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CITY AND COUNTY OF HONOLULU

Adoption of
Amendments to Rules for
Residential Condominium, Cooperative and Planned
Development Leasehold Conversion

September 28, 2000

SUMMARY

1. §1-2 and §1-9 are amended.

2. §§2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9 and 2-10 are amended.

3. §2-11 is amended and renumbered.

4. A new §2-11 is added.

5. §§2-12, 2-13, 2-15, 2-16 and 2-20 are amended and renumbered.

6. §§2-14, 2-17, 2-18, 2-19 and 2-21 are renumbered.

7. §§3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9 and 3-10 are amended.

8. §3-11 is amended and renumbered.

9. A new §3-11 is added.

10. §§3-12, 3-15, 3-17 and 3-19 are renumbered.

11. §§3-13, 3-14, 3-16 and 3-18 are amended and renumbered.

12. §§4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9 and 4-10 are amended.

13. §4-11 is amended and renumbered.

14. A new §4-11 is added.

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15. §§4-12, 4-13, 4-15, 4-16 and 4-20 are amended and renumbered.

16. §§4-14, 4-17, 4-18, 4-19 and 4-21 are renumbered.

17. §§5-2, 5-4, 5-5 and 5-6 are amended.

CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

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CHAPTER 1

RULES OF GENERAL APPLICATION

§1-1 Applicability. These rules shall apply to all lands in the City and County of Honolulu on which are situated residential condominium projects created under Chapter 514A, HRS, cooperative housing developments and planned developments, whether the lands are owned or held privately, owned or held by the State of Hawaii or the City, except Hawaiian Home Lands, subject to Article XII of the Constitution of the State, or owned or held by the Federal government. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.3)

§1-2 Definitions. The following terms used in these rules are defined as stated below, unless otherwise clear from the context.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.2)

"Administrative costs" means expenditures which are not allocable to a specific project but which are expended to administer the leasehold conversion program overall, including, but not limited to, equipment and City and County of Honolulu support staff salaries and benefits.

"Agreement of sale" means an executory contract which states the terms of the sale and purchase of real property which binds one party to sell and the other party to buy an interest in specific land.

"Allocated costs" means the total of Direct Costs and Administrative costs.

"Association of apartment owners" has the same meaning as defined in Chapter 514A, Hawaii Revised Statutes.

"City" means the City and County of Honolulu.

"Condominium", "Condominium Unit" means a residential apartment, together with its appurtenant undivided interests in common elements and limited common elements, located on land subject to a declaration of condominium property regime as defined in Chapter 514A, Hawaii Revised Statutes, used, occupied, developed, devoted, intended or permitted to be used or occupied as a principal residence for a single family but shall not include apartments used for commercial purposes or as time share units or as a transient vacation unit as defined under Chapter 21A, Article 9, Revised Ordinances of Honolulu.

"Condominium owner" means owner-occupants of a condominium unit.

"Condominium property regime" means a condominium property regime project established under Chapter 514A, Hawaii Revised Statutes.

"Cooperative" means a residential apartment held, owned or leased by a cooperative housing corporation, and shall not include apartments used for commercial purposes, or as time share units or as transient vacation units.

"Cooperative development" means an area of land, irrespective of size, leased by a fee owner to a cooperative housing corporation and subleased to cooperative owners for their residential use.

"Cooperative owner" means the owner of a cooperative residential apartment.

"Cooperative housing corporation" means a corporation organized pursuant to the requirements stated in the appropriate sections of the Hawaii Revised Statutes and which is defined in sec. 519-3(d)(1), Hawaii Revised Statutes, or Chapter 421H, Hawaii Revised Statutes, and which conforms to the requirements of sec. 216 of the Internal Revenue Code of 1986, as amended.

"Department" means the City and County of Honolulu, Department of Housing and Community Development, or the City's designated agency.

"Development" means an area of land, irrespective of size, which is subject to a declaration of condominium property regime pursuant to Chapter 514A, Hawaii Revised Statutes, which contains or is intended to contain ten or more condominiums occupied or to be occupied under apartment leases or condominium conveyance documents.

"Direct costs" means expenditures attributed to a specific project, including, but not limited to, professional fees, notice publication expense, escrow charges, appraisers' fees, and court costs.

"Director" means the director of the department.

"Estimated costs" means the total of the price to be paid to acquire the leased fee interest estimated by the director and the allocated costs.

"Fair market value" means the amount of money that a purchaser willing, but not obliged, to buy land or an interest in land, would pay to an owner willing, but not obliged, to sell the land or interest in land in an open market, taking into consideration all uses to which the land is adapted or might in reason be applied.

"Fee owner" means the person who owns the fee simple title to the land leased by an apartment lease, condominium conveyance document or proprietary lease, and the heirs, successors, legal representatives and assigns of that person.

"HRS" means the Hawaii Revised Statutes.

"Lease" means the conveyance of land or an interest in land by a fee simple owner as lessor to a lessee or sublessee; or by any other person or sublessor to any person, in consideration of payment of rent or other recompense; or a ground lease from a fee owner to a cooperative housing corporation and not a lease or sublease to a cooperative owner.

"Leased fee" and "leased fee interest" mean reversionary and other applicable interests of the fee owner, lessor, and all legal and equitable owners of land which is leased, except a lessee's or sublessee's interest.

"Legal and equitable owners" means the fee simple owner and all persons having legal or equitable ownership interests in the leased fee or in the lessor's leasehold estate, including mortgagees, developers, sublessors, lienors, and their respective heirs, successors, legal representatives and assigns.

"Lessee" means a natural person to whom land is leased or subleased, including the person's heirs, successors, legal representatives and assigns, and who is also concurrently the owner-occupant of a residential condominium; or a natural person who is an owner-occupant of a cooperative and the person's heirs, successors, legal representatives and assigns; or a natural person who is the owner-occupant of a unit in a planned development.

"Lessor" means any person who leases or subleases land to another, and the person's heirs, successors, legal representatives and assigns.

"Owner-occupant" means any individual in whose name sole or joint legal or equitable title is held in a residential condominium unit or planned development apartment or home which serves concurrently with such ownership as the individual's principal place of residence for a continuous and uninterrupted period of not less than one year immediately preceding an application for conversion, as well as during the legal proceedings to acquire the fee simple title. An owner-occupant must retain complete possessory control of the condominium unit or planned development apartment or home throughout these periods and shall not be deemed to have complete possessory control if the condominium unit or planned development apartment or home is rented, leased or assigned for any period of time to any other person who is not a legal owner, or an

equitable owner under an Agreement of Sale, of the same condominium. The department may consider exceptions to the occupancy requirement based only on serious illness, employment requirements, military obligations, and educational sabbatical.

"Owner-occupant-shareholder" means any person who is a sole or joint owner of shares of a cooperative housing corporation or trust and leases a cooperative apartment, which concurrently with the individual's status as a shareholder, serves as the individual's principal place of residence continuously for a period of not less than one year immediately prior to the application for conversion as well as during the period of legal proceedings to acquire the fee; provided that the individual shall retain complete possessory control of the apartment during these periods. An owner shall be deemed not to have complete possessory control of the apartment if it is rented, leased or assigned for any period of time to any other person. The department may consider exceptions to the occupancy requirement based only on serious illness, employment requirements, military obligations, and educational sabbatical.

"Planned development" means a residential housing development project, also known as a cluster housing development or planned unit development, in which the apartment or homeowner has a leasehold interest in the underlying land; provided however, this definition shall not include any housing project which is registered as a condominium under Chapter 514A, HRS.

