



Maui Land & Pineapple Company, Inc.

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OFFICE OF THE
COUNTY COUNCIL

November 30, 2020

Council Member Tamara Paltin, Chair
Maui County Council Planning and Sustainable Land Use Committee
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

SUBJECT: AFFORDABLE HOUSING REPORT FOR WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (PSLU-54(5))

Dear Council Member Paltin,

In response to your letter dated November 4, 2020 I provide this letter detailing compliance with West Maui Project District 2 (Kapalua Mauka) Change in Zoning Ordinance 3358, Condition 11 regarding the satisfaction of affordable housing requirements for Kapalua Mauka.

With a letter dated November 9, 2020, I replied to a similar letter addressed to Ms. Lori Tshako, Director, Department of Housing and Human Concerns. I apologize for not responding directly to your letter.

Condition 11 requires Maui Land & Pineapple Company Inc. (MLP) to provide at least one affordable dwelling unit for every four market-priced dwelling units that are constructed within Kapalua Mauka. Condition 11(g) requires prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply.

Mahana Estates

To date only 51 market-priced lots have been subdivided and developed in Kapalua Mauka. These lots are in the Mahana Estates subdivision, the northern 125 acres of Kapalua Mauka.

When approvals for Mahana Estates were sought in 2006, Maui County Code (MCC) Chapter 2.96 ("Residential Workforce Housing Policy") was recently enacted and required residential workforce housing units equivalent to at least 50 percent of the total number of market rate lots of a development (a greater number of affordable workforce housing units than Condition 11). Thus, by the express terms of Condition 11 MCC Chapter 2.96 supersedes Condition 11.

Council Member Tamara Paltin

SUBJECT: AFFORDABLE HOUSING REPORT FOR WEST MAUI PROJECT DISTRICT 2
(KAPALUA MAUKA) (PSLU-54(5))

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MLP fulfilled its affordable housing obligation for Mahana Estates by providing 26 affordable housing credits as detailed in the:

- Mahana Estates Subdivision Residential Workforce Housing Agreement executed on December 29, 2006 (Attachment 1);
- Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement Doc. No. 2007-097329 dated May 31, 2007 (Attachment 2); and
- Mahana Estates Subdivision Residential Workforce Housing Agreement 2011 Annual Update Report dated July 7, 2011 (Attachment 3).

Per the above documents MLP has satisfied all residential workforce housing requirements for Kapalua Mauka to date.¹

Balance of Kapalua Mauka

Maui County Code (MCC) Chapter 19.92 specifies that no more than 690 dwelling units shall be constructed in Kapalua Mauka. With Mahana Estates 51 market-priced lots have been subdivided and developed. The balance of Kapalua Mauka has not been developed or built; therefore, no additional housing has been required or built. However, the State Land Use District Boundary Amendment Decision and Order (LUC Docket No. A03-74) for Kapalua Mauka requires 125 affordable units to be built at the Pulelehua project in fulfillment of the Kapalua Mauka affordable housing requirement.

The owner of the Pulelehua project has executed a Residential Workforce Housing Agreement with the County Maui for Pulelehua (Attachment 4). This agreement specifically references the 125 affordable units required for Kapalua Mauka.

Conclusion

With the 26 affordable housing units provided in connection with the Mahana Estates subdivision and the 125 affordable housing that will be provided at Pulelehua, a total of 151 affordable housing units will be provided. As and when development of Kapalua Mauka proceeds and additional units are required they will be provided at that time.

Please contact me should you have any questions or require additional information.



Paul Subrata
Vice President

Attachments

Cc: Lori Tzuhako, Director, Department of Housing and Human Concerns
Michele McLean, Director, Planning Department

¹ Final subdivision approval for Mahana Estates was granted on February 8, 2017, at which time Chapter 2.69 had been amended to require 25% residential workforce housing units for the Mahana Estates subdivision, or 13 units, consistent with Condition 11. Thus 13 units in excess of the requirement were provided and can be applied to future developments.

ATTACHMENT 1

Mahana Estates Subdivision
Residential Workforce Housing Agreement

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

Kiefer, Merchant & Garneau LLC
444 Hana Hwy., Ste. 204
Kahului, Maui, HI 96732

Attention: Greg Garneau
Telephone (808) 871-6016

TITLE OF DOCUMENT:

MAHANA ESTATES SUBDIVISION
RESIDENTIAL WORKFORCE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

OWNER: MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, Maui, Hawaii 96733

COUNTY: COUNTY OF MAUI
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY(S): (2) 4-2-001:042 (por.)
Lot 3-B, Kapalua Mauka Large-Lot Subdivision No. 3
(This document consists of ___ pages.)

**MAHANA ESTATES SUBDIVISION
RESIDENTIAL WORKFORCE HOUSING AGREEMENT**

This Agreement is made this _____ day of _____, 2006, by and between MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose mailing address is P.O. Box 187, Kahului, Maui, Hawaii 96733, hereinafter called "MLP", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as "County".

Background

1. By Ordinance No. 3358 ("Ordinance 3358"), the Council of the County of Maui ("Council") granted a conditional change in zoning to West Maui Project District 2 (Kapalua Mauka).
2. MLP has filed for subdivision approval of a 51-lot residential subdivision located on approximately 124.980 acres of land within Kapalua Mauka known as the Mahana Estates Subdivision, County Subdivision File No. 4.913 (the "Project"), said land being more particularly described in Exhibit A attached hereto (the "Property").
3. MLP represents that the Project will contain 51 residential lots and/or units with an anticipated 50% or more offered for sale for \$600,000.00 or more.
4. At the time Ordinance 3358 was enacted, the Council was considering establishing a new residential workforce housing policy.
5. Ordinance 3358 includes certain conditions of zoning including an affordable housing condition enumerated as Condition 11 ("Condition 11"), subsection (g) of which provides that any affordable housing policies adopted by the County prior to final subdivision approval which would result in a greater number of affordable units being required shall apply to Kapalua Mauka.
6. By Ordinance No. 3418, effective December 1, 2006, the Council established a new affordable housing policy for the County set forth in Maui County Code ("MCC") Chapter 2.96 entitled "Residential Workforce Housing Policy" ("Chapter 2.96"). Chapter 2.96 would require a greater number of affordable workforce housing units with respect to subject developments within Kapalua Mauka, including the Project, and thus by the express terms of Condition 11 Chapter 2.96 supersedes Condition 11 and applies to the Project.
7. In accordance with MCC §2.96.080, MLP desires to enter into this Mahana Estates Subdivision Residential Workforce Housing Agreement ("Agreement") with County to implement the provisions of MCC Chapter 2.96 with respect to the Project.

NOW, THEREFORE, MLP and County, in consideration of the recitals set forth above and the terms, covenants and conditions set forth in this Agreement below, agree as follows:

ARTICLE I - DEFINITIONS

Capitalized terms defined below shall have the following meanings when used in this Agreement:

A. "Buyer" or "Renter" means a person or family who, individually or collectively, as the case may be, meets the following minimum qualifications:

1. Is a citizen of the United States or a permanent resident alien;
2. meets one of the criteria for a "Resident" as set forth in MCC §2.96.020 prior to filing an Application for a Residential Workforce Housing Unit ("Application"), with documentation confirming the criteria is met;
3. Is at least eighteen (18) years of age;
4. In the case of a Buyer, has the financial ability to purchase a Residential Workforce Housing Unit ("Housing Unit" or "Unit"), including being able to qualify for a residential mortgage in a timely manner;
5. Falls within one of the Income Groups established by Chapter 2.96.

