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HAWAI'I HOUSING FINANCE
AND DEVELOPMENT CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MICHAEL TUTTLE, CHI
PILIALOHA GUYER, JOSEPH VU,
and SHAZADA RAYLEEN YAP,

Plaintiffs,

vs.

FRONT STREET AFFORDABLE
HOUSING PARTNERS, a domestic
limited partnership, 3900 LLC, a
foreign limited liability company and
HAWAI'I HOUSING FINANCE
AND DEVELOPMENT
CORPORATION,

Defendants.

CIVIL No. _____

NOTICE OF REMOVAL; CONSENT
OF DEFENDANT FRONT STREET
AFFORDABLE HOUSING
PARTNERS TO REMOVAL;
CONSENT OF DEFENDANT 3900
LLC TO REMOVAL; EXHIBIT "A";
CERTIFICATE OF SERVICE

Trial Date: None

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Petitioner HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HHFDC"), herein shows:

1. A civil action, filed on May 10, 2018, is now pending in the Second Circuit Court of the State of Hawai'i wherein MICHAEL TUTTLE, CHI PILIALOHA GUYER, JOSEPH VU AND SHAZADA RAYLEEN YAP, are the Plaintiffs and the Defendants are FRONT STREET AFFORDABLE HOUSING PARTNERS, 3900 LLC, and HAWAI'I HOUSING FINANCE AND DEVELOPMENT CORPORATION, which action is designated Civil No. 18-1-0208(2). Copies of the Complaint and Summons, Amended Complaint, and Errata to Amended Complaint are attached as Exhibit "A".

2. Plaintiffs' Fourth Claim for Relief against HHFDC arises under or is related to the Internal Revenue Code, 26 U.S.C § 42. And, Plaintiffs' claims in general depend on the resolution of substantial, disputed federal questions. Removal of this entire action under 28 U.S.C. § 1441(a) and (c) is therefore proper because:

(a) "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue" 28 U.S.C. § 1340;

(b) Plaintiff's Fourth Claim for Relief is necessarily federal in character; and

(c) Plaintiff's right to relief depends on the resolution of substantial, disputed federal questions, including but not limited to: (i) whether the Internal Revenue Code or implementing regulations provide Plaintiffs any substantive rights or private right of action against HHFDC; and (ii) whether HHFDC failed to make "reasonable efforts" to offer the subject building for sale, as provided in 26 C.F.R. § 1.42-18(d)(2).

3. All defendants have consented to this removal.

WHEREFORE, Petitioner prays that this action be removed to this Court.

DATED: Honolulu, Hawai'i, June 8, 2018.

RUSSELL A. SUZUKI
Attorney General of Hawai'i

/s/

DIANE K. TAIRA
CRAIG Y. IHA
SANDRA A. CHING
Deputy Attorneys General

Attorneys for Petitioner
HAWAI'I HOUSING FINANCE AND
DEVELOPMENT CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MICHAEL TUTTLE, CHI
PILIALOHA GUYER, JOSEPH VU,
and SHAZADA RAYLEEN YAP,

Plaintiffs,

vs.

FRONT STREET AFFORDABLE
HOUSING PARTNERS, a domestic
limited partnership, 3900 LLC, a
foreign limited liability company and
HAWAI'I HOUSING FINANCE
AND DEVELOPMENT
CORPORATION,

Defendants.

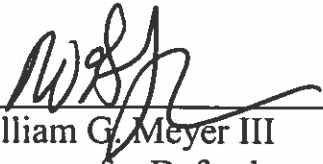
CIVIL No. _____
(Declaratory Relief)

CONSENT OF DEFENDANT FRONT
STREET AFFORDABLE HOUSING
PARTNERS TO REMOVAL

Trial Date: None

Front Street Affordable Housing Partners, by and through its counsel, hereby consents to the removal to the United States District Court for the District of Hawaii of the action entitled, *Tuttle et al. v. Front Street Affordable Housing Partners et al.*, Civil No. 18-1-0208 (2), and pending in the Second Circuit Court of the State of Hawaii.

DATED: June 8, 2018



William G. Meyer III
Attorney for Defendant
Front Street Affordable Housing Partners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MICHAEL TUTTLE, CHI
PILIALOHA GUYER, JOSEPH VU,
and SHAZADA RAYLEEN YAP,

Plaintiffs,

vs.

FRONT STREET AFFORDABLE
HOUSING PARTNERS, a domestic
limited partnership, 3900 LLC, a
foreign limited liability company and
HAWAI'I HOUSING FINANCE
AND DEVELOPMENT
CORPORATION,

Defendants.

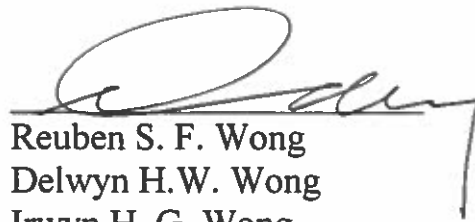
CIVIL No. _____
(Declaratory Relief)

CONSENT OF DEFENDANT 3900
LLC TO REMOVAL

Trial Date: None

3900 LLC, by and through its counsel, hereby consents to the removal to the United States District Court for the District of Hawaii of the action entitled, *Tuttle et al. v. Front Street Affordable Housing Partners et al.*, Civil No. 18-1-0208 (2), and pending in the Second Circuit Court of the State of Hawaii.

DATED: June 7, 2018



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FILED

2018 MAY 10 AM 8:56

D. PELLAZAR, CLERK
 SECOND CIRCUIT COURT
 STATE OF HAWAII

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

18-1-0208 (2)

MICHAEL TUTTLE, CHI PILIALOHA
 GUYER, JOSEPH VU, and SHAZADA
 RAYLEEN YAP,

Plaintiffs
 vs.

FRONT STREET AFFORDABLE HOUSING
 PARTNERS, a domestic limited partnership and
 HAWAII HOUSING FINANCE &
 DEVELOPMENT CORPORATION,

Defendants.

