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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and
MARGARET MARA, individually, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and recognized
agency of the State of Hawai'i; HHA
WILIKINA APARTMENTS PROJECT, INC.,
DOES 1-25,

Defendants.

) CIVIL NO. 05-1-0815-05 EEH *DMP*
) (Contract)

) **PLAINTIFF'S MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT; MEMORANDUM**
) **IN SUPPORT OF MOTION; DECLARATION**
) **OF JACK WATERS; EXHIBITS "A"- "B";**
) **DECLARATION OF GAVIN K. THORNTON;**
) **EXHIBITS 1-4; DECLARATION OF PETER**
) **C. YOUNG; NOTICE OF HEARING**
) **MOTION; CERTIFICATE OF SERVICE**

) Hearing *11/2/05*
) Date:
) Time: *10:45 a.m.*
) Judge: Eden E. Hifo

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs JACK WATERS and MARGARET MARA, individually, and on behalf of all persons similarly situated, by and through their counsel Alston Hunt Floyd & Ing and Lawyers for Equal Justice, hereby move this Court pursuant to Rules 7 and 56 of the Hawai'i Rules of Civil Procedure for partial summary judgment in this matter.

Summary judgment is appropriate on the issue of Defendants' liability for violations of the U.S. Housing Act and the rental agreements between Plaintiffs and Defendants with respect to Wilikina Apartments tenants. There is no genuine issue as to a material fact and Plaintiffs are entitled to partial summary judgment as a matter of law

This motion is based upon the attached memorandum, declarations and exhibits filed in support of this Motion, and such other matters as may be brought before the Court and/or presented prior to and at the hearing on this Motion, all of which are incorporated herein.

DATED: Honolulu, Hawai'i, October 14, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN THORNTON

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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) **MEMORANDUM IN SUPPORT OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Defendants Housing and Community Development Corporation of Hawaii ("HCDCH") and HHA Wilikina Apartments, Inc. ("HHA") own, operate and/or administer Wilikina Apartments. As a federally subsidized housing project under the Section 8 New Construction program of the U.S. Department of Housing and Urban Development ("HUD"), Wilikina Apartments is subject to certain federal rules regarding, *inter alia*, the calculation of tenant rents.¹

Section 1437a(a)(1) of the U.S. Housing Act, also known as the Brooke Amendment, imposes a ceiling for rents charged to low-income tenants residing in Section 8 New Construction program units. The Brooke Amendment provides that a low-income

¹ Section 8 of the U.S. Housing Act, 42 U.S.C. § 1437f governs the Section 8 New Construction program under which Wilikina Apartments operates. The maximum rent that can be charged to tenants of Section 8 New Construction program projects is set by 42 U.S.C. § 1437a(a)(1). See 42 U.S.C. § 1437f(c)(3). Additionally, 24 C.F.R. §§ 880.101-880.612a and 24 C.F.R. part 5 are applicable to the Section 8 New Construction program projects such as Wilikina Apartments. See 24 C.F.R. § 880.101(a) and 24 C.F.R. § 880.104 (d).

family "shall pay as rent" a specific percentage of its income, which in practice is approximately 30%.² HUD and the courts have long considered "rent" to include a reasonable amount for the use of utilities. See 24 C.F.R. § 5.603(b); *Wright v. City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987); *Dorsey v. Housing Authority of Baltimore City*, 984 F.2d 622, 624 (4th Cir. 1993).

Where tenants are responsible for the payment of utility service (i.e., where tenants must pay a utility provider directly), tenants must be provided with a "utility allowance" so that their rent plus utilities does not exceed the rent ceiling set by the Brooke Amendment.³ See 24 C.F.R. § 5.603(b). HUD regulations require that the utility

² The Brooke Amendment in its present form reads as follows:

§ 1437a. Rental payments

(a) Families included; amount.

(1) Dwelling units assisted under this Act shall be rented only to families who are low-income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. Except as provided in paragraph (2) and subject to the requirement under paragraph (3), a family shall pay as rent for a dwelling unit assisted under this Act (other than a family assisted under section 8(o) or (y) [42 USCS § 1437f(o) or (y)] or paying rent under section 8(c)(3)(B) [42 USCS § 1437f(c)(3)(B)]) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

³ The utility allowance takes the form of a rent credit which decreases the amount of rent that a tenant pays to the owner. For example, if a tenant has a monthly adjusted income of \$200, the tenant's rent (known as the "total tenant payment") will be \$60 (30% of the tenant's income). If the tenant is entitled to a utility allowance of \$50 per month, the tenant should only pay \$10 to the owner each month for rent (\$60 tenant payment - \$50 utility allowance).

Where the utility allowance exceeds the total tenant payment, the tenant should receive a "utility reimbursement." 24 C.F.R. § 5.603(b). For example, a tenant with an adjusted income of \$100 per month, will have a total tenant payment of \$30 per month (30% of the tenant's income). If the tenant is entitled to a utility allowance of \$50 per month, the tenant should receive a check for \$20 each month as a utility reimbursement (\$50 utility allowance - \$30 total tenant payment).

allowance be sufficient to cover the monthly cost of "a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment." *Id.*

After the utility allowances are adopted, the owner must continue to reevaluate the adequacy of the allowances to account for relevant changes, such as an increase in utility rates. 24 C.F.R. § 880.610. When the contract rents received by the owner are adjusted (which generally occurs annually), the owner must complete and submit to HUD an analysis of the adequacy of the utility allowances in light of the relevant changes since the allowances were last adjusted.⁴ *Id.* Additionally, where utility rate increases would result in an increase of 10 percent or more in the most recently approved utility allowances, the project owner must request approval of new utility allowances and implement the increased allowances once approved. *Id.*

In spite of Defendants' obligations under federal law, the utility allowance provided to Wilikina Apartments residents has not been reevaluated or updated since 1996. Since the last update, utility rates have increased in excess of 37%. As a result,

⁴ The contract rent is the total amount of rent payable to an owner for a unit as specified in the Housing Assistance Payment Contract ("HAP Contract") between HUD and the owner. 24 C.F.R. § 880.201. For example, if the contract rent for a one bedroom apartment at a Section 8 project is set at \$800 by the HAP Contract, and the tenant's share based on the rent maximum according to the Brooke Amendment is \$100, HUD will pay a \$700 subsidy directly to the owner. See 24 C.F.R. § 880.501(d) ("The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.")

The contract rents are adjusted annually upon request from the owner. 24 C.F.R. § 880.609(a). The adjustments are granted automatically based on a schedule of "Automatic Annual Adjustment Factors," which is published at least annually in the Federal Register, and which takes into account increases in the costs of operating comparable housing in the area. See 24 C.F.R. §§ 880.201-880.204.

Owner requests for "special additional adjustments" to contract rents may also be granted where determined necessary by HUD to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units. 24 C.F.R. § 880.609(b).

Defendants have provided residents with utility allowances that are insufficient under federal regulations, thereby violating the Brooke Amendment of the U.S. Housing Act by charging Wilikina Apartments residents rents in excess of 30% of their income for rent. Further, Defendants have breached residents' rental agreements, which require Defendants to calculate residents' rents in accordance with HUD procedures and regulations.

II. UNDISPUTED MATERIAL FACTS

Defendants Housing and Community Development Corporation of Hawaii ("HCDCH") and HHA Wilikina Apartments, Inc., ("HHA") own, operate and/or administer federally subsidized housing projects under the "project-based Section 8 program."⁵ (Def.s' First Am. Answer to Compl. Filed May 6, 2005 at ¶ 1.) Defendant HCDCH is a duly organized and recognized agency of the State of Hawaii with the power to sue and be sued. (*Id.* at ¶ 11.) Defendant HHA is a not for profit corporation set up, controlled and run by HCDCH specifically to own and operate the Wilikina Apartments. (Def.s' Mot. to Dismiss Pl.'s Second Claim at 2.)

Wilikina Apartments is an apartment building in Wahiawa with 117 units available for rent to low-income families. (Def.s' Mot. to Dismiss Pl.'s Second Claim at 2.) All of the units are subsidized by the Section 8 New Construction program of the Department of Housing and Urban Development. (*Id.*) At Wilikina Apartments, the tenants pay for electricity directly to Hawaiian Electric Company ("HECO") and are thus entitled to a utility allowance calculated in accordance with HUD rules and regulations.⁶

⁵ Defendant HCDCH owns, operates and/or administers at least one other project-based Section 8 housing project, Banyan Street Manor, which is also a subject of this litigation. However, Defendants have thus far objected to discovery requests concerning Banyan Street Manor and, thus, Plaintiffs do not yet have sufficient information for a summary judgment motion.

⁶ Named plaintiff JACK WATERS' Rental Agreement for Wilikina Apartments provides that he must make payment for his utilities directly to the appropriate utility company. See Section 7 of Rental Agreement attached as Exhibit "A" to Waters Dec. He is required to pay for heat, lights, electric

(Def.s' Mot. to Dismiss Pl.'s Second Claim at 2; *see also* Declaration of Jack Waters (hereinafter "Waters Dec.") at ¶ 4.) In 1995, to calculate a new utility allowance, HHA's manager obtained and reviewed tenants' actual electrical utility bills. (Def.s' Answer to Pl.s' First Set of Interrogs. to Def. HHA Wilikina Apartments Project, Inc. at 1-2, attached hereto as Exhibit 1 to Declaration of Gavin K. Thornton.) The bills were averaged (separately for one-bedroom and two-bedroom units) and the average amount was submitted to HUD as the requested utility allowance. (*Id.*) Based on HHA's request, effective March 1996 HUD approved a utility allowance of \$40 and \$56 per month for one and two-bedroom units, respectively. (*Id.* at 1-3.)

Since the March 1996 adjustment, the utility allowance has not been reviewed or adjusted, and tenants continue to receive the same utility allowance implemented in 1996 (although Defendants assert that they have started the review and adjustment process since the filing of this suit). (*Id.*; *see also* Def.s' Mot. to Dismiss Pl.'s Second Claim at 2.) Meanwhile, from April 1996 to May 2005 (the month in which this suit was filed), residential electric utility rates increased by over 37%. (*See* Declaration of Peter C. Young at ¶5.) Additionally, since 1996, Defendants have continued to request and obtain adjustments in the contract rents, (*see* Exhibits 2 thru 4 of Declaration of Gavin K. Thornton), without performing the obligatory analysis of the utility allowances.⁷

Plaintiff JACK WATERS has been a head of household and tenant of Wilikina Apartments since November 24, 1997. (*See* Waters Dec. at ¶ 3.) On November 10, 1997,

and cooking. *Id.*

⁷ Exhibits 2 thru 4 indicate that adjustments to the Wilikina Apartments contract rents were approved at least 2 times between April 1996 and May 2005. Page 2 of Exhibit 2 shows that the contract rents effective on March 29, 2000 were \$525 and \$660 for one and two-bedroom units, respectively (*see* Part A, Column 3). Page 2 of Exhibit 3 shows that the contract rents in effect on December 20, 2001 were \$537 and \$675 for one and two-bedroom units, respectively (*see* "Step 1", Column C). Page 2 of Exhibit 4 shows that the contract rents effective on April 1, 2000 were \$564 and \$709 for one and two-bedroom units, respectively (*see* Part A, Column 3).