"Planned development owner" means owner occupants of a planned development apartment or home.

"Proprietary lease" means a lease or sublease by a cooperative housing corporation to a cooperative owner.

"RCH" means the Revised Charter of Honolulu, 2000 edition.

"ROH" means the Revised Ordinances of Honolulu 1990.

The terms "lessor," "lessee," "fee owner" and "legal and equitable owner" include individuals, both male and female, and, except as to the term "lessee", corporations, partnerships, associations, trusts, estates, the State of Hawaii and the City and County of Honolulu. When more than one person or entity is included in any such designation, the terms shall apply to all of them, jointly and severally.

§1-3 Severability. If any rule or part of any rule stated in these rules is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining rules unless that effect is made impossible by the absence of the omitted rule or portion of a rule. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(a))

§1-4 Authority of the department. The department may employ attorneys, accountants, appraisers, surveyors, hearing officers, investigators and other persons as required, and may do all things necessary and convenient to implement and enforce Chapter 38, ROH and these rules. The director may delegate to any person, specific authority and responsibility for assigned duties and tasks. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(i))

§1-5 Investigations. The director shall conduct an investigation of any written complaint or situation which indicates a possible violation of Chapter 38, ROH or of these rules. The director is authorized to examine the books, accounts, records and files of any person connected with the matter under investigation, and may conduct hearings regarding any matter under investigation. If the director finds any violation, the director may order the responsible parties to cease and desist from continuing the violation, and if necessary the director may bring a civil action in the name of the City in any court of competent jurisdiction for the enforcement of the orders. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(e))

§1-6 Collection of information. From time to time, the director shall require all lessors, fee owners and other owners of legal or equitable interests in the leased fee of residential condominiums, cooperative housing developments and residential planned developments to provide such information as may be reasonably required for the administration and enforcement of Chapter 38, ROH and these rules. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(h))

§1-7 Dissemination of information. The director shall disseminate information and render assistance to lessees of residential condominiums, cooperative housing developments and residential planned developments, in order that Chapter 38, ROH and these rules may be understood and effectively implemented. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(d))

§1-8 Contracts; documents; deeds. The director shall determine the form and content of all documents necessary for the purposes of Chapter 38, ROH and these rules, including, but not limited to contracts, documents, application forms, and conveyance documents. The City shall convey its interest in any property acquired pursuant to Chapter 38, ROH by quitclaim deed. Any title insurance requested by buyers shall be paid for by the buyers. All closings and recordation shall be executed by a licensed escrow company. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §§38-1.8(g); 38-1.9)

§1-9 Burden of proof; oaths; affidavits. The party having the burden of proof of any fact or event shall make such proof by competent and credible evidence and testimony acceptable and satisfactory to the director or his designated agent. Evidence at any hearing may be required to be given under oath or by sworn written material. An application may be required to be affirmed under oath. False oaths and affidavits shall constitute perjury and a violation of sec.

710-1060, HRS. [Eff 10/9/1993 am DEC 22 2000] (Auth: ROH §38-1.8(a),(i)) (Imp: ROH §§38-2.4(c); 38-3.4(c); 38-4.4(c))

§1-10 Revolving fund. All moneys received or collected by the City or the department shall be deposited in the revolving fund created by Chapter 38, ROH. The department may invest the fund in a pooled investment to obtain the highest safe return. All interest earned on moneys paid by lessees shall accrue to the lessees. Provided, however, the department may pay costs incurred in the administration of the program from the earnings on the fund to reduce the amount assessed to the lessees. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-6.1)

CHAPTER 2

LEASEHOLD CONDOMINIUMS

SUBCHAPTER 1

PURPOSE; APPLICABILITY

§2-1 Purpose. The purpose of this chapter is to implement and enforce the provisions of Chapter 38, ROH relating to the conversion of leasehold condominiums to fee simple ownership. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.1)

§2-2 Applicability. This chapter shall apply to all developments which at the time of acquisition by the City are:

(a) Developed into condominium property regimes or occupied by residential lessees under leases or condominium conveyance documents executed before the effective date of Chapter 38, ROH; or

(b) Developed or partially developed into condominium property regimes occupied or to be occupied by residential lessees under apartment leases or condominium conveyance documents executed on or after the effective date of Chapter 38, ROH; provided that 90% of the leases to units in the development have been executed. [Eff 10/9/1993] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-2.1)

SUBCHAPTER 2

APPLICATION; FINDING; NEGOTIATION

§2-3 Application by lessees. Condominium owners in a development may apply to the department on forms approved by the department to purchase their respective leased fee interests, together with an undivided leased fee interest equal to the percentage of common interest

and limited common interest appurtenant to the condominium. Each applicant shall pay an initial deposit of $1000.00 at the time of making the application by certified check, or such other means as determined by the director, payable to the City and County of Honolulu. The initial deposit shall be applied by the department in the manner stated in sec. 2-10, below. Not less than 25 condominium owners by number, or 50% of the condominium owners of a development, whichever shall be the lesser number, must apply as a condition precedent to the exercise of the power of eminent domain or the threat of eminent domain by the City. Any fee owner, lessor or sublessor of a development may request from the department copies of any application received by the department pursuant to this section. [Eff 10/9/1993; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.2)

§2-4 Qualifications for purchase. To be eligible to purchase a leased fee interest, an applicant shall:

(a) Submit to the department an application to purchase leased fee interest, an affidavit and a personal financial statement, or such other forms required by the department pursuant to sec. 2-3 of these rules.

(b) Be a bona fide resident of the City and County of Honolulu;

(c) Be at least 18 years of age and the owner-occupant of the condominium described in the application. Ownership shall include either legal title or the equitable interest of a purchaser under an Agreement of Sale;

(d) Own no other property in fee simple suitable for residential purposes within the city, or have pending before the State Housing and Community Development Corporation or the department, any unrefused application to lease or purchase residential real property for dwelling purposes. This requirement shall apply to the applicant and the applicant's spouse jointly and severally, unless they are separated and living apart under a decree of a court of competent jurisdiction;

§2-7 Finding of Effectuation of Public Purpose. Following the public hearing, the director shall determine whether or not the acquisition of the leased fee interest in the development, or a portion of that interest, through the exercise of the power of eminent domain, or by purchase under the threat of eminent domain, and the disposition of such interest as provided by these rules, will effectuate the public purpose of Chapter 38, ROH. Written notice of the decision shall be mailed to all preliminarily approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interests in the leased fee at their respective addresses as shown on the real property tax records of the City and County of Honolulu. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.2)

§2-8 Negotiation by fee owners and preliminarily approved applicants. Following the public hearing and if there is a finding of effectuation of the public purpose of Chapter 38, ROH, the director shall request the fee owners and preliminarily approved applicants to negotiate the just compensation to be paid for the leased fee. If the parties do not reach an agreement within 60 days following the request to negotiate, the director shall call a final negotiation meeting with notice to all parties. At the meeting, the parties shall exchange their best and final offers, together with all supporting appraisals, expert opinions, and other documents, and shall give copies to the director. The director may extend the time limit for negotiations, so long as the parties continue to negotiate in good faith, for a length of time that is deemed reasonable by the director, or as the parties agree. The parties shall pay for their own costs of negotiation including all fees of attorneys, accountants, appraisers and witnesses. The negotiations shall not be considered to be a part of