) Civil No. _____
) (Declaratory Relief)
)
) COMPLAINT; SUMMONS
)

I hereby certify that this is a full, true and
 correct copy of the Original

 Clerk, Second Circuit Court

COMPLAINT

Plaintiffs Chi Piliialoha Guyer, Michael Tuttle, Joseph Vu, and Shazada Rayleen Yap
 (collectively, "Plaintiffs"), by and through their counsel, Law Office of Lance D Collins, Lawyers for

EXHIBIT "A"

Equal Justice, and Hogan Lovells US LLP, for their Complaint against Defendants Front Street Affordable Housing Partners (“FSA”) and Hawaii Housing Finance and Development Corporation (“HHFDC”) (collectively, “Defendants”), state, aver, and allege as follows:

NATURE OF THE CASE

1. Plaintiffs are current or prospective residents of the Front Street Apartments, a low-income housing project in Lahaina, Maui County, Hawaii. In 2002, FSA, HHFDC, and 3900 Corp. (the fee owner of the land on which the Front Street Apartments exist) entered into a restrictive covenant running with the land under which the Front Street Apartments would maintain low-income housing restrictions under the federal Low Income Housing Tax Credit (LIHTC) program for an extended period of at least 51 years, thereby ensuring that Plaintiffs—and other low-income residents—would have an affordable place to live. Plaintiffs Guyer, Tuttle, and Vu, and other current residents of the Front Street Apartments, and Plaintiff Yap, and other prospective residents of the Front Street Apartments, are third-party intended beneficiaries of the restrictive covenant and thus have standing to enforce its provisions. In 2015, however, FSA—despite the restrictive covenant and without obtaining the consent of Plaintiffs or any other current or future resident of Front Street Apartments—sought to eliminate these low-income housing restrictions approximately 36 years before their expiration under the restrictive covenant. Towards this end, FSA requested that HHFDC advertise the Front Street Apartments for sale under a qualified contract. HHFDC subsequently purportedly “released” FSA from the restrictive covenant altogether. In this action, Plaintiffs contend that neither FSA nor HHFDC (nor any other party) had any legal right or authority to terminate the restrictive covenant without the consent of Plaintiffs and each and every other tenant or prospective tenant of Front Street Apartments. Plaintiffs contend further that, even if Defendants had such right, HHFDC failed to follow applicable law regarding the qualified-contract process by adopting unwritten rules and policies for the qualified-contract process and then failing to use “reasonable efforts” to market the Front Street Apartments. Plaintiffs thus bring this action against Defendants seeking, among other remedies, declaratory relief, injunctive relief, and specific performance enforcing the restrictive covenant; a declaratory judgment that Defendants failed to comply with applicable law regarding the qualified-contract process; and a declaratory judgment that the procedures by which HHFDC addresses qualified-contract requests constitutes a “rule” that HHFDC failed to enact pursuant to Haw. Rev. Stat. § 91-3.

GENERAL AVERMENTS

Parties, Jurisdiction, and Venue

2. Plaintiff Chi Pili aloha Guyer is a resident of the State of Hawaii. She is and, at all times relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. She has resided at the Front Street Apartments for more than 7 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. Her current address at the Front Street Apartments is 821 Kenui Circle, Lahaina, Hawaii 96761.

3. Plaintiff Michael Tuttle is a resident of the State of Hawaii. He is and, at all times relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. He and his two children have resided at the Front Street Apartments for more than 2 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. His current address at the Front Street Apartments is 1001 Kenui Circle, Lahaina, Hawaii 96761.

4. Plaintiff Joseph Vu is a resident of the State of Hawaii. He is and, at all times relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. He has resided at the Front Street Apartment for more than 2 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. His current address at the Front Street Apartments is 204 Kenui Circle, Lahaina, Hawaii 96761.

5. Plaintiff Shazada Rayleen Yap is a resident of the State of Hawaii. She and her five children currently share a room in the house of a family member. Plaintiff Yap qualifies under the eligibility guidelines to lease a unit at the Front Street Apartments and, therefore, is a “prospective tenant” as defined in the restrictive covenant discussed below.

6. HHFDC is an administrative agency of the State of Hawaii and is the successor-in-obligations to the restrictive covenant described below.

7. FSA is a Hawaii limited partnership that owns the Front Street Apartments. FSA’s principal address is located at 733 Bishop Street, Suite 1850, Honolulu, Hawaii 96813.

8. This Court has subject matter jurisdiction over this action and personal jurisdiction over all parties. Specifically, this Court has personal jurisdiction over HHFDC because, among other things, HHFDC is an agency of the State of Hawaii. This Court has personal jurisdiction over FSA because, among other things, FSA is a limited partnership whose principal place of business is in Hawaii.

9. Venue for this action is proper in the Circuit Court for the Second Circuit in the State of Hawaii pursuant to Haw. Rev. Stat. § 603-36(5) because the claims for relief herein arose in

Maui.

Low-Income Housing Tax Credit Program Generally

10. Plaintiffs Guyer, Tuttle, and Vu are current residents of the Front Street Apartments. Their rent is affordable because FSA has operated the Front Street Apartments as low-income housing under the LIHTC program since it was financed with tax credits in 2001.

11. The LIHTC program finances the construction and rehabilitation of rental housing for low-income residents. Investors in low-income housing may take credits on their federal income taxes for investing in approved projects that meet IRS rules. In return for the credits, limited partners contribute substantial equity, necessary to complete the financing of the project. The U.S. Department of Treasury allocates the tax credits to each state. HHFDC administers the LIHTC program in Hawaii.

12. The LIHTC program requires project owners to rent a specified number of apartments to qualified low-income tenants. The LIHTC program requires owners to execute and record these premises in a contract, running with the land, that is enforceable in state court by the low-income beneficiaries of the program. *See* 26 U.S.C. § 42(h)(6)(B)(ii). Owners must make their promises binding for a period of at least thirty years.

13. Generally, LIHTC program rules allow these use restrictions to be cut short in only two scenarios: (a) project foreclosure, or (b) release through a qualified-contract process. The LIHTC program rules are applicable to the extent that they are not in conflict with FSA's covenant and obligation to maintain affordability of rents of tenants of Front Street Apartments for 51 years. In this case, as described below, FSA entered into a long-term commitment waiving its right to a release of program restrictions through the qualified contract process.

14. A qualified contract is "a bona fide contract to acquire (within a reasonable period after the contract is entered into)" a LIHTC-financed building, at a purchase price determined by a calculation set forth in the federal statute ("qualified-contract price"), by "any person who will continue to operate [the low-income portion of the building] as a qualified low-income building." 26 U.S.C. § 42(h)(6)(E)-(F).

15. Generally under federal law, and in the absence of a restrictive covenant that provides otherwise, a project owner may, after fourteen years of LIHTC financing, make a written request to the applicable state housing credit agency asking the agency to find a person to acquire the building through a qualified contract. In such circumstances, the agency must use "reasonable

efforts” to offer the building for sale to the general public. 26 C.F.R. § 1.42-18(d)(2). If the agency is unable to find a buyer at the qualified-contract price within one year after receipt of the project owner’s request, the use restrictions may terminate. 26 U.S.C. § 42(h)(6)(E)(i)(II); *id.* § 42(h)(6)(i). Thereafter, assuming the project owner complies with federal law, the project owner may, no earlier than three years after the termination date, increase the rent for a low-income unit or evict or terminate the tenancy of an existing tenant of any low-income unit.