WATERS entered into a rental agreement with HHA Wilikina Apartments Project, Inc., a copy of which is attached hereto as Exhibit "A" to the Declaration of Jack Waters . (See Waters Dec. at ¶ 5.) WATERS' rental agreement remains in effect and its terms still apply to WATERS tenancy.⁸ (See Waters Dec. at ¶ 6.)

The rental agreement entered into by WATERS is a form agreement for Wilikina Apartments titled "Lease for HHA Wilikina Apartments" (hereinafter "Wilikina Rental Agreement"). (See Exhibit "A" of Waters Dec.) Pursuant to the terms of the Wilikina Rental Agreement, Defendants are required to calculate tenants' rents in accordance with HUD procedures and regulations.⁹ (See Sections 4 and 27 of Rental Agreement attached hereto as Exhibit "A" to Waters Dec.; see also the "Owner Certification" section of Exhibit "B" to Waters Dec.)

On May 6, 2005, Plaintiffs filed this suit seeking declaratory and injunctive relief and damages for Defendants' violations of the U.S. Housing Act stemming from their failure to review and update utility allowances, and seeking relief for breaches of the rental agreements with project-based Section 8 tenants.¹⁰ On October 3, 2005, this Court

⁸ Section 2 of the rental agreement provides as follows:

"The initial term of this Agreement shall begin on Nov. 24, 1997 and end on Nov. 30, 1997. After the initial terms ends, the Agreement will continue for successive terms of one year each unless automatically terminated as permitted by paragraph 23 of this Agreement."

The Agreement has not be terminated. See (Waters Dec. at ¶ 6).

⁹ See further discussion *infra*.

¹⁰ Approximately a year before the filing of this action, three related class action suits were filed against Defendant HCDCH seeking redress for HCDCH's failure to update utility allowances for tenants of federally subsidized "public housing" (versus project-based subsidies such as the project-based Section 8 subsidy applicable to Wilikina Apartments). The suits are briefly described below:

Smith, et al. v. Aveiro, et al., Civil No. 04-00309 DAE KSC, was filed in the United States District Court for the District of Hawaii on May 13, 2004. The suit sought equitable relief on behalf of all public housing tenants who pay their own utilities for rent over-charges arising out of HCDCH's failure to adjust utility allowances as utility rates increased. Defendants admitted that they had failed to review and adjust the utility allowances adjust the utility allowances as required by federal law. However, in October 2004, HCDCH adjusted its utility allowances, implementing an adjusted utility allowance that

issued an order granting in part Plaintiffs' motion for class certification and certifying the class as "persons that currently reside, or resided at any point from May 6, 2003 to the present in an HCDCH project-based Section 8 project in which residents receive or should receive utility allowances." (Order Granting in Part Pl.s' Mot. for Class Certification at 2.) Plaintiffs now request an order of partial summary judgment with regards to Defendants' liability for violations of the U.S. Housing Act and the rental agreements between Plaintiffs and Defendants with respect to Wilikina Apartments tenants.

III. STANDARD FOR SUMMARY JUDGMENT

A party is entitled to summary judgment when there are no genuine issues of material fact, and the party is entitled to judgment as a matter of law. Haw. R. Civ. P. 56(c); *Celotex v. Catrett*, 477 U.S. 317, 322 (1986); *Linville v. State*, 674 F. Supp. 1095 (D. Haw. 1994). If the record, including the pleadings, answers to interrogatories, admissions and affidavits show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law, the Court shall enter judgment forthwith. *Joy A. McEclroy, M.D. v. Maryl Group, Inc.*, 107 Haw. 423, 429 (2005); *Querubin v. Thronas*, 107 Haw. 53 (2005). All evidence and inferences must be construed in the light most

was retroactive to September 2004. In light of HCDCH's adjustment of the utility allowances and its adoption of procedures to annually review the adequacy of the allowances, the suit was dismissed as moot by the Federal District Court on July 12, 2005.

Smith v. Housing and Community Development Corporation of Hawaii, Civil No. 04-10069K, was filed in the Third Circuit Court of the State of Hawaii, seeking reimbursement for the unlawful charges resulting from HCDCH's failure to update utility allowances. A hearing on a motion and cross-motion for summary judgment was held on October 3, 2005 to determine HCDCH's liability under a breach of rental agreement claim and a third-party beneficiary claim based upon HCDCH's breach of the Annual Contributions Contract between HCDCH and HUD. The court's decision on the motion is pending.

Amore v. Aveiro, et al., Civ. No. 04-508ACK, was filed in the United States District Court for the District of Hawaii in August 2004 by disabled public housing tenants who have been denied their rights to receive notice of and request increased utility allowances as a result of their need for medical devices using electricity. On June, 17, 2005, the Court issued an order granting a permanent injunction requiring HCDCH to comply with federal regulations governing the provision of utility allowance adjustments to disabled public housing tenants and declaring that class members were entitled to have their rents adjusted.

favorable to the nonmoving party and disputed facts must be resolved in its favor. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractor's Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

IV. LEGAL ARGUMENT

A. Defendants Breached the Rental Agreement Between Wilikina Apartments Residents and HHA

In Count I of Plaintiffs' Amended Complaint, Plaintiffs seek relief based on a claim for breach of the rental agreements of Section 8 project-based tenants. There are no genuine issues of material fact with respect to Plaintiffs' breach of rental agreement claim for Wilikina Apartments tenants. With respect to Defendants' liability for breaches of the rental agreements for tenants at Wilikina Apartments, Plaintiffs are entitled to judgment as a matter of law.

Section 4 of the Wilikina Rental Agreement, (attached as Exhibit "A" to Waters Dec.), provides, in part, as follows:

The Landlord agrees to implement changes in the Tenant's rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions, and regulations related to administration of multifamily subsidy programs.

Section 27 of the Wilikina Rental Agreement incorporates into the terms of the lease by reference Form HUD-50059, Certification and Recertification of Tenant Eligibility. Form HUD-50059 includes an "Owner's Certification" section in which HHA must certify to the following statement: "I certify that this Tenant's eligibility, rent and assistance payment have been computed in accordance with HUD's regulations and administrative procedures...." (See Exhibit "B" of Waters Dec.)

In spite of these provisions of the Wilikina Rental Agreement, Defendants failed to comply with HUD procedures and regulations in calculating tenants' rents by neglecting to review and request adjustments to the utility allowance. HUD regulations require that: (1) the Section 8 New Construction project owner complete and submit to

HUD an analysis of the adequacy of utility allowances in connection with adjustments of the contract rents; and (2) the owner request approval of, and implement new utility allowances where utility rate increases would result in an increase of 10 percent or more in the most recently approved allowances. 24 C.F.R. § 880.610. The undisputed facts are that Defendants failed to fulfill either of these requirements. As a direct result of Defendants' failures, Plaintiffs were provided with an insufficient utility allowance and were thereby charged rents in excess of the maximum rents permitted by the Brooke Amendment of the U.S. Housing Act and its supporting regulations.¹¹ Because the U.S. Housing Act and HUD procedures and regulations are expressly and implicitly part of the Wilikina Rental Agreement for Wilikina Apartments residents,¹² Defendants violations of federal law amount to a material breach of the Agreement for which Plaintiffs are entitled to recover.

B. Defendants Have Violated Plaintiffs' Federal Rights Under the U.S. Housing Act.

In Count II, Plaintiffs seek relief based on an implied private right of action under the Brooke Amendment for Defendants' admitted violations of the U.S. Housing Act. Specifically, Plaintiffs allege that Defendants' have over-charged Plaintiffs in rent in direct violation of the rent ceiling imposed by the Brooke Amendment. Case law has recognized that Plaintiffs have the right bring such a claim.

An implied private right of action is available to public housing residents to enforce their rights under the Brooke Amendment. In *Castleman v. United States Dep't of HUD*, 1988 U.S. Dist. LEXIS 10242 (W.D.Mo. 1988), public housing tenants filed suit to

¹¹ 24 C.F.R. § 5.628 sets out the rent ceiling for Section 8 New Construction project tenants in almost identical fashion to the Brooke Amendment.

¹² Existing law is part of a contract where there is no stipulation to the contrary. *Quedding v. Arisumi Brothers, Inc.*, 66 Haw. 335, 337, 661 P.2d 706, 709 (1983) (holding that it was implied in the contract that a contractor would comply with the requirements of the Uniform Building Code even though the Code was not expressly referred to in the contract).

obtain relief because they were not provided with proper utility allowances, causing them to pay more in rent than permitted by the Brooke Amendment. The court, applying the test set forth in *Cort v. Ash*, 422 U.S. 66 (1975), held that public housing tenants have an implied private right of action in the Brooke Amendment.

Castleman explained that under *Cort v. Ash* a court must consider four questions to determine whether a private remedy is implicit in a federal statute where not expressly provided: (1) whether the plaintiff is one of the class "for whose especial benefit the statute was enacted"; (2) whether "there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one"; (3) whether it is consistent with the underlying legislative scheme to imply a private right of action; and (4) whether the cause of action is traditionally one relegated to state law. *Castleman*, 1988 U.S. Dist. LEXIS 10242, at 9 (quoting *Cort*, 422 U.S. at 78).

In assessing these four questions, the *Castleman* court relied heavily on the U.S. Supreme Court's analysis in *Wright v. City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987), which addressed whether public housing tenants have a 42 U.S. § 1983 private right of action against state agents who violate the Brooke Amendment. Section 1983 allows private individuals to enforce violations of federal statutes by agents of the state. *Maine v. Thidoutot*, 448 U.S. 1 (1980). In *Wright*, the United States Supreme Court held that public housing residents can maintain a cause of action under § 1983 against state agents who violate the Brooke Amendment.