MLP shall be responsible for requesting and securing appropriate documentation and for verifying all of the foregoing requirements.

B. "Application for a Residential Workforce Housing Unit" or "Application" means the application form prepared by MLP and duly completed and signed by an applicant to determine the applicant's eligibility to be a Buyer or Renter to purchase or rent a Housing Unit.

C. "Cash Equity" means the actual amount of payments of principal which the Buyer has made for the purpose of purchasing a Housing Unit, including the cash down payment made, and payments of principal on mortgage loans secured to purchase the Housing Unit. The term "Cash Equity" shall not include interest or the appreciated value of the Housing Unit caused by market fluctuation. Cash Equity may include payments of principal for improvements as defined in this Agreement that add value to the Housing Unit.

D. "County" means the County of Maui.

E. "Council" means Maui County Council.

F. "Department" means the Department of Human Concerns of the County of Maui.

G. "Director" means the Director of the Department of Human Concerns of the County of Maui.

H. "Family" means two (2) or more persons related by blood, marriage or operation of law.

I. "Gross Annual Family Income" includes income from the following sources: wages, overtime, commissions, bonuses, profit sharing, tips, business income, child support, interest and dividends from funds retained after the closing, and other types of periodic payments which are anticipated for the 12 month period commencing with the date of Application.

J. "HUD" means the Department of Housing and Urban Development of the U.S. Government.

K. "Income Groups" are the six groups established and defined by Chapter 2.96 (specifically, "very low income", "low income", "below moderate income", "moderate income", "above-moderate income", and "gap income").

L. "Improvements" means substantial structural or permanent fixed improvements that cannot be removed without substantial damage to the premises or substantial or total loss of value of said improvements and as may be further defined by MLP in its sales documents.

M. "Median Family Income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County.

N. "Permanent Resident Alien" means an individual who has been issued a Permanent Resident Card by the United States Citizen and Immigration Services Department of the Department of Homeland Security.

ARTICLE II – RESIDENTIAL WORKFORCE HOUSING PROGRAM

A. Specific Requirements Applicable to the Mahana Estates Project.

1. Number of Units Required; Approved Satisfaction of Requirements.
Pursuant to MCC §2.96.040(A)(2), the Project is subject to a residential workforce housing requirement of 26 units. MLP has elected and agreed, with the approval of the Director, to satisfy this requirement as follows:

(a) Fifteen (15) of the required units (58%) are "for sale" Housing Units for the Below Moderate Income Group; this requirement is satisfied by applying MLP's fifteen (15) existing housing unit credits from MLP's sale of lots in the Kapua Village workforce housing subdivision, which are hereby surrendered by MLP and accepted by the County; and

(b) MLP shall satisfy the remaining eleven (11) required units by developing eleven (11) residential workforce housing units at MLP's Site 6-0 project (also known as Pailolo) or other site approved by the Director within the West Maui Community Plan region and renting those 11 units in accordance with Chapter 2.96 and this Agreement. Four (4) of those units (15%) shall be rented to qualified renters in the 120% to 140% income bracket, and seven (7) of those units (27%) shall be rented to qualified renters in the 140% to 160% income bracket. Rental Units will be offered for rent and occupancy no later than the time at

which homes at Mahana Estates are made available for occupancy by purchasers. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units in Mahana Estates unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units provided pursuant to this section concurrently or sooner. Subject to the approval of the Director, the units may be rented to special housing target groups identified by MLP as provided in MCC §2.96.080(A)(3). In accordance with MCC §2.96.070(E) such residential workforce housing units shall remain affordable for the life of the unit.

B. General Requirements Applicable to Sale of Housing Units.

1. Applicant Selection Process for Sale of Housing Units.

(a) Wait list procedure. MLP shall use the following procedure for establishing a waitlist for Buyers of Housing Units:

(1) MLP shall establish a wait list of interested applicants;
(2) Prior to initiating the wait list, MLP shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and

(3) Selection for purchase shall be made by a lottery administered by MLP and overseen by the Department, subject to the Applicant meeting the applicable eligibility criteria.

2. Eligibility criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following minimum criteria:

(a) Be a citizen of the United States or a permanent resident alien who is a resident of the County;

(b) Be eighteen years of age or older;

(c) Have a Gross Annual Family Income (not to include the income of minors) which does not exceed one hundred sixty percent of the County's area median income as established by HUD. Initial determination for compliance with the maximum gross annual family income provision shall be made MLP for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the Applicant's income verification data is received;

(d) Have assets that do not exceed one hundred sixty percent of the County's area median income as established by HUD. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property;

(e) For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold

in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the Applicant is selling an Housing Unit and purchasing a different Housing Unit that is more appropriate for the Applicant's family size; and

(f) Pre-qualify for a loan with the Applicant's choice of lender.

3. Notification of change. Each Applicant shall be responsible for notifying MLP in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If Applicant fails to properly notify MLP of such changes and MLP is unable to contact the Applicant, MLP shall remove the Applicant's name from the wait list.

4. Selection priority.

(a) Residents on the wait list shall receive first priority for the available units. Non-residents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents;

(b) MLP may do a mass mailing of housing applications to applicants on the wait list;

(c) The Housing Units must be offered to qualified residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the Income Group for which they qualify. Non-residents will be offered residential workforce housing units in the order in which their names were drawn in the lottery; and

(d) In the event that Units are not sold or rented within the first ninety days after they are offered, and MLP has made a good faith effort, as determined by the Director, to contact and qualify Applicants on the wait list, the sale or rental of remaining Units shall be conducted as follows:

(1) For the next ninety-day period, Units shall be offered to the next-higher income preference group, at the original sales price or rental. For example, Units targeted for families earning up to one hundred twenty percent of the median income may be sold to families earning up to one hundred forty percent of the median income. All other eligibility criteria shall apply;

(2) Units shall be offered to the next higher Income Group every ninety days until the units are sold or rented or there are no more Income Groups available;

(3) Units shall then be offered to non-residents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the Applicant's income is within the residential workforce housing income groups; and

(4) Any for sale units that remain unsold may be offered at market rate without deed restrictions, provided that with the Director's approval they may also be rented in accordance with this Agreement until such time as a qualified buyer becomes available. Upon the sale of the unit, the County shall receive fifty percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, MLP shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.

5. MLP shall submit copies of the following information to the Department to verify the sale of Housing Units to eligible buyers:

(a) Applicant's completed ownership application;

- (b) Executed sales contract;
- (c) Pre-qualification notice from lender;
- (d) All signed federal tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender; and
- (e) Escrow company's settlement statement.

6. An owner of a Housing Unit that is being re-sold must sell the unit to an income-qualified household and notify the Department of the sale. The Department shall verify the sales price.

7. Deed Restrictions for Housing Units Sold. Housing Units sold shall be subject to the following deed restrictions pursuant to the Residential Workforce Housing Policy:

(a) Housing Units sold shall be subject to MCC 2.96 for twenty-five (25) years from the initial sale of the Unit.

(b) Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

- (1) Thirty percent of the ownership units shall be for "below-moderate income" residents;
- (2) Thirty percent of the ownership units shall be for "moderate income" residents;
- (3) Twenty percent of the ownership units shall be for "above-moderate income" residents; and
- (4) Twenty percent of the Ownership units shall be for "gap income" residents.

(c) Timing of completion.

(1) Residential workforce housing units shall be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development; and

(2) Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

(d) Deed restrictions.