FSA’s Low-Income Housing Commitment

16. FSA submitted a LIHTC application to Housing and Community Development Corporation of Hawaii (HHFDC’s predecessor) on January 28, 1999. It amended its application on June 18, 1999 and November 15, 2000.

17. In its LIHTC application, FSA represented that it would construct a 142-unit residential housing project, which would become the Front Street Apartments. FSA represented further that it would lease 71 units to individuals or families whose income is 60% or less of the area median gross income (“AMI”) and 70 units to individuals or families whose income is 50% or less of the AMI (collectively, the “low-income units”). The remaining residential unit was designated as the manager’s unit.

18. Allocation of tax credits is and was a very competitive process. The Qualified Allocation Plan in effect at the time provided extra competitive points for agreeing to maintain the LIHTC rent and income restriction for a term in excess of 30 years.

19. Accordingly, FSA also represented that it would covenant to maintain the LIHTC rent and income restriction for an additional 36 years beyond the minimum 15-year compliance period, for a total of 51 years.

20. Accordingly, on August 9, 2002, FSA, 3900 Corp. (the fee owner of the Front Street Apartments), and Housing and Community Development Corporation of Hawaii entered into a Declaration of Restrictive Covenants for Low-Income Housing Credits (the “Declaration”), pursuant to which FSA agreed to maintain the LIHTC rent and income restriction for a total of 51 years. Pursuant to the Declaration, all low-income units would be rented or made available only to members of the general public who qualify as low-income tenants under the LIHTC program.

21. By its terms, the Declaration’s income restriction expires no earlier than December 31, 2051.

22. Section 5(b) of the Declaration provides that FSA “shall comply with the

requirements of Section 42 of the [Internal Revenue] Code relating to the Extended Use Period unless the Extended Use Period for this Project shall terminate through acquisition of the Project by foreclosure or instrument in lieu of foreclosure if in accordance with the regulations promulgated by the Code.”

23. The Declaration does not provide for termination of the Extended Use Period after HHFDC’s inability to find a buyer pursuant to a qualified-contract process. Further, no “foreclosure” has occurred “or instrument in lieu of foreclosure” been exchanged regarding the Front Street Apartments.

24. In accordance with the LIHTC statute, Section 6(b) of the Declaration provides that, in the event of a breach of the Declaration, any individual who meets the LIHTC program income restriction, whether a prospective, present, or former tenant or occupant, is designated a beneficiary and shall be entitled to enforce specific performance by FSA (or its successors) of its obligations under the Declaration. Accordingly, by its express terms, Plaintiffs (and each of them) have standing to enforce the Declaration in this action.

FSA’s Qualified-Contract Process and Purported “Release” from the Declaration

25. On or about August 5, 2015, FSA submitted to HHFDC an application to sell the Front Street Apartments under a qualified contract pursuant to Section 42 of the Internal Revenue Code.

26. On or about September 22, 2015, HHFDC accepted FSA’s qualified-contract application.

27. HHFDC was required to advertise the qualified contract using “reasonable efforts” during the qualified-contract period, which expired on August 4, 2016. *See* 26 C.F.R. § 1.42-18(d)(2).

28. HHFDC has not, however, adopted rules regarding the reasonable efforts it shall use to advertise qualified contracts during a qualified-contract period as required by Haw. Rev. Stat. § 91-3.

29. Further, HHFDC failed to use “reasonable efforts” to advertise the Front Street Apartments. For example, and without limitation, HHFDC:

- a. Failed to advertise FSA’s qualified contract on its website until May 24, 2016, more than nine months after FSA filed its application with HHFDC and less than three months before the qualified-contract period expired on August 4, 2016;
- b. Failed to notify the Maui Department of Housing and Human Concerns of FSA’s

qualified-contract request until June 2016, thereby preventing that entity from attempting to take measures to locate a suitable purchaser for the Front Street Apartments to maintain their low-income status; and

- c. Failed to secure a buyer or otherwise present a qualified contract to FSA before the qualified-contract period expired on August 4, 2016.

30. Further, on or about December 14, 2016, HHFDC executed a Release of Declaration of Restrictive Covenants for Low-Income Housing Credits (“Release”), allegedly effective as of August 5, 2016, which purportedly “released” and “terminated” the Declaration. Defendants did not, however, obtain consent of Plaintiffs, each and every other current and prospective tenant/occupant of Front Street Apartments, and each and every other beneficiary of the Declaration before attempting to “release” and “terminate” the Declaration. Therefore, the purported Release is void and of no force or effect.

31. FSA requested that HHFDC execute the Release. Both FSA and 3900 Corp. agreed to, but did not execute, the Release. The failure of FSA and 3900 Corp. to execute the Release renders the Release unenforceable under the statute of frauds, Haw. Rev. Stat. § 656-1(4).

32. Pursuant to the Release, FSA allegedly may evict low-income tenants at will and/or raise tenants’ rent beginning on August 5, 2019.

33. Pursuant to the Release, presently FSA allegedly may rent vacant units to the general public at market rates.

34. Moreover, if the Release is valid (and it is not), Plaintiffs Guyer, Tuttle, and Vu will be forced to relocate by August 5, 2019.

35. If the Release is valid (and it is not), Plaintiff Yap is presently unable and will continue to be unable to rent vacant units at the Front Street Apartments that are otherwise available to her and other prospective tenants who are qualified to lease units at the Front Street Apartments.

FIRST CLAIM FOR RELIEF
(Breach of the Declaration—Against FSA)

36. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 35, above, as if fully set forth herein.

37. HHFDC, FSA, and 3900 Corp. entered into the Declaration.

38. The Declaration constitutes a valid, binding, and enforceable contract and covenant that runs with the land. Alternatively, the Declaration constitutes an equitable servitude that

Plaintiffs are entitled to enforce as intended third-party beneficiaries. In any event, the Declaration has not been effectively terminated, released, or otherwise nullified.

39. Pursuant to the Declaration, FSA covenanted and agreed, among other things, to lease all units subject to the LIHTC to low-income tenants during the 51-year term of the Declaration.

40. FSA materially breached the Declaration by, among other things, failing to lease all units subject to the LIHTC to low-income tenants, failing to ensure that such units remain available to qualified prospective tenants throughout the term of the Declaration, requesting that HHFDC execute the Release (which HHFDC did execute), threatening to increase rents and evict from the Front Street Apartments by August 5, 2019 Plaintiffs and other current tenants who are unable to afford increased rents, and otherwise attempting improperly to avoid the provisions of the Declaration.