Similar to the facts in this case, *Wright* involved a dispute regarding the adequacy of utility allowances in public housing. Tenants living in federally subsidized low-income housing projects alleged that the public housing authority ("PHA") over-billed them for their utilities by failing to provide an adequate utility allowance, thereby violating the rent ceiling imposed by the Brooke Amendment. The PHA argued that the Brooke

Amendment was not enforceable through a private § 1983 cause of action. The U.S. Supreme Court determined that the PHA was wrong, holding that tenants could bring a § 1983 cause of action to enforce these rights secured by federal law. *Wright*, 479 U.S. at 429.

Castleman held that in light of *Wright* all four questions of the *Cort* analysis must be answered in the affirmative, and thus an implied private right of action exists to enforce the Brooke amendment. In answering the first question of the *Cort* analysis, *Castleman* explained that the U.S. Supreme Court's decision in *Wright* "makes it unmistakable that the Brooke Amendment was enacted for the special benefit of precisely the class of plaintiffs before the court in this case, namely, low-income public housing residents." *Castleman*, 1988 U.S. Dist. LEXIS 10242, at 9 (citing *Wright*, 479 U.S. at 430 ("The Brooke Amendment could not be clearer.... The intent to benefit tenants is undeniable.")).

As to the second question, *Castleman* recognized that *Wright* made it clear that Congress specifically intended that private individuals bring actions in federal court to enforce their rights under the Brooke Amendment. *Castleman*, 1988 U.S. Dist. LEXIS 10242, at 9-10.

For the third question, *Castlemen* further relied on *Wright* to find that allowing a private cause of action was consistent with federal regulatory efforts, stating that "*Wright* instructs that enforcement of section 1437a [the Brooke Amendment] by HUD as well as by private individuals is consistent with the United States Housing Act, 42 U.S.C. §§ 1401 et seq., taken as a whole, of which section 1437a [the Brooke Amendment] is a part." *Castleman*, 1988 U.S. Dist. LEXIS 10242, at 10.


As to the final question, *Castleman* held that tenants met this factor because the cause of action was not one traditionally relegated to state law.¹³ *Id.*

Based on the authority and analysis of *Castleman*, Plaintiffs have an implied private right of action under the Brooke Amendment of the Housing Act. As set forth in detail above, the undisputed facts are that Defendants violated Plaintiff's federal rights under the Brooke Amendment, overcharging Plaintiffs by failing to: (1) submit an analysis of the project's utility allowances in connection with adjustments of the contract rents; and (2) revise and request approval of utility allowances when utility rates increased by 10 percent or more, as required by 24 C.F.R. § 880.610. Plaintiffs are therefore entitled to summary judgment as to Count II and must be granted declaratory and injunctive relief.

V. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request this Court grant partial summary judgment as to Counts I and II of the Plaintiff's Amended Complaint with respect to the tenants of Wilikina Apartments and (1) declare that Defendants have violated Plaintiffs' rights; (2) enter a permanent injunction requiring Defendants to make appropriate adjustments to the Wilikina Apartments utility allowance in accordance with the U.S. Housing Act, its supporting regulations and the rental agreements for Wilikina Apartments tenants; and (3) enter an order finding Defendants have breached rental agreements for Wilikina Apartments tenants.

DATED: Honolulu, Hawai'i, October 14, 2005.


SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN THORNTON

Attorneys for Plaintiff

¹³ *Castleman* referenced *Wright*, which noted that although public housing tenants retained the right to bring state law claims for breach of their leases, they were not thereby deprived of their right to bring an action to enforce their federal rights. *Wright*, 479 U.S. at 429.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and
MARGARET MARA, individually, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and recognized
agency of the State of Hawai'i; HHA
WILIKINA APARTMENTS PROJECT, INC.,
DOES 1-25,

Defendants.

) CIVIL NO. 05-1-0815-05 EEH
) (Contract)

) **DECLARATION OF JACK WATERS;**
) **EXHIBITS "A"-"B"**

DECLARATION OF JACK WATERS

JACK WATERS, under penalty of perjury, declares and states the following to be true and correct:

1. I am familiar with and have personal knowledge of the facts stated in this Declaration.
2. I am a current resident of Wilikina Apartments.
3. I have been a head of household and tenant of Wilikina Apartments since November 24, 1997.
4. As a resident of Wilikina Apartments, I pay for my own electric utilities directly to the Hawaiian Electric Company ("HECO").
5. On November 10, 1997, I entered into a rental agreement with HHA Wilikina Apartments Project, Inc. A true and correct copy of the rental agreement is attached hereto as Exhibit "A".

6. My rental agreement for Wilikina Apartments remains in effect and has not been terminated.

7. Attached hereto as Exhibit "B" is a true and correct copy of a letter my household and I received from the management of Wilikina Apartments that includes a completed and signed Form HUD-50059 for my household. I recognize the signature under the "Tenant(s)' Certification" section as that of my wife, Alvina Waters.

I declare under the penalty of perjury the foregoing is true and correct.

DATED: Wahiawa, Hawaii, October 13th, 2005.

Jack Waters
JACK WATERS

EXHIBIT A

LEASE FOR HHA WILIKINA APARTMENTS

1. **Parties and Dwelling Unit:** The parties to this Agreement are HHA Wilikina Apartments, Inc., referred to as Landlord, and JACK WATERS & ALVINA SOLOMON referred to as Tenant. The Landlord leases to the Tenant unit number 812, located at 730 Wilikina Drive, Wahiawa, Hawaii 96786 in the project known as Wilikina Apartments.

2. **Length of time (Term):** The initial term of this Agreement shall begin on NOV. 24, 1997 and end on NOV. 20, 1997. After the initial term ends, the Agreement will continue for successive terms of one year each unless automatically terminated as permitted by paragraph 23 of this Agreement.

3. **Rent:** The Tenant agrees to pay \$ 50.00 for the partial month ending on 11/30/97. After that, the Tenant agrees to pay a rent of \$ 212.00 per month. This amount is due on the first (1st) day of the month at Urban Real Estate Co., 850 Richards Street, Suite 603, Honolulu, Hawaii 96813. The Tenant understands that this monthly rent is less than the market (unsubsidized) rent due on this unit. The lower rent is available either because the mortgage on this project is subsidized by the Department of Housing and Urban Development (HUD) and/or because HUD makes monthly payments to the Landlord on behalf of the Tenant. The amount, if any, that HUD makes available monthly on behalf of the Tenant is called the tenant assistance payment and is shown on the "Assistance Payment" line of the Certification and Recertification of Tenant Eligibility Form, which is Attachment No. 1 to this Agreement.

4. **Changes in Tenant's share of the Rent:** The Tenant agrees that the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this Agreement if:
 - a. HUD or the Contract Administrator (such as a Public Housing Agency) determines, in accordance with HUD procedures, that an increase in rents is needed;
 - b. HUD or the Contract Administrator changes any allowance for utilities or services considered in computing Tenant's share of the rent;
 - c. the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and HUD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;
 - d. changes in the Tenant's rent or assistance is required by HUD's recertification or subsidy termination procedures;
 - e. HUD's procedures for computing the tenant's assistance or rent change; or
 - f. the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord.

The Landlord agrees to implement changes in the Tenant's rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions, and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give Tenant at least 30 days advance written notice of any increase in Tenant's rent, except as noted in paragraphs 11, 15, or 17. The Notice will state the new amount the

Tenant is required to pay, the date the new amount is to be effective, and the reasons for the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the change.

5. **Charges for Late Payments and Returned Checks:** If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 10th day of the month, the Landlord may collect a fee of \$10.00 on the 11th day of the month. The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of \$10.00 on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.

6. **Condition of Dwelling Unit:** By signing this Agreement, the Tenant acknowledges that that the unit is safe, clean and in good condition. The Tenant agrees that all appliances and equipment in the unit are in good working order, except as described on the Unit Inspection Report which is Attachment No. 2 to this agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair or improve the unit, except as listed on the Unit Inspection Report.

7. **Charges for Utilities and Services:** The following charts describe how the cost of utilities and services related to occupancy of the unit will be paid. The Tenant agrees that these charts accurately describe the utilities and services paid by the Landlord and those paid by the Tenant.

a. The Tenant must pay for the utilities in column (1). Payments should be made directly to the appropriate utility company. The items in column (2) are included in the Tenant's rent.

(1) Put "x" by Utility Tenant pays directly	Type of Utility	(2) Put "x" by any Utility Included in Tenant Rent	(3) \$ Amount Tenant pays Landlord in addition to Rent
<u> x </u>	Heat	<u> -0- </u>	<u> -0- </u>
<u> x </u>	Lights, Electric	<u> -0- </u>	
<u> -0- </u>	Water	<u> x </u>	
<u> x </u>	Cooking	<u> -0- </u>	
<u> NA </u>	Other (specify)	<u> NA </u>	

b. The Tenant agrees to pay the Landlord the amount shown in column (3) on the date the rent is due. The Landlord certifies that HUD has authorized him/her to collect the type of charges shown in column (3) and that the amounts shown in column (3) do not exceed the amounts authorized by HUD.

8. **Security Deposits:** The Tenant has deposited \$269.00 with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures.

- a. The Tenant will be eligible for refund of the security deposit only if the Tenant provided the Landlord with the 30-day written notice of intent to move required by paragraph 23, unless the Tenant was unable to give the notice for reasons beyond his/her control.
 - b. After the Tenant has moved from the unit, the Landlord will inspect the unit and complete another Unit Inspection Report. The Landlord will permit the Tenant to participate in the inspection, if the Tenant so requests.
 - c. The Landlord will refund to the Tenant the amount of the security deposit less any amount needed to pay the cost of:
 - (1) unpaid rent;
 - (2) damages that are not due to normal wear and tear and are not listed on the Unit Inspection Report;
 - (3) charges for late payment of rent and returned checks, as described in paragraph 5; and
 - (4) charges for unreturned keys, as described in paragraph 9.
 - d. The Landlord agrees to refund the amount computed in paragraph 8c within fourteen (14) days after the Tenant has permanently moved out of the unit, returned possession of the unit to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant disagrees with the Landlord concerning the amounts deducted and asks to meet the Landlord, the Landlord agrees to meet with the Tenant and informally discuss the disputed charges.
 - e. If the unit is rented by more than one person, the Tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to any Tenant identified in Paragraph 1 of this Agreement.
 - f. The Tenant understands that the Landlord will not count the Security Deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with paragraph 11.
9. **Keys and Locks:** The tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the tenant's request to install such locks, the Tenant agrees to provide the Landlord with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the Tenant \$75.00 for each Security key not returned and \$4.00 for other key(s).