- (1) The unit must be owner-occupied;
- (2) The unit must remain affordable for twenty-five years from the initial sale, with the owner notifying the Department upon a decision to sell; and
- (3) Under special circumstances an owner of a residential workforce housing unit may appeal to the Department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

(e) Sales price - single-family dwelling units. The sales price of a new single-family dwelling unit shall be set by the Department, at the time MLP is ready to market the Unit, using the following guidelines:

- (1) A down payment of five percent shall be assumed;
- (2) The prevailing interest rate shall be used;

(3) The price of a one-bedroom Unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target Income Group;

(4) The price of a two-bedroom Unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target Income Group;

(5) The price of a three-bedroom Unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target Income Group;

(6) The price of a four-bedroom Unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target Income Group; and

(7) Applicants in each Income Group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the Applicant's group.

(f) Sales price - two-family or multi-family dwelling units. The sales price of a new two-family or multi-family dwelling unit shall be ninety percent of the price of a single-family dwelling unit, as established in section 2.96.060(E).

(g) Resale price. The maximum resale price shall be established by the department using the following guidelines:

(1) An appraisal of the property shall be required before occupancy;

(2) A second appraisal shall be required upon a decision to sell the Unit; and

(2) Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

(h) Foreclosures.

(1) The County shall have the first option to purchase the unit; and

(2) If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the Director, with the same deed restrictions.

C. General Requirements Applicable to Rental of Housing Units.

1. Applicant Selection Process for Rental of Housing Units.

(a) Wait list procedure. MLP shall use the following procedure for establishing a waitlist for Renters of Housing Units:

(1) MLP shall establish wait lists of interested applicants by rental development;

(2) Prior to initiating the wait list, MLP shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and

(3) Selection for rental Units shall be made by a lottery administered by MLP and overseen by the Department, subject to the Applicant meeting the eligibility criteria established in MCC §2.96.100(B).

2. Eligibility criteria. The eligibility criteria for rentals shall be established on a project-by-project basis by the director in the following manner:

(a) If the project is receiving federal and/or state assistance, the applicable federal and/or state eligibility criteria shall apply; and

(b) If the project is not receiving federal and/or state assistance, the minimum eligibility criteria in MCC §2.96.090(B) shall apply, except for MCC §2.96.090(B)(6).

3. Notification of change. Each Applicant shall be responsible for notifying MLP in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an Applicant fails to properly notify MLP of such changes and MLP is unable to contact the Applicant, the Applicant's name shall be removed from the applicable wait list.

4. Selection priority.

(a) Residents on the wait list shall receive first priority for the available Housing Units. Non-residents on the wait list may rent a Housing Unit once the wait list has been exhausted of all residents;

(b) MLP may do a mass mailing of housing applications to applicants on the wait list;

(c) Housing Units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a Unit available in the Income Group for which they qualify. Non-residents will then be offered Housing Units in the order in which their names were drawn in the lottery, provided that there is a Unit available in the Income Group for which they qualify;

(d) MLP shall submit copies of the following information to the Department to verify the rental of Housing Units to eligible Renters:

(1) Applicant's completed final rental application;

(2) Executed rental lease; and

(3) All signed federal tax returns used to determine eligibility, or any other documents used to determine eligibility by MLP;

(e) MLP shall maintain a wait list for the development after all of the units are rented, which shall be used to fill any vacancy;

(f) Any rental Unit vacancy shall be filled by an Applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income", "below-moderate income", and "moderate income" groups;

(g) MLP shall follow the procedure in Section B.4(d) above if they cannot rent the Unit at the appropriate Income Group; and

(h) MLP, as an owner of a residential workforce housing rental development that is being re-sold, shall notify the Department of MLP's intent to sell and provide documentation that the new owner knows of the deed restrictions.

5. Deed Restrictions for Housing Units Rented. Housing Units rented shall be subject to the following deed restrictions pursuant to the Residential Workforce Housing Policy:

(a) Rental units shall be subject to Chapter 2.96 for the life of the unit, as determined by a building inspector with the Development Services Administration of the Department of Public Works and Environmental Management.

(b) Unless an exemption is granted by the Director, the percentage of rental units within each income group shall be as follows:

- (1) One third of the rental units shall be for "very low income" and "low income" residents;
- (2) One third of the rental units shall be for "below-moderate income" residents; and
- (3) One third of the rental units shall be for "moderate income" residents.

(c) Timing of completion.

(1) Except when the MLP is partnering with a non-profit organization or community land trust as allowed in MCC §2.96.040(B)(2), residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner; and

(2) When MLP is partnering with a non-profit organization or community land trust, the payment to the non-profit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce Housing Units must be constructed within three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units.

(d) Vacancies. Any rental Unit vacancy must be filled by an Applicant in the appropriate Income Group to better maintain an equal distribution of rentals across the "very low income" and "low income", "below-moderate income", and "moderate income" groups.

(e) Deed restrictions.

- (1) The rental Unit must remain affordable for the life of the unit;
- (2) MLP must notify the department upon a decision to sell the rental development; and
- (3) Any new owner must comply with the deed restrictions.

(f) Rental rates. The monthly rental rates shall be set by the department based on HUD income limits.

(g) Foreclosures.

- (1) The County will have the first option to purchase the rental development; and
- (2) If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.

D. Availability of Credits for Housing Units.

1. Residential workforce housing credits may be given under the following circumstances:

(a) One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or multifamily dwelling unit constructed in excess of the residential workforce housing required by MCC §2.96.040; and

(b) One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.

2. The credit must be used in the same community plan area in which the unit was constructed.

3. The credit must be applied toward the same type of unit constructed.

4. The credit must be used for the same Income Group in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required.

5. The credit must be used for the "gap income" group when the credit is earned by creating a deed restriction.

6. The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

ARTICLE III – VERIFICATION & REPORTING REQUIREMENTS

A. Availability of Information & Documentation. The County shall have the right to require MLP to provide such information as may be reasonably required for the administration and enforcement of this Agreement.

B. Annual Reporting Requirement. MLP shall provide the Department annual written status reports regarding the implementation of this Agreement, which shall contain the information required under MCC §2.96.110.

ARTICLE IV - TERM OF AGREEMENT

This Agreement shall remain in full force and effect until all of the residential workforce housing units required hereunder are developed and either sold to Buyers or rented to Renters, or the requirements hereunder are otherwise satisfied, provided that the provisions applicable to rental Units shall remain in effect so long as rental Units remain in rental use pursuant to this Agreement. The County agrees to, upon request, provide such written verification of compliance with this Agreement as MLP may reasonably request.

ARTICLE V - GOVERNING LAW

This Agreement and the rights and obligations of MLP and the County shall be interpreted in accordance with the laws of the State of Hawaii.

ARTICLE VI - CONSENTS; APPROVALS; WAIVERS; NOTICES

A. Consents, Waivers, Approvals.

Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. Except where otherwise provided, consent from the County shall mean the consent or approval of the Mayor, the Director, or any others required by law. No consent or waiver, express or implied, by MLP or the County to or of any breach or default by the other party in the performance of the obligations hereunder shall be construed to be a consent or waiver to or of any other or further breach or default. Failure on the part of MLP or the County to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights hereunder.

B. Notices.

All notices, demands, requests, consents, approval, or other communications ("Notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to MLP, then to:

Maui Land & Pineapple Company, Inc.
P.O. Box 187
Kahului, Maui, Hawaii 96733
Attn: President

If to County, then to:

Mayor
County of Maui
200 South High Street
Wailuku, Hawaii 96793

cc: Director of Housing and Human Concerns

County of Maui
200 South High Street
Wailuku, Hawaii 96793

Notices given as provided in this section shall be deemed given on delivery or upon receipt if by personal delivery, telegram or facsimile transmission or on the fourth business day following the mailing thereof if by mail.