41. Under section 6(b) of the Declaration, and under Section 42(h)(6)(B)(ii), any prospective, present, or former tenant/occupant of the Front Street Apartments is entitled to enforce specific performance by FSA for a breach of the Declaration.

42. Plaintiffs are prospective, present, or former tenants or occupants of the Front Street Apartments who qualify for protections of the Declaration, and thus are beneficiaries with standing to enforce the Declaration.

43. FSA's material breach of the Declaration caused Plaintiffs harm that cannot be adequately compensated by monetary damages and entitles Plaintiffs to specific performance by FSA of FSA's obligations under the Declaration, including, without limitation, ensuring that the low-income restrictions remain valid, binding, and enforceable obligations that run with the land.

SECOND CLAIM FOR RELIEF
(Breach of the Declaration—Against FSA)

44. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 43, above, as if fully set forth herein.

45. FSA's material breach of the Declaration has resulted, and will continue to result, in irreparable damage, including, without limitation, unlawfully evicting or constructively evicting Plaintiffs and similarly situated tenants and occupants without cause or legal basis.

46. The public interest supports the issuance of a permanent injunction to prevent FSA from unlawfully terminating its affordable-housing commitment and leaving Plaintiffs and similarly situated tenants and occupants with no affordable place to live.

47. There is no adequate remedy at law for FSA's material breach of the Declaration and therefore Plaintiffs are entitled to a permanent injunction, in effect through at least December 31, 2051, prohibiting FSA and any successor or assign from renting any unit at the Front Street Apartments to members of the public who are not LIHTC-qualified low-income tenants.

THIRD CLAIM FOR RELIEF
(Breach of the Declaration—Against Defendants)

48. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 47, above, as if fully set forth herein.

49. Defendants materially breached the Declaration by, among other things, executing the Release, which purported to "release" and "terminate" the Declaration without the consent of Plaintiffs and each and every tenant/occupant of Front Street Apartments and beneficiary of the Declaration.

50. Therefore, Plaintiffs seek a declaratory judgment that the Release is null, void, and of no force or effect, and that the Declaration is and remains a valid, binding, and enforceable obligation and binding upon and enforceable against FSA and all subsequent owners and operators of the Front Street Apartments through at least December 31, 2051.

FOURTH CLAIM FOR RELIEF
(Failure to Use "Reasonable Efforts"—Against HHFDC)

51. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 50, above, as if fully set forth herein.

52. Between August 5, 2015 and August 4, 2016, Defendant HHFDC was required to advertise FSA's qualified-contract request to the general public using reasonable efforts.

53. HHFDC failed to advertise FSA's qualified-contract request to the general public using reasonable efforts.

54. Therefore, the qualified-contract process in this matter is void.

FIFTH CLAIM FOR RELIEF
(Failure to Promulgate Rules—Against HHFDC)

55. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 54, above, as if fully set forth herein.

56. Between August 5, 2015 and August 4, 2016, Defendant HHFDC was required to advertise FSA's qualified-contract request to the general public using reasonable efforts. HHFDC did not, however, adopt a rule regarding the methodology used to advertise a qualified-contract request using reasonable efforts.

57. The methodology used to advertise a qualified-contract request is a rule within the meaning of Haw. Rev. Stat. § 91-1.

58. The methodology used to advertise FSA's qualified-contract request was adopted without complying with the procedures in Haw. Rev. Stat. § 91-3.

59. Therefore, the qualified-contract process in this matter is void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Enter judgment in Plaintiffs' favor and against Defendants as set forth above;
2. Enter an order for specific performance by FSA for a breach of the Declaration;
3. Enter an order, in effect through at least December 31, 2051, temporarily, preliminarily, and permanently enjoining FSA and any successor or assign thereof from increasing rents to the extent inconsistent with the Declaration and low-income rent restrictions governing the Front Street Apartments and/or renting any unit at the Front Street Apartments to members of the public who are not LIHTC-qualified low-income tenants;
4. Enter an order temporarily, preliminarily, and permanently enjoining and restraining FSA from increasing the rents of Plaintiffs Guyer, Tuttle, and Vu above amounts permissible under the Declaration and applicable low-income rent restrictions governing the Front Street Apartments and enjoining and restraining FSA from evicting Plaintiffs Guyer, Tuttle, and Vu based on any such increases;
5. Enter a declaratory judgment that the Release is null, void, and of no force or effect, and that the Declaration is and remains a valid, binding, and enforceable obligation and binding upon and enforceable against FSA and all subsequent owners and operators of the Front Street Apartments through at least December 31, 2051;
6. Enter a declaratory judgment that the methodology used by HHFDC to advertise a qualified-contract request is a rule within the meaning of Haw. Rev. Stat. § 91-1, said methodology used to advertise FSA's qualified-contract request was adopted without complying with the

procedures in Haw. Rev. Stat. § 91-3, and, therefore, the qualified-contract process in this matter is void.

7. Enter judgment in Plaintiffs' favor and against Defendants for reasonable attorney fees and costs to the extent provided by law; and

8. Grant Plaintiffs such other relief as the Court deems proper.

DATED: Wailuku, Maui Hawai'i

May 10, 2018



LAW OFFICE OF LANCE D COLLINS
Lance D. Collins

LAWYERS FOR EQUAL JUSTICE
M. Victor Geminiani

HOGAN LOVELLS US LLP
Andrew C. Lillie (Pro Hac Vice Forthcoming)
Joseph L. Lambert (Pro Hac Vice Forthcoming)
Andrew M. Nussbaum (Pro Hac Vice Forthcoming)

ATTORNEYS FOR PLAINTIFFS

STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF MICHAEL TUTTLE, CHI PILIALOHA GUYER, JOSEPH VU, and SHAZADA RAYLEEN YAP	vs.	DEFENDANT FRONT STREET AFFORDABLE HOUSING PARTNERS, a domestic limited partnership and HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) LAW OFFICE OF LANCE D. COLLINS LANCE D. COLLINS 8246 Post Office Box 179336 Honolulu HI 96817 (808) 243-9292		
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to file with the court and serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;">If you fail to obey this summons this may result in an entry of default and default judgment.</p> <p style="text-align: center;">Pursuant to Rule 4(b) of the <u>Hawai'i Rules of Civil Procedure</u>, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.</p>		
DATE ISSUED MAY 10 2018	CLERK OF COURT /sgd/ D. PELLAZAR (seal)	



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office at PHONE NO. 244-2969, FAX 244-2932, or TTY 244-2865, at least ten (10) working days prior to your hearing or appointment date.