10. **Maintenance:**

- a. The Landlord agrees to:
 - (1) regularly clean all common areas of the project;
 - (2) maintain the common areas and facilities in a safe condition;

- (3) arrange for collection and removal of trash and garbage;
- (4) maintain all equipment and appliances in safe and working order;
- (5) make necessary repairs with reasonable promptness;
- (6) maintain exterior lighting in good working order;
- (7) provide extermination services, as necessary;
- (8) maintain grounds and shrubs.

b. The Tenant agrees to:

- (1) keep the unit clean;
- (2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
- (3) not litter the grounds or common areas of the project;
- (4) not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;
- (5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and
- (6) remove garbage and other waste from the unit in a clean and safe manner.

11. Damages: Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, and/or his/her family or visitors, the Tenant agrees to pay:

- a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges;
- b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

12. Restrictions on Alterations: The Tenant agrees not to do any of the following without first obtaining the Landlord's written permission:

- a. change or remove any part of the appliances, fixtures or equipment in the unit;
- b. paint or install wallpaper or contact paper in the unit;
- c. attach awnings or window guards in the unit;
- d. attach or place any fixtures, signs, or fences on the building(s) the common areas, or the project grounds;

- f. install washing machines, dryers, fans, heaters or air conditioners in the unit; or
- g. place any aerials, antennas or other electrical connections on the unit.

13. **General Restrictions:** The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for him/herself and the individuals listed on the Certification and Recertification of Tenant Eligibility. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

- a. sublet or assign the unit, or any part of the unit;
- b. use the unit for unlawful purposes;
- c. engage in or permit unlawful activities in the unit, in the common areas, or on the project grounds;
- d. have pets or animals of any kind in the unit without the prior written permission of the Landlord; or
- e. make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

14. **Rules:** The Tenant agrees to obey the House Rules which are Attachment No. 3 to this Agreement. The Tenant agrees to obey additional rules established after the effective date of this Agreement if:

- a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the tenants; and
- b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

15. **Regularly Scheduled Recertifications:**

Every year around the 10th day of AUGUST, the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The Landlord will verify the information supplied by the Tenant and use the verified information to recompute the amount of the Tenant's rent and assistance payment, if any.

- a. If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.

- (1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.
 - (2) Implement any increase in rent resulting from the recertification processing without providing the 30 - day notice otherwise required by paragraph 4 of this Agreement.
- b. The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification process. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.

16. Reporting Changes Between Regularly Scheduled Recertifications:

- a. If any of the following changes occur, the Tenant agrees to advise the Landlord immediately.
- (1) Any household member moves out of the unit.
 - (2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.
- b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty (30) days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent. (Revised 3/22/89)
- c. If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.
- d. The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.

17. Removal of Subsidy:

- a. The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items (1) or (2) below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, other Tenant will be required to pay the HUD-approved market rent for the unit.

- (1) The Tenant does not provide the Landlord with the information or reports required by paragraph 15 or 16 within ten (10) calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.
 - (2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.
- b. The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.
 - c. Termination of assistance shall not affect the Tenant's other rights under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.
18. **Tenant Obligation to Repay:** If the tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by paragraph 16 of this Agreement, and as a result is charged a rent less than the amount required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.
19. **Size of Dwelling:** The Tenant understands that HUD requires the Landlord to assign units according to the size of the household and the age and sex of the household members. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:
- a. move within 30 days after the Landlord notifies him/her that a unit of the required size is available within the project;
 - b. remain in the same unit and pay the HUD-approved market rent.
20. **Access by Landlord:** The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit, and to enter the unit only after receiving the Tenant's consent to do so, except when emergency situations make such notices impossible or except under paragraph (c) below.
- a. The Tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.
 - b. After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.

- c. If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

21. **Discrimination Prohibited:** The Landlord agrees not to discriminate based upon race; color, religion, creed, national origin, sex, age, handicap; membership in a class, such as unmarried mothers or recipients of public assistance; or because there are children in the family.
22. **Change in Rental Agreement:** The Landlord may, with the prior approval of HUD, change the terms and conditions of this agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.

23. **Termination of Tenancy:**

- a. To terminate this Agreement, the Tenant must give the Landlord 30- days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever date comes first.
- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:
- (1) the Tenant's material noncompliance * with the terms of this Agreement;
 - (2) Tenant's Material failure to carry out obligations under any State Landlord and Tenant Act; or
 - (3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control;
 - (4) other good cause, which includes, but is not limited to, the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Termination for "other good cause" may only be effective as of the end of any initial or successive term.

* The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3)

failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies) or to knowingly provide incomplete or inaccurate information; and (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

- c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- (1) specify the date Agreement will be terminated;
- (2) state the grounds for termination with enough detail for the Tenant to prepare a defense;
- (3) advise the Tenant that he/she has ten (10) days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant;
- (4) advise the Tenant of his/her right to defend the action in court.

- d. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph (c).

24. **Hazards:** The Tenant shall not undertake, or permit his/her family or guests to undertake any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

25. **Penalties for Submitting False Information:** Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to penalties available under federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

26. **Contents of this Agreement:** This Agreement and its Attachments make up the entire agreement between the Landlord and the Tenant regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal all

other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

27. Attachments to the Agreement:

The Tenant certifies that he/she has received a copy of this Agreement and the following Attachments to this Agreement and understands that these Attachments are part of this Agreement.

- a. Attachment No. 1 - Form HUD - 50059, Certification and Recertification of Tenant Eligibility.
- b. Attachment No. 2 - Unit Inspection Report (provided at check-in)
- c. Attachment No. 3 - House Rules (provided at check-in)
- d. Attachment No. 8 - Addendum to Lease

28. Signatures:

TENANT:

- 1. John A. Waters III 11/16/97
Date Signed
- 2. Bluma M. Spence 11/16/97
Date Signed
- 3. _____ 1 1
Date Signed

LANDLORD:

- 1. Academe Inc 11/16/97
Urban Real Estate Co. Date Signed

willis

ATTACHMENT 8

ADDENDUM TO LEASE

This Addendum (Addendum or Agreement) amends the Attached Lease signed on NOV. 16, 1997. In the event of a conflict between provisions of the Attached Lease and this Addendum, the provisions of this Agreement shall be controlling.

1. Parties and Dwelling Unit:

The parties to this Agreement are HHA WILIKINA APARTMENTS, INC., referred to as Landlord, and JACK WATERS & ALVINA SOLOMON, referred to as Tenant. The Landlord leases to the Tenant unit number _____ located at 730 Wilikina Drive, Wahiawa, Hawaii 96786, in the project known as Wilikina Apartments.

2. Length of Time (Term):

The term of this agreement shall begin on NOV. 24, 1997 and end on OPEN unless automatically terminated as permitted by paragraph 4 of this Agreement.

3. Rent:

The Tenant agrees to pay rent as determined by the attached Attached Lease.

4. Termination of Tenancy:

- a. To terminate this Agreement, the Tenant must give the Landlord 30 days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which the notice is required, or until the unit is re-rented, whichever date comes first.
- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only upon:
 - (1) the Tenant's material noncompliance with the terms of this Agreement;
 - (2) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or
 - (3) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by

- a tenant, any member of the tenant's household, or any guest or other person under the Tenant's control; or
- (4) expiration of the Section 8 Housing Assistance Payments Contract between the Owner and HUD; or
- (5) other good cause.

c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner as determined by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. All termination notices must:

- (1) specify the date this Agreement will be terminated;
- (2) state the grounds for termination with enough detail for the Tenant to prepare a defense;
- (3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of Tenancy with the Landlord. The 10 day period will begin on the earlier of the day the notice was hand-delivered to the unit, or the day after the notice is mailed. If the Tenant requests a meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- (4) advise the Tenant of his/her right to defend the action in court.

d. If the eviction is initiated, the Landlord agrees to rely upon those grounds cited in the termination notice required by paragraph (c).

5. Signatures:

TENANT

1. Jackie M. Waters III

11-10-97
Date Signed

2. William M. Johnson

11-10-97
Date Signed

3. _____

Date Signed

LANDLORD

1. Jessie [Signature]

11/6/97
Date Signed

EXHIBIT B

URBAN REAL ESTATE CO.
HOUSING & COMMUNITY DEVELOPMENT CORPORATION OF HAWAII
WILIKINA APARTMENTS
730 WILIKINA DRIVE
WAHIAWA, HAWAII 96786

Contract Rent:	\$709.00
Total Tenant Payment:	\$374.00
Utility Allowance:	\$56.00
Tenant Rent:	\$318.00
Assistance Payment:	\$391.00
Effective Date:	11/01/04

September 20, 2004

Jack & Alvina Waters
730 Wilikina Drive #812
Wahiawa, Hawaii 96786

Dear M/M Waters,

This is to notify you that on the basis of our recent review of your income and family composition, your rent has been adjusted as indicated. This new rent is effective on the "Effective Date" shown above. This notification amends Paragraph 3 of your Lease Agreement, which sets forth the amount of rent you pay each month.

Attached for your records is a copy of the Form HUD-50059 CERTIFICATION OF COMPLIANCE WITH HUD's TENANT ELIGIBILITY AND TENANT PROCEDURES. This form shows you the income we used to calculate your new rent and the amount of rental assistance, if any that HUD pays monthly on your behalf.

You may call our project office at 622-6408 if you wish to arrange a meeting to discuss these changes. Thank you for your cooperation.

