

1 MARK J. BENNETT 2672
Attorney General, State of Hawaii

2
3 CARON M. INAGAKI 3835
4 DIANE K. TAIRA 3761
5 JOHN M. CREGOR 3521
6 JOHN C. WONG 2804
7 KRISLEN N. CHUN 7953

8 Deputy Attorneys General
9 Department of the Attorney
10 General, State of Hawai`i
11 425 Queen Street
12 Honolulu, Hawai`i 96813
13 Telephone: (808) 587-3080
14 Email: Caron.M.Inagaki@hawaii.gov
Diane.K.Taira@hawaii.gov
John.M.Cregor@hawaii.gov
John.C.Wong@hawaii.gov
Krislen.N.Chun@hawaii.gov

15 Attorneys for Defendants
16 STATE OF HAWAII and
17 HAWAI'I PUBLIC HOUSING AUTHORITY

18 IN THE UNITED STATES DISTRICT COURT

19 FOR THE DISTRICT OF HAWAI I

20
21 HAZEL MCMILLON; GENE
22 STRICKLAND; TRUDY SABALBORO;
23 KATHERINE VAIOLA; and LEE
24 SOMMERS, each individually and on
25 behalf of a class of present and future
26 residents of Kuhio Park Terrace and
27 Kuhio Homes who have disabilities
28 affected by architectural barriers and
hazardous conditions,

Plaintiffs,

Case No. CV 08 00578 JMS LEK

**SETTLEMENT, RELEASE,
INDEMNIFICATION AND
ASSIGNMENT AGREEMENT;
EXHIBITS A AND B**

McMillon, et al. v. State of Hawaii, et al., Case No. 08-00578 JMS-LEK
Settlement, Release, Indemnification and Assignment Agreement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

vs.

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
REALTY LAUA LLC, formerly known
as R & L Property Management LLC, a
Hawai`i limited liability company,

Defendants.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY,

Third-Party Plaintiffs,

vs.

URBAN MANAGEMENT
CORPORATION DBA URBAN REAL
ESTATE COMPANY, DOES 1-20,

Third-Party
Defendants.

**SETTLEMENT, RELEASE, INDEMNIFICATION
AND ASSIGNMENT AGREEMENT**

This SETTLEMENT, RELEASE, INDEMNIFICATION AND
ASSIGNMENT AGREEMENT (“Settlement Agreement”), entered into and
effective this _____ day of _____, 2010, between
Plaintiffs (as defined in paragraph 2.2, hereinbelow), the Law Firms of
ALSTON HUNT FLOYD AND ING, LAWYERS FOR EQUAL JUSTICE,
McMillon, et al. v. State of Hawaii, et al., Case No. 08-00578 JMS-LEK
Settlement, Release, Indemnification and Assignment Agreement

1 O'MELVENY & MYERS, BINGHAM MCCUTCHEN, and THE LEGAL
2 AID SOCIETY – EMPLOYMENT LAW CENTER (collectively referred to
3 as the “Law Firms”), the STATE OF HAWAII and the HAWAII PUBLIC
4 HOUSING AUTHORITY (collectively referred to as “State” or the “State
5 Defendants”, and as defined in paragraph 2.3, hereinbelow), for themselves
6 and their “Representatives” (as defined in paragraph 2.5, hereinbelow):
7
8

9 **PART A. CONTINGENCIES**

10 This Settlement Agreement is contingent upon the following:
11

12 (A) Approval of this settlement by all appropriate governmental
13 entities, including but not limited to the U.S. Department of Housing and
14 Urban Development (HUD), or any State or Federal court having
15 jurisdiction over this matter; and
16

17 (B) That no more than FIVE PER CENT (5%) of the eligible class
18 members opt out of this settlement in writing, following due Notice of the
19 settlement of this Lawsuit (as defined in paragraph 5.3).
20
21
22
23
24
25
26
27
28

PART B. RECITALS

1
2 1. On December 18, 2008, Named Plaintiffs Hazel McMillon, Gene
3 Strickland, Trudy Sabalboro, Katherine Vaiola and Lee Sommers commenced
4 a class action in the United States District Court for Hawaii (“District Court”),
5 Case No. 08-00578 JMS-LEK (the “Federal Action”), against Defendants,
6 alleging *inter alia*, discrimination in violation of the Americans with
7 Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973
8 (“Section 504”) and the Fair Housing Act Amendments regarding physical
9 access for persons with disabilities at Kuhio Park Terrace (KPT) and Kuhio
10 Homes and the failure to provide reasonable accommodations. Gene
11 Strickland is now deceased and is therefore no longer a class representative nor
12 a party to this Settlement Agreement.

13
14 2. On December 18, 2008, Named Plaintiffs Lewers Faletofo,
15 Hazel McMillon, Gene Strickland, Trudy Sabalboro, and Lee Sommers filed a
16 class action in the Circuit Court of the First Circuit for the State of Hawaii (the
17 “Circuit Court”), Civil No. 08-1-2608-12 (the “State Lawsuit”) alleging,
18 *inter alia*, breach of the implied warranty of habitability, breach of lease,
19 breach of the management contract – third party beneficiary, unfair trade
20 practices prohibited by HRS § 480-2, and medical monitoring. Lewers
21 Faletofo and Gene Strickland are now deceased and are therefore no longer
22
23
24
25
26
27
28

1 class representatives nor parties to this Settlement Agreement. The individuals
2 described in this paragraph and the immediately preceding paragraph, other
3 than Gene Strickland and Lewers Faletogo, shall be collectively referred to as
4 the “Named Plaintiffs.”