(e) As more specifically stated in sec. 2-10, below, demonstrate the ability to pay promptly and in full the estimated costs, at the time that the sale is to be consummated; and

(f) Execute a contract for the purchase of the leased fee interest from the City.
[Eff 10/9/1993; am DEC 22 2000] (Auth: ROH §§38-1.8(a), (i); 38-2.4(d)) (Imp: ROH §38-2.4)

§2-5 Review of applications; preliminary approval. The director shall examine all applications and all supporting testimony, evidence and documents, and shall make a preliminary determination whether an applicant satisfies the requirements stated in sec. 2-4(a),(b),(c) (d) and (f). All applicants shall be notified in writing whether they are preliminarily approved or disapproved, and if disapproved, the reasons for disapproval. All applicants who are disapproved shall be allowed to submit additional testimony, evidence and documents as may be required for approval. [Eff 10/9/1993; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§2-6 Public notice; public hearing. After the review and preliminary approval of the required minimum number of applicants in a development, the director shall give public notice of a public hearing to be held for the purpose of public discussion of whether the acquisition of the leased fee interest in all or a portion of the development by the City through the exercise of the power of eminent domain or by purchase under the threat of eminent domain will effectuate the public purpose of Chapter 38, ROH. The notice shall also indicate the time and place of a public hearing to be held and shall be published in a newspaper of general circulation in the City on at least three different days, the last publication being not less than five days before the date of the hearing. All interested persons shall be allowed to present oral and written testimony and evidence for or against the requested finding of effectuation of public purpose.
[Eff 10/9/1993; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-2.2)

eminent domain proceedings. The director may use the final offers, appraisals, expert opinions and other documents to assist in establishing an estimated cost of acquiring the leased fee. All offers, appraisals, expert opinions and other documents prepared for use by a party for negotiation purposes and not prepared for use in a trial shall not be discoverable, usable or admissible by an opposing or adverse party in any legal action, suit or proceeding. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.6)

§2-9 Estimated costs. Following the negotiations, if no agreement is reached by the parties, the director shall establish an estimated price to acquire the leased fee, or a portion thereof, and all other legal and equitable interests of the development, together with the allocated costs. The estimated price to acquire the leased fee may be divided among the preliminarily approved applicants according to their percentage of the leased fee interests. The allocated costs may be divided equally among the preliminarily approved applicants. The director shall notify all preliminarily approved applicants in writing of their estimated costs.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.5)

§2-10 Initial deposit; final approval of applicants. Within 60 days following the receipt of the notice of estimated costs, all applicants shall:

(a) On forms approved by the department, submit an accurate and updated financial statement and letter of credit, certificate of deposit, proof of funds or an approved application from any lending institution to verify the ability to pay the estimated costs. Evidence of other assets, e.g. precious metals, coins, jewelry, stocks, bonds, may be submitted to determine the applicant's eligibility if they are acceptable to the department and the value claimed is verified by an independent appraiser;

(b) Pay to the department 50% of the allocated costs attributed to each applicant, after crediting the initial deposit paid as stated in sec. 2-3, above; and

(c) Re-affirm the contract to purchase the leased fee interest from the City.

Proof of ability to pay for the estimated costs may be waived for an applicant who has reached a settlement in which the fee owner agrees to finance the payment. However, all parties must agree to any such method of financing for any applicant.

Any applicant who fails or refuses to comply with the requirements of this section may be disqualified from participating further, and may be charged with a proportionate share of the allocated costs incurred by the department and the city to the date of disqualification. All applicants shall be notified in writing if they are approved or disapproved. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a),(i)) (Imp: ROH §§38-1.8(i);38-2.5)

SUBCHAPTER 3

DESIGNATION; CONDEMNATION; WITHDRAWAL; SUBSTITUTION

§2-11 Designation. If no agreement is reached by the parties by negotiation and after final approval of the applicants, the director shall designate all or a portion of the development for acquisition upon the following conditions:

(a) The designation shall state the department's findings and shall identify the individual residential condominium interests, which may include the land, the condominium unit, and the appurtenant undivided interest in the common elements, as applicable, for which the City intends to acquire the leased fee interests.

(b) The department's determination to designate the individual residential condominium interests shall take into consideration the compliance by the applicants of the qualification requirements as stated in sec. 2-4 of these rules.

(c) Upon designation of the individual residential condominium interests, written notice of the decision shall be published once in a newspaper of general circulation in the City and copies shall be mailed to all approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interest in the leased fee at their respective address as shown on the real property tax records of the City and County of Honolulu. The notice shall include the names of the approved applicants, the identity of their respective condominium, and their percentage of leased fee interest.

(d) Any owner occupant of a condominium in the development who was not one of the applicants at the time of the designation of the individual residential condominium interests may apply and become an additional applicant, subject to meeting the applicable requirements of Chapter 38, ROH and these rules.

(1) Once all of the applicable requirements of Chapter 38, ROH and these rules have been met by any additional applicant, the designation as herein described shall be amended to include the additional applicant(s) and the individual condominium interests.

(2) Written notice of the amended designation shall be published once in a newspaper of general circulation in the City and copies shall be mailed to all approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interest in the leased fee at their respective address as shown on the real property tax records of the City and County of Honolulu. The notice shall include the

name of the additional applicant, the identity of the respective condominium, and the percentage of leased fee interest. [Eff DEC 22 2000] (Auth: ROH §38-1.8 (i)) (Imp: ROH §§38-2.2; 38-5.2; 38-1.8(i))

§2-12 Condemnation. Following the designation by the director of the individual residential condominium interests, the director shall request the corporation counsel to prepare and present to the City Council a Resolution for the exercise of the power of eminent domain for the condemnation of the legal and equitable interests of the fee owner, lessor, or equitable owner of the leased fee interest, and may request the appropriation of the funds necessary to pay the compensation for the leased fee interest. The director shall also request the corporation counsel to file the necessary legal action no later than 12 months after the designation. If some of the applicants have reached an agreement with the fee owners, the Resolution and condemnation action shall relate only to the remaining applicants who have not reached an agreement. [Eff 10/9/93; am and ren §2-12 DEC 22 2000] (Auth: ROH §38-1.8(a),(i)) (Imp: ROH §38-5.2; RCH §§3-110; 3-202)

§2-13 Withdrawal. Any applicant may withdraw from the designation for acquisition at any time before the City has initiated the eminent domain action to condemn the leased fee interests. Upon withdrawal, the applicant shall pay the department for the allocated costs incurred to the date of withdrawal. Withdrawal after the commencement of the condemnation action shall require the consent of the court, and the costs shall include in addition, the allocated share of all court costs and attorney's fees of the City as well as all fees and costs of the fee owners and other parties in the condemnation action, as may be required by the court. Payment of the allocated costs and any other costs and fees shall be made by the forfeiture of the deposits of the withdrawing applicant. In the

event there are insufficient funds in the deposits, the department shall have all legal recourse for the collection of the unpaid balance including civil lawsuits. [Eff 10/9/93; am and ren §2-13 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§2-14 Substitution. Any person who acquires the lease of an applicant may be substituted for the withdrawing applicant, provided that the substituted applicant meets all the applicable requirements of Chapter 38, ROH and these rules, except the requirement that the substituted applicant be a resident of the condominium unit for a continuous and uninterrupted period of one year prior to the application. If the substitution occurs after the commencement of the condemnation action, it shall require the consent of the court. The director shall allow a substituted applicant a reasonable time to meet all the requirements for final approval. In the event there is no application for substitution within 60 days following a withdrawal, the director shall request the corporation counsel to dismiss the withdrawing applicant as a party to the condemnation action. [Eff 10/9/93; am and ren §2-14 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