Sincerely,

ACKNOWLEDGED:

M. Miyamoto
Mandy Miyamoto
Certified Occupancy Specialist

Signature

Alvin M. Waters

Signature

Date

9/20/04

Owner's/Tenant's Certificate of Compliance with HUD's Tenant Eligibility and Rent Procedures

U. S. Department of Housing and Urban Development
Federal Housing Commissioner



OMB APPROVED #2502-0054 (Rev. 10/31/2004)

Section A. Summary Information

1. Project Name WILIKINA APARTMENTS - HHA PROJ	13. Effective Date 11/01/2004	25. Unit Number 812
2. Subsidy Type 1 - Section 8	14. Voucher Date 11/2004	26. No of Bedrooms 2
3. Secondary Subsidy Type	15. Next Recertification Date 11/01/2005	27. Building ID
4. Property ID	16. Project Move-In Date 11/24/1997	28. Unit Transfer Code
5. Project Number 14035071	17. Unit Move-In Date	29. Previous Unit No.
6. Contract Number HI100001002	18. Certification Type AR	30. Security Deposit 259
7. TRACSMail ID	19. Action Processed	31. Market Rent 0
8. Plan of Action Code	20. Correction Type	32. Contract Rent 709
9. HUD-Owned Project? NO	21. Cert. Correction Date	33. Utility Allowance 56
10. Region Code 09	22. Previous Subsidy Type	34. Gross Rent 765
11. Field Office Code 08	23. Previous Housing Code 3-Standard	35. Conversion Date Code
12. FIPS County Code	24. Displacement Status Code 4-Not Displaced	36. Age 62 at Conversion Indicator
		37. Continuous Section 8 Indicator

Section B. Household Information

38. No.	39. Last Name	40. First Name	41. MI	42. Rel.	43. Sex	44. Race	45. Eth.	46. Birth Date	47. Special Status	48. ID Code (SSN)	49. Elig Code	50. Alien Reg. Number	51. Occupation	52. Able to Wrk Code	53. Care Rcvd Codes
01	WATERS	JACK		H	M	4	2	09/02/1973		575-96-9889	EC				
02	WATERS	ALVINA		K	F		N/A	05/17/1977		575-78-8975	EC				
03	WATERS	LEILANI	K	D	F		N/A	07/14/1996		575-75-5643	EC				
04	WATERS	ADAM	K	D	M		N/A	04/17/2001		575-91-0185	EC				
54.	Family is Mobility Impaired?		N	57. Number of Family Members		4		60. Expected Family Addition - Adoption		0					
55.	Family is Hearing Impaired?		N	58. Number of Non-Family Members		0		61. Expected Family Addition - Pregnancy		0					
56.	Family is Visually Impaired?		N	59. Number of Dependents		2		62. Expected Family Addition - Foster Children		0					

Section C. Income Information

Section D. Asset Information

63. Mbr. No.	64. Income Type Code	65. Amount	66. New HH Mbr?	67. Newly Emp. Mbr?	68. SSN Benefits Claim No.	74. Mbr. No.	75. Description	76. Status	77. Cash Value	78. Actual Yearly Income	79. Date Divested
01	W-Non-Federal Wage	15,930									
01	U-Unemployment	0									
69. Total Employment Income					15,930	80. Cash Value of Assets					0
70. Total Pension Income					0	81. Actual Income from Assets					0
71. Total Public Assistance Income					0	82. HUD Passbook Rate					2.00 %
72. Total Other Income					0	83. Imputed Income from Assets					0
73. Total Non-Asset Income					15,930	84. Asset Income					0

Section E. Allowances and Rent Calculations

85. Total Annual Income	15,930	96. Allowance for Dependents	960	107. Total Tenant Payment	374
86. Lower Income Limit	46,000	97. Child Care Expense (work)	0	108. Tenant Rent	318
87. Very Low Income Limit	32,300	98. Child Care Expense (school)	0	109. Utility Reimbursement	0
88. Extremely Low Income Limit	0	99. 3% Income	478	110. Assistance Payment	391
89. Current Income Status	Very Low	100. Disability Expense	0	111. Welfare Rent	0
90. Eligibility Universe Code	PRE-1981	101. Disability Allowance	0	112. HCDA percentage	30.00 %
91. Section 8 Assistance 1984 Indicator	NA	102. Medical Expense	0	113. Percent Actually Charged	30.00 %
92. Income Exception Code		103. Medical Allowance	0	114. Worksheet	E
93. Police / Security Tenant?	N	104. Elderly Household Allowance	0	115. Hardship Exemption	
94. Survivor of Qualifier?		105. Total Allowances	960	116. Waiver Type Code	
95. Household Assistance Status	E	106. Adjusted Annual Income	14,970	117. Preference Code	

118. Previous Head Last Name
119. Previous Head First Name
120. Previous Head Middle Initial
121. Previous Effective Date
122. Previous Head ID / SSN
123. Previous Head Birth Date

Section F. Certifications

Tenant(s)' Certification - Warning to Tenants: Your signature means that you agree with the following certification statements. This certification covers the information provided by the Applicant/Tenant in Sections B, C, and D of the 50059 data requirements. This information is used in determining eligibility or the level of benefits. I/We certify that the information I/we have provided is true and complete to the best of my/our knowledge and belief. I/We understand that, if I/we furnish false or incomplete information, I/we can be fined up to \$10,000 or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased. I/We have read the Privacy Act Notice.

Owner's Certification - Warning to Owners: Your signature indicates that you agree with this certification statement. The 50059 data requirements: I certify that this Tenant's eligibility, rent and assistance payment have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained. I also certify that the computations are based upon the data provided by the Tenant. I have read and understand the purpose and uses of collecting the required information from applicants and tenants and I understand that misuse of this information can lead to personal penalties to me.

Head of Household	Date	<input type="checkbox"/> Check if Tenant is unable to sign for a legitimate reason
Spouse/Co-head <i>Kevin M Waters</i>	Date <i>4/20/04</i>	
Other Adult	Date	
Owner/Agent <i>Y. Yamamoto</i>		Date <i>4/20/04</i>

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and
MARGARET MARA, individually, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and recognized
agency of the State of Hawai'i; HHA
WILIKINA APARTMENTS PROJECT, INC.,
DOES 1-25,

Defendants.

) CIVIL NO. 05-1-0815-05 EEH
) (Contract)

) **DECLARATION OF GAVIN K. THORNTON;**
) **EXHIBITS 1-4**

DECLARATION OF GAVIN K. THORNTON

GAVIN THORNTON, under penalty of perjury, declares and states the following to be true and correct:

1. I am an attorney for the law firm of Lawyers for Equal Justice, counsel for Plaintiffs herein.

2. I am familiar with and have personal knowledge of the facts stated in this Declaration.

3. Attached hereto as Exhibit 1 is a true and correct copy of Defendants' Answer to Plaintiffs' First Set of Interrogatories to Defendant HHA Wilikina Apartments Project, Inc.

4. Attached hereto as Exhibit 2 is a true and correct copy of an August 21, 2000 transmittal letter from the Housing and Community Development Corporation of Hawaii ("HCDCH") to Urban Real Estate Co. provided by Defendant HHA Wilikina Apartments Project, Inc. in response to Plaintiff's first request for production of

documents. Attached to the letter is a March 29, 2000 Rent Schedule (Form HUD 92458) for Wilikina Apartments.

5. Attached hereto as Exhibit 3 is a true and correct copy of January 8, 2002 transmittal letter from the Housing and Community Development Corporation of Hawaii ("HCDCH") to the HUD Hawaii State Office provided by Defendant HHA Wilikina Apartments Project, Inc. in response to Plaintiff's first request for production of documents. Attached to the letter is a December 20, 2001 "OCAF Rent Adjustment Worksheet" for Wilikina Apartments.

6. Attached hereto as Exhibit 4 is a true and correct copy of a March 18, 2002 transmittal letter from the Housing and Community Development Corporation of Hawaii ("HCDCH") to the U.S. Department of Housing and Urban Development provided by Defendant HHA Wilikina Apartments Project, Inc. in response to Plaintiff's first request for production of documents. Attached to the letter is an April 1, 2002 Rent Schedule (Form HUD 92458) for Wilikina Apartments.

7. Attached to this motion is a true and correct copy of the Declaration of Peter C. Young with facsimile signature. An original signature will be filed when it is received by mail.

I declare under the penalty of perjury the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 14, 2005.


GAVIN THORNTON

EXHIBIT 1

B. Defendants object to the request to the extent that it seeks to unilaterally expand the scope of discovery allowed by the Hawai'i Rules of Civil Procedure through the instructions and definitions preceding the interrogatories or by any other means.

C. Defendants have not completed either discovery or preparation for trial in this matter. Accordingly, these responses are made without prejudice to defendants' right to present additional or modified answers at trial based upon information obtained or evaluated thereafter.

D. Defendants specifically reserve the right to supplement or amend these responses or to present additional or modified answers at a later date.


E. In answering these interrogatories, defendants do not in any way waive or intend to waive, but rather intends to preserve and are preserving:

1. All objections as to competency, relevancy, materiality and admissibility for the responses or the subject matter thereof;
2. All objections as to vagueness, ambiguity or undue burden;
3. All rights to object on any grounds to the use of the responses, or the subject matter thereof, at trial of this or any other action; and
4. All rights to object on any ground to any request for further responses to these or to other requests involving or relating to the subject matter of these interrogatories.

F. The applicable of the foregoing general and specific objections are hereby incorporated into each of defendants' specific answers that follow with the same force and effect as if fully set forth therein.

These objections and all specific objections stated in the following answers are made on behalf of defendants by the undersigned, their attorney.

DATED: Honolulu, Hawai'i September 6, 2005



WILLIAM J. WYNHOFF, ESQ.
Attorney for Defendants

1. State your full name, address and occupation; also state the name, address, occupation, and relationship to the parties of each individual who assisted in the answering of these interrogatories.

ANS.

Michael J. Hee
Chief, Contract Administration Section
Housing & Community Development Corporation of Hawai'i
1002 N. School Street
Honolulu, Hawai'i 96817

2. Before answering these interrogatories, state whether or not you have:
- a. Made a due and diligent search of all related documents, books, reports, memos, photos, and writings within your possession or under your control in order to obtain information with respect to this action. If not, please explain why not.
 - b. Made a due and diligent inquiry of your employees, associates, and those persons available to assist you in order to obtain information with respect to this action. If not, please explain.

ANS.

Yes to the extent required by applicable rules governing discovery.

3. To the extent you have not already done so, identify and describe in detail every fact, document, item of evidence or piece of information that is in your possession or under your control that in any manner, directly or indirectly, relates to this case.

ANS.

Objection: vague, ambiguous, overbroad, and burdensome.

4. Please identify and describe any and all methods, guidelines, or policies, used by HHA Wilikina Apartments, Inc., for project based Section 8 housing units where the cost of utilities is not included in the rent, to establish and/or modify: (1) the estimated/maximum utility usage for residents based on unit size (i.e. utility allowances in terms of amounts of consumption of kilowatt hours or Therms of utilities); and (2) the monetary monthly utility allowance payment/credit provided to residents (i.e. utility allowances in terms of the a monetary payment to residents meant to cover the costs of their utility consumption).

ANS.

Objection: vague and ambiguous. Without waiving the objections:

With respect to Wilikina Apartments, in 1994, HHA's manager obtained and reviewed tenants' actual electrical utility bills. The bills were averaged (separately for one-bedroom and two-bedroom units) and the average amount was submitted to HUD as the requested utility allowance. As to the two-bedroom units, HUD approved and required a utility allowance of \$51 per month, effective July 1995.

The process was repeated in 1995. At that time HUD approved and required a utility allowance for the two-bedroom units of \$56 per month, effective March 1996.

We are in the process of reviewing the utility allowance at the present time. We will supplement this answer or otherwise inform you as to the present review process.