6 3. Defendants are the State of Hawaii (“State”), Hawaii Public
7 Housing Authority (“HPHA”) (collectively “State Defendants”), and Realty
8 Laua LLC (“Realty Laua”), formerly known as R&L Property Management
9 LLC. Urban Management Corporation (“Urban Management”) is a Third-
10 Party Defendant. This Settlement Agreement is by and between Plaintiffs
11 and the State Defendants only.

14 4. On October 29, 2009, the District Court entered an Order
15 certifying the following class in the Federal Action:

17 All present and future residents of KPT and Kuhio Homes who are
18 eligible for public housing, who have mobility impairments or other
19 disabling medical conditions that constitute “disabilities” or
20 “handicaps” under federal disability nondiscrimination laws, and who
21 are being denied access to the facilities, programs, services, and/or
22 activities of the Defendants, and/or discriminated against, because of
23 the architectural barriers and/or hazardous conditions described in the
24 Complaint.

25 (Order Re Class Certification, Doc. 120 at 30-31.) For the purposes of this
26 Settlement Agreement, the class is hereinafter referred to as “the Federal
27 Class.”

1 5. For the purposes of this Settlement Agreement, Plaintiffs in the
2 State Lawsuit and the State Defendants stipulate to the following definition
3 for the class in the State Lawsuit:
4

5 All current and future residents of Kuhio Park Terrace.

6 For the purposes of this Agreement, the State Lawsuit class is
7 hereinafter referred to as “the State Class.”
8

9 6. The Federal Action and the State Lawsuit are collectively
10 referred to herein as the “Lawsuits”.
11

12 7. The Lawsuits have been vigorously prosecuted and defended.

13 8. State Defendants deny any and all liability to the Named
14 Plaintiffs and to the Class Members, and deny that they have violated any
15 laws, including without limitation, Title II of the ADA, Section 504 and the
16 FHAA, pertaining to access for persons with disabilities and the failure to
17 make reasonable accommodation and deny that they have breached any
18 contractual obligations with respect to the Named Plaintiffs and Class
19 Members and that they have committed any unfair trade practices.
20
21
22

23 9. However, in the interest of all the parties herein to resolve these
24 matters and to avoid further costs, expense and time as a result of continued
25 litigation and, without admitting liability of any kind, the parties are entering
26 into this Settlement Agreement.
27
28

1 **PART C. DEFINITIONS**

2 1. "Settlement Agreement" shall mean this Settlement, Release,
3 Indemnification and Assignment Agreement.
4

5 2. "Plaintiffs" shall mean all plaintiffs named in the Lawsuits and
6 each and every member of the classes covered in the Lawsuits.
7

8 3. "State of Hawaii" shall mean the State of Hawaii, its
9 departments, agencies, officers and employees, past and present, and
10 specifically includes the Hawaii Public Housing Authority ("HPHA"), its
11 officers, directors and employees, past and present.
12

13 4. "State Defendants" shall mean the State of Hawaii, the Hawaii
14 Public Housing Authority, and their officers, directors and employees, past
15 and present.
16

17 5. "Person" shall mean any individual, corporation, association,
18 partnership, agency, joint venture, institution, organization, governmental
19 agency, or other entity, and his, her or its legal Representatives.
20

21 6. "Representatives" shall mean the past and present
22 representatives, directors, officers, agents, servants, employees,
23 shareholders, predecessors, successors, assigns, law firms and attorneys. In
24 the case of the State, all of its departments shall also be included. The
25
26
27
28

1 definition of “Representatives” excludes the Defendant Management
2 Companies, as defined below.

3 7. “Undersigned Parties” shall mean the persons executing this
4 Agreement and includes Plaintiffs and their Representatives, the Law Firms
5 and their Representatives, and the HPHA and the State of Hawaii and its
6 Representatives.
7

8 8. “Covered Claims” shall mean any and all past, present, or
9 future claims – to the extent such future claims arise out of conditions or
10 policies existing as of the effective date of this Settlement Agreement –
11 demands, obligations, actions, causes of action, rights, damages, costs, loss
12 of services, and/or expenses arising out of, related to and/or caused by:
13

14 (a) any alleged violation of federal law related to or alleged, in the
15 Complaint filed on December 18, 2008, in the Federal Action,
16 including but not limited to, the U.S. Housing Act of 1937, as
17 amended, the Americans With Disabilities Act, or Section 504 of the
18 Rehabilitation Act of 1978;
19

20 (b) any claim or alleged cause of action of whatever kind, and
21 related to the allegations in the Complaint filed on December 18, 2008
22 in the State Lawsuit;
23
24
25
26

1 (c) any claims or allegations asserted or which could have been
2 asserted in the Lawsuits, to the fullest extent allowed by applicable
3 principles of claim preclusion with respect to class action settlements
4 and/or judgments; and,
5

6 (d) attorneys' fees, costs, and any other expenses related to the
7
8 Lawsuits.

9 The above are "Covered Claims" whether based directly or indirectly
10 on a constitutional claim, tort, statute, rule, regulation, contract or any other
11 theory of recovery, and which Plaintiffs now have or may hereafter accrue or
12 acquire, whether anticipated or not and whether known or unknown at the
13 time of this Settlement Agreement.
14
15

16 9. "Class Counsel" means and refers to the Law Firms.