SUBCHAPTER 4

ADDITIONAL DEPOSITS; SUBSEQUENT APPLICANTS

§2-15 Additional deposits. The director may require all applicants to make additional deposits from time to time for the same purposes as the initial deposit, in such amounts as the director may determine to be reasonable and necessary to pay for the allocated costs. [Eff 10/9/93; ren §2-15 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i);38-2.5)

§2-16 Subsequent applicants.If an additional applicant applies after the condemnation action is initiated, consent of the court shall be required in order to include the additional applicant as a defendant in a condemnation action,subject to meeting the applicable requirements of Chapter 38, ROH and

these rules. Subsequent applicants applying separately from the initial application shall not be required to meet the minimum requirement of number of owners or percent of owners in a development stated in sec. 2-3, above.[Eff 10/9/93; am and ren §2-16 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

SUBCHAPTER 5

PAYMENT; TRANSFER OF TITLE

§2-17 Negotiated acquisition by applicants. After the initial application, all applicants who subsequently successfully negotiate an agreement to purchase their leased fee directly from the fee owner shall make their payments and receive title according to the terms and conditions of their private agreements, provided that they shall pay the department for the allocated costs incurred to the date of agreement. [Eff 10/9/93; am and ren §2-17 DEC 22 2000 (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.6)

§2-18 Acquisition by City. The City may pay for all legal and equitable interests which the City acquires in the development from any legally authorized funds, or the City may arrange for a simultaneous acquisition and transfer to each approved applicant. [Eff 10/9/93; ren §2-18 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.4)

§2-19 Sale by City to applicants. Within 60 days following acquisition, the City shall sell the leased fee together with all other legal and equitable interests appurtenant to each condominium to the respective applicants. The sale price to each applicant shall be the cost of the particular leased fee plus a proportionate share of the actual amounts paid by negotiation or condemnation for all other legal and equitable interests, together with the allocated costs. The unused balance of any deposit shall be applied to the sale price of each applicant's unit. [Eff 10/9/93; ren §2-19 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.3)

§2-20 Failure of applicant to pay under private agreement. In the event of the failure of an applicant to perform according to the terms and conditions of a private negotiated agreement, the fee owners and other affected legal and equitable owners shall have recourse against the applicant according to the terms and conditions of the negotiated agreement and all applicable laws and remedies. The City and the department shall not be responsible for collection or receipt of any moneys from the defaulting applicant. [Eff 10/9/93; ren §2-20 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§2-21 Failure of applicant to pay the city. In the event the City has acquired the leased fee and all other legal and equitable interests appurtenant to a condominium and the applicant fails or refuses to pay the sale price as stated in sec. 2-19, above, the City shall have all the rights, remedies and recourse provided by law against the defaulting applicant, including civil actions and lawsuits. Upon the request of the fee owners, the director may negotiate terms, conditions and prices for a cancellation and rescission or a sale back to the fee owners. Notwithstanding such request, the director may at his discretion retain title in the City and sell the acquired interests to any other party by public auction or negotiated private sale. The defaulting applicant shall remain liable for the unpaid sale price stated in sec. 2-19, above, following any sale by the director. [Eff 10/9/93; am and ren §2-21 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-2.3)

§2-22 Interest in compensation paid by the city. Lessors, fee owners and all other owners of legal and equitable interests in a condominium shall share in the compensation paid by the City as their respective interests shall appear. A developer or other party entitled to share in the lease rent shall share in the compensation to the extent of such party's interest, as may be determined by agreement among all parties entitled to share in the compensation. In the absence of agreement, the director is authorized by Chapter 38, ROH to apply to the First Circuit Court for an order compelling the parties to submit their claims

to binding arbitration pursuant to Chapter 658, HRS. [Eff 10/9/93; ren §2-22 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.5)

CHAPTER 3

LEASEHOLD COOPERATIVE HOUSING DEVELOPMENTS

SUBCHAPTER 1

PURPOSE; APPLICABILITY

§3-1 Purpose. The purpose of this chapter is to implement and enforce the provisions of Chapter 38, ROH relating to the conversion of leasehold cooperative housing developments to fee simple ownership. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.1)

§3-2 Applicability. This chapter shall apply to all developments which at the time of acquisition by the City are leased to cooperative housing corporations that sublease individual apartments to residential lessees under proprietary leases executed either prior to or after the effective date of Chapter 38, ROH; provided that 90% of the proprietary leases have been executed. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-3.1)

SUBCHAPTER 2

APPLICATION; FINDING; NEGOTIATION

§3-3 Application by cooperative housing corporation. A cooperative housing corporation may apply to the department on forms approved by the department to purchase the entire residential leased fee interest in the cooperative development. The cooperative housing corporation shall pay an initial deposit of $1000.00 for each unit in the project at the time of making the application by certified check, or such other means as determined by the director, payable to the City and County of Honolulu. The fee shall be applied by the department in the manner stated in sec. 3-10. Any fee owner, lessor or sublessor of a cooperative development may request from the department a copy of any application received by the department pursuant to this section. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a)) (Imp: ROH §§38-3.1; 38-3.2)

§3-4 Qualifications for purchase. To qualify for the purchase of the leased fee interest, a cooperative housing corporation shall satisfy the following requirements:

(a) Submit an application for the purchase of the entire residential leased fee interest from the City;

(b) Submit proof that at least 60% of the cooperative housing corporation consists of owner-occupant shareholders of residential apartments within the project;

(c) Submit proof that a majority of the shareholders of the cooperative housing corporation have approved or ratified the purchase of the entire residential leased fee interest by the corporation;

(d) As more specifically stated in sec. 3-10, below, demonstrate the ability to pay promptly and in full the estimated costs, at the time that the sale is to be consummated;

(e) Verify that it is a corporation qualified to do business in the State of Hawaii and submit a Certificate of Good Standing issued by the State of Hawaii Department of Commerce and Consumer Affairs; and

(f) Execute a contract for the purchase of the entire residential leased fee interest from the City. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §§38-1.8(a), (i); 38-3.4(d)) (Imp: ROH §38-3.4)

§3-5 Review of applications; preliminary approval. The director shall examine all applications by cooperative housing corporations and all supporting testimony, evidence and documents, and shall make a preliminary determination whether the corporation satisfies the requirements stated in sec. 3-4 above. The applicant shall be notified in writing of preliminary approval or disapproval, and the reasons for disapproval. The applicant whose application is

disapproved shall be allowed to submit additional testimony, evidence and documents as may be required for approval.[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§3-6 Public notice; public hearing. After the review and preliminary approval of the corporation's application, the director shall give public notice of a public hearing to be held for the purpose of public discussion of whether the acquisition of the leased fee by the City through the exercise of the power of eminent domain or by purchase under the threat of eminent domain will effectuate the public purpose of Chapter 38, ROH. The notice shall also indicate the time and place of a public hearing to be held and shall be published in a newspaper of general circulation in the City on at least three different days, the last publication being not less than five days before the date of the hearing. All interested persons shall be allowed to present oral and written testimony and evidence for or against the requested finding of effectuation of public purpose. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-3.2)