ARTICLE VII - OTHER PROVISIONS; RESTRICTIONS

A. No Partnership or Joint Venture.

Nothing contained in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture, or lease by and between the parties.

B. Binding Effect.

Each and all of the covenants, terms, and provisions contained herein shall be binding upon MLP and its successors and assigns.

C. Indemnification.

MLP will defend, indemnify and hold the County harmless against all claims, including reasonable attorney's fees, made by any person or entity for: (1) failure of MLP or its agents to make any required disclosures to the prospective buyer or any other person as required by law; (2) any misrepresentations made by MLP or its agents, including but not limited to a sales agent, prospective buyer or any other person; (3) loss or damage, including property damage, bodily injury and wrongful death, arising out of or in connection with the construction and development of the Housing Units, including proper sub-base preparation and building foundation construction or during the performance of this Agreement caused, in whole or in part, by MLP, its agents, employees, contractors, subcontractors or invitees, or any failure by MLP to keep its property or any improvements thereon in a safe condition; and (4) any warranty pertaining to the Housing Units.

D. Third Party Beneficiary. This Agreement is made exclusively for the benefit of MLP and the County, and no other persons or entities shall acquire any rights, powers, privileges, remedies, or claims thereby.

E. Amendments.

This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by MLP and the County.

F. Remedies not Exclusive.

MLP agrees that the County has the right to enforce or prosecute any breach of the terms of this Agreement by MLP, its successors or assigns. Except as otherwise specifically set forth herein, any remedies herein provided for breaches of obligations hereunder shall not be exclusive, and shall not impair the right of the County to exercise any other right or remedy it may have, whether for damages, injunction or otherwise.

G. Attorney's Fees.

In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement or for damages by reason of any breach of this Agreement, or for any other judicial or administrative remedy, then the

prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

H. Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

I. Captions.

Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

J. Identification.

Whenever required by the context in which it is used, any pronoun shall include both the singular and plural, and any gender shall include the masculine, the feminine, and the neuter genders.

K. Neither Party Deemed Drafter.

The parties agree that neither party shall be deemed the drafter of this Agreement, and further, that if this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision thereof against any party as the drafter of this Agreement.


L. Effective Date.

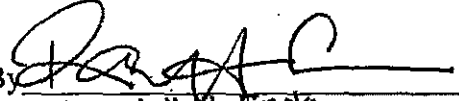
The effective date of this Agreement shall be the date set forth on the first page of this Agreement or, absent such a date, on the date on which the last party signs this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.


MLP:

MAUI LAND & PINEAPPLE COMPANY,
INC.


By 
Name: Ryan Churchill
Its: Vice President, Community Development

By 
Name: Randall H. Endo
Its: Vice President, Community Development

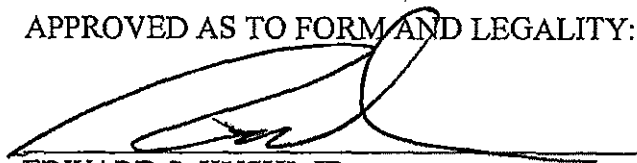
COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


ALICE L. LEE
Director of Housing and Human Concerns


APPROVED AS TO FORM AND LEGALITY:


EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of December, 2006, before me personally appeared Ruan Churchill, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

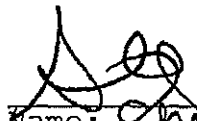
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Name: Sheila Nakagawa N.S.
Notary Public, State of Hawaii
My commission expires: 10/3/07

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of December, 2006, before me personally appeared Bardall H. Endo, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Name: Sheila Nakagawa N.S.
Notary Public, State of Hawaii
My commission expires: 10/3/07

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29th day of December, 2000, before me personally appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Keli P. Nahooikaka
Name: Keli P. Nahooikaka
Notary Public, State of Hawaii

My commission expires: 4/30/10

L.S.

EXHIBIT A

**Kapalua Mauka Large-Lot Subdivision No. 3
Description of Proposed Lot 3-B**

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the northwesterly corner of this parcel of land, being also the southwesterly corner of Lot 49 of The Plantation at Kapalua (File Plan 2006), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 101.02 feet North and 5,926.49 feet East and running by azimuths measured clockwise from True South:

1. 284° 00' 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;
2. 328° 38' 787.92 feet along same to a point;
3. 320° 11' 342.84 feet along same to a point;
4. 299° 45' 473.25 feet along same to a point;
5. 294° 02' 414.26 feet along same to a point;
6. 22° 18' 545.98 feet along same to a point;
7. 6° 29' 302.12 feet along same to a point;
8. 342° 52' 171.59 feet along same to a point;
9. 313° 48' 23.52 feet along same to a point;
10. Thence along same on a curve to the right, having a radius of

597.00 feet, the chord
azimuth and distance
being:
322° 58' 30" 190.38 feet
to a point;

- | | | | | |
|-----|------|-----|---------------|--|
| 11. | 332° | 09' | 147.95 feet | along same to a point; |
| 12. | 286° | 50' | 160.00 feet | along same to a point; |
| 13. | 246° | 40' | 198.00 feet | along same to a point; |
| 14. | 326° | 00' | 559.72 feet | along the remainder of
Royal Patent 2236, Land
Commission Award 8522-B
Apana 1 to Kale Davis
(Certificate of Boundaries
No. 21), being also along
Lot 4 of Kapalua Mauka
Large-Lot Subdivision to a
point; |
| 15. | 315° | 00' | 212.40 feet | along same to a point; |
| 16. | 342° | 00' | 98.17 feet | along same to a point; |
| 17. | 59° | 30' | 228.90 feet | along same to a point; |
| 18. | 8° | 00' | 87.96 feet | along same to a point; |
| 19. | 308° | 20' | 125.73 feet | along same to a point; |
| 20. | 240° | 00' | 48.91 feet | along same to a point; |
| 21. | 330° | 00' | 90.84 feet | along same to a point; |
| 22. | 240° | 00' | 128.41 feet | along same to a point; |
| 23. | 342° | 00' | 70.47 feet | along same to a point; |
| 24. | 290° | 00' | 250.66 feet | along same to a point; |
| 25. | 335° | 30' | 1,577.46 feet | along same to a point; |
| 26. | 344° | 00' | 310.62 feet | along same to a point; |

27.	324°	00'	182.30 feet	along same to a point;
28.	357°	00'	319.88 feet	along same to a point;
29.	319°	00'	348.47 feet	along same to a point;
30.	342°	00'	223.65 feet	along same to a point;
31.	336°	00'	498.25 feet	along same to a point;
32.	54°	00'	227.53 feet	along same to a point;
33.	125°	29'	442.49 feet	along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apāna 1 to Kale Davis (Certificate of Boundaries No. 21) to a point;
34.	152°	53'	614.19 feet	along same to a point;
35.	120°	31'	532.29 feet	along same to a point;
36.	138°	20'	735.61 feet	along same to a point;
37.	169°	34'	541.87 feet	along same to a point;
38.	165°	36'	613.74 feet	along same to a point;
39.	148°	06'	836.18 feet	along same to a point;
40.	166°	17'	967.27 feet	along same to a point;
41.	138°	24'	342.79 feet	along same to a point;
42.	57°	50'	140.01 feet	along same to a point;
43.	137°	06'	1,958.49 feet	along same to a point;
44.	187°	05' 19"	17.99 feet	along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF- 030-1(3)) to a point;

