

# **ATTACHMENT J**

## **Sample Revocable Lease**

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## MONTH-TO-MONTH LEASE NO. 09-xx

This Month-to-Month Lease ("**Lease**") is entered into as of the date in item 8 below (such date, the "**Effective Date**") between the Hawaii Community Development Authority ("**Lessor**") and \_\_\_\_\_ ("**Lessee**"), whose mailing address is \_\_\_\_\_, Honolulu, Hawaii 96813. (Each party hereto is a "**Party.**")

In consideration of the Parties' respective undertakings below, the Parties agree as follows: Lessor leases to Lessee (1) (a) for the period commencing on the Effective Date and ending on the last day of the month following such date and (b) continuing on a month-to-month basis thereafter and (2) for the purpose set forth in item 4 below, (3) the premises (a) described in item 2 below, (b) delineated on Exhibit A hereto and made a part hereof, and (c) located at the site described in item 1 below (such site, the "**Project Site**") and at the address set forth in item 3 below (such premises, the "**Premises**"). For each calendar month, Lessee shall pay the rent specified in item 5 below (prorated for a partial calendar month; such rent, the "**Rent**") and the monthly common-area maintenance expense specified in item 6 below (such expense, the "**Common-Area Maintenance Expense**") and shall perform all other obligations imposed upon Lessee by the terms in Exhibit "B" hereto and made a part hereof.

1. Project Site: TMK (1) 2-1- (por)
2. Premises: Approximately \_\_\_\_\_ sq. ft. in the \_\_\_\_\_
3. Location: \_\_\_\_\_ Street; Honolulu, Hawaii 96813
4. Purpose: Storage of \_\_\_\_\_
5. Rent: \$ \_\_\_\_\_ per month
6. Common-Area Main- \$ \_\_\_\_\_ per month  
tenance Expense:
7. Security Deposit: \$ \_\_\_\_\_
8. Effective Date: \_\_\_\_\_, 2008

Approved as to Form for Lessor by the  
Department of the Attorney General, State  
of Hawaii

**Lessor:**

Hawaii Community Development  
Authority

By: \_\_\_\_\_  
Eugene Won  
Deputy Attorney General

By: \_\_\_\_\_  
Anthony J.H. Ching  
Executive Director

**Lessee:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit "A"**  
**[location of premises]**

HCDA Standard Revocable Lease as of 12/08

**Exhibit "B"**  
**TERMS AND CONDITIONS**

1. **TERM.** The Lease is from \_\_\_\_\_ through \_\_\_\_\_ and on a month-to-month basis thereafter.
2. **COMMON-AREA MAINTENANCE EXPENSE.** In addition to Rent, Lessee shall pay the Common-Area Maintenance Expense. For any given month, the Common-Area Maintenance Expense is intended to reflect a prorated portion of the month's total common-area maintenance and administrative expenses incurred by Lessor in providing such services as utilities (electricity, telephone, cable), water, sewer, trash disposal, patrol security, parking control and collection of parking payments payable to Lessor, and maintenance of the common area of the Project Site.
3. **CALCULATION OF THE COMMON-AREA MAINTENANCE EXPENSE.** Lessor shall calculate the Common-Area Maintenance Expense in the same proportion of the total common-area maintenance and administrative expenses incurred by Lessor as the Premises' area is a proportion of the aggregate area leased by all lessees at the Project Site during a given month.
4. **RENT.** The Rent and Common-Area Maintenance Expense shall be payable in advance, without notice or demand, on the first (1<sup>st</sup>) day of each month for the ensuing month during the term of the Lease. If the 1<sup>st</sup> day of a month falls on a nonbusiness day, then payment shall be due on the last business day of the prior month. For the partial calendar month from the Effective Date through \_\_\_\_\_, the Rent shall be \$\_\_\_\_\_, due on the Effective Date.
5. **INTEREST; SERVICE CHARGE.** Without prejudice to any other remedy available to Lessor, Lessee shall without further notice or demand pay to Lessor (a) interest at the rate of one percent (1%) per month, compounded monthly, on any amount due and unpaid from the date payment is due to the date of payment and (b) a service charge of \$50.00 for each calendar month in which a payment is due and is not timely paid or during (any part of) which the payment remains unpaid.
6. **LESSEE'S PRIOR INSPECTION.** Lessee warrants that it has inspected the Premises and all improvements thereon, knows the condition thereof, accepts the Premises, including soil, water, structures and any hazardous substances that may be found to exist, and fully assumes all risks incident to the use and enjoyment of the Premises.
7. **SECURITY DEPOSIT.** (a) Upon the Parties' execution of the Lease, Lessee shall deposit in legal tender or in such other form as may be acceptable to the Lessor, the amount specified in item 8 on the signature page (page 1) of the Lease as security for the faithful performance by Lessee of all the terms and conditions of the Lease (the amount required to be deposited with Lessor as such security at any given time or the amount deposited with Lessor as so required, the "Security Deposit," and the amount specified in item 8, the "Initial" Security