§3-7 Finding of Effectuation of Public Purpose. Following the public hearing, the director shall decide whether the acquisition of the leased fee interest in the cooperative housing development through the exercise of the power of eminent domain or by purchase under the threat of eminent domain, and the disposition of such interests as provided by these rules, will effectuate the public purposes of Chapter 38, ROH. Written notice of the decision shall be sent to the approved corporation, all shareholders of the corporation, all known lessors, sublessors, and all other owners and holders of any legal or equitable interests in the leased fee at their respective addresses as shown on the real property tax records of the City and County of Honolulu. [Eff 10/9/93;

am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.2)

§3-8 Negotiation by fee owners and preliminarily approved corporation. Following the public hearing and if there is a finding of effectuation of the public purpose of Chapter 38, ROH, the director shall request the fee owners and the approved corporation to negotiate the just compensation to be paid for the leased fee. If the parties do not reach an agreement within 60 days following the request to negotiate, the director shall call a final negotiation meeting with notice to all parties. At the meeting, the parties shall exchange their best and final offers, together with all supporting appraisals, expert opinions and other documents, and shall give copies to the director. The director may extend the time limit for negotiations, so long as the parties continue to negotiate in good faith, for a length of time that is deemed reasonable by the director or as the parties agree. The parties shall pay for their own costs of negotiation, including all fees of attorneys, accountants, appraisers and other professionals. The negotiations shall not be considered to be a part of eminent domain proceedings. The director may use the final offers, appraisals, expert opinions and other documents to assist in establishing an estimated cost of acquiring the leased fee. All offers, appraisals, expert opinions and other documents prepared for use by a party for negotiation purposes and not prepared for use in a trial shall not be discoverable, usable or admissible by an opposing or adverse party in any legal action, suit or proceeding. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.6)

§3-9 Estimated costs. Following the negotiation, if no agreement is reached by the parties, the director shall establish an estimated price to acquire the leased fee, all other legal and equitable interests of the cooperative development, together with the allocated costs. The director shall notify the corporation and all participating shareholders in

writing of the estimated costs. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.5)

§3-10 Initial deposit; final approval of corporation. Within 30 days following the receipt of the notice of estimated costs, the corporation shall:

(a) On forms approved by the department, submit an accurate and updated financial statement and letter of credit, certificate of deposit, proof of funds or an approved application from any lending institution, to verify the ability to pay the estimated costs;

(b) Pay to the department 50% of the allocated costs, after crediting the initial deposit paid as stated in sec. 3-3, above; and

(c) Re-affirm the contract to purchase the leased fee interest from the City.

Proof of ability to pay for the estimated costs may be waived for a corporation which has reached an agreement in which the fee owners agree to finance the payment. However, all participating shareholders and all other owners and holders of legal and equitable interests must agree to any such method of financing.

Any corporation which fails or refuses to comply with the requirements of this section may be disqualified from participating further and may be charged with the allocated costs incurred by the department and the City to the date of disqualification. The corporation shall be notified in writing by the department if it is approved or disapproved. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-3.5)

SUBCHAPTER 3

DESIGNATION; CONDEMNATION; WITHDRAWAL

§3-11 Designation. If no agreement is reached by the parties by negotiation and after final approval of the corporation, the director shall designate the cooperative development for acquisition upon the following conditions:

(a) The designation shall state the department's findings and shall identify the cooperative development for which the City intends to acquire the leased fee interest.

(b) The department's determination to designate the cooperative development shall take into consideration the compliance by the applicant of the qualification requirements as stated in sec. 3-4 of these rules.

(c) Upon designation of the cooperative development, written notice of the decision shall be published once in a newspaper of general circulation in the City and copies shall be mailed to the approved corporation, all shareholders of the corporation and all known lessors, sublessors, and other owners or holders of any legal or equitable interest in the leased fee at their respective address as shown on the real property tax records of the City and County of Honolulu. [Eff DEC 22 2000] (Auth: ROH §38-1.8(i)) (Imp: ROH §§38-3.2; 38-5.2; 38-1.8(i))

§3-12 Condemnation. Following the designation by the director of the cooperative development, the director shall request the corporation counsel to prepare and present to the City Council a Resolution for the exercise of the power of eminent domain for the condemnation of the legal and equitable interests of the fee owner, lessor, or equitable owner of the leased fee interest, and may request the appropriation of the funds necessary to pay the compensation for the leased fee interest. The director shall also request the corporation counsel to file the necessary legal action no later than 12 months after the designation by the director pursuant to sec. 3-11 of these rules. [Eff 10/9/93; am and ren §3-12 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.2; RCH §§3-110; 3-202)

§3-13 Withdrawal. Any corporation may withdraw from the designation for acquisition at any time before the City has initiated the eminent domain action to condemn the leased fee interest. Upon withdrawal, the corporation shall pay the department and the City for the allocated costs incurred to the date of withdrawal. Withdrawal after the commencement of the condemnation action shall require the consent of the court, and the costs shall include in addition, all court costs and attorneys' fees of the City as well as all fees and costs of the fee owners and other parties in the condemnation action, as may be required by the court. Payment of the allocated costs and any other costs and fees shall be made by the forfeiture of the deposits of the withdrawing corporation. In the event there are insufficient funds in the deposits, the department and the City shall have all legal recourse for collection of the unpaid balance, including civil lawsuits. [Eff 10/9/93; ren §3-13 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

SUBCHAPTER 4

ADDITIONAL DEPOSITS

§3-14 Additional deposits. The director may require an approved corporation to make additional deposits from time to time for the same purposes as the initial deposit, in such amounts as the director may determine to be reasonable and necessary to pay for the allocated costs. [Eff 10/9/93; am and ren §3-14 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-3.5)

SUBCHAPTER 5

PAYMENT; TRANSFER OF TITLE

§3-15 Negotiated acquisition by corporation. After the initial application, a corporation which subsequently successfully negotiates an agreement to purchase the leased fee directly from the fee owner, shall make payments and receive title according to the

terms and conditions of the private agreement, provided that the corporation shall pay the department for the allocated costs incurred to the date of agreement. [Eff 10/9/93; am and ren §3-15 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.6)

§3-16 Acquisition by City. The City may pay for all legal and equitable interests which the City acquires in the development, from any legally authorized funds, or the City may arrange for a simultaneous acquisition and transfer to the approved corporation. [Eff 10/9/93; ren §3-16 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.4)

§3-17 Sale by City to corporation. Within 60 days following acquisition, the City shall sell the leased fee together with all other legal and equitable interests appurtenant to the cooperative development to the corporation. The sale price shall be the cost of the leased fee plus the actual amounts paid by negotiation or condemnation for all other legal and equitable interests, together with the allocated costs. The unused balance of any deposit shall be applied to the sale price. [Eff 10/9/93; am and ren §3-17 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.3)

§3-18 Failure of corporation to pay under private agreement. In the event a corporation fails to pay according to the terms and conditions of a private negotiated agreement, the fee owners and other legal and equitable owners affected shall have recourse against the corporation according to the terms and conditions of the negotiated agreement and all applicable laws and remedies. The City shall not be responsible for collection or receipt of any moneys from the defaulting corporation. [Eff 10/9/93; ren §3-18 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§3-19 Failure of corporation to pay the City. In the event the City has acquired the leased fee and all other legal and equitable interests appurtenant to a cooperative development and the corporation fails

or refuses to pay the sale price stated in sec. 3-17, above, the City shall have all the rights, remedies and recourse provided by law against the defaulting corporation, including civil actions and lawsuits. Upon the request of the fee owners, the director may negotiate terms, conditions and prices for a cancellation and rescission or a sale back to the fee owners. Notwithstanding such request, the director may at his discretion retain title in the City and sell the acquired interests to any other party by public auction or negotiated private sale. The defaulting corporation shall remain liable for all unpaid sale price stated in sec. 3-17, above, following the sale by the director. [Eff 10/9/93; am and ren §3-19 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-3.3)