- | | | | | |
|-----|------|-----|-----|---|
| 45. | 277° | 05' | 19" | 10.00 feet along same to a point; |
| 46. | 185° | 39' | 23" | 400.13 feet along same to a point; |
| 47. | 175° | 46' | 38" | 101.98 feet along same to a point; |
| 48. | 187° | 05' | 19" | 518.19 feet along same to the point of
beginning and containing
an Area of 124.980 Acres. |

ATTACHMENT 2

Memorandum of Mahana Estates Subdivision
Residential Workforce Housing Agreement Doc. No. 2007-097329

25



R-534 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 31, 2007 08:01 AM
Doc No(s) 2007-097329



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z12

LAND COURT SYSTEM *Ka* REGULAR SYSTEM

Return by Mail Pickup To:

RS

Kiefer Merchant & Gameau, LLC
444 Hana Highway, Suite 204
Kahului, Hawaii 96732
Attention: Greg Gameau
Telephone: (808) 871- 6016

TWA 378420D

TITLE OF DOCUMENT:

MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL
WORKFORCE HOUSING AGREEMENT

PARTIES TO DOCUMENT:

MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation

COUNTY OF MAUI

TAX MAP KEY(S): Maui 4-2-001:042 (por.); Lot 3-B Kapalua Mauka Large-Lot
Subdivision No. 3

(9 pages.)

**MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL
WORKFORCE HOUSING AGREEMENT**

THIS MEMORANDUM OF MAHANA ESTATES SUBDIVISION RESIDENTIAL WORKFORCE HOUSING AGREEMENT is made on May 22, 2007, by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is P.O. Box 187, Kahului, Maui, Hawaii 96733, hereinafter referred to as "MLP", and **COUNTY OF MAUI**, whose address is 200 S. High Street, Wailuku, Hawaii, 96793, hereinafter referred to as "County".

Pursuant to an unrecorded Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006 (the "Agreement"), MLP has entered into an agreement with County regarding the workforce housing requirements for a project known as the Mahana Estates Subdivision, which is located on that certain parcel of land identified as Lot 3-B of the Kapalua Mauka Large Lot Subdivision No. 3, which is a portion of the land that as of the date of this Memorandum bears Tax Map Key No. (2) 4-2-001:042, and which is more particularly described in **Exhibit A**.

Under the Agreement, MLP and County agreed, among other things, that in accordance with Maui County Code ("MCC") §2.96.080, the purpose of the Agreement is to implement the provisions of MCC Chapter 2.96 with respect to the Mahana Estates Subdivision.

NOW THEREFORE, MLP and the County hereby enter into this Memorandum for purposes of giving notice of the terms of the Agreement, which are incorporated herein by this reference.

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

MLP:

MAUI LAND & PINEAPPLE COMPANY, INC.

By Robert M. McNatt

Name: **Robert M. McNatt**

Its: **Executive Vice President / Community Development**

By Ryan L. Churchill

Name: **Ryan L. Churchill**

Its: **Sr. Vice-President Corporate Development**


COUNTY OF MAUI

By 
CHARMAINE TAVARES
Its Mayor

APPROVAL RECOMMENDED:


VANESSA A. MEDEIROS
Director of Housing and Human Concerns

APPROVED AS TO FORM AND LEGALITY:


EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 14th day of May, 2007, before me personally appeared Robert M. McKeeth, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii
My commission expires: 5/25/17

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

L.S.

On this 14th day of May, 2007, before me personally appeared Ryan L. Churchill, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhonda M. Pang
Name: Rhonda M. Pang
Notary Public, State of Hawaii
My commission expires: 5/25/17

L.S.

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 22nd day of May, 2007, before me personally appeared CHARMAINE TAVARES, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said CHARMAINE TAVARES acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Kelli P. Nahookaka
Name: **Kelli P. Nahookaka**
Notary Public, State of Hawaii

My commission expires: 4/20/10

L.S.

EXHIBIT A

Lot 3-B, Kapalua Mauka Large-Lot Subdivision No. 3

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the northwesterly corner of this parcel of land, being also the southwesterly corner of Lot 49 of The Plantation at Kapalua (File Plan 2006), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 101.02 feet North and 5,926.49 feet East and running by azimuths measured clockwise from True South:

1. 284° 00' 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;
2. 328° 38' 787.92 feet along same to a point;
3. 320° 11' 342.84 feet along same to a point;
4. 299° 45' 473.25 feet along same to a point;
5. 294° 02' 414.26 feet along same to a point;
6. 22° 18' 545.98 feet along same to a point;
7. 6° 29' 302.12 feet along same to a point;
8. 342° 52' 171.59 feet along same to a point;
9. 313° 48' 23.52 feet along same to a point;
10. Thence along same on a curve to the right, having a radius of 597.00 feet, the chord azimuth and distance being:
322° 58' 30" 190.38 feet to a point;

11.	332° 09'	147.95 feet along same to a point;
12.	286° 50'	160.00 feet along same to a point;
13.	246° 40'	198.00 feet along same to a point;
14.	326° 00'	559.72 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
15.	315° 00'	212.40 feet along same to a point;
16.	342° 00'	98.17 feet along same to a point;
17.	59° 30'	228.90 feet along same to a point;
18.	8° 00'	87.96 feet along same to a point;
19.	308° 20'	125.73 feet along same to a point;
20.	240° 00'	48.91 feet along same to a point;
21.	330° 00'	90.84 feet along same to a point;
22.	240° 00'	128.41 feet along same to a point;
23.	342° 00'	70.47 feet along same to a point;
24.	290° 00'	250.66 feet along same to a point;
25.	335° 30'	1,577.46 feet along same to a point;
26.	344° 00'	310.62 feet along same to a point;
27.	324° 00'	182.30 feet along same to a point;

28.	357°	00'	319.88 feet along same to a point;
29.	319°	00'	348.47 feet along same to a point;
30.	342°	00'	223.65 feet along same to a point;
31.	336°	00'	498.25 feet along same to a point;
32.	54°	00'	227.53 feet along same to a point;
33.	125°	29'	442.49 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21) to a point;
34.	152°	53'	614.19 feet along same to a point;
35.	120°	31'	532.29 feet along same to a point;
36.	138°	20'	735.61 feet along same to a point;
37.	169°	34'	541.87 feet along same to a point;
38.	165°	36'	613.74 feet along same to a point;
39.	148°	06'	836.18 feet along same to a point;
40.	166°	17'	967.27 feet along same to a point;
41.	138°	24'	342.79 feet along same to a point;
42.	57°	50'	140.01 feet along same to a point;
43.	137°	06'	1,958.49 feet along same to a point;
44.	187°	05' 19"	17.99 feet along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF- 030-1(3)) to a point;
45.	277°	05' 19"	10.00 feet along same to a point;

46. 185° 39' 23" 400.13 feet along same to a point;
47. 175° 46' 38" 101.98 feet along same to a point;
48. 187° 05' 19" 518.19 feet along same to the point of
beginning and containing
an Area of 124.980 Acres.

ATTACHMENT 3

Mahana Estates Subdivision
Residential Workforce Housing Agreement 2011 Annual Update Report



Maui Land & Pineapple Company, Inc.