LAW OFFICE OF LANCE D. COLLINS
Lance D. Collins 8246
Post Office Box 179336
Honolulu, Hawai'i 96817
Telephone: (808) 243-9292

FILED

2018 MAY 25 AM 8:53

Y. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

LAWYERS FOR EQUAL JUSTICE
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Honolulu, Hawai'i 96813
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MICHAEL TUTTLE, CHI PILIALOHA)	Civil No. 18-1-0208(2)
GUYER, JOSEPH VU, and SHAZADA	)	(Declaratory Relief)
RAYLEEN YAP,)	
	)	AMENDED COMPLAINT; SUMMONS
Plaintiffs)	
vs.)	
)	
FRONT STREET AFFORDABLE HOUSING)	
PARTNERS, a domestic limited partnership,)	
3900 LLC, a foreign limited liability company)	
and HAWAII HOUSING FINANCE &)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiffs Chi Piliialoha Guyer, Michael Tuttle, Joseph Vu, and Shazada Rayleen Yap (collectively, "Plaintiffs"), by and through their counsel, Law Office of Lance D Collins and Lawyers for Equal Justice, for their Complaint against Defendants Front Street Affordable Housing Partners ("FSA") and Hawaii Housing Finance and Development Corporation ("HHFDC") (collectively, "Defendants"), state, aver, and allege as follows:

NATURE OF THE CASE

1. Plaintiffs are current or prospective residents of the Front Street Apartments, a low-income housing project in Lahaina, Maui County, Hawaii. In 2002, FSA, HHFDC, and 3900 (the fee owner of the land on which the Front Street Apartments exist) entered into a restrictive

I hereby certify that this is a full, true and correct copy of the Original.


Clerk, Second Circuit Court

covenant running with the land under which the Front Street Apartments would maintain low-income housing restrictions under the federal Low Income Housing Tax Credit (LIHTC) program for an extended period of at least 51 years, thereby ensuring that Plaintiffs—and other low-income residents—would have an affordable place to live. Plaintiffs Guyer, Tuttle, and Vu, and other current residents of the Front Street Apartments, and Plaintiff Yap, and other prospective residents of the Front Street Apartments, are third-party intended beneficiaries of the restrictive covenant and thus have standing to enforce its provisions. In 2015, however, FSA—despite the restrictive covenant and without obtaining the consent of Plaintiffs or any other current or future resident of Front Street Apartments—sought to eliminate these low-income housing restrictions approximately 36 years before their expiration under the restrictive covenant. Towards this end, FSA requested that HHFDC advertise the Front Street Apartments for sale under a qualified contract. HHFDC subsequently purportedly “released” FSA from the restrictive covenant altogether. In this action, Plaintiffs contend that neither FSA nor HHFDC (nor any other party) had any legal right or authority to terminate the restrictive covenant without the consent of Plaintiffs and each and every other tenant or prospective tenant of Front Street Apartments. Plaintiffs contend further that, even if Defendants had such right, HHFDC failed to follow applicable law regarding the qualified-contract process by adopting unwritten rules and policies for the qualified-contract process and then failing to use “reasonable efforts” to market the Front Street Apartments. Plaintiffs thus bring this action against Defendants seeking, among other remedies, declaratory relief, injunctive relief, and specific performance enforcing the restrictive covenant; a declaratory judgment that Defendants failed to comply with applicable law regarding the qualified-contract process; and a declaratory judgment that the procedures by which HHFDC addresses qualified-contract requests constitutes a “rule” that HHFDC failed to enact pursuant to Haw. Rev. Stat. § 91-3.

GENERAL AVERMENTS

Parties, Jurisdiction, and Venue

2. Plaintiff Chi Pili aloha Guyer is a resident of the State of Hawaii. She is and, at all times relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. She has resided at the Front Street Apartments for more than 7 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. Her current address at the Front Street Apartments is 821 Kenui Circle, Lahaina, Hawaii 96761.

3. Plaintiff Michael Tuttle is a resident of the State of Hawaii. He is and, at all times

relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. He and his two children have resided at the Front Street Apartments for more than 2 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. His current address at the Front Street Apartments is 1001 Kenui Circle, Lahaina, Hawaii 96761.

4. Plaintiff Joseph Vu is a resident of the State of Hawaii. He is and, at all times relevant hereto, was, a resident of the Front Street Apartments located at 2001 Kenui Place, Lahaina, Hawaii 96761. He has resided at the Front Street Apartment for more than 2 years and, therefore, is a “present tenant” as defined in the restrictive covenant discussed below. His current address at the Front Street Apartments is 204 Kenui Circle, Lahaina, Hawaii 96761.

5. Plaintiff Shazada Rayleen Yap is a resident of the State of Hawaii. She and her five children currently share a room in the house of a family member. Plaintiff Yap qualifies under the eligibility guidelines to lease a unit at the Front Street Apartments and, therefore, is a “prospective tenant” as defined in the restrictive covenant discussed below.

6. HHFDC is an administrative agency of the State of Hawaii and is the successor-in-obligations to the restrictive covenant described below.

7. FSA is a Hawaii limited partnership that owns the Front Street Apartments. FSA’s principal address is located at 733 Bishop Street, Suite 1850, Honolulu, Hawaii 96813.

8. 3900 LLC is a foreign limited liability company and the surviving entity of a merger with 3900 Corp, previously a foreign profit corporation and title owner of the fee under Front Street Apartments. 3900 Corp merged with 3900 LLC on or about December 12, 2017. Pursuant to HRS 414-316(a)(2), title to the property vested in 3900 LLC as surviving entity. 3900 LLC as owner of the fee under Front Street Apartments is named to the extent that it may be a necessary and indispensable party.

9. This Court has subject matter jurisdiction over this action and personal jurisdiction over all parties. Specifically, this Court has personal jurisdiction over HHFDC because, among other things, HHFDC is an agency of the State of Hawaii. This Court has personal jurisdiction over FSA because, among other things, FSA is a limited partnership whose principal place of business is in Hawaii. This Court has personal jurisdiction over 3900 LLC because, among other things, 3900 LLC owns the fee under Front Street Apartments.

10. Venue for this action is proper in the Circuit Court for the Second Circuit in the State of Hawaii pursuant to Haw. Rev. Stat. § 603-36(5) because the claims for relief herein arose in Maui.

Low-Income Housing Tax Credit Program Generally

11. Plaintiffs Guyer, Tuttle, and Vu are current residents of the Front Street Apartments. Their rent is affordable because FSA has operated the Front Street Apartments as low-income housing under the LIHTC program since it was financed with tax credits in 2001.