§3-20 Interest in compensation paid by the City. Lessors, fee owners and all other owners of legal and equitable interests in a cooperative development shall share in the compensation paid by the City as their respective interests shall appear. A developer or other party entitled to share in the lease rent shall share in the compensation to the extent of such party's interest as may be determined by agreement among all parties entitled to share in the compensation. In the absence of agreement, the director shall apply to the First Circuit Court for an order compelling the parties to submit their claims to binding arbitration pursuant to Chapter 658, HRS, as authorized by Chapter 38, ROH. [Eff 10/9/93; ren §3-20 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.5)

CHAPTER 4

LEASEHOLD PLANNED DEVELOPMENTS

SUBCHAPTER 1

PURPOSES; APPLICABILITY

§4-1 Purpose. The purpose of this chapter is to implement and enforce the provisions of Chapter 38, ROH relating to the conversion of leasehold planned developments to fee simple ownership. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.1)

§4-2 Applicability. This chapter shall apply to all residential planned developments which at the time of acquisition by the City are:

(a) Developed into residential planned developments and occupied by residential lessees under apartment leases or planned development conveyance documents executed before the effective date of Chapter 38, ROH; or

(b) Developed or partially developed and occupied or intended for occupation by residential lessees under apartment leases or planned development conveyance documents executed on or after the effective date of Chapter 38, ROH; provided that no less than 90% of such leases or conveyance documents have been executed. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-4.1)

SUBCHAPTER 2

APPLICATION; FINDING; NEGOTIATION

§4-3 Application by lessees. Planned development owners in a planned development may apply to the department on forms approved by the department to purchase their respective leased fee interests, together with an undivided leased fee interest equal to the percentage of common interests and limited common interests appurtenant to their apartment or home. Each

applicant shall pay an initial deposit of $1000.00 at the time of making the application by certified check, or such other means as determined by the director, payable to the City and County of Honolulu. The fee shall be applied by the department in the manner stated in sec. 4-10. Not less than 25 planned development owners by number, or 50% of the planned development owners, whichever shall be the lesser number, must apply as a condition precedent to the exercise of the power of eminent domain or the threat of eminent domain by the City. Any fee owner, lessor or sublessor of a planned development may request from the department copies of any application received by the department pursuant to this section.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.2)

§4-4 Qualifications for purchase. To be eligible to purchase a leased fee interest, an applicant must satisfy the following requirements:

(a) Submit to the department an application to purchase leased fee interest, an affidavit and personal financial statement or such other forms required by the department pursuant to sec. 4-3 of these rules.

(b) Be a bona fide resident of the City and County of Honolulu;

(c) Be at least 18 years of age and the owner-occupant of the apartment or home described in the application. Ownership shall include either legal title or the equitable interest of a purchaser under an Agreement of Sale;

(d) Own no other property in fee simple suitable for residential purposes within the City, or have pending before the State Housing and Community Development Corporation or the department, any unrefused application to lease or purchase residential real property for dwelling purposes. This requirement shall apply to the applicant and the applicant's spouse jointly and severally, unless they are separated and living apart under a decree of a court of competent jurisdiction;

(e) As more specifically stated in sec. 4-10, below, demonstrate the ability to pay promptly and in full the estimated costs, at the time that the sale is to be consummated; and

(f) Execute a contract for the purchase of the leased fee interest from the City.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §§38-1.8(a), (i); 38-4.4(d)) (Imp: ROH §38-4.4)

§4-5 Review of applications; preliminary approval. The director shall examine all applications and all supporting testimony, evidence and documents, and shall make a preliminary determination whether the applicant satisfies the requirements stated in sec. 4-4 (a), (b), (c),(d) and (f), above. An applicant shall be notified in writing whether the applicant is preliminarily approved or disapproved, and if disapproved, the reasons for disapproval. Any applicant who is disapproved shall be allowed to submit additional testimony, evidence and documents as may be required for approval. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§4-6 Public notice; public hearing. After the review and preliminary approval of the required minimum number of applicants in a planned development, the director shall give public notice of a public hearing to be held for the purpose of public discussion of whether the acquisition of the leased fee interest in all or a portion of the planned development by the City through the exercise of the power of eminent domain or by purchase under the threat of eminent domain will effectuate the public purpose of Chapter 38, ROH. The notice shall also indicate the time and place of a public hearing to be held and shall be published in a newspaper of general circulation in the City on at least three different days, the last publication being not less than five days before the date of the hearing. All interested persons shall be allowed to present oral and written testimony and evidence for or against the requested finding of effectuation of public purpose.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-4.2)

§4-7 Finding of effectuation of public purpose. Following the public hearing, the director shall decide whether the acquisition of the leased fee interest in the planned development, or a portion of that interest, by the exercise of the power of eminent domain, or by purchase under the threat of eminent domain, and the disposition of such interest as provided by these rules, will effectuate the public purposes of Chapter 38, ROH. Written notice of the decision shall be mailed to all preliminarily approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interests in the leased fee at their respective addresses as shown on the real property tax records of the City and County of Honolulu. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.2)

§4-8 Negotiation by fee owners and preliminarily approved applicants. Following the public hearing if there is a finding of effectuation of the public purpose of Chapter 38, ROH, the director shall request the fee owners and preliminarily approved applicants to negotiate the just compensation to be paid for the leased fee. If the parties do not reach an agreement within 60 days following the request to negotiate, the director shall call a final negotiation meeting with notice to all parties. At the meeting, the parties shall exchange their best and final offers, together with all supporting appraisals, expert opinions, and other documents, and shall give copies to the director. The director may extend the time limit for negotiations, so long as the parties continue to negotiate in good faith, for a length of time that is deemed reasonable by the director or as the parties agree. The parties shall pay for their own cost of negotiation, including all fees of attorneys, accountants, appraisers and other professionals. The negotiations shall not be considered to be a part of

eminent domain proceedings. The director may use the final offers, appraisals, expert opinions and other documents to assist in establishing an estimated cost of acquiring the leased fee. All offers, appraisals, expert opinions and other documents prepared by a party for negotiation purposes and not prepared for use in a trial shall not be discoverable, usable or admissible by an opposing or adverse party in any legal action, suit or proceeding. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.6)

§4-9 Estimated costs. Following the negotiations, if no agreement is reached by the parties, the director shall establish an estimated price to acquire the leased fee, or a portion thereof, and all other legal and equitable interests of the planned development, together with the allocated costs. The estimated price to acquire the leased fee may be divided among the approved applicants according to their percentage of the leased fee interest. The allocated costs may be divided equally among the preliminarily approved applicants. The director shall notify all preliminary approved applicants in writing of their estimated costs. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.5)

§4-10 Initial deposit; final approval of applicants. Within 60 days following the receipt of the notice of estimated costs, all applicants shall:

(a) On forms approved by the department, submit an accurate and updated financial statement and letter of credit, certificate of deposit, proof of funds or an approved application from any lending institution to verify the ability to pay the estimated costs. Evidence of other assets, e.g. precious metals, coins, jewelry, stocks, bonds, may be submitted to determine the applicant's eligibility if they are acceptable to the department and the value claimed is verified by an independent appraiser;

(b) Pay to the department 50% of the allocated costs attributed to each applicant, after

crediting the fee paid as stated in sec. 4-3, above; and

(c) Re-affirm the contract to purchase the leased fee interest from the City.