July 7, 2011

Jo-Ann T. Ridao
Director
County of Maui Housing Division
One Main Plaza Bldg.
2200 Main St., Suite 546
Wailuku, HI 96793

Re: Mahana Estates Subdivision Residential Workforce Housing Agreement
2011 Annual Update Report

Dear Ms. Ridao,

Pursuant to the Mahana Estates Subdivision Residential Workforce Housing Agreement dated December 29, 2006, recorded by Memorandum of Mahana Estates Subdivision Residential Workforce Housing Agreement dated May 22, 2007 (Agreement), Article III Verification & Reporting Requirements, attached please find our fourth and final annual written status report regarding the implementation of the agreement.

The subdivision application for Mahana Estates continues to be reviewed by the County of Maui, and no construction has yet taken place. The attached report lists the original 15 housing credits that were accepted by the County pursuant to the Agreement, as well as the 11 housing credits which have been assigned to the Mahana Estates project since our last annual status report. These 26 housing credits satisfy the specific requirements applicable to the Mahana Estates Project per Article II, Section A of the Agreement.

You may contact Yarrow Flower at yflower@mlpmaui.com or 808-665-5459 with questions or to request additional information.

Sincerely,

Ryan Churchill
President & COO

Encl.

Department of Housing and Human Concerns' Annual Status Report: Mahana Estates Subdivision Residential Workforce Housing Agreement

Article III B. Annual Reporting

Reporting Period: May 15, 2010 to May 14, 2011

	# of affordable dwelling units	# market rate units
Proposed	26	51
Completed	26	0
Sold	26	0
Rented	0	0

Wait list	0	0
------------------	---	---

Housing Unit Credits

# Units		Income Group	
15	Per Agreement	Below Moderate	Credits as approved in original agreement
11	Assigned by WK3 LLC	Below Moderate	

For Sale Units

# Units	# Bedrooms	Income Group	Sales Price	Resold
0				

Rental Units

# Units	# Bedrooms	Income Group	Rental Rate	Move in Date
0				

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #4

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	Total	372
2	Workforce Housing Credits assigned prior to this assignment	<u>56</u>
3	Workforce House Credits to be assigned by this assignment	<u>2</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>314</u>

Submitted by:

WK 3 LLC

By Maui Quest LLC

Its: Member


By Dowling Company, Inc.

Its: Member

By:  June 3, 2010
Everett R Dowling Date
Its: President

Transferor

Acknowledgement:

By:  June 3, 2010
Director Date
Department of Housing and Human Concerns

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1: 45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #5

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	Total	372
2	Workforce Housing Credits assigned prior to this assignment	<u>58</u>
3	Workforce House Credits to be assigned by this assignment	<u>3</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>311</u>

Submitted by:

WK 3 LLC

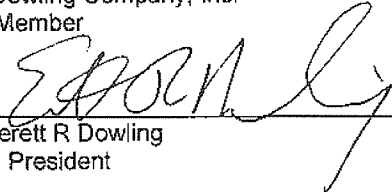
By Maui Quest LLC

Its: Member

By Dowling Company, Inc.

Its: Member

By:

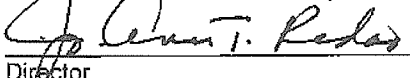

Everett R Dowling
Its: President

July 12, 2010
Date

Transferor

Acknowledgement:

By:


Director
Department of Housing and Human Concerns

July 13, 2010
Date

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1:45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

Notice of Exercise and Assignment of Act 141 Workforce Housing Credits
Assignment #6

1	Workforce Housing Credits available	
	Waiehu Kou 2	99
	Waiehu Kou 3	83
	Waiehu Kou 4	86
	Leialii Phase 1A	104
	<u>Total</u>	<u>372</u>
2	Workforce Housing Credits assigned prior to this assignment	<u>61</u>
3	Workforce House Credits to be assigned by this assignment	<u>6</u>
4	Workforce Housing Credits remaining after this assignment and available for future use	<u>305</u>

Submitted by:

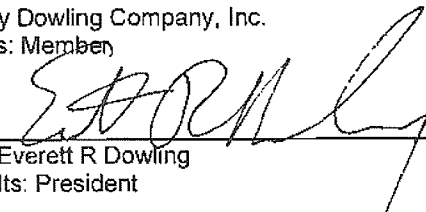
WK 3 LLC

By Maui Quest LLC

Its: Member

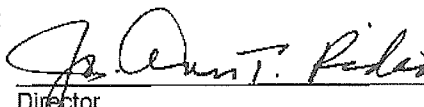
By Dowling Company, Inc.

Its: Member

By:  July 12, 2010
Everett R Dowling Date
Its: President

Transferor

Acknowledgement:

By:  July 13, 2010
Director Date
Department of Housing and Human Concerns

Credits Exercised by this assignment are for the following project:

Project Name: Mahana Estates
Project TMK: (2) 4-2-1:45
Transferee's Name and Address: SMC Mahana LLC
3170 Noela Drive
Honolulu, HI 96815

ATTACHMENT 4

Pulelehua
Residential Workforce Housing Agreement

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup

To: Department of Housing and Human Concerns
County of Maui
2200 Main Street, Suite 546
Wailuku, Hawaii 96793

TITLE OF DOCUMENT:

RESIDENTIAL WORKFORCE HOUSING AGREEMENT
PULELEHUA
MULTI-FAMILY DWELLING UNITS – RENTAL

PARTIES TO DOCUMENT:

DEVELOPER: **MAUI OCEANVIEW, LP, a Delaware Limited Partnership**
16610 Dallas Parkway Suite 1600
Dallas, Texas 75248

COUNTY: COUNTY OF MAUI
200 S. High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEY: (2) 4-3-001-082 and 083

(This document consists of 13 pages.)

RESIDENTIAL WORKFORCE HOUSING AGREEMENT

PULELEHUA

SINGLE-FAMILY FEE SIMPLE HOUSE LOTS; MULTI-FAMILY DWELLING UNITS –
RENTAL

THIS AGREEMENT is made this 7th day of March, 2019, by and between, MAUI OCEANVIEW, LP, a Delaware Limited Partnership, whose address is **16610 Dallas Parkway Suite 1600**, Dallas, Texas 75248 (“Developer”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, Developer intends to construct a development that is subject to County’s Residential Workforce Housing Policy, Chapter 2.96, Maui County Code (“MCC”); and

WHEREAS, Section 2.96.040, MCC, requires that prior to final subdivision approval or issuance of a building permit for a development, the Department of Housing and Human Concerns (“DHHC”) shall require a developer to enter into a Residential Workforce Housing Agreement.

NOW, THEREFORE, Developer and County hereby agree as follows:

1. Project Description. PULELEHUA (“Development”) is to be located at Lahaina, Maui, Hawaii, on that certain parcel of land identified as Tax Map Key No. (2)4-3-001-082 and 083 , area approximately 304 acres, and shall consist of a total of 900 (100 single family fee simple house lots and 800 multi-family rental) dwelling units, as provided in West Maui Project District No. 5 (Pulelehua Project District), Maui County Code Chapter 19.93. Maui County Code section 19.93.050, provides that no more than one thousand two hundred dwellings or dwelling units, including accessory dwellings, may be developed at Pulelehua.

2. Term of Agreement. The term of this agreement shall commence upon execution and shall expire thirty (30) years after the Initial Occupancy of the last residential workforce housing unit, unless sooner terminated as provided herein. Notwithstanding the foregoing, if Developer has not secured building permits for and signed a construction contract for construction of the Residential Workforce Housing Units by June 30, 2020 and County has not granted an extension to such date, this Agreement shall terminate and the Property shall be released from this Agreement and all deed restrictions recorded hereunder or in connection herewith.