5. Please identify the name, job title, address, telephone number and/or other means of identification of each person who was/is directly or indirectly involved in the establishment and/or modification of the utility allowances used at HHA Wilikina Apartments, Inc., project based Section 8 housing units, including a description of the nature of their involvement.

ANS.

Objection: vague, ambiguous, overbroad, and burdensome. Without waiving the objections:

The last adjustment was made in 1995, effective 1996, and this answer responds as to that adjustment. At that time the managing agent was Chaney Brooks & Company. Chaney Brooks obtained, compiled, and reviewed the data. We do not know the name of all the persons involved at Chaney Brooks but correspondence from it at the time is signed by Elizabeth Hibbert (Bell), property manager. The person involved from HHA was Glori Inafuku, property manager coordinator I. We do not know the name of the persons involved at HUD, but correspondence is addressed to Carole Horiuchi. HUD reviewed the data and advised HHA as to the utility allowance.

6. For the period from January 1, 1993 to the present date, for the units at Wilikina Apartments, please provide:

- a. The utility allowances (in terms of amounts of consumption of kilowatt hours or Therms of utilities) for each unit size (e.g., one bedroom, two bedroom).
- b. The monetary monthly utility allowance payment/credit for each unit size.

- c. The name, address, telephone number and/or other means of identification of each person who has possession or first hand knowledge this information.

ANS.

a. The allowance was not calculated based on therms or kilowatt hours, although that may change in the future.

b. HHA purchased Wilikina Apartments in May 1993. The requested information starting then is:

	One bedroom	Two bedroom
May 1993 to June 1995	\$26	\$43
July 1995 to February 1996	\$39	\$51
March 1996 to present	\$40	\$56

c. Objection: vague and ambiguous. Without waiving the objections: all of our information on this issue is document-based. We are not sure what is meant by "possession" of the information or "first hand knowledge" of the information.

7. For every tenant residing at Wilikina Apartments at some point during the period from May 6, 1999 to present, please provide the tenant's move in and move out dates, identifying the size of the unit occupied.

ANS.

Objection, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence; the requested information is private, personal, and confidential.

8. Please identify every tenant whose lease was terminated or has been threatened with lease termination from Wilikina Apartments, based in whole or in part on the grounds of rent delinquency between May 6, 2003 and the present date. For each such tenant, please identify the name of the tenant, the unit size, the size of the household, the amount of the tenant's monthly rent at the time of lease termination, the amount of the tenant's delinquency at the time of lease termination, the date when the tenant began residency, the date of the eviction hearing, the date of the tenant's lease termination, and the dates of any other actions taken to terminate or threaten to terminate the lease of the tenant.

ANS.

Objection, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence; the requested information is private, personal, and confidential.

VERIFICATION

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

Michael J. Hee, being first duly sworn on oath, deposes and says that he has read the foregoing answers to interrogatories and that the same are true to the best of his knowledge and belief.

Michael J. Hee
Michael J. Hee

Subscribed and sworn to before me
this 6th day of September 2005.

Jose A. Agosto
Notary Public, State of Hawai'i
Print Name of Notary: JOSE A. AGOSTO

My commission expires: September 23, 2005

EXHIBIT 2



STATE OF HAWAII
 DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
 HOUSING & COMMUNITY DEVELOPMENT CORPORATION OF HAWAII
 P. O. BOX 17907
 HONOLULU, HAWAII 96817

TO Urban Real Estate Co.
850 Richards Street, Suite 603
Honolulu, HI 96813

DATE August 21, 2000
 ATTENTION: Lui Faleafine, Jr.

RE Wilikina Apartments

WE ARE SENDING YOU Attached
 Under separate cover via _____ the following items:

COPIES	DATE	NO.	DESCRIPTION
1	3/29/00		Rent Schedule (Form HUD 92458)

THESE ARE TRANSMITTED as checked below:

- | | | |
|--|---|---|
| <input type="checkbox"/> For approval | <input type="checkbox"/> Approved as submitted | <input type="checkbox"/> Resubmit _____ copies for approval |
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Approved as noted | <input type="checkbox"/> Submit _____ copies for distribution |
| <input type="checkbox"/> As requested/required | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Return _____ corrected prints |
| <input type="checkbox"/> For review and comment | <input type="checkbox"/> For payment | |
| <input type="checkbox"/> FOR BIDS DUE _____ 19 _____ | <input type="checkbox"/> PRINTS RETURNED AFTER LOAN TO US | |

REMARKS: Here is the HUD approved rent schedule for the project files.

IF THERE ARE ANY QUESTIONS PLEASE CONTACT: the undersigned TELEPHONE NO: 832-5973

SIGNED: *Glory Inafuku*
 GLORI INAFUKU, Property Management Coordinator

COPY TO

CAS 51002.50

01017

**Rent Schedule
Low Rent Housing**

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

See back of page for instructions, Public Burden Statement and Privacy Act requirements.

OMB Approval No. 2502-0012 (Exp. 07/31/96)

Project Name Wilikina Apartments	FHA Project Number 140-350-71	Date Rents Will Be Effective (Month Year) March 29, 2000
--	---	--

Part A - Apartment Rents

Show the actual rents you intend to charge, even if the total of these rents is less than the Maximum Allowable Monthly Rent Potential.

Col. 1 Unit Type (Include Non-revenue Producing Units)	Col. 2 Number of Units	Contract Rents		Col. 5 Utility Allowances (Effective Date: ___/___/___)	Col. 6 Gross Rent (Col. 3 + Col. 5)	Market Rents (Sec. 236 Projects Only)	
		Col. 3 Rent Per Unit	Col. 4 Monthly Contract Rent Potential (Col. 2 x Col. 3)			Col. 7 Rent Per Unit	Col. 8 Monthly Market Rent Potential (Col. 2 x Col. 7)
1 BR	79	525.00	41,475.00	40	565.00		
2 BR	38	660.00	25,080.00	56	716.00		
Total Units 117		Monthly Contract Rent Potential (Add Col. 4)* 66,555.00				Monthly Market Rent Potential (Add Col. 8)*	
		Yearly Contract Rent Potential (Col. 4 Sum x 12)* 798,660.00				Yearly Market Rent Potential (Col. 8 Sum x 12)*	

These amounts may not exceed the Maximum Allowable Monthly Rent Potential approved on the last Rent Computation Worksheet or requested on the Worksheet you are now submitting. Market Rent Potential applies only a Section 236 Projects.

Part B - Items Included in Rent

Equipment/Furnishings in Unit: (Check those included in rent.)

Range
 Refrigerator
 Air Conditioner
 Disposal
 Dishwasher
 Carpet
 Drapes
 smoke det.

Utilities: (Check those included in rent. For each item, (even those not included in rent), enter E, F, or G on line beside that item): E=electric; G=gas; F=fuel oil or coal.

Heating _____
 Cooling _____
 Hot Water _____
 Cooking _____
 Lights, etc. _____

Services/Facilities (check those included in rent)

Parking
 Laundry (Coin Op)
 Swimming Pool
 Tennis Courts

 Nursing Care
 Linen/Maid Service

Part C - Charges in Addition to Rent (e.g., parking, cable TV, meals)

Expense	Monthly Charge
	\$
	\$
	\$
	\$
	\$
	\$

Part D - Non-Revenue Producing Space

Col. 1 Use	Col. 2 Unit Type	Col. 3 Contract Rent
Project Office	2 BR	660
Res. Mgr. Unit	2 BR	660
Total Rent Loss Due to Non-Revenue Units		\$ 1,320.00

Part E - Commercial Space (retail, offices, garages, etc.)

Col. 1 Use	Col. 2 Monthly Rent Potential	Col. 3 Square Footage	Col. 4 Rental Rate Per Sq. Ft. (Col. 2 divided by Col. 3)
Total Commercial Rent Potential			\$

Part F - Maximum Allowable Rent Potential

Enter Maximum Allowable Monthly Rent Potential From Rent Computation Worksheet (to be completed by HUD or lender)

\$ 66,555.00



RECEIVED
DEPT. OF HUD
HAWAII STATE OFFICE

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HOUSING & COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

AUG 16 2 22 PM '00

AUG 21 10 12 AM '00

RECEIVED
H.C.D.C.H.

DATE FROM! August 14, 2000
ATTENTION: Jane Adaniya

TO HUD Hawaii State Office
500 Ala Moana Blvd. Suite 500
Honolulu, HI 96813

RE Wilikina Apartments

WE ARE SENDING YOU Attached
 Under separate cover via _____ the following items:

COPIES	DATE	NO.	DESCRIPTION
3 org	8/11/00		Rent Schedule - Form HUD 92458
			Effective 3/29/00

THESE ARE TRANSMITTED as checked below:

- For approval
- For your use
- As requested/required
- For review and comment
- FOR BIDS DUE _____ 19 _____
- Approved as submitted
- Approved as noted
- Returned for corrections
- For payment
- Resubmit _____ copies for approval
- Submit _____ copies for distribution
- Return _____ corrected prints
- PRINTS RETURNED AFTER LOAN TO US

REMARKS: *Enclosed 2 copies of the approved Rental Agreement Schedule.*

IF THERE ARE ANY QUESTIONS PLEASE CONTACT: the undersigned TELEPHONE NO: 832-5973

SIGNED: *[Signature]*
GLORI INAFUKU, Property Management Coordinator

COPY TO Lui Faleafine, Jr. Urban Real Estate Co. CAS 51002.50

01019

Part G - Information on Mortgagor Entity

Name of Entity

HHA Wilikina Apartments Project, Inc.

Type of Entity

- Individual
 General Partnership
 Joint Tenancy/Tenants in Common
 Other (specify) _____
 Corporation
 Limited Partnership
 Trust

List all Principals Comprising Mortgagor Entity: provide name, title and Social Security Number or Employer Identification Number (EIN) of each principal. Use extra sheets, if needed. If mortgagor is a:

- corporation, list: (1) all officers; (2) all directors; and (3) each stockholder having a 10% or more interest.
- partnership, list: (1) all general partners; and (2) limited partners having a 25% or more interest in the partnership.
- trust, list: (1) all managers, directors or trustees and (2) each beneficiary having at least a 10% beneficial interest in the trust.