12. The LIHTC program finances the construction and rehabilitation of rental housing for low-income residents. Investors in low-income housing may take credits on their federal income taxes for investing in approved projects that meet IRS rules. In return for the credits, limited partners contribute substantial equity, necessary to complete the financing of the project. The U.S. Department of Treasury allocates the tax credits to each state. HHFDC administers the LIHTC program in Hawaii.

13. The LIHTC program requires project owners to rent a specified number of apartments to qualified low-income tenants. The LIHTC program requires owners to execute and record these premises in a contract, running with the land, that is enforceable in state court by the low-income beneficiaries of the program. *See* 26 U.S.C. § 42(h)(6)(B)(ii). Owners must make their promises binding for a period of at least thirty years.

14. Generally, LIHTC program rules allow these use restrictions to be cut short in only two scenarios: (a) project foreclosure, or (b) release through a qualified-contract process. The LIHTC program rules are applicable to the extent that they are not in conflict with FSA's covenant and obligation to maintain affordability of rents of tenants of Front Street Apartments for 51 years. In this case, as described below, FSA entered into a long-term commitment waiving its right to a release of program restrictions through the qualified contract process.

15. A qualified contract is "a bona fide contract to acquire (within a reasonable period after the contract is entered into)" a LIHTC-financed building, at a purchase price determined by a calculation set forth in the federal statute ("qualified-contract price"), by "any person who will continue to operate [the low-income portion of the building] as a qualified low-income building." 26 U.S.C. § 42(h)(6)(E)-(F).

16. Generally under federal law, and in the absence of a restrictive covenant that provides otherwise, a project owner may, after fourteen years of LIHTC financing, make a written request to the applicable state housing credit agency asking the agency to find a person to acquire the building through a qualified contract. In such circumstances, the agency must use "reasonable efforts" to offer the building for sale to the general public. 26 C.F.R. § 1.42-18(d)(2). If the agency is unable to find a buyer at the qualified-contract price within one year after receipt of the project

owner's request, the use restrictions may terminate. 26 U.S.C. § 42(h)(6)(E)(i)(II); *id.* § 42(h)(6)(i). Thereafter, assuming the project owner complies with federal law, the project owner may, no earlier than three years after the termination date, increase the rent for a low-income unit or evict or terminate the tenancy of an existing tenant of any low-income unit.

FSA's Low-Income Housing Commitment

17. FSA submitted a LIHTC application to Housing and Community Development Corporation of Hawaii (HHFDC's predecessor) on January 28, 1999. It amended its application on June 18, 1999 and November 15, 2000.

18. In its LIHTC application, FSA represented that it would construct a 142-unit residential housing project, which would become the Front Street Apartments. FSA represented further that it would lease 71 units to individuals or families whose income is 60% or less of the area median gross income ("AMI") and 70 units to individuals or families whose income is 50% or less of the AMI (collectively, the "low-income units"). The remaining residential unit was designated as the manager's unit.

19. Allocation of tax credits is and was a very competitive process. The Qualified Allocation Plan in effect at the time provided extra competitive points for agreeing to maintain the LIHTC rent and income restriction for a term in excess of 30 years.

20. Accordingly, FSA also represented that it would covenant to maintain the LIHTC rent and income restriction for an additional 36 years beyond the minimum 15-year compliance period, for a total of 51 years.

21. Accordingly, on August 9, 2002, FSA, 3900 LLC, and Housing and Community Development Corporation of Hawaii entered into a Declaration of Restrictive Covenants for Low-Income Housing Credits (the "Declaration"), pursuant to which FSA agreed to maintain the LIHTC rent and income restriction for a total of 51 years. Pursuant to the Declaration, all low-income units would be rented or made available only to members of the general public who qualify as low-income tenants under the LIHTC program.

22. By its terms, the Declaration's income restriction expires no earlier than December 31, 2051.

23. Section 5(b) of the Declaration provides that FSA "shall comply with the requirements of Section 42 of the [Internal Revenue] Code relating to the Extended Use Period unless the Extended Use Period for this Project shall terminate through acquisition of the Project by

foreclosure or instrument in lieu of foreclosure if in accordance with the regulations promulgated by the Code.”

24. The Declaration does not provide for termination of the Extended Use Period after HHFDC’s inability to find a buyer pursuant to a qualified-contract process. Further, no “foreclosure” has occurred “or instrument in lieu of foreclosure” been exchanged regarding the Front Street Apartments.

25. In accordance with the LIHTC statute, Section 6(b) of the Declaration provides that, in the event of a breach of the Declaration, any individual who meets the LIHTC program income restriction, whether a prospective, present, or former tenant or occupant, is designated a beneficiary and shall be entitled to enforce specific performance by FSA (or its successors) of its obligations under the Declaration. Accordingly, by its express terms, Plaintiffs (and each of them) have standing to enforce the Declaration in this action.

FSA’s Qualified-Contract Process and Purported “Release” from the Declaration

26. On or about August 5, 2015, FSA submitted to HHFDC an application to sell the Front Street Apartments under a qualified contract pursuant to Section 42 of the Internal Revenue Code.

27. On or about September 22, 2015, HHFDC accepted FSA’s qualified-contract application.

28. HHFDC was required to advertise the qualified contract using “reasonable efforts” during the qualified-contract period, which expired on August 4, 2016. *See* 26 C.F.R. § 1.42-18(d)(2).

29. HHFDC has not, however, adopted rules regarding the reasonable efforts it shall use to advertise qualified contracts during a qualified-contract period as required by Haw. Rev. Stat. § 91-3.

30. Further, HHFDC failed to use “reasonable efforts” to advertise the Front Street Apartments. For example, and without limitation, HHFDC:

- a. Failed to advertise FSA’s qualified contract on its website until May 24, 2016, more than nine months after FSA filed its application with HHFDC and less than three months before the qualified-contract period expired on August 4, 2016;
- b. Failed to notify the Maui Department of Housing and Human Concerns of FSA’s qualified-contract request until June 2016, thereby preventing that entity from attempting to take measures to locate a suitable purchaser for the Front Street

Apartments to maintain their low-income status; and

- c. Failed to secure a buyer or otherwise present a qualified contract to FSA before the qualified-contract period expired on August 4, 2016.

31. Further, on or about December 14, 2016, HHFDC executed a Release of Declaration of Restrictive Covenants for Low-Income Housing Credits (“Release”), allegedly effective as of August 5, 2016, which purportedly “released” and “terminated” the Declaration. Defendants did not, however, obtain consent of Plaintiffs, each and every other current and prospective tenant/occupant of Front Street Apartments, and each and every other beneficiary of the Declaration before attempting to “release” and “terminate” the Declaration. Therefore, the purported Release is void and of no force or effect.