Deposit). (b) At any given time during the term of the Lease, the required Security Deposit shall be equal to the greater of (1) the Initial Security Deposit or (2) the sum of (A) the Rent and (B) the Common-Area Maintenance Expense then in effect. (c) If the required Security Deposit increases at any time, Lessee shall deposit the increment with Lessor within 10 days after notice from Lessor to Lessee of the increase. If the required Security Deposit decreases at any time, Lessor shall refund the decrement to Lessee within 10 days after the decrease occurs. (d) The Security Deposit held by Lessor shall not bear interest. (e) Promptly following the termination of this Lease, Lessor shall return to Lessee the Security Deposit deposited with Lessor in full if Lessee has faithfully performed its obligations under the Lease. (e) Otherwise, Lessor may apply the Security Deposit deposited with Lessor as an offset to any amount owed by Lessee to Lessor under the Lease or to any damages or loss incurred by Lessor because of Lessee's breach. (f) For purposes of clause (b)(2)(B), the Common-Area Maintenance Expense in effect at a given time shall mean the average monthly Common-Area Maintenance Expense payable by a lessee of the Premises during the prior calendar year.

8. **HAZARDOUS MATERIALS.** (a) Neither Lessee nor any person acting on Lessee's behalf shall (1) release any hazardous materials at, onto, or from the Premises; (2) store or use at the Premises such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for storage and use of such materials; or (3) bring onto the Premises any such materials, except (A) for use in the ordinary course of Lessee's business and (B) with Lessor's prior written consent, which Lessor may withhold in its sole and absolute discretion. (b) Lessee shall be responsible for the cost of any testing required by any lender or governmental agency to ascertain whether Lessee or any person acting on Lessee's behalf has released any hazardous materials at, onto, or from the Premises. (c) At Lessor's request, Lessee shall execute affidavits, representations and the like concerning Lessee's best knowledge and belief regarding the presence of any hazardous materials that Lessee or any person acting on its behalf has brought onto or released at, onto, or from the Premises. (d) Lessee shall indemnify, defend and hold Lessor harmless from any damages and claims resulting from any release by Lessee or any person acting on Lessee's behalf, during the term of the Lease, of hazardous materials at, onto, or from the Premises or elsewhere. (e) Clauses (c) and (d) shall survive the expiration or earlier termination of the Lease. (f) For purposes of the Lease, "hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. (g) For purposes of the Lease, "person" means any individual or legally recognized entity. (h) For purposes of this paragraph, to "release" hazardous material means to (A) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or disperse hazardous material in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (B) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment.

9. **INSURANCE.** Concurrently with the Parties' execution of the Lease, Lessee shall deliver to the Lessor a Comprehensive General Liability Insurance policy or policies, or

Certificate of Insurance in lieu thereof, evidencing that such policy has been issued and is in force, with a combined single limit of not less than \$1,000,000 for bodily injury and damage to property per occurrence. Such insurance shall:

- a. Be issued by an insurance company or surety company authorized to do business in the State of Hawaii;
- b. Name the Hawaii Community Development Authority and the State of Hawaii as additional insureds;
- c. Provide that Lessor shall be notified at least fifteen (15) days prior to termination, cancellation or material change in its insurance coverage;
- d. Cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of Lessee or its officers, agents, employees, invitees or licensees, in connection with Lessee's use or occupancy of the Premises;
- e. Be maintained and kept in effect at Lessee's own expense throughout the term of the Lease, evidenced by furnishing Lessor without notice or demand a like certificate upon each renewal thereof;

Lessor reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in Lessor's opinion, the above insurance does not provide adequate protection for Lessor, it may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change of insurance is required.