17 10. "Hawaii Public Housing Authority" ("HPHA") means the
18 officers, directors, agents (including contractors), employees, and successors
19 or assigns of the Hawaii Public Housing Authority excluding the Defendant
20 Management Companies as defined below.
21
22

23 11. "Effective Date" is the date on which the last condition
24 necessary for this Agreement to become final occurs, as set forth below.
25

26 12. "Notice", with the exception of notice to the Federal Class
27 and/or the State Class of the proposed settlement of this matter, shall mean a
28

1 written notification to the attorneys for the Defendants, and/or to Class
2 Counsel, or those attorneys' designees. Unless otherwise stated herein,
3 notice shall be provided within a reasonable period of time.
4

5 13. "Defendant Management Companies" shall mean Realty Laua,
6 LLC and Urban Management Co., Inc., collectively, their heirs, successors,
7 Representatives, and assigns.
8

9 **PART D. RELEASE**

10 1. Release. Plaintiffs, for themselves and their Representatives,
11 do hereby fully release and discharge absolutely and forever from such
12 Covered Claims, the State Defendants, their Representatives, and all other
13 persons, firms, partnerships, corporations and entities who might be liable to
14 them for any of the Covered Claims in whole or in part other than Defendant
15 Management Companies,.
16
17

18 2. Plaintiffs acknowledge and agree that the releases and
19 discharges set forth herein are general releases applicable to the Covered
20 Claims. Plaintiffs expressly assume the risk of any and all claims for
21 damages which exist as of the date Plaintiffs, through their Representatives
22 and their Law Firms, execute this Agreement, but of which Plaintiffs do not
23 know or suspect to exist, whether through ignorance, oversight, error,
24 negligence or otherwise, and which, if known, would materially affect
25
26
27
28

1 Plaintiffs' decision to enter into this Agreement. Plaintiffs further agree that
2 they will accept the consideration to be given by the State of Hawaii as a
3 complete compromise of matters involving disputed issues of law and fact.
4 Plaintiffs assume the risk that the facts or law may be other than they may
5 now believe. It is understood and agreed by Plaintiffs that the settlement is a
6 compromise of a disputed claim and the payments are not to be construed as
7 an admission of liability on the part of any party, and that liability is
8 expressly denied.
9
10
11

12 3. Warranty. Plaintiffs represent and warrant that they own the
13 right, title and interest in all claims Plaintiffs are releasing and that they have
14 not assigned or transferred or purported to assign or transfer, voluntarily or
15 involuntarily, their right, title or interest in any such claim to any person,
16 including insurance carriers.
17
18

19 4. Release. The Law Firms, for themselves and their
20 Representatives, hereby fully release and discharge absolutely and forever
21 any claim they may have for attorney fees, costs, or other expenses arising
22 out of the Lawsuit against the State Defendants and their Representatives.
23

24 5. The release in the immediately previous paragraph shall be a
25 fully binding and complete settlement between the Law Firm and their
26 Representatives and the State Defendants and their Representatives with
27
28

1 respect to any allegation or claim the Law Firms may have arising out of the
2 Lawsuit, either directly or indirectly, through their clients.

3
4 **PART E. SETTLEMENT PAYMENT**

5 1. In consideration of the provisions set forth above, the State
6 Defendants agree to settle the Lawsuits in the amount of SIX HUNDRED
7 AND TEN THOUSAND AND NO/100 DOLLARS (**\$610,000.00**),
8 inclusive of all Plaintiffs' attorneys' fees and costs (hereafter referred to as
9 the "Settlement Amount").
10

11
12 2. Payment of the Settlement Amount shall be made jointly and
13 severally to the Law Firms.

14
15 3. The State Defendants acknowledge that Class Counsel intends
16 to distribute a portion of the Settlement Amount and additional funds as may
17 be received in settlement or judgment of the claims asserted in the Federal
18 Lawsuit and the State Lawsuit and the claims assigned under this Agreement
19 to members of the Federal Class and State Class. The State Defendants
20 agree to provide reasonable cooperation to Class Counsel to identify: (1) the
21 members of the Federal Class and State Class; (2) the duration of each class
22 member's occupancy of Kuhio Park Terrace and/or Kuhio Homes; and
23 (3) the amount of rent paid by each class member. This obligation shall be
24 limited to producing existing data and records and shall not require the State
25
26
27
28

1 Defendants to sort or analyze such data or records. All information provided
2 to Class Counsel pursuant to this provision shall be subject to appropriate
3 confidentiality arrangements to comply with applicable state and federal
4 laws.
5

6 **PART F. ASSIGNMENT OF STATE DEFENDANTS CLAIMS**

7 1. In consideration of the provisions set forth herein, the State
8 Defendants hereby assign, convey, deed, hypothecate, or otherwise transfer,
9 to the Named Plaintiffs (as representatives of the Federal Class and State
10 Class), their Representatives, agents, successors, and assigns their claims,
11 actions, causes of actions, cross-claims, counterclaims, and claims of
12 whatever nature or kind, that State Defendants own, possess, hold, acquire,
13 or are presently seised , against Realty Laua, Inc., and Urban Management,
14 Inc., and their insurers related to or based on any and all of the allegations
15 contained in either the Federal Lawsuit or State Lawsuit and the State
16 Defendants' cross-claims and third party claims in those lawsuits, including
17 but not limited to claims for breach of the management contracts governing
18 Kuhio Park Terrace and Kuhio Homes, contractual indemnity, equitable
19 indemnity and/or contribution, breach of the insurance policies, breach of the
20 covenant of good faith and fair dealing, insurance bad faith, declaratory relief,
21
22
23
24
25
26
27
28

1 violations of the Hawaii Insurance Code, and unfair competition (collectively
2 “Assigned Claims”).