Name and Title	Social Security or EIN Number:
Wesley R. Segawa, President	99-0302925
Name and Title	Social Security or EIN Number:
Nadine K. Nakamura, Vice-President	"
Name and Title	Social Security or EIN Number:
Kurt H. Mitchell, Secretary	"
Name and Title	Social Security or EIN Number:
Sharyn L. Miyashiro, Treasurer	"
Name and Title	Social Security or EIN Number:
Ronald S. Lim, Director	"
Name and Title	Social Security or EIN Number:
Don Fujimoto, Director	"
Name and Title	Social Security or EIN Number:
Allan Los Banos, Jr., Director	"
Name and Title	Social Security or EIN Number:
Craig Hirai, Director	"
Name and Title	Social Security or EIN Number:
Susan M. Chandler, Director	"
Name and Title	Social Security or EIN Number:
Clarita B. Barretto, Director	"
Name and Title	Social Security or EIN Number:

Part H - Owner Certification

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name and Title	Authorized Official's Signature and Date
Sharyn L. Miyashiro Sharyn L. Miyashiro, Treasurer	Sharyn L. Miyashiro 8/11/00

Part I - HUD/Lender Approval

Indendum Number:	Branch Chief/Lender Official (Signature and Date)
IAP Contract Number:	
Exhibit Number:	Director, Housing Management Division (Signature and Date)
Loan Servicer (Signature and Date)	

Joe Adams, Project Mgr. 8/16/00

EXHIBIT 3



STATE OF HAWAII
 DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
 HOUSING & COMMUNITY DEVELOPMENT CORPORATION OF HAWAII
 P. O. BOX 17907
 HONOLULU, HAWAII 96817

TO HUD Hawaii State Office
500 Ala Moana Blvd. Suite 3A
Honolulu, HI 96813

DATE January 8, 2002
 ATTENTION: Jane Adaniya

RE Wilikina Apartments

WE ARE SENDING YOU Attached
 Under separate cover via _____ the following items:

COPIES	DATE	NO.	DESCRIPTION
1	12/20/01		OCAF Rent Adjustment Worksheet

THESE ARE TRANSMITTED as checked below:

For approval
 For your use
 As requested/required
 For review and comment
 FOR BIOS DUE _____ 19 _____

Approved as submitted
 Approved as noted
 Returned for corrections
 For payment

Resubmit _____ copies for approval
 Submit _____ copies for distribution
 Return _____ corrected prints
 PRINTS RETURNED AFTER LOAN TO US

REMARKS:

IF THERE ARE ANY QUESTIONS PLEASE CONTACT: the undersigned TELEPHONE NO: 832-5978

SIGNED: *Glori Inafuku*
 GLORI INAFUKU, Property Management Coordinator

COPY TO

CAS 51002.50

01007

OC RENT ADJUSTMENT WORKSHEET

PROJECT NAME: Wilikina Apartments

PROJECT ADDRESS: 730 Wilikina Drive, Wahiawa, Hawaii 96786

PROJECT OWNER: HHA Wilikina Apartment Project, Inc.

FHA PROJECT NO.: Not Applicable

TOTAL UNITS IN PROJECT: 119 TOTAL SECTION 8 UNITS IN PROJECT: 117

DATE OF SUBMISSION: 12/20/01 DATE RECEIVED BY HUD: _____

STEP 1:

Calculate the current Section 8 Rent Potential for EXPIRING contracts

(A) UNIT TYPE AND CONTRACT AND/OR STAGE	(B) # OF UNITS	(C) CURRENT SECTION 8 CONTRACT RENTS	(D) CURRENT SECTION 8 RENT POTENTIAL (B x C)
1 Bdrm	79	537	42,423
2 Bdrm	38	675	25,650

(E) Monthly Expiring Section 8 Contract Rent Potential
(total of column D):

68,073

(F) Annual Section 8 Rent Potential for Expiring Contracts
(E x 12):

816,876

STEP 2:

Calculate Increase Factor Adjusted by OCAF for Expiring Contracts

(G)	TOTAL ANNUAL RENT POTENTIAL FOR NON-EXPIRING SECTION 8 CONTRACTS	0
(H)	TOTAL ANNUAL RENT POTENTIAL FOR NON-SEC. 8 UNITS	0
(I)	TOTAL ANNUAL PROJECT RENT POTENTIAL (F + G + H)	816,876
(J)	EXPIRING SECTION 8 PORTION OF TOTAL PROJECT RENT POTENTIAL (F + I)	1
(K)	TOTAL ANNUAL PROJECT DEBT SERVICE	0
(L)	ANNUAL EXPIRING SECTION 8 SHARE OF DEBT SERVICE (J x K)	0
(M)	ANNUAL EXPIRING SECTION 8 POTENTIAL LESS EXPIRING SEC. 8 SHARE OF DEBT SERVICE (F-L)	816,876
(N)	ANNUAL EXPIRING SECTION 8 RENT POTENTIAL ATTRIBUTED TO OPERATIONS MULTIPLIED BY PUBLISHED OCAF (M x OCAF)	842,199.156
(O)	ADJUSTED CONTRACT RENT POTENTIAL (L + N)	842,199.156
(P)	LESSER OF (O) AND COMPARABLE RENT POTENTIAL FROM RENT COMPARABILITY STUDY	842,199.156
(Q)	INCREASE FACTOR (P ÷ F)	1.031

STEP 3:

Calculate OCAF Adjusted Contract Rent Potential for Expiring Section 8 Contracts ONLY.

(R)	(S)	(T)	(U)	(V)	(W)
UNIT TYPE AND CONTRACT AND/OR STAGE	# UNITS	CURRENT CONTRACT RENTS	OCAF ADJUSTED RENT (Q x T)	ANNUAL ADJUSTED RENT (U x I2)	ADJUSTED ANNUAL RENT POTENTIAL (S x V)
1 Bdrm	79	537	553	6636	524,244
2 Bdrm	38	675	695	8340	316,920

(X) Annual Adjusted Rent Potential of the Expiring Contract(s)
(total Column W):

841,164

I certify that this information is true and complete.

Project Name: Wilikina Apartments

Owner's Name: HHA Wilikina Apartment Project, Inc.

Owner's signature: *Henry Mujashiro* Date: 12/20/01

Warning: If you knowingly make a false statement on this form, you may be subject to civil penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

EXHIBIT 4



STATE OF HAWAII
 DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
 HOUSING & COMMUNITY DEVELOPMENT CORPORATION OF HAWAII
 P. O. BOX 17907
 HONOLULU, HAWAII 96817

TO U.S. Department of Housing and Urban Development
500 Ala Moana Blvd., Suite 3A
Honolulu, HI 96813

DATE March 18, 2002
 ATTENTION: Jane Adaniya

RE Wilikina Apartments

WE ARE SENDING YOU

Attached

Under separate cover via _____ the following items:

COPIES	DATE	NO.	DESCRIPTION
1	4/1/02		Rent Schedule

THESE ARE TRANSMITTED as checked below:

- For approval Approved as submitted Resubmit _____ copies for approval
 For your use Approved as noted Submit _____ copies for distribution
 As requested/required Returned for corrections Return _____ corrected prints
 For review and comment For payment
 FOR BIDS DUE _____ 19 _____ PRINTS RETURNED AFTER LOAN TO US

REMARKS:

IF THERE ARE ANY QUESTIONS PLEASE CONTACT: the undersigned TELEPHONE NO: 832-5978

SIGNED: *Glori Inafuku*
 GLORI INAFUKU, Property Management Coordinator

COPY TO Lui Faialefina, Jr., Urban Real Estate Co.

CAS 51002.50

01002

Rent Schedule Low Rent Housing

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0012
(exp. 3/31/2000)

See page 3 for instructions. Public Burden Statement and Privacy Act requirements.

Project Name Wilking Apartments	FHA Project Number	Date Rents Will Be Effective (mm/yyyy) 4/1/02
------------------------------------	--------------------	--

Part A - Apartment Rents

Show the actual rents you intend to charge, even if the total of these rents is less than the Maximum Allowable Monthly Rent Potential.

Col. 1 Unit Type (Include Non-revenue Producing Units)	Col. 2 Number of Units	Contract Rents		Col. 5 Utility Allowances (Effective Date (mm/dd/yyyy) ____/____/____)	Col. 6 Gross Rent (Col. 3 + Col. 5)	Market Rents (Sec. 236 Projects Only)	
		Col. 3 Rent Per Unit	Col. 4 Monthly Contract Rent Potential (Col. 2 x Col. 3)			Col. 7 Rent Per Unit	Col. 8 Monthly Market Rent Potential (Col. 2 x Col. 7)
1 BR	79	564	44556	40	604		
2 BR	38	709	26942	56	765		
Total Units		Monthly Contract Rent Potential (Add Col. 4)* 71498				Monthly Market Rent Potential (Add Col. 8)*	
		Yearly Contract Rent Potential (Col. 4 Sum x 12)* 857976				Yearly Market Rent Potential (Col. 8 Sum x 12)*	

* These amounts may not exceed the Maximum Allowable Monthly Rent Potential approved on the last Rent Computation Worksheet or requested on the Worksheet you are now submitting. Market Rent Potential applies only to Section 236 Projects.

Part B - Items Included in Rent

Equipment/Furnishings in Unit (Check those included in rent.)

<input checked="" type="checkbox"/> Range	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Carpet	<input type="checkbox"/> _____
<input type="checkbox"/> Air Conditioner	<input type="checkbox"/> Drapes	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> Disposal	<input checked="" type="checkbox"/> smoke detector	<input type="checkbox"/> _____

Utilities (Check those included in rent. For each item, (even those not included in rent), enter E, F, or G on line beside that item)
E=electric; G=gas; F=fuel oil or coal.

<input type="checkbox"/> Heating _____	<input type="checkbox"/> Hot Water _____	<input type="checkbox"/> Lights, etc. _____
<input type="checkbox"/> Cooling _____	<input type="checkbox"/> Cooking _____	<input type="checkbox"/> _____

Part C - Services/Facilities (check those included in rent)

<input type="checkbox"/> Parking	<input type="checkbox"/> _____	<input type="checkbox"/> Nursing Care
<input type="checkbox"/> Laundry	<input type="checkbox"/> _____	<input type="checkbox"/> Linen/Maid Service
<input type="checkbox"/> Swimming Pool	<input type="checkbox"/> _____	<input type="checkbox"/> _____
<input type="checkbox"/> Tennis Courts	<input type="checkbox"/> _____	<input type="checkbox"/> _____

Part C - Charges in Addition to Rent (e.g., parking, cable TV, meals)

Purpose	Monthly Charge
	\$
	\$
	\$
	\$
	\$

Part D - Non-Revenue Producing Space

Col. 1 Use	Col. 2 Unit Type	Col. 3 Contract Rent
Project Office	2 BR	709
Res. Mar. Unit	2 BR	709
Total Rent Loss Due to Non-Revenue Units		\$

Part E - Commercial Space (retail, offices, garages, etc.)

