DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Adoption of Chapter 15-___
Hawaii Administrative Rules

Month Day, Year

1. Chapter 15-___, Hawaii Administrative Rules, entitled "Solar Hui Program", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SUBTITLE 15

HAWAII GREEN INFRASTRUCTURE AUTHORITY

CHAPTER ____

SOLAR HUI PROGRAM

Subchapter 1 General Provisions

Subchapter 2 Solar Hui Program

Subchapter 3 Solar Hui Program Process

SUBCHAPTER 1

GENERAL PROVISIONS

§15-___-1 Purpose. These rules are adopted pursuant to chapter 91, HRS, to implement part VIII of chapter 196, HRS, that establishes the Solar Hui Program and Solar Hui Investment Fund to provide multi-family residential property owners the opportunity to invest in the Solar Hui Investment Fund and be eligible to receive the tax credits and any residual income derived from the Fund. The Fund's purpose is to install solar energy systems on the rooftops of low and moderate income households.[Eff] (Auth: HRS §196-112) (Imp: HRS §196-111, 112, 113)

§15-___-2 Definitions. As used in this chapter:

"Accredited investor" means a designation granted by the United States Securities and Exchange Commission (SEC) to individuals or entities who meet specific income, net worth, or licensure criteria, allowing them to participate in certain private securities offerings that are not available to the general public.

"Authority" means the Hawaii green infrastructure authority as established under section 196-63, HRS.

"Business entity" means and includes a profit corporation, nonprofit corporation, professional corporation, agriculture cooperative association, general partnership, limited partnership, limited liability partnership, and limited liability company, or any other legal or commercial entity.

"Document" means any executed article, agreement, affidavit, certificate, declaration, petition, application, statement, annual report, and every kind of paper, except correspondence, filed in the authority or with the respective agency (e.g., department of commerce and consumer affairs (DCCA), United States Securities and Exchange Commission

(SEC), Internal Revenue Service (IRS), or State of Hawaii department of taxation (DOTAX)) in accordance with statutory requirement.

"Energy Services Agreement" (ESA) means the Green Energy Money $aver Energy Services Participant Agreement, which is similar to a solar power purchase agreement.

"Executive director" means the executive director of the authority, or the executive director's designated representative.

"Filed" means that a document has been received and entered of record by the authority in accordance with statutory requirements (e.g., filed with the department of commerce and consumer affairs (DCCA), United States Securities and Exchange Commission (SEC), Internal Revenue Service (IRS), or State of Hawaii department of taxation (DOTAX)).

"Financial institution" means any of the following federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in this State.

"Financial statements" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, or similar statements, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles or any standard approved by the Public Company Accounting Oversight Board (PCAOB).

"Fund(s)" means the Solar Hui Investment Fund(s).

"Green Energy Money $aver (GEM$)" means the authority's on-bill repayment program that helps eligible customers on all rate schedules (except Schedule "F") reduce electricity costs by installing approved energy improvements such as private rooftop solar systems, solar hot water systems, or commercial energy efficiency retrofits, which are repaid through the customer's electric bill.

"Household" means the owner(s) or leaseholder(s) who dwell in a unit, (e.g., the structure) when the solar system is installed.

"HRS" means Hawaii Revised Statutes, as amended.

"Independent accountants" means independent certified public accountants. The concept of independence shall be defined by rules promulgated by the American Institute of Certified Public Accountants.

"Low and moderate income" means those earning income equal to or less than one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

"Manager" means the authority’s fund manager.

"Partnership" means a general partnership, limited partnership, or a limited liability partnership.

"Private Placement Memorandum" means a document meeting the applicable requirements of Securities Act of 1933, Regulation D, or chapter 485A, HRS.

"Project" means a plan, design, or undertaking by a contractor for the installation of solar photovoltaic on household dwelling units.

"Securities Act" means the Securities Act of 1933, as amended.

"Share" means a share of stock or unit of investment or interest in a corporation, limited partnership, limited liability company, or other unincorporated person, or a share or unit of a security.

"Solar energy system" or "energy project" means any identifiable facility, equipment, apparatus, or the like, which may include an energy storage system, that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent on fossil fuel for their generation.

"State" means the State of Hawaii.

"Subscription agreement" means a legally binding contract between a Fund and an investor outlining the terms and conditions, capital contributions, investor information, and other relevant details.[Eff] (Auth: HRS §196-112) (Imp: HRS §196-111, 112, 113)

SUBCHAPTER 2

SOLAR HUI PROGRAM

§15-___-3 Purpose of the Solar Hui Program. The purpose of the Solar Hui Program is to create investment vehicle(s) to allow Hawaii residents who own multi-family residential property to invest into the solar hui investment fund. The investor may receive solar investment tax credits and may benefit from any excess income derived from the sale of energy. The Fund will use the proceeds to install solar energy systems on low and moderate income households in the County of Hawaii, County of Maui, and City and County of Honolulu.[Eff] (Auth: HRS §196-112) (Imp: HRS §196-112)

§15-___-4 Solar Hui Program information. The private placement memorandum for the Fund and other information about the Fund and can be obtained by emailing dbedt.greenbank@hawaii.gov.