3 2. The Assigned Claims are assigned to Named Plaintiffs whether
4 such claims, cross claims, counterclaims, actions or causes of action have
5 been asserted or not unasserted or which are or could have been brought.
6

7 3. This assignment shall be irrevocable except as set forth below.
8 This assignment is solely for the benefit of the Named Plaintiffs, or their
9 successors or assigns, and the Federal Class and State Class and the Named
10 Plaintiffs and Class Counsel shall have no obligation to prosecute any
11 Assigned Claims.
12

13 4. The State Defendants shall make information, documents, and
14 personnel reasonably available to Class Counsel as is reasonably necessary for
15 the Named Plaintiffs’ prosecution of the Assigned Claims and/or defense of
16 the Indemnified Claims (as defined below), including but not limited to
17 providing Class Counsel with sufficient documentation and information to
18 establish and recover the amount and value of legal services provided by the
19 attorneys for the State Defendants and the costs incurred by the State
20 Defendants in the Federal Lawsuit and State Lawsuit to enable the Named
21 Plaintiffs to recover the value of such services and all other compensable
22 damages from Realty Laua and/or Urban Management and/or their insurers.
23
24
25
26
27
28

1 **PART G. INDEMNITY**

2 1. The Named Plaintiffs shall indemnify the State of Hawaii and
3 the State Defendants for any counterclaims/cross-claims/related or
4 independently asserted claims raised by the Defendant Management
5 Companies (collectively “Indemnified Claims”) up to the amount of the
6 Settlement Payment and any amounts received by the Named Plaintiffs upon
7 settlement of or judgment on the Assigned Claims. The Named Plaintiffs, or
8 their successors or assigns, through Alston Hunt Floyd and Ing, exclusively,
9 at no cost to the State Defendants, shall defend the State Defendants from
10 any such claims. The Named Plaintiffs, or their successors or assigns, shall
11 defend the State Defendants solely in their capacity as indemnitors and this
12 Agreement shall in no way be construed to create an attorney-client
13 relationship between Alston Hunt Floyd and Ing and the State Defendants.
14 This indemnity may be implemented by reducing or, if necessary, dismissing
15 claims to avoid imposing liability on the State Defendants.
16

17 2. As security for these obligations, Alston Hunt Floyd and Ing,
18 will retain fifty percent (50%) of the Settlement Amount until all
19 Indemnified Claims are resolved. The State of Hawaii shall have the right to
20 discontinue the Named Plaintiffs prosecution of the Assigned Claims if it
21 reasonably appears that the State’s liability on the Indemnified Claims will
22

1 exceed the Settlement Amount and the probable recovery on the Assigned
2 Claims.

3 **PART H. EQUITABLE RELIEF RELATED TO LAWSUITS**

4
5 1. In consideration of the provisions set forth herein, and in
6 contemplation of the settlement and resolution of all matter relating to the
7 Lawsuits, State Defendants agree to the following:

8
9 **A. Compliance Review and Monitoring**

10 Within thirty (30) days of the Effective Date of this Settlement
11 Agreement, and subject to the availability of funds, State Defendants shall
12 take the necessary steps to procure the retention or engagement of a
13 nationally recognized consultant with credentials and expertise in ADA,
14 FHA and Section 504 compliance and monitoring, such as the National
15 Center for Housing Management (NCHM). The scope of services may
16 include, but not be limited to, a minimum contractual term of two (2) years
17 for ADA/Section 504 Compliance monitoring at KPT and Kuhio Homes; a
18 comprehensive update and review of the KPT and Kuhio Homes 1999
19 Uniform Federal Accessibility Checklist Self Evaluation and Transition
20 Plans; a physical site assessment of KPT and Kuhio Homes; a review all
21 policies, procedures and forms relating to KPT and Kuhio Homes regarding
22 ADA and reasonable accommodations under Section 504; a training
23
24
25
26
27
28

1 schedule, and scheduled training for HPHA employees and KPT and Kuhio
2 Homes management personnel; a review of any construction or alteration
3 plans before any construction or alterations are conducted at KPT or Kuhio
4 Homes; and verification of the need to remove any physical or access
5 barriers as required by law.
6

7
8 The obligations of HPHA and any consultant retained by it under this
9 part may be terminated by HPHA if, during the consultant's contract term,
10 HPHA and Michaels Development Company (MDC) enter into a contract
11 for the sale and transfer of ownership of KPT and Kuhio Homes. It is
12 contemplated by HPHA that MDC will undertake and perform its own
13 compliance review and monitoring for its planned modernization and
14 redevelopment of KPT and Kuhio Homes. HPHA may provide MDC with
15 any completed work product of the consultant.
16
17
18

19 **B. Reasonable Accommodation Requests.**

20 1. State Defendants shall make reasonable accommodations and
21 modifications for tenants in accordance with applicable state and federal
22 laws and shall comply with, and shall make reasonable efforts to ensure its
23 managing agents (including Realty Laua and/or any other company the State
24 Defendants contract with to manage KPT and/or Kuhio Homes) understand
25
26
27
28

1 and comply with, HPHA's Reasonable Accommodation Policy adopted on
2 February 18, 2010 and attached as Exhibit A to this Settlement Agreement.