Col. 1 Use	Col. 2 Monthly Rent Potential	Col. 3 Square Footage	Col. 4 Rental Rate Per Sq. Ft. (Col. 2 divided by Col. 3)
\$		Total Commercial Rent Potential	

Part F - Maximum Allowable Rent Potential

Enter Maximum Allowable Monthly Rent Potential From Rent Computation Worksheet (to be completed by HUD or lender)	\$
---	----

Part G - Information on Mortgagor Entity

Name of Entity

HHA Wilikina Apartments Project, Inc.

Type of Entity

- Individual
 General Partnership
 Joint Tenancy/Tenants in Common
 Other (specify) _____
 Corporation
 Limited Partnership
 Trust

List all Principals Comprising Mortgagor Entity: provide name, title and Social Security Number or Employer Identification Number (EIN) of each principal. Use extra sheets, if needed. If mortgagor is a:

- corporation, list: (1) all officers; (2) all directors; and (3) each stockholder having a 10% or more interest.
- partnership, list: (1) all general partners; and (2) limited partners having a 25% or more interest in the partnership.
- trust, list: (1) all managers, directors or trustees and (2) each beneficiary having at least a 10% beneficial interest in the trust.

Name and Title	Social Security or EIN Number
Wesley R. Segawa, President	99-0302925
Nadine K. Nakamura, Vice-President	.
Kurt H. Mitchell, Secretary	.
Sharyn L. Miyashiro, Treasurer	.
Ronald S. Lim, Director	.
Don Fujimoto, Director	.
Patrick S. Yamada, Director	.
Susan M. Chandler, Director	.
Seiji Naya, Director	.
Aipopo Aipopo, Jr., Director	.

Part H - Owner Certification

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name and Title	Authorized Official's Signature	Date (mm/dd/yyyy)
Sharyn L. Miyashiro, Treasurer	<i>Sharyn Miyashiro</i>	03/15/2002

Part I - HUD/Lender Approval

Addendum Number	Branch Chief/Lender Official Signature	Date (mm/dd/yyyy)
HAP Contract Number		
Exhibit Number	Director, Housing Management Division Signature	Date (mm/dd/yyyy)
Loan Servicer Signature		Date (mm/dd/yyyy)

Rent Schedule Low Rent Housing

To Glenn Inafuku From J. Adaniya
 Dept./Agency _____ Phone # _____
 Fax # 832-5979 Fax # _____
 HSN 7540-21-217-7540 5099-101 GENERAL SERVICES ADMINISTRATION

See page 3 for instructions. Put
Project Name

Date Rents Will Be Effective (mm/yyyy)
4/1/02

Wilkins Apartments

Part A - Apartment Rents

Show the actual rents you intend to charge, even if the total of these rents is less than the Maximum Allowable Monthly Rent Potential.

Col. 1 Unit Type <small>(Include Non-revenue-Producing Units)</small>	Col. 2 Number of Units	Contract Rents		Col. 5 Utility Allowances <small>(Effective Date (mm/dd/yyyy))</small>	Col. 6 Gross Rent <small>(Col. 3 + Col. 5)</small>	Market Rents <small>(Sec. 236 Projects Only)</small>	
		Col. 3 Rent Per Unit	Col. 4 Monthly Contract Rent Potential <small>(Col. 2 x Col. 3)</small>			Col. 7 Rent Per Unit	Col. 8 Monthly Market Rent Potential <small>(Col. 2 x Col. 7)</small>
1 BR	79	564	44556	40	604		
2 BR	38	709	26942	56	765		
Total Units		Monthly Contract Rent Potential <small>(Add Col. 4)*</small> 71498				Monthly Market Rent Potential <small>(Add Col. 8)*</small>	
		Yearly Contract Rent Potential <small>(Col. 4 Sum x 12)*</small> 857976				Yearly Market Rent Potential <small>(Col. 8 Sum x 12)*</small>	

* These amounts may not exceed the Maximum Allowable Monthly Rent Potential approved on the last Rent Computation Worksheet or requested on the Worksheet you are now submitting. Market Rent Potential applies only to Section 236 Projects.

Part B - Items Included In Rent

Equipment/Furnishings in Unit (Check those included in rent.)

- | | | |
|--|--|--------------------------------|
| <input checked="" type="checkbox"/> Range | <input type="checkbox"/> Dishwasher | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Refrigerator | <input type="checkbox"/> Carpet | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Air Conditioner | <input type="checkbox"/> Drapes | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Disposal | <input checked="" type="checkbox"/> smoke detector | <input type="checkbox"/> _____ |

Utilities (Check those included in rent. For each item, (even those not included in rent), enter E, F, or G on line beside that item)
E=electric; G=gas; F=fuel oil or coal.

- | | | |
|--|--|---|
| <input type="checkbox"/> Heating _____ | <input type="checkbox"/> Hot Water _____ | <input type="checkbox"/> Lights, etc. _____ |
| <input type="checkbox"/> Cooling _____ | <input type="checkbox"/> Cooking _____ | <input type="checkbox"/> _____ |

Services/Facilities (check those included in rent)

- | | | |
|--|--------------------------------|---|
| <input type="checkbox"/> Parking | <input type="checkbox"/> _____ | <input type="checkbox"/> Nursing Care |
| <input type="checkbox"/> Laundry | <input type="checkbox"/> _____ | <input type="checkbox"/> Linen/Maid Service |
| <input type="checkbox"/> Swimming Pool | <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Tennis Courts | <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

Part C - Charges in Addition to Rent (e.g., parking, cable TV, meals)

Purpose	Monthly Charge
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

Part D - Non-Revenue Producing Space

Col. 1 Use	Col. 2 Unit Type	Col. 3 Contract Rent
Project Office	2 BR	709
Res. Mar. Unit	2 BR	709
Total Rent Loss Due to Non-Revenue Units		\$ _____

Part E - Commercial Space (retail, offices, garages, etc.)

Col. 1 Use	Col. 2 Monthly Rent Potential	Col. 3 Square Footage	Col. 4 Rental Rate Per Sq. Ft. <small>(Col. 2 divided by Col. 3)</small>
Total Commercial Rent Potential			\$ _____

Part F - Maximum Allowable Rent Potential

Enter Maximum Allowable Monthly Rent Potential From Rent Computation Worksheet (to be completed by HUD or lender)
\$ 71,498.00

01005

Part G - Information on Mortgage Entity

Name of Entity

HHA Wilkina Apartments Project, Inc.

Type of Entity

- Individual
 General Partnership
 Joint Tenancy/Tenants in Common
 Other (specify)
- Corporation
 Limited Partnership
 Trust

List all Principals Comprising Mortgage Entity; provide name, title and Social Security Number or Employer Identification Number (EIN) of each principal. Use extra sheets, if needed. If mortgage is a:

- corporation, list: (1) all officers; (2) all directors; and (3) each stockholder having a 10% or more interest.
- partnership, list: (1) all general partners; and (2) limited partners having a 25% or more interest in the partnership.
- trust, list: (1) all managers, directors or trustees and (2) each beneficiary having at least a 10% beneficial interest in the trust.

Name and Title	Social Security or EIN Number
Wesley R. Segawa, President	99-0302925
✓ Name and Title Nadine K. Nakamura, Vice-President	.
Name and Title Kurt H. Mitchell, Secretary	.
✓ Name and Title Sharyn L. Miyashiro, Treasurer	.
Name and Title Ronald S. Lim, Director	.
✓ Name and Title Don Fujimoto, Director	.
✓ Name and Title Patrick S. Yamada, Director	.
Name and Title Susan M. Chandler, Director	.
✓ Name and Title Seiji Naya, Director	.
✓ Name and Title Aipopo Aipopo, Jr., Director	.
Name and Title	Social Security or EIN Number

Part H - Owner Certification

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
 Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name and Title Sharyn L. Miyashiro, Treasurer	Authorized Official's Signature <i>Sharyn Miyashiro</i>	Date (mm/dd/yyyy) 03/15/2002
--	--	---------------------------------

Part I - HUD/Lender Approval

Addendum Number	Branch Chief/Lender Official Signature	Date (mm/dd/yyyy)
HAP Contract Number		
Exhibit Number	Director, Housing Management Division Signature	3-22-02
Loan Servicer Signature	Date (mm/dd/yyyy)	
	<i>Jane Adeniga, Project Manager</i>	

Previous editions are obsolete

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and
MARGARET MARA, individually, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and recognized
agency of the State of Hawaii; HHA
WILIKINA APARTMENTS, INC., DOES 1-
25,

Defendants.

) CIVIL NO. 05-1-0815-05 EEH
) (Contract)

) **DECLARATION OF PETER C. YOUNG**

DECLARATION OF PETER C. YOUNG

Peter C. Young, under penalty of perjury, declares and states the following to be true and correct:

1. I am familiar with and have personal knowledge of the facts stated in this Declaration.
2. I am an employee of the Hawaiian Electric Company ("HECO").
3. My position at HECO is Director of Pricing Division.
4. As the Director of Pricing Division at HECO, I have access to, and am familiar with HECO's records regarding past and current residential electric utility rates.
5. From April 1, 1996 to May 1, 2005, the HECO effective rate per kWh for residential utility consumers has increased over 37%.

I declare under the penalty of perjury the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 13, 2005.



PETER C. YOUNG

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and
MARGARET MARA, individually, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and recognized
agency of the State of Hawaii; HHA
WILIKINA APARTMENTS PROJECT, INC.,
DOES 1-25,

Defendants.

) CIVIL NO. 05-1-0815-05 EEH
) (Contract)

) **NOTICE OF HEARING MOTION AND**
) **CERTIFICATE OF SERVICE**


NOTICE OF HEARING OF MOTION

TO: WILLIAM J. WYNHOFF, ESQ.
Deputy Attorney General
Office of the Attorney General
465 South King St., Ste. 300
Honolulu, Hawaii 96743

Attorney for Defendants

NOTICE IS HEREBY GIVEN that the above-identified Plaintiff's Motion for
Partial Summary Judgment shall come on for hearing before the Honorable Eden E. Hifo,
Judge of the above-entitled Court, in her courtroom in the Kaahumanu Hale, 777
Punchbowl Street, Honolulu, Hawaii 96813, at 10:45 o'clock a.m. on
November 2, 2005, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, October 14, 2005.




SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN K. THORNTON
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion was duly served on the above identified parties at their respective addresses by hand-delivery and U.S. mail, postage prepaid.

DATED: Honolulu, Hawai'i, October 14, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN K. THORNTON
Attorneys for Plaintiffs