3. Definitions:

“Below-moderate income” means those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

“Department” means the County of Maui’s Department of Housing and Human Concerns.

“Director” means the Director of the County of Maui’s Department of Housing and Human Concerns. “HUD” means the United States Department of Housing and Urban Development. “Initial Occupancy” means the effective date of the first lease for each residential workforce housing unit.

“Low income” means those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

“Moderate income” means those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai.

“Owner” means the person(s) or entity that owns the development.

"Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

“Very low income” means those households whose gross annual family income is more than fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

4. Residential Workforce Housing Requirement For Full Build Out:
 - a. Requirement: 25% of 620 market rate units (100 Single Family fee simple House Lots and 520 multi-family rental dwelling units), plus 125 units to fulfill Kapalua Mauka condition
 - b. Number of units required: 155
 - c. Number of total workforce housing units, including units Kapalua Mauka condition: 280. Developer will apply the total workforce housing units require on the 800 total multi-family rental dwelling units.
 - d. Developer is not required to identify specific units within the Development to be designated as Residential Workforce Housing Units. Developer shall be required to ensure

that in the Development is in compliance with the requirements of the deed restriction. Income Group Distribution:

- i. 93 units shall be for “very low income” and “low income” residents;
- ii. 93 units shall be for “below-moderate income” residents;
- iii. 94 shall be for “moderate income” residents.

5. Timing of Completion. Residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or proportionate final inspections are passed for the residential workforce housing units concurrently or sooner. For example, every 80 units of Certificate of Occupancy issued to market rate rental units must include at least 28 units of workforce housing units with Certificates of Occupancy issued concurrently.

6. Initial Occupancy. Developer shall submit a report to the Director of the County of Maui Department of Housing and Human Concerns (“DHHC”) within 90 days of the date upon which the last affordable unit in the Project is leased, which shall include the number of units that have been constructed and leased, including applicable rents and utility allowances of said units. Moreover, Developer shall provide, upon request, copies of any income certification or recertification or other reports required by the Hawaii Housing Finance & Development Corporation.

7. Annual Recertification. Within sixty (60) calendar days after the close of each calendar year, Developer or its management company shall provide the DHHC with a report including the following: (a) Each tenant rented to during the preceding calendar year along with their move-in date; and (b) The income group of the tenant or family.

8. Graduated income tenants. For those tenants who have graduated to a higher income during the term of the lease but still remain within an appropriate income group, if owner or owner’s representative elects to continue to lease to tenant, the monthly rental rate shall be the rate for the income group which tenant is within. For those tenants who during the term of the lease have graduated to an income level that is in excess of the income groups for rental units, if owner or owner’s representative elects to continue to lease to tenant, the annual rental shall be equivalent to thirty percent of tenant’s gross income. Owner or owner’s representative shall be responsible for paying County, for deposit into the affordable housing fund, the difference between the actual rent paid and the rent for the appropriate income group as required under the deed restriction. Owner or owner’s representative shall make its reasonable best efforts to maintain the proper distribution of rentals across the “very low income” and “low income,” “below moderate income” and “moderate income” groups.

9. Credits. For each residential workforce housing unit constructed and rented to an income qualified individual, where a deed restriction in accordance with the requirements of Chapter 2.96, MCC, is properly recorded with the appropriate entity, on the underlying property, the Developer shall receive one (1) residential workforce housing credit for each residential

workforce housing unit, in excess of the number of units required, that is subject to terms of the deed restriction. The credits shall be subject to the following:

- a. The credits may be used in any community plan area;
- b. The credits may be used to satisfy the requirement for any type of unit required throughout County of Maui; and
- c. The credits may be applied to satisfy the requirement for any income group.

10. Deed Restrictions – Rental Units. Developer shall record on the property a deed restriction which sets forth the following:

a. The 280 rental residential workforce housing units in the Development shall be subject to the requirements of Chapter 2.96, MCC, for thirty (30) years commencing upon the date of Initial Occupancy.

b. For the term of this Agreement, the owner of the Development must notify the department upon a decision to sell the rental development and the County shall have the first option to purchase the rental development from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

c. In the event of a sale to a new owner, any new owner must comply with the deed restrictions. Prior to the closing of the sale, Owner shall provide documentation to the Department that the prospective new owner acknowledges and is aware of the terms, conditions, and restrictions encumbering the Development.

d. Within 90 days of the expiration of this Agreement, the owner shall offer the County the right to purchase the property at market value as determined by the owner.

e. Owner or owner's representative shall submit to DHHC proof of compliance with income guidelines for rentals quarterly.

11. Binding Effect; Assignment to Developer's Affiliate. Subject to the limitations on transferability contained herein, each and all of the covenants, terms, and provisions contained herein shall be binding upon Developer and its successors and assigns. Developer may, without prior consent or approval of the County, assign the benefits, obligations, covenants, representations, and burdens contained in this Agreement to a wholly-owned subsidiary or affiliate of Developer (an affiliate shall be an entity in which Developer or its parent owns or control more than fifty percent (50%) of the voting rights), which subsidiary or affiliate shall assume and thereafter be responsible to perform each and every covenant, obligation, representation, and burden to be observed and performed by Developer as set forth in this Agreement. Developer shall notify the County, in writing, of its intent thirty (30) days prior to the event of any assignment of benefits, obligations, covenants, representations and burdens contained in the Agreement. Such notification shall include a description of the assignment and the name, mailing address and telephone number of the individual or organization to whom it will be assigned.

12. Residential Workforce Housing Restrictions – Rental Units. The Owner shall use reasonable best efforts to comply with the deed restriction period set forth above to ensure that during any given month, for the number of units designated as Residential Workforce Housing Units in the recorded deed restriction:

a. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the "very low income," "low income," "below-moderate income," and "moderate income".

b. The income qualified individual shall reside in the residential workforce housing unit.

Owner acknowledges that failure to comply with income guidelines may result in owner paying to County, for deposit into the Affordable Housing Fund, the difference between the actual rent paid or the rent for the income group which the non-qualified renter falls into, whichever is greater, and the rent for the income group required under the deed restriction.

13. Rental Rates. The monthly rental rates for the Residential Workforce Housing Units shall be set by the department based on HUD income limits on an annual basis.

14. Marketing. Developer shall be required to use its reasonable best efforts to effectively market the Residential Workforce Housing Units. Developer shall create a marketing plan, DHHC shall approve said marketing plan prior to the issuance of any building permits for the Development. Developer shall publish in at least five (5) issues of a newspaper of general circulation within the County of Maui, a public notice that shall contain all information that is relevant to the Residential Workforce Housing Units in the Development along with information regarding the establishment of the Wait List described in Section 15 below.

15. Wait List:

a. The Developer shall establish a wait list of interested applicants for the Development.

b. Prior to initiating the wait list, the Developer shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list;

c. Selection for rental units shall be made by a lottery administered by the Developer and overseen by the Department, subject to the applicant meeting the eligibility criteria established in Section 20; and

d. The Developer shall maintain the wait list for the Development after all of the units are rented, which shall be used to fill any vacancy.

e. Any rental unit vacancy shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

16. Eligibility: Subject to any restrictions under HUD Housing regulations, in order to be eligible for a Residential Workforce Housing Unit, an applicant must at the time of application and upon initially occupancy of the unit meet the following criteria:

a. Be a citizen of the United States or a permanent resident alien who is a resident of the County of Maui;

b. Be eighteen (18) years of age or older;

c. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred twenty percent (120%) of the County's area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai;

d. Have assets that do not exceed one hundred twenty percent (120%) of the County's area median income as established by HUD, or as adjusted by DHHC, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property; and

e. For a period of three (3) years before the submittal of the Rental Application, have not had an interest of fifty percent (50%) or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposed, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.