3 2. Pursuant to that policy, if HPHA cannot offer the tenant a
4 suitable unit that reasonably accommodates the tenant's specific disability-
5 required need within six months of approval and verification of the tenant's
6 written request, HPHA will use its best efforts to modify that tenant's
7 existing unit to reasonably accommodate the tenant's disability; provided
8 that, the appropriate accommodations can be made without endangering the
9 physical structure of the housing project; the proposed accommodation does
10 not create an undue financial or administrative burden; or that the proposed
11 accommodation would not result in a fundamental alteration of the program.
12

13 3. If a tenant on the waiting list for transfers on the basis of
14 disability declines in writing a unit that has been offered to him or her by
15 HPHA and which HPHA has reasonably determined does reasonably
16 accommodate his/her disability, that tenant's date of entry on the list will
17 drop to the date the transfer was offered. Reasonable geographic objections
18 to the transfer will not be grounds for "going to the bottom of the list." The
19 HPHA shall maintain records of which unit was offered, when the unit was
20 offered, and the tenant's response.
21
22
23
24
25
26
27
28

1 4. HPHA has also revised forms (the notice of right to reasonable
2 accommodation form, reasonable accommodation request form, request for
3 transfer form, and certification of medical need form), attached as Exhibit B
4 to this Settlement Agreement. State Defendants shall make these forms
5 available in the management office and shall provide them (or cause their
6 managing agents to provide them) to any tenant upon that tenant's request.
7 State Defendants shall also provide (or cause to be provided) a notice of
8 right to reasonable accommodation form to any new KPT or Kuhio Homes
9 tenant upon signing a rental agreement and during the annual re-certification
10 process, and shall provide a notice of right to reasonable accommodation
11 form to all present KPT and Kuhio Homes tenants within forty-five (45)
12 days of the District Court's final approval of this Settlement Agreement.

13
14
15
16
17 **C. Installation of Grab Bars, Modification of Shower
18 Stalls, and Other Reasonable Modifications.**

19 1. Bathroom grab bars will be provided and installed upon request
20 without the need for medical verification of need. HPHA agrees to modify
21 the tub or shower outer wall, on a case by case basis, only upon an
22 appropriate reasonable accommodation request and documented showing
23 that such accommodation is required , and provided that such modification
24 does not create an undue financial or administrative burden for HPHA.
25
26
27
28

2. The attached table is only illustrative of the types of reasonable accommodations / modifications that may be requested by a tenant and considered by the HPHA, as well as agreed upon timeframes to complete the reasonable accommodations if approved. Whether these accommodations / modifications are reasonably necessary to ensure disabled tenants equal access to their housing units; do not endanger the physical structure of the housing project; do not create an undue financial or administrative burden; and do not result in a fundamental alteration of the program shall be determined on a case by case basis. The HPHA shall have the discretion to determine whether the deadlines set forth below can be reasonably accomplished based on the circumstances of each request.

KPT

Accommodation	Time (from HPHA’s approval of request)
Grab Bars	90 days
Shower Seat	90 days
Remove approx. 2 foot high shower barrier	180 days of request
Move bathtub controls	180 days of request
Install lever type hardware on doors	90 days of request

KUHIO HOMES

Accommodation	Time (from HPHA’s approval of request)
Grab Bars	90 days of request
Move bathtub controls	180 days of request
Shower Seat	90 days of request

McMillon, et al. v. State of Hawaii, et al., Case No. 08-00578 JMS-LEK
Settlement, Release, Indemnification and Assignment Agreement

1	Remove bathroom door and trim to provide minimum clear width to bathroom	90 days of request
2		
3	Widen non-structural doorways to accommodate wheelchair or other mobility aid	180 days of request
4		
5	Remove shower barrier	90 days of request
6	Install lever type hardware on doors	90 days of request
7	Install access ramp for one entrance	180 days of request
8	Modify path of travel through and to unit entrance door	180 days of request

9

10 **D. Staffing of Elevators**

11 Pending completion of the elevator modernization, HPHA will use its
12 best efforts to assure that the service elevators in Towers A and B will be
13 staffed and run by Realty Laua employees during peak usage hours if
14 necessary to ensure that two elevators are operational for each tower,
15 provided that the service elevator is not being utilized by maintenance staff
16 for service use, such as waste removal or transport of construction materials.

19 **E. Fire Evacuation Notice, Disaster Preparedness Plans, and Other Fire Safety Issues.**

21 1. Within thirty (30) days of the Effective Date of this Settlement
22 Agreement, HPHA agrees to notify and distribute to KPT and Kuhio Homes
23 residents an updated Fire Evacuation Notice which shall have been reviewed
24 by the Fire Prevention Bureau of the Honolulu Fire Department.