The address and contact information are:

Hawaii Green Infrastructure Authority
Office Address: 250 S Hotel Street, Room 501, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Phone: (808) 587-3868
Email: dbedt.greenbank@hawaii.gov [Eff] (Auth: HRS §196-112) (Imp: HRS §196-112)

§15-___-5 Eligibility requirements. Investments in the Fund are not bank deposits (and thus not insured by the Federal Deposit Insurance Corporation or by any other federal governmental agency) and are not guaranteed by the authority. The private placement memorandum and subscription agreement should be read carefully before investing in the Funds. Eligible investors:

(1) Are multi-family unit owners and residents of the State;

(2) Should be accredited investors; and

(3) Should carefully consider the investment objectives, risks, charges and expenses of the Fund before investing;

(4) The sale of shares to any investor shall be subject to the investment fund manager's approval. [Eff] (Auth: HRS §196-112) (Imp: HRS §196-112)

§15-___-6 Solar Hui Program Fund Manager. The Solar Hui Program fund manager is authorized to manage the Solar Hui Investment Fund and among other things will:

(1) Select solar contractors for solar energy projects that meet the minimum qualifications(e.g., having a certificate of compliance from Hawaii Compliance Express, having workers compensation and liability insurance, proper licenses and experience, etc.);

(2) Market the Solar Hui Program to accredited multi-family residential property owners, registered brokers-dealers, registered investment advisors and agents;

(3) Develop the operating and subscription agreements and obtain required documents from prospective investors, collect

investments, pay contractors, distribute excess proceeds, distribute tax documents, ensure financial statements are prepared, etc.

(4) File the appropriate documents with the DCCA for the Fund, including the articles of organization, operating agreement, and other necessary documents to support the Fund; and

(5) Oversee the operations of the Fund and perform other duties as needed. [Eff] (Auth: HRS §196-112) (Imp: HRS §196-112)

§15-___-7 Reporting requirements. Reports will be distributed to the investors. During the life of the fund, each active investor shall receive documents consisting of federal and state schedule K1's and a financial statement on calendar year basis or fiscal year as needed. The reporting shall comply with state and federal reporting requirements. The manager is responsible for ensuring the required Fund documents are completed and filed with the Internal Revenue Service and the department of taxation and distributed to the appropriate state and federal agencies, and Fund investors. [Eff](Auth: HRS §196-112) (Imp: HRS §196-112)

SUBCHAPTER 3

SOLAR HUI PROGRAM PROCESS

§15-___-8 Investment vehicles. The manager shall create the appropriate investment special purpose vehicle(s) and the appropriate business entity or entities for a private placement fund. The private placement must comply with the Securities Act of 1933, Regulation D and chapter 485A, HRS, and provide a PPM and subscription agreement to interested investors. The private placement memorandum shall contain the information required under the Securities Act of 1933, Regulation D and, if applicable, chapter 485A, HRS. [Eff] (Auth: HRS §196-112) (Imp: HRS §§196-112, 196-113)

§15-___-9 Investors. The investors shall include accredited (and limited number of non-accredited) multi-family residential property owners (e.g., Hawaii condo owners), and the Hawaii Green Infrastructure Authority. The investors are allowed to invest in the Fund to purchase solar energy systems to be installed on low and moderate income homeowner dwellings in the County of Hawaii, the County of Maui, and the City and County of Honolulu. [Eff] (Auth: HRS §196-112) (Imp: HRS §§196-112, 196-113)

§15-___-10 Homeowners. Low and moderate income homeowners of single-family residential dwellings located in the County of Hawaii, the County of Maui, or the City and County of Honolulu are eligible to have the solar energy system installed. The homeowner shall select a contractor from a list of qualified solar installers (QSI), execute an Energy Services Agreement (ESA) and other required documents with the Fund and the authority, and enroll in the authority's Green Energy Money $aver (GEM$) On-Bill Program. [Eff] (Auth: HRS §196-112) (Imp: HRS §§196-112, 196-113)

§15-___-11 Contractors. Solar contractors are required to complete a contractor training and provide certificate of vendor compliance provided by the State of Hawaii procurement office, provide the authority with the necessary certificates of insurance, licenses, warranties, job experience, references and other requested documents. The manager will maintain a list of qualified solar contractors for the Fund. The Fund will purchase solar systems from the qualified solar contractors and execute energy services agreements with the respective homeowners. [Eff] (Auth: HRS §196-112) (Imp: HRS §§196-112, 196-113)

§15-___-12 Source of funds. The Fund may obtain funds from investments received from multi-family residential property owners; appropriations by the legislature; all other money from any other source including debt; and all income and interest earned or accrued on money deposited into the Fund. [Eff] (Auth: HRS §196-112) (Imp: HRS §196-113)

§15-___-13 Use of funds. The funds shall be used to enter into ESAs with low-to-moderate income households; invest in energy projects; and pay for administrative costs of the Solar Hui Investment Fund Program. [Eff] (Auth: HRS §196-112) (Imp: HRS §196-113)

§15-___-14 Energy savings requirements. Energy services agreements will include an estimated twenty percent of utility bill savings. The authority encourages and prioritizes projects with greater positive economic impact for the homeowners. [Eff] (Auth: HRS §196-111) (Imp: HRS §§196-112, 196-113)

§15-___-15 Severability and conflict with law. If any provision (or applicable provision) of this chapter conflicts with, or is superseded by, any applicable federal or state law, statute, or regulation (whether now or hereafter enacted), then such provision shall be deemed inoperative or shall be modified only to the minimum extent necessary to comply with such law. All remaining provisions of this chapter shall continue to remain in full force and effect." [Eff] (Auth: HRS §196-111) (Imp: HRS §§196-112, 196-113)

2. The adoption of chapter 15-___, Hawai‘i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawai‘i Revised Statutes, which were adopted on Month Day, Year, and filed with the Office of the Lieutenant Governor.

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James Kunane Tokioka, Director
Department of Business,
Economic Development and
Tourism

APPROVED AS TO FORM:

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Deputy Attorney General