17. Notification of Change: It shall be the applicant's responsibility to notify Developer in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify Developer of such changes and Developer is unable to contact applicant, applicant's name shall be removed from the Wait List.

18. Rental Application: Prior to the selection lottery, described in Section 19 below, all interested applicants shall be required to submit a completed Rental Application to the Developer, on the form provided by the Developer.

19. Pre-Selection Verification: Initial determination for compliance with the maximum gross annual family income provision shall be made by Developer prior to the lottery for the Residential Workforce Housing Units, on the basis of the information provided in the Rental Application.

20. Initial Selection:

a. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents.

b. The Developer may do a mass mailing of housing applications to applicants on the wait list.

c. The residential workforce housing units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will then be offered residential workforce housing units in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify.

d. The Developer shall submit copies of the following information to the department to verify the rental of residential workforce housing units to eligible renters:

i. Applicant's completed final Rental Application;

ii. Executed Rental Lease; and

iii. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the Developer.

21. Vacancy. Residents on the wait list shall receive first priority for available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents. Any rental unit vacancy unit shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across

the “very low income” and “low income,” “below-moderate income,” and “moderate income” groups.

22. Post-Selection Verification: The Developer shall submit copies of the following information to the Department to verify the rental of residential workforce housing units to eligible renters:

- a. Applicant’s completed final Rental Application;
- b. Executed rental lease; and
- c. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the Developer.

23. Indemnification. Developer shall indemnify, defend, and hold harmless County and its officers, employees, and agents from and against any and all claims, including bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this Agreement.

24. Third Party Beneficiary. This Agreement is made exclusively for the benefit of Developer and the County, and no other persons or entities shall acquire any rights, powers, privileges, remedies, or claims thereby; provided however, that insofar as this Agreement is incorporated into or referenced by a separate but related agreement between Developer and the County but only to the extent provided in such separate and related agreement.

25. Consents, Waivers, Approvals. Whenever under this Agreement the consent, waiver or approval of any party is required or permitted, such consent, waiver or approval shall be evidenced by a writing signed by such party and shall not be unreasonably withheld or delayed. Except where otherwise provided, consent from the County shall mean the consent or approval of the Mayor and the DHHC and any others required by law. No consent or waiver, express or implied, by Developer or the County to or of any breach or default by the other party in the performance of the obligations hereunder shall be construed to be a consent or waiver to or of any other or further breach or default. Failure on the part of Developer or the County to complain of any act or omission by the other party or to declare the other party in default, irrespective of the duration of such failure, shall not constitute a waiver by such party of any of its rights hereunder.

26. Amendments: This Agreement, or any provision thereof, may not be modified, altered or changed except by written instrument executed by Developer and County.

27. Notices: All notices, demands, requests, consents, approval, or other communications ("notices") required or permitted to be given under this Agreement or which are given with respect to this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:
Mayor
County of Maui

200 South High Street
Wailuku, Hawaii 96793

cc:
Director of Housing and Human Concerns
County of Maui
200 South High Street
Wailuku, Hawaii 96793

If to Developer, then to:
Maui Oceanview LP
ATTN: Paul Cheng
16610 Dallas Parkway Suite 1600
Dallas, Texas 75248

Notices given as provided in this Section shall be deemed given on delivery or upon receipt if by personal delivery.

28. Severability: If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

29. Recordation: As required by MCC §2.96.080(B), MCC, this Agreement shall be recorded in the Bureau of Conveyances or the Land Court of the State of Hawai'i, as the case may be, so that the terms and conditions of this Agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the property. By executing this Agreement, Developer agrees to record (and hereby authorizes the County to record in the event of failure by Developer to do so) this Agreement with the State of Hawaii Bureau of Conveyances, as an encumbrance on the Project Site. Once the Developer has satisfied the Residential Workforce Housing requirements specified in this Agreement, or the Agreement is terminated, the County shall, upon the request of the Developer, promptly execute a release of this Agreement, which release Developer may thereafter record.

30. Captions. Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

31. Effective Date: The effective date of this Agreement shall be the date on which the last party signs this Agreement. This Agreement is made as of the day and year first above written.

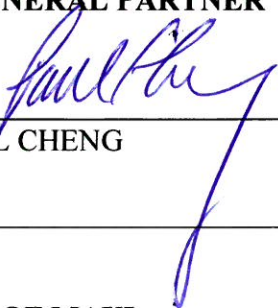
32. Governing Law: This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

33. Term: This Agreement shall remain in full force and effect for the life of the Residential Workforce Housing Units.

IN WITNESS WHEREOF, Maui Oceanview, LP, and the County of Maui have executed this Agreement the day and year first above written.

**MAUI OCEANVIEW LP,
A Delaware Limited Partnership**

**By: MAUI OCEANVIEW GP INC.,
A Delaware Corporation,
Its GENERAL PARTNER**

By  _____
PAUL CHENG

Its _____

COUNTY OF MAUI

By  _____
MICHAEL VICTORINO
Its Mayor

RECOMMENDED APPROVAL:


WILLIAM SPENCE

Interim Director of Housing and Human Concerns

APPROVED AS TO FORM
AND LEGALITY:

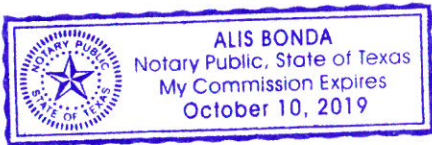


JEFFREY UEOKA
Deputy Corporation Counsel

STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

On this 27th day of FEBRUARY, 2019, before me appeared PAUL CHENG, to me personally known, who, being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



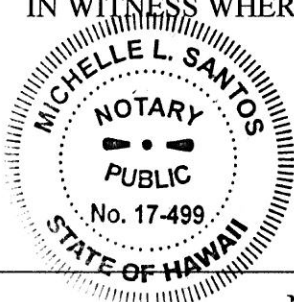
Alis Bonda
Notary Public, State of Texas
My commission expires: 10/10/19

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	<u>FEBRUARY 27, 2019</u> # Pages: <u>13</u>
Notary Name:	<u>ALIS BONDA</u> Judicial Circuit: _____
Doc. Description: <u>RESIDENTIAL WORKFORCE</u> <u>HOUSING AGREEMENT - PULELEHUA</u> <u>MULTI-FAMILY DWELLING</u> <u>UNITS-RENTAL</u>	
Notary Signature:	<u>Alis Bonda</u>
Date:	<u>02/27/19</u>

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 7th day of March, 2019, before me appeared **MICHAEL VICTORINO**, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-6.2 and Section 9-18.1 of the Charter of the County of Maui; and the said **MICHAEL VICTORINO** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Michelle L. Santos
Notary Public, State of Hawaii
My commission expires: 12-31-21
MICHELLE L. SANTOS

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>3-7-19</u>	# Pages: <u>13</u>
Notary Name: <u>MICHELLE L. SANTOS</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>Residential</u> <u>Workforce Housing Agreement</u>	
Notary Signature: <u>Michelle L. Santos</u>	A circular notary seal for Michelle L. Santos, Notary Public, State of Hawaii, No. 17-499. The seal features a central emblem with a scale of justice and a book, surrounded by the text "MICHELLE L. SANTOS", "NOTARY PUBLIC", and "STATE OF HAWAII".
Date: <u>3-7-19</u>	