32. FSA requested that HHFDC execute the Release. Both FSA and 3900 agreed to, but did not execute, the Release. The failure of FSA and 3900 to execute the Release renders the Release unenforceable under the statute of frauds, Haw. Rev. Stat. § 656-1(4).

33. Pursuant to the Release, FSA allegedly may evict low-income tenants at will and/or raise tenants’ rent beginning on August 5, 2019.

34. Pursuant to the Release, presently FSA allegedly may rent vacant units to the general public at market rates.

35. Moreover, if the Release is valid (and it is not), Plaintiffs Guyer, Tuttle, and Vu will be forced to relocate by August 5, 2019.

36. If the Release is valid (and it is not), Plaintiff Yap is presently unable and will continue to be unable to rent vacant units at the Front Street Apartments that are otherwise available to her and other prospective tenants who are qualified to lease units at the Front Street Apartments.

FIRST CLAIM FOR RELIEF
(Breach of the Declaration—Against FSA)

37. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 35, above, as if fully set forth herein.

38. HHFDC, FSA, and 3900 entered into the Declaration.

39. The Declaration constitutes a valid, binding, and enforceable contract and covenant that runs with the land. Alternatively, the Declaration constitutes an equitable servitude that Plaintiffs are entitled to enforce as intended third-party beneficiaries. In any event, the Declaration has not been effectively terminated, released, or otherwise nullified.

40. Pursuant to the Declaration, FSA covenanted and agreed, among other things, to lease all units subject to the LIHTC to low-income tenants during the 51-year term of the Declaration.

41. FSA materially breached the Declaration by, among other things, failing to lease all units subject to the LIHTC to low-income tenants, failing to ensure that such units remain available to qualified prospective tenants throughout the term of the Declaration, requesting that HHFDC execute the Release (which HHFDC did execute), threatening to increase rents and evict from the Front Street Apartments by August 5, 2019 Plaintiffs and other current tenants who are unable to afford increased rents, and otherwise attempting improperly to avoid the provisions of the Declaration.

42. Under section 6(b) of the Declaration, and under Section 42(h)(6)(B)(ii), any prospective, present, or former tenant/occupant of the Front Street Apartments is entitled to enforce specific performance by FSA for a breach of the Declaration.

43. Plaintiffs are prospective, present, or former tenants or occupants of the Front Street Apartments who qualify for protections of the Declaration, and thus are beneficiaries with standing to enforce the Declaration.

44. FSA's material breach of the Declaration caused Plaintiffs harm that cannot be adequately compensated by monetary damages and entitles Plaintiffs to specific performance by FSA of FSA's obligations under the Declaration, including, without limitation, ensuring that the low-income restrictions remain valid, binding, and enforceable obligations that run with the land.

SECOND CLAIM FOR RELIEF
(Breach of the Declaration—Against FSA)

45. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 43, above, as if fully set forth herein.

46. FSA's material breach of the Declaration has resulted, and will continue to result, in irreparable damage, including, without limitation, unlawfully evicting or constructively evicting Plaintiffs and similarly situated tenants and occupants without cause or legal basis.

47. The public interest supports the issuance of a permanent injunction to prevent FSA from unlawfully terminating its affordable-housing commitment and leaving Plaintiffs and similarly situated tenants and occupants with no affordable place to live.

48. There is no adequate remedy at law for FSA's material breach of the Declaration and therefore Plaintiffs are entitled to a permanent injunction, in effect through at least December 31,

2051, prohibiting FSA and any successor or assign from renting any unit at the Front Street Apartments to members of the public who are not LIHTC-qualified low-income tenants.

THIRD CLAIM FOR RELIEF
(Breach of the Declaration—Against Defendants)

49. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 47, above, as if fully set forth herein.

50. Defendants materially breached the Declaration by, among other things, executing the Release, which purported to “release” and “terminate” the Declaration without the consent of Plaintiffs and each and every tenant/occupant of Front Street Apartments and beneficiary of the Declaration.

51. Therefore, Plaintiffs seek a declaratory judgment that the Release is null, void, and of no force or effect, and that the Declaration is and remains a valid, binding, and enforceable obligation and binding upon and enforceable against FSA and all subsequent owners and operators of the Front Street Apartments through at least December 31, 2051.

FOURTH CLAIM FOR RELIEF
(Failure to Use “Reasonable Efforts”—Against HHFDC)

52. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 50, above, as if fully set forth herein.

53. Between August 5, 2015 and August 4, 2016, Defendant HHFDC was required to advertise FSA’s qualified-contract request to the general public using reasonable efforts.

54. HHFDC failed to advertise FSA’s qualified-contract request to the general public using reasonable efforts.

55. Therefore, the qualified-contract process in this matter is void.

FIFTH CLAIM FOR RELIEF
(Failure to Promulgate Rules—Against HHFDC)

56. Plaintiffs restate and incorporate by reference each and every averment set forth at Paragraphs 1 through 54, above, as if fully set forth herein.

57. Between August 5, 2015 and August 4, 2016, Defendant HHFDC was required to advertise FSA’s qualified-contract request to the general public using reasonable efforts. HHFDC did not, however, adopt a rule regarding the methodology used to advertise a qualified-contract

request using reasonable efforts.

58. The methodology used to advertise a qualified-contract request is a rule within the meaning of Haw. Rev. Stat. § 91-1.

59. The methodology used to advertise FSA's qualified-contract request was adopted without complying with the procedures in Haw. Rev. Stat. § 91-3.

60. Therefore, the qualified-contract process in this matter is void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Enter judgment in Plaintiffs' favor and against Defendants as set forth above;
2. Enter an order for specific performance by FSA for a breach of the Declaration;
3. Enter an order, in effect through at least December 31, 2051, temporarily, preliminarily, and permanently enjoining FSA and any successor or assign thereof from increasing rents to the extent inconsistent with the Declaration and low-income rent restrictions governing the Front Street Apartments and/or renting any unit at the Front Street Apartments to members of the public who are not LIHTC-qualified low-income tenants;
4. Enter an order temporarily, preliminarily, and permanently enjoining and restraining FSA from increasing the rents of Plaintiffs Guyer, Tuttle, and Vu above amounts permissible under the Declaration and applicable low-income rent restrictions governing the Front Street Apartments and enjoining and restraining FSA from evicting Plaintiffs Guyer, Tuttle, and Vu based on any such increases;
5. Enter a declaratory judgment that the Release is null, void, and of no force or effect, and that the Declaration is and remains a valid, binding, and enforceable obligation and binding upon and enforceable against FSA and all subsequent owners and operators of the Front Street Apartments through at least December 31, 2051;
6. Enter a declaratory judgment that the methodology used by HHFDC to advertise a qualified-contract request is a rule within the meaning of Haw. Rev. Stat. § 91-1, said methodology used to advertise FSA's qualified-contract request was adopted without complying with the procedures in Haw. Rev. Stat. § 91-3, and, therefore, the qualified-contract process in this matter is void.
7. Enter judgment in Plaintiffs' favor and against Defendants for reasonable attorney