10. **INDEMNITY.** Lessee shall at all times with respect to the Premises use due care for public safety and shall defend, hold harmless and indemnify Lessor and its officers, agents and employees from and against all claims or demands for damages, including claims for property damage, personal injury or death, arising on the Premises, or by reason of any fire or explosion thereon arising from, growing out of, or caused by any act or omission on the part of Lessee or its officers, agents, employees, invitees, or licensees, in connection with Lessee's use or occupancy of the Premises.

11. **ACCEPTANCE OF RENT NOT A WAIVER.** Lessor's acceptance of any rent shall not constitute a waiver of any breach hereof by Lessee or impair Lessor's right to terminate the Lease in accordance with it or with law. Failure by Lessor to insist upon strict performance of the Lease by Lessee or to exercise any right reserved by Lessor shall not be construed as a waiver or relinquishment of any of Lessor's rights under the Lease.

12. **PROPERTY TAXES.** Lessee shall pay all real property taxes lawfully assessed against the Premises.

13. **WASTE, STRIP, NUISANCE; MAINTENANCE.** Neither Lessee nor any person acting on its behalf shall make or cause any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises. Lessee shall maintain the Premises, improvements thereon, and all equipment and other personal property thereon in a strictly clean, neat, safe, orderly and sanitary condition, free of waste, rubbish and debris. Lessee shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse from the Premises.

14. **ENTRY BY LESSOR.** Lessor or its agents and employees may enter the Premises at all reasonable hours to inspect the Premises to determine if Lessee is complying with the terms of the Lease or for any other proper purpose. Lessee shall not make any claim for damages or set off of rent, service charge or other charges because of such entry.

15. **REPAIRS.** Lessee shall, at its own expense, keep and maintain the Premises and all improvements in a condition similar to that which existed on the Effective Date, ordinary wear and tear and damage by acts of God excepted.

16. **STRUCTURAL IMPROVEMENTS, ALTERATIONS OR ADDITIONS.** No substantial improvement, alteration or addition of a structural nature shall be made, installed, or constructed on, under or within the Premises by Lessee unless it first submits its plans and specifications for such work to Lessor for approval and Lessor approves such plans and specifications in writing. Such plans and specifications shall comply with all applicable laws, rules and regulations. Any improvements, alterations or additions shall be accomplished at the sole cost and risk of Lessee and Lessor shall not be responsible for any damage to or destruction of any such improvements, alterations or additions or any personal property on the Premises. Lessee shall provide notice to the responsible agencies, including the Office of Environmental Quality, and otherwise comply with Chapter 343, Hawaii Revised Statutes, to determine if such improvements, alteration or addition requires environmental assessments or environmental impact statements.

17. **REMOVAL OF IMPROVEMENTS OR ADDITIONS.** Lessee may remove, at its own cost and risk, any and all improvements or additions or any portions thereof, constructed or installed by it upon the Premises, at any time during the term of the Lease or within 30 days after the Lease's termination, provided that Lessee gives Lessor written notice before undertaking any such removal. Until such removal and restoration of the Premises have been completed to Lessor's satisfaction, Lessee shall pay the Rent that would otherwise be due if the Lease were not terminated for the period Lessee continues to use or occupy the Premises following the termination. Any improvements or additions remaining at the Premises after 30 days following the Lease's termination shall become the property of Lessor.

18. **LIENS.** Lessee shall not commit or suffer any act or neglect which results in any attachment, lien, charge or other encumbrance upon the Premises, any improvement thereon, or the leasehold estate of the Lessee and shall indemnify, defend, and hold Lessor harmless from and against all such encumbrances and all resulting expenses (including attorneys' fees) to clear the Premises, improvements thereon, or leasehold of such encumbrances.