Proof of ability to pay for the estimated costs may be waived for an applicant who has reached a settlement in which the fee owner agrees to finance the payment. However, all parties must agree to any such method of financing for any applicant.

Any applicant who fails or refuses to comply with the requirement of this section may be disqualified from participating further, and may be charged with a proportionate share of the allocated costs incurred by the department and the City to the date of disqualification. All applicants shall be notified in writing if they are approved or disapproved. [Eff 10/9/93; am DEC 22 2000](Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-4.5)

SUBCHAPTER 3

DESIGNATION; CONDEMNATION; WITHDRAWAL; SUBSTITUTION

§4-11 Designation. If no agreement is reached by the parties by negotiation and after final approval of the applicants, the director shall designate all or a portion of the planned development for acquisition upon the following conditions:

(a) The designation shall state the department's findings and shall identify the individual residential planned development interests, which may include the land, the planned development apartment or home, and the appurtenant undivided interest in the common elements, as applicable, for which the City intends to acquire the leased fee interests.

(b) The department's determination to designate the individual residential planned development interests shall take into consideration the

compliance by the applicants of the qualification requirements as stated in sec. 4-4 of these rules.

(c) Upon designation of the individual planned development interests, written notice of the decision shall be published once in a newspaper of general circulation in the City and copies shall be mailed to all approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interest in the leased fee at their respective address as shown on the real property tax records of the City and County of Honolulu. The notice shall include the names of the approved applicants, the identity of their respective planned development apartment or home, and their percentage of leased fee interest.

(d) Any owner-occupant of an apartment of home in the planned development who was not one of the applicants at the time of the designation of the individual planned development interests may apply and become an additional applicant, subject to meeting the applicable requirements of Chapter 38, ROH and these rules.

(1) Once all of the applicable requirements of Chapter 38, ROH and these rules have been met by any additional applicant, the designation as herein described shall be amended to include the additional applicant and the individual residential planned development.

(2) Written notice of the amended designation shall be published once in a newspaper of general circulation in the City and copies shall be mailed to all approved applicants and all known lessors, sublessors, and other owners or holders of any legal or equitable interest in the leased fee at their respective address as shown on the real property tax records of the City and County of Honolulu. The notice shall include the name of the additional applicant, the identity of the

respective planned development apartment or home, and the percentage of leased fee interest [Eff DEC 22 2000](Auth: ROH §38-1.8 (i)) (Imp: ROH §§38-4.2; 38-5.2; 38-1.8(i))

§4-12 Condemnation. Following the designation by the director of the individual residential planned development interests, the director shall request the corporation counsel to prepare and present to the City Council a Resolution for the exercise of the power of eminent domain for the condemnation of the legal and equitable interests of the fee owner, lessor, or equitable owner of the leased fee interest, and may request the appropriation of the funds necessary to pay the compensation for the leased fee interest. The director shall also request the corporation counsel to file the necessary legal action no later than 12 months after the designation. If some of the applicants have reached an agreement with the fee owners, the Resolution and condemnation action shall relate only to the remaining applicants who have not reached an agreement.
[Eff 10/9/93; am and ren §4-12 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.2; RCH §§ 3-110; 3-202)

§4-13 Withdrawal. Any applicant may withdraw from the designation for acquisition at any time before the City has initiated the eminent domain action to condemn the leased fee interest. Upon withdrawal, the applicant shall pay the department for the allocated costs incurred to the date of withdrawal. Withdrawal after the commencement of the condemnation action shall require the consent of the court, and the costs shall include in addition, the allocated share of all court costs and attorneys' fees of the City as well as all fees and costs of the fee owners and other parties in the condemnation action, as may be required by the court. Payment of the allocated costs and any other costs and fees shall be made by the forfeiture of the deposits of the withdrawing applicant. In the event there are insufficient funds in the deposits, the

department shall have all legal recourse for the collection of the unpaid balance, including civil lawsuits. [Eff 10/9/99; am and ren § 4-13 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§4-14 Substitution. Any person who acquires the lease of a withdrawing applicant may be substituted for the withdrawing applicant, provided that the substituted applicant meets all the applicable requirements of Chapter 38, ROH and these rules, except the requirement that the substituted applicant be a resident of the planned development for a continuous and uninterrupted period of one year prior to the application. If the substitution occurs after the commencement of the condemnation action, it shall require the consent of the court. The director shall allow a substituted applicant a reasonable time to meet all the requirements for final approval. In the event there is no application for substitution within 60 days following a withdrawal, the director shall request the corporation counsel to dismiss the withdrawing applicant as a party to the condemnation action. [Eff 10/9/93; am and ren §4-14 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

SUBCHAPTER 4

ADDITIONAL DEPOSITS; SUBSEQUENT APPLICANTS

§4-15 Additional deposits. The director may require all applicants to make additional deposits from time to time for the same purposes as the initial deposit, in such amounts as the director may determine to be reasonable and necessary to pay for the allocated costs. [Eff 10/9/93; ren §4-15 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §§38-1.8(i); 38-4.5)

§4-16 Subsequent Applicants. If an additional applicant applies after the condemnation action is initiated, consent of the court shall be required in order to include the additional applicant as a defendant in a condemnation action, subject to meeting the applicable requirements of Chapter 38, ROH and these rules. Subsequent applicants applying separately from the initial application shall not be required to meet the minimum requirement of number of owners or percent of owners in a development stated in sec. 4.3, above. [Eff 10/9/93; am and ren §4-16 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

SUBCHAPTER 5

PAYMENT; TRANSFER OF TITLE

§4-17 Negotiated acquisition by applicants. After the initial application, all applicants who subsequently successfully negotiate an agreement to purchase their leased fee directly from the fee owner shall make their payments and receive title according to the terms and conditions of their private agreement, provided that they shall pay the department for the allocated costs incurred to the date of agreement. [Eff 10/9/93; am and ren §4-17 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.6)

§4-18 Acquisition by City. The City may pay for all legal and equitable interests which the City acquires in the development from any legally authorized funds, or the City may arrange for a simultaneous acquisition and transfer to each approved applicant. [Eff 10/9/93; ren §4-18 DEC 22 2000) (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.4)

§4-19 Sale by City to applicants. Within 60 days following acquisition, the City shall sell the leased fee together with all other legal and equitable interests appurtenant to each apartment or home to the respective applicants. The sale price to each applicant shall be the cost of the particular leased fee plus a proportionate share of the actual amounts

paid by negotiation or condemnation for all other legal and equitable interests, and the allocated costs. The unused balance of any deposit shall be applied to the sale price of the applicant. [Eff 10/9/93; ren §4-19 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.3)

§4-20 Failure of applicant to pay under private agreement. In the event of the failure of an applicant to perform according to the terms and conditions of a private negotiated agreement, the fee owners and other affected legal and equitable owners shall have recourse against the applicant according to the terms and conditions of the negotiated agreement and all applicable laws and remedies. The City and the department shall not be responsible for collection or receipt of any moneys from the defaulting applicant. [Eff 10/9/93, ren §4-20 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-1.8(i))