1 2. HPHA agrees to assure that the management company
2 maintains a list of all residents who feel, for any reason, that they may have
3 trouble evacuating their unit or the building, in the event of an emergency.
4 The list will be provided to fire department personnel in the event of a fire
5 call.
6

7 3. HPHA shall make available for review or copying by the
8 residents the comprehensive Fire Evacuation and Disaster Preparedness Plan
9 for KPT and Kuhio Homes.
10

11 4. HPHA shall cause the dry stand pipes at KPT to be tested by a
12 qualified contractor with the frequency recommended by the Honolulu Fire
13 Department and shall maintain all records of such inspections in the
14 management office.
15

16
17 **F. Common Area Repairs**
18

19 1. HPHA agrees to remove or reasonably remediate any barriers to
20 the management offices which prevent, impede or hinder disabled residents
21 from entry or exit.
22

23 2. HPHA agrees to install three (3) crosswalks across Linapuni
24 Street.
25

26 3. HPHA agrees to replace, repair or reinforce Plaintiff Kathy
27 Vaiola's doorway ramp at her unit at Kuhio Homes.
28

1 4. HPHA agrees to regularly inspect the Kokohead sidewalk
2 between the KPT towers and to patch and smooth out any cracks which are
3 present.
4

5 **G. Ongoing Capital Repairs**

6 The parties acknowledge that several of the conditions at KPT that
7 were the basis of the claims in the Federal Lawsuit and State Lawsuits have
8 purportedly been remediated or are in the process of being remediated,
9 including through the installation of a new Fire Alarm System, Elevator
10 Modernization and Garbage Chute Replacement. HPHA has duly procured
11 and entered into Contracts with the respective contractors for these projects.
12 To the extent these Contracts are timely completed, the Parties acknowledge
13 that the allegations in the Federal and State Lawsuits relating to the fire
14 alarm system, trash chutes, and elevators are moot. The reference to these
15 Contracts in this Settlement Agreement is not intended to establish or create
16 any third-party beneficiary or other rights as to those Contracts in any of the
17 Plaintiffs or residents of KPT and/or Kuhio Homes.
18
19
20
21
22

23 **H. Other Conditions**

24 State Defendants shall make reasonable efforts to ensure that KPT and
25 Kuhio Homes are maintained in safe, sanitary, and habitable condition.
26 State Defendants shall enforce provisions of the Management Contract
27
28

1 requiring the Management Company to maintain the overall physical
2 appearance and condition of the properties, including maintenance and up-
3 keep to the individual units.
4

5 **PART I. MODERNIZATION OF KPT AND KUHIO HOMES**

6 Notwithstanding HPHA's agreement to the provisions above,
7
8 Plaintiffs expressly acknowledge and recognize that both KPT and Kuhio
9 Homes are planned for a ten-year modernization and redevelopment
10 proposal by MDC. Any modernization or redevelopment of KPT and Kuhio
11 Homes by MDC shall be subject to, and be required to comply with, this
12 Settlement Agreement, and all applicable laws related to the allegations in
13 the Lawsuits except as otherwise provided.
14
15

16 HPHA expressly acknowledges and recognizes that, in light of
17 MDC's redevelopment proposal, Plaintiffs have agreed that the costs of
18 certain modifications to KPT and Kuhio Homes and its grounds desirable to
19 improve access for individuals with disabilities, improve fire safety, and
20 otherwise improve the conditions at KPT and Kuhio Homes outweigh the
21 benefits of such work. Therefore, Plaintiffs and State Defendants agree that
22 if, at any time after the Effective Date of this Agreement, HPHA receives
23 written notice from MDC that it will not proceed with the redevelopment
24 and modernization of KPT and Kuhio Homes, or if the project plans are
25
26
27
28

1 otherwise substantially delayed, the parties will meet and confer to discuss
2 additional equitable relief under this Settlement Agreement, subject to the
3 dispute resolution process set forth below.
4

5 **PART J. OPT-OUT BY CLASS MEMBERS**

6 1. Upon preliminary approval of this Settlement Agreement by the
7 United States District Court and the Circuit Court, the District Court and
8 Circuit Court, acting through Class Counsel, shall direct the best notice that is
9 reasonably practicable under the circumstances of this Settlement Agreement
10 and the settlement it memorializes to Class Members.
11

12 2. All such Class Members shall have a reasonable opportunity to
13 opt-out of the monetary aspects of the settlement prior to the Final Approval
14 of this Settlement Agreement. This Settlement Agreement shall be null and
15 void at State Defendants' election if more than FIVE PERCENT (5%) of Class
16 Members opt out.
17
18
19

20 **PART K. RESOLUTION OF ANY DISPUTES; RETENTION OF**
21 **JURISDICTION FOR ENFORCEMENT OF SETTLEMENT ONLY**

22 1. In connection with the provisions of this Part K, HPHA agrees
23 to include Class Counsel on its mailing list in order to receive any and all
24 public documents or information which are also made available to the
25 general public, regarding KPT and Kuhio Homes and which may be reported
26 to the HPHA board at any regularly scheduled meeting. Plaintiffs' Counsel
27
28

McMillon, et al. v. State of Hawaii, et al., Case No. 08-00578 JMS-LEK
Settlement, Release, Indemnification and Assignment Agreement

1 has also been informed that all non-confidential or public documents are also
2 available through the HPHA website: www.hpha@hawaii.gov. However,
3 the non-receipt by Plaintiffs Counsel of such public information shall not in
4 itself constitute a breach of this Settlement Agreement.
5