19. **COMPLIANCE WITH LAWS; DISCRIMINATION PROHIBITED.** Lessee shall comply with all laws, statutes, ordinances, rules and regulations of all governmental agencies, applicable to the Premises or relating to and affecting any business or other commercial activity conducted on the Premises. The use and enjoyment of the Premises shall not be in support of any policy that discriminates against anyone based upon race, creed, color, sex or national origin.

20. **TRANSFERABILITY AND MORTGAGE.** The Lease and Premises or any part thereof, inclusive of any and all rights or obligations accruing or arising under the Lease, shall not be sold, transferred, assigned, leased, mortgaged, sublet or otherwise alienated or encumbered in any manner whatsoever.

21. **TERMINATION.** (a) This Lease may be terminated by Lessor or Lessee following at least thirty (30) days' prior written notice. (b) If Lessee fails to pay any amount when due or otherwise commits a material breach of the Lease and fails to cure such breach within five business days following Lessor's notice to Lessee of the breach, Lessor may immediately terminate the Lease without further notice. (c) If Lessee fails to vacate the Premises following the Lease's termination in accordance with clause (a) or (b), Lessee shall pay Lessor liquidated damages of \$200 for each day that Lessee continues to occupy or use the Premises following the termination date. (d) Such damages (1) are not a penalty, but rather are reasonable estimates of the losses that Lessor would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and (2) are Lessor's exclusive remedy for Lessee's failure to vacate the Premises following the Lease's termination.

22. **RIGHT TO RE-ENTER AND ASSUME POSSESSION.** Lessor reserves the right and Lessee agrees that, upon its breach of the Lease or the Lease's termination under paragraph 21 above, Lessor may without necessity of court action, enter upon and administratively take possession of the Premises from Lessee.

23. **REMOVAL OF PERSONAL PROPERTY.** (a) If any of Lessee's personal property remains on or at the Premises following the Lease's termination and Lessee fails to remove such property within 10 days after Lessor's written notice to Lessee of the presence of such property on the Premises, then Lessor may remove such property from the Premises and either deem the property abandoned or dispose of the property or place the property in storage. (b) Lessee shall bear all costs and expenses for such disposal, removal, or storage and indemnify Lessor against any costs or expenses incurred by it for such disposal, removal, or storage. (c) Clause (b) shall survive the termination of the Lease.

24. **COURT COSTS AND ATTORNEY'S FEES.** Lessee shall pay any and all court costs and attorney's fees incurred or paid by the Lessor in collecting any damages, charges, penalties due from or payable by the Lessee under the Lease in removing from the Premises the Lessee and any improvements or additions constructed or installed thereon, or in recovering damages or losses caused by Lessee's breach of the Lease, or in the collection of delinquent payments due under the Lease.

25. **INTERPRETATION.** The use of any gender shall include all genders, the use of the singular shall include the plural and the use of the plural shall include the singular, as the context may require.

26. **PARTIAL INVALIDITY.** The invalidity, illegality, or unenforceability of any part of the Lease shall not affect or impair the validity, legality, or enforceability of the remainder.



27. **TIME OF THE ESSENCE.** Time is of the essence as to all obligations to be performed promptly or by or at a specified time under the Lease.

28. **CONFLICTING TERMS AND CONDITIONS.** In any conflict between the foregoing terms of this exhibit and the terms of paragraph 29 below, priority shall be given to the latter terms.

29. **SPECIAL CONDITIONS.**

- a. Lessee shall maintain the Premises in a clean and orderly manner and shall remove any rubbish or debris on the premises or surrounding area.
- b. Lessee acknowledges that the Premises are a portion of a larger parcel that shall be leased to other tenants. Lessee shall not interfere with other tenants' use and enjoyment of their premises including but not limited to ingress/egress.
- c. During the term of this Lease, Lessee shall eradicate vegetation growth on the Premises and along outside perimeter of fence line, and shall immediately remove graffiti on fences, signs, posts, and on property boundary markers.
- d. Lessee acknowledges that it may be required to relocate its property from the Premises to another location in order to accommodate other tenants' needs, construction activity, etc. Lessee shall cooperate with Lessor on any such relocation by moving, at Lessee's own expense, all of its property from the Premises within seven business days after receipt of written notice from Lessor