fees and costs to the extent provided by law; and

8. Grant Plaintiffs such other relief as the Court deems proper.

DATED: Wailuku, Maui Hawai'i

May 24, 2018



LAW OFFICE OF LANCE D COLLINS
Lance D. Collins

LAWYERS FOR EQUAL JUSTICE
M. Victor Geminiani

ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MICHAEL TUTTLE, CHI PILIALOHA	)	Civil No. 18-1-0208(2)
GUYER, JOSEPH VU, and SHAZADA	)	(Declaratory Relief)
RAYLEEN YAP,)	
	)	SUMMONS
Plaintiffs)	
vs.)	
)	
FRONT STREET AFFORDABLE HOUSING)	
PARTNERS, a domestic limited partnership,)	
3900 LLC, a foreign limited liability company)	
and HAWAII HOUSING FINANCE &)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon Plaintiffs' attorney, whose address is Post Office Box 179336, Honolulu HI 96817, an answer to the amended complaint which shall be served contemporaneously with this Summons. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the amended complaint.

If you fail to obey this Summons, this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the Circuit Court permits, in writing on this summons, personal delivery during those hours.

MAY 25 2018

DATED: Wailuku, Maui, Hawai'i

/sgd/ V. ISHIHARA (seal)

CLERK OF THE ABOVE-ENTITLED COURT

LAW OFFICE OF LANCE D. COLLINS
Lance D. Collins 8246
Post Office Box 179336
Honolulu, Hawai'i 96817
Telephone: (808) 243-9292

FILED

2018 MAY 31 AM 10:56

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

LAWYERS FOR EQUAL JUSTICE
M Victor Geminiani 4354
119 Merchant Street, Suite 605A
Honolulu, Hawai'i 96813
Telephone: (808) 587-7605

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MICHAEL TUTTLE, CHI PILIALOHA	)	Civil No. 18-1-0208(2)
GUYER, JOSEPH VU, and SHAZADA	)	(Declaratory Relief)
RAYLEEN YAP,)	
	)	ERRATA TO AMENDED COMPLAINT;
Plaintiffs	)	CERTIFICATE OF SERVICE
vs.)	
)	
FRONT STREET AFFORDABLE HOUSING)	
PARTNERS, a domestic limited partnership,)	
3900 LLC, a foreign limited liability company)	
and HAWAII HOUSING FINANCE &)	
DEVELOPMENT CORPORATION,)	
)	
Defendants.)	

ERRATA TO AMENDED COMPLAINT

Plaintiffs Chi Piliialoha Guyer, Michael Tuttle, Joseph Vu, and Shazada Rayleen Yap (collectively, "Plaintiffs"), by and through their counsel, Law Office of Lance D Collins and Lawyers for Equal Justice, for their Complaint against Defendants Front Street Affordable Housing Partners ("FSA") and Hawaii Housing Finance and Development Corporation ("HHFDC") (collectively, "Defendants"), submit the following errata to the Amended Complaint filed May 25, 2018. Due to a numbering error of paragraphs,

Paragraph 37, page 7, should read "Paragraphs 1 through 36, above"

Paragraph 45, page 8, should read "Paragraphs 1 through 44, above"

Paragraph 49, page 9, should read "Paragraphs 1 through 48, above"

Paragraph 52, page 9, should read “Paragraphs 1 through 51, above”

Paragraph 56, page 9, should read “Paragraphs 1 through 55, above”

DATED: Wailuku, Maui, Hawai'i May 31, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS

LAWYERS FOR EQUAL JUSTICE
M. Victor Geminiani

ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MICHAEL TUTTLE, et al,	)	Civil No. 18-1-0208(2)
	)	(Declaratory Relief)
Plaintiffs)	
vs.	)	CERTIFICATE OF SERVICE
)	
FRONT STREET AFFORDABLE HOUSING)	
PARTNERS, a domestic limited partnership, et)	
al,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing was duly served upon the following parties by U.S. Mail, postage pre-paid, on this date as follows:

RUSSELL SUZUKI
Attorney General of Hawai'i
SANDRA A. CHING
Deputy Attorney General
425 Queen Street
Honolulu HI 96813

WILLIAM G. MEYER III
SETTLE MEYER LAW
Pioneer Plaza
900 Fort Stret Mall
Suite 1800
Honolulu, HI 96813

Attorneys for Defendant HHFDC

Attorney for Defendant FSAHP

CORBETT KALAMA
3900 LLC
3660 WAIALAE AVENUE SUITE 400
Honolulu HI 96813

Registered Agent for Defendant 3900 LLC

DATED: Wailuku, Maui, Hawai'i

May 31, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MICHAEL TUTTLE, CHI
PILIALOHA GUYER, JOSEPH VU,
and SHAZADA RAYLEEN YAP,

Plaintiffs,

vs.

FRONT STREET AFFORDABLE
HOUSING PARTNERS, a domestic
limited partnership, 3900 LLC, a
foreign limited liability company and
HAWAI'I HOUSING FINANCE
AND DEVELOPMENT
CORPORATION,

Defendants.

CIVIL No. _____
(Declaratory Relief)

CERTIFICATE OF SERVICE

Trial Date: None

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below a true and correct copy of the Notice of Removal, Consent of Defendant Front Street Affordable Housing Partners to Removal, Consent of Defendant 3900 LLC to Removal, and Exhibits "A" were duly served by United States mail, postage prepaid to the following at the address indicated below:

Lance D. Collins, Esq.
P.O. Box 179336
Honolulu, Hawai'i 96817

M. Victor Geminiani, Esq.
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Honolulu, Hawai'i 96813

Attorneys for Plaintiffs

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Honolulu, Hawai'i 96813

Attorney for Defendant Front Street
Affordable Housing Partners

Reuben S. F. Wong, Esq.
Delwyn H. W. Wong, Esq.
Irwyn H. G. Wong, Esq.
1164 Bishop Street, Suite 1006
Honolulu, Hawai'i 96813

Attorneys for Defendant 3900 LLC

DATED: Honolulu, Hawai'i, June 8, 2018.

/s/

DIANE K. TAIRA
CRAIG Y. IHA
SANDRA A. CHING
Deputy Attorneys General

Attorneys for Petitioner
HAWAI'I HOUSING FINANCE AND
DEVELOPMENT CORPORATION