6 2. Compliance with this Settlement Agreement shall be placed on
7 the agenda of meetings of the Board of Directors of the HPHA and the
8 HPHA shall make a written or oral report to the Board about the status of
9 compliance on at least a quarterly basis. The minutes of the Board shall
10 reflect the substance of any such report.
11

12 3. The HPHA shall continue to maintain a log of requests for
13 reasonable accommodations and requests for transfers based on disability,
14 including information about which tenant made such a request, when the
15 request was made, what documentation was requested or received in
16 connection with such a request, and the disposition of the request. The logs
17 shall be provided to Class Counsel every six months.
18

19 4. Upon written request of Class Counsel, the HPHA shall make
20 available within thirty days of the request any non-privileged records
21 relating to compliance with this Settlement Agreement and shall make the
22 premises of KPT and/or Kuhio Homes available for reasonable inspection as
23 is reasonably necessary to enforce this Settlement Agreement.
24
25
26
27
28

1 5. In the case of any disputes arising out of or related to any
2 alleged failure to perform in accordance with the terms of this Settlement
3 Agreement, the party asserting a failure of performance shall notify the
4 counsel for the other parties via facsimile and overnight mail. Within ten
5 (10) business days of the notification, the Parties shall commence to meet
6 and confer in a good faith effort to resolve the dispute. If the parties are
7 unable to resolve the dispute through the “meet and confer” process, the
8 Parties shall engage in non-binding mediation before Keith Hunter to be
9 calendared within 21 days of the last meeting of the parties. If Keith Hunter
10 is not available to serve as the mediator, the parties shall mutually agree
11 upon a mediator. If the parties are unable to agree upon a mediator, a
12 mediator shall be selected by the District Court.
13
14
15
16

17 6. Upon determination from the mediator that the parties cannot
18 resolve the dispute through mediation, either party may file a motion with
19 the District Court to resolve the issue or issues specified in the meet and
20 confer process. In the motion, the party shall indicate whether the resolution
21 of the motion requires the taking of live testimony.
22
23

24 7. To this extent, upon the Effective Date of this Settlement
25 Agreement, the District Court shall retain jurisdiction of this matter only for
26
27
28

1 purposes of enforcement of the terms of this Settlement Agreement for a
2 period of 5 years from the Effective Date of this Settlement Agreement.

3
4 **PART L. CONDITIONS TO SETTLEMENT AND**
5 **EFFECTIVE DATE OF SETTLEMENT**

6 This Agreement shall become final and enforceable only after all of the
7 following occurs:

- 8 1. Final Approval by the United States District Court;
- 9 2. Certification of a class for purposes of settlement by the Circuit
10 Court;
- 11 3. Final Approval by the Circuit Court;
- 12 4. Approval by the Legislature of the State of Hawai`i;
- 13 5. Approval by the Governor of the State of Hawai`i; and
- 14 6. Approval by the United States Department of Housing and Urban
15 Development.
16
17
18

19 The date on which the last of these actions occurs shall be the Effective Date
20 of this Agreement.
21

22 **PART M. ADDITIONAL PROVISIONS**

23
24 **1. Counterparts**

25 This Settlement Agreement may be executed in counterparts, each of
26 which will be considered an original, but all of which, when taken together,
27 will constitute one and the same instrument.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Interpretation

The language of this Settlement Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Settlement Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms “and” and “or” shall mean “and/or.” This Settlement Agreement is the product of negotiation and joint drafting so that any ambiguity shall not be construed against any Party. Nothing in this Settlement Agreement shall be interpreted to relieve State Defendants of any of their legal obligations to comply fully with any more stringent disability nondiscrimination statute or any accompanying regulations or disability access design standards.

3. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

4. Authority to Bind

The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, their respective Party.

1 **5. Notice**

2 State Defendants shall bear the cost of notice of this Settlement
3
4 Agreement to the Federal and State Class Members in connection with the
5 court approval process and the fairness hearing. The form of any such notice
6 shall be agreed upon between the Parties, and will be subject to court approval.
7

8 **6. Duration**

9 The duration of this Settlement Agreement shall be five years from its
10 Effective Date.
11

12 **PART N. DISMISSAL WITH PREJUDICE**

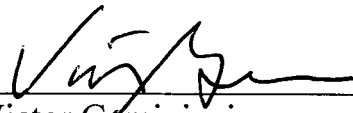
13 Within thirty (30) days of the Effective Date of this Settlement
14 Agreement and the fulfillment of all Contingencies, Plaintiffs shall obtain an
15 Order from the respective Courts dismissing with prejudice the Lawsuits.
16

17 DATED: Honolulu, Hawaii; _____, 2010.
18

19 For Plaintiffs:

LAWYERS FOR EQUAL JUSTICE

20
21 Dated: 10/26, 2010

22 By: 
23 Victor Geminiani
24 Attorneys for Plaintiffs
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

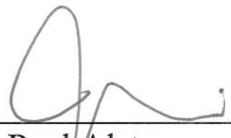
THE LEGAL AID SOCIETY--
EMPLOYMENT LAW CENTER