§4-21 Failure of applicant to pay the City. In the event the City has acquired the leased fee and all other legal and equitable interests appurtenant to an apartment or home and the applicant fails or refuses to pay the sale price stated in sec.4-19, above, the City shall have all the rights, remedies and recourse provided by law against the defaulting applicant, including civil actions and lawsuits. Upon the request of the fee owners, the director may negotiate terms, conditions and prices for a cancellation and rescission or a sale back to the fee owners. Notwithstanding such request, the director may at his discretion retain title in the City and sell the acquired interests to any other party by public auction or private negotiated sale. The defaulting applicant shall remain liable for the unpaid sale price stated in sec. 4-19, above following any sale by the director. [Eff 10/9/93; am and ren §4-21 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-4.3)

§4-22 Interest in compensation paid by the City. Lessors, fee owners and all other owners of legal and equitable interests in a planned development

shall share in the compensation paid by the City as their respective interests shall appear. A developer or other party entitled to share in the lease rent shall share in the compensation to the extent of such party's interest, as may be determined by agreement among all parties entitled to share in the compensation. In the absence of agreement, the director is authorized by Chapter 38, ROH to apply to the First Circuit Court for an order compelling the parties to submit their claims to binding arbitration pursuant to Chapter 658, HRS. [Eff 10/9/93; ren §3-22 DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: ROH §38-5.5)

CHAPTER 5

ADMINISTRATIVE PROCEDURES

§5-1. Public hearing.

Any public hearings shall be held as required by law. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: HRS §§91-9; 92-3; 92-4; 92-5; RCH §13-106)

§5-2. Public information.

a. Any rule, order, or opinion of the department shall be on file and available for public inspection at the offices set forth below. A copy of the compilation of rules shall be available to the public at a price to be fixed by the department to cover mailing and publication costs. The public may obtain information on matters within the jurisdiction of the department, by inquiring at:

(1) The Office of the City Clerk, Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813; or

(2) Department of Community Services, Leasehold Conversion Program, 530 South King St., Basement, Honolulu, Hawaii 96813.

b. Submittal or Request for Information.

Any inquiry may be made in person at the offices set forth above during business hours, or by submitting a request for information in writing to the director. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: HRS §§91-2(a)(1); 91-2(a)(3); 91-2(a)(4))

§5-3. Filing; taking effect of rules.

a. In adopting, amending, or repealing a rule and upon its approval by the Mayor, the department shall file a certified copy with the City Clerk and the City Clerk shall file a certified copy with the Lieutenant Governor.

b. Each adopted, amended, or repealed rule shall be effective ten days after its filing with the City Clerk. [Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: HRS §91-3(c))

§5-4. Petition for adoption, amendment or repeal of rules.

a. Petition

Any interested person may petition the department for the adoption, amendment or repeal of any rule.

b. Submission

The petitioner shall submit five copies of the petition to the department. The petition shall include:

(1) A statement of the nature of the petitioner's interest;

(2) A draft of the substance of the proposed rule, the amendment to a rule, or a designation of the rule sought to be repealed; and

(3) An explicit statement of the reasons in support of the action proposed.

c. Disposition of Petition

Within 30 days after the filing of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or initiate proceedings in accordance with sec. 91-3, HRS for the adoption, amendment, or repeal of the rule. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: HRS §§91-3; 91-6)

§5-5. Declaratory rulings.

a. Petition

Any interested person may petition the director for a declaratory order as to the applicability of any State statute or City ordinance, or of any rule or order of the department.

b. Submission of Petition

The petitioner shall submit five copies of the petition to the department. It shall include:

(1) The name, address, and telephone number of the petitioner;

(2) A designation of the specific statute, ordinance, rule, or order which is the subject of the petition;

(3) A complete statement of facts on which the petition is based;

(4) A statement of the nature of the petitioner's reason for submitting the petition; and

(5) A complete statement of the position of the petitioner together with a memorandum of authorities, including any legal authorities and a complete statement of the reasons in support of petitioner's position.

c. Rejection of Petition

A petition which does not conform to the requirements stated in sec. 5-5(b), above, may be rejected, but may be resubmitted when it complies with those requirements.

d. Refusal to Issue Declaratory Order

The director may for good cause refuse to issue a declaratory order. Without limiting the generality of the foregoing, good cause includes:

(1) The issue presented by the petitioner is speculative or hypothetical and does not involve existing fact or facts which can reasonably be expected to exist in the near future;

(2) The interest of the petitioner is not of the type which would give petitioner standing to maintain an action if judicial relief were sought;

(3) The issuance of the declaratory order may adversely affect the interest of the City, the department, or any of its officers or employees in any litigation which is pending or may reasonably be expected to be initiated; or

(4) The issue or the factual basis of the petition is not within the jurisdiction of the department.

e. Referral to Other Agencies

If a question of law is presented in the petition, the department shall refer the matter to the Corporation Counsel of the City. The department may also obtain the assistance of other agencies, where necessary or desirable.

f. Notification of Petitioner

The director shall promptly notify the petitioner in writing of the disposition of the petition.

g. Status of Orders

An order disposing of a petition shall have the same status as other agency orders. An order shall be applicable only to the fact situation alleged in the petition or set forth in the order. It shall not be applicable to different fact situation or where additional facts not considered in the order exist. [Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a), (i)) (Imp: HRS §§91-7; 91-8)

§5-6. Hearing on disputes.

a. Informal Hearing

Within fifteen calendar days after a dispute arises or, if there was a written notification, within fifteen calendar days from the date of the written notification which gave rise to the dispute, an aggrieved person who disputes action taken by the department and claims that the action adversely affects rights, duties, welfare, or status, that person may submit a written complaint with the department which initially will be discussed informally and attempted to

be settled without a hearing. A written summary of the informal discussion shall be prepared within ten calendar days of the date of the discussion and given to the complaining person. The summary shall specify the names of the participants, the dates of meetings, the proposed disposition of the dispute, and the specific reasons for the disposition. It shall specify the procedures to obtain a hearing if the complainant is not satisfied.
[Eff 10/9/93] (Auth: ROH §38-1.8(a)) (Imp: ROH §38-1.8(i))

b. Contested Case Hearing.

A hearing on a dispute other than an informal hearing provided in sec. 5-6(a), above, shall be conducted in accordance with sec. 91-9 through sec. 91-13,HRS.
[Eff 10/9/93; am DEC 22 2000] (Auth: ROH §38-1.8(a),(i)) (Imp: HRS §§91-9; 91-10; 91-11; 91-12; 91-13)

The Rules for Residential Condominium, Cooperative and Planned Development Leasehold Conversion were amended following a public hearing held on March 17, 2000, notice of which was published in MidWeek on February 14, 2000. The amended rules were adopted on September 28, 2000.

The amended rules shall become effective upon approval by the Mayor of the City and County of Honolulu and ten days after filing with the City Clerk.

ABELINA MADRID SHAW, Director
Department of Community Services, City and County of Honolulu

APPROVED AS TO FORM:

Deputy Corporation Counsel

Date: September 28, 2000

APPROVED:

JEREMY HARRIS, Mayor
City and County of Honolulu

Date: December 11, 2000

RECEIVED the 12th day of December, 2000

City Clerk
GENEVIEVE G. WONG

MUNICIPAL LIBRARY, RECORDS MGMT & [illegible]
Department of Customer Services
City Hall Annex, 558 S. [illegible]
Honolulu, Hawaii 96813