Dated: _____, 2010

By: _____
Claudia Center
Attorneys for Plaintiffs

ALSTON HUNT FLOYD & ING

Dated: Nov. 5, 2010

By:  _____
Paul Alston
Jason H. Kim
Attorneys for Plaintiffs

O'MELVENY & MYERS LLP

Dated: _____, 2010

By: _____

Attorneys for Plaintiffs¹

BINGHMAN MCCUTCHEON LLP

Dated: _____, 2010

By: _____
Peter Obstler
Attorneys for Plaintiffs

HAZEL MCMILLON (on her own
behalf and on behalf of the class)

Dated: _____, 2010

¹ O'Melveny & Meyers signs only in its capacity as releasee of its attorneys' fees and costs, is no longer counsel for the class, and did not participate in negotiating the settlement or advising the Class relating to the settlement.
McMillon, et al. v. State of Hawaii, et al., Case No. 08-00578 JMS-LEK
Settlement, Release, Indemnification and Assignment Agreement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE LEGAL AID SOCIETY--
EMPLOYMENT LAW CENTER

Dated: _____, 2010

By: _____
Claudia Center
Attorneys for Plaintiffs

ALSTON HUNT FLOYD & ING

Dated: _____, 2010

By: _____
Paul Alston
Jason H. Kim
Attorneys for Plaintiffs

O'MELVENY & MYERS LLP

Dated: _____, 2010

By: _____

Attorneys for Plaintiffs


BINGHMAN MCCUTCHEON LLP

Dated: _____, 2010

By: _____
Peter Obstler
Attorneys for Plaintiffs

HAZEL MCMILLON (on her own
behalf and on behalf of the class)

Dated: 9/15, 2010


TRUDY SABALBORO (on her own
behalf and on behalf of the class)

THE LEGAL AID SOCIETY--
EMPLOYMENT LAW CENTER

1
2
3 Dated: _____, 2010

4 By: _____
5 Claudia Center
6 Attorneys for Plaintiffs

7 ALSTON HUNT FLOYD & ING

8 Dated: _____, 2010

9 By: _____
10 Paul Alston
11 Jason H. Kim
12 Attorneys for Plaintiffs

13 O'MELVENY & MYERS LLP

14 Dated: _____, 2010

15 By: _____
16 Attorneys for Plaintiffs

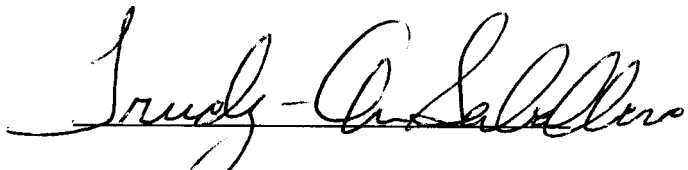
17 BINGHMAN MCCUTCHEON LLP

18 Dated: _____, 2010

19 By: _____
20 Peter Obstler
21 Attorneys for Plaintiffs

22 HAZEL MCMILLON (on her own
23 behalf and on behalf of the class)

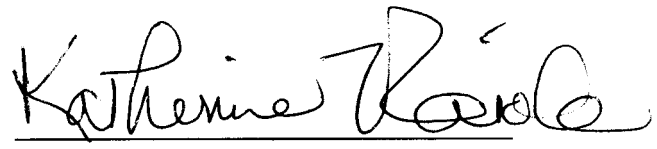
24 Dated: 9-13, 2010



25 TRUDY SABALBORO (on her own
26 behalf and on behalf of the class)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 9/13, 2010



KATHLEEN VAIOLA (on her own behalf and on behalf of the class)

Dated: _____, 2010

LEE SOMMERS (on her own behalf and on behalf of the class)

Dated: _____, 2010

For Defendants:

STATE OF HAWAII

By: _____
MARK J. BENNETT
ATTORNEY GENERAL

HAWAII PUBLIC HOUSING
AUTHORITY

By: _____
DENISE WISE
Its Executive Director

APPROVED AS TO FORM:

JOHN M. CREGOR
JOHN C. WONG
Deputy Attorneys General
Attorneys for Hawaii Public Housing Authority

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2010

KATHLEEN VAIOLA (on her own behalf and on behalf of the class)

Dated: _____, 2010

LEE SOMMERS (on her own behalf and on behalf of the class)

Dated: 9-15, 2010



For Defendants:

STATE OF HAWAII

By: _____
MARK J. BENNETT
ATTORNEY GENERAL

HAWAII PUBLIC HOUSING
AUTHORITY

By: _____
DENISE WISE
Its Executive Director

APPROVED AS TO FORM:

JOHN M. CREGOR
JOHN C. WONG
Deputy Attorneys General
Attorneys for Hawaii Public Housing Authority

1 Dated: _____, 2010

2 KATHLEEN VAIOLA (on her own
3 behalf and on behalf of the class)

4
5 Dated: _____, 2010

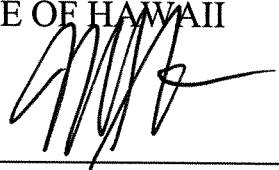
6 LEE SOMMERS (on her own behalf
7 and on behalf of the class)

8
9 Dated: _____, 2010

10
11 For Defendants:

STATE OF HAWAII

12
13
14 Dated: _____, 2010

By:  _____

Mark J. Bennett
Attorney General, State of
Hawaii

Attorneys for Defendants

15
16
17
18
19 HAWAII PUBLIC HOUSING
20 AUTHORITY

21
22 Dated: _____, 2010

By: _____

23
24 Dated: _____, 2010

By: _____

25
26
27 Dated: _____, 2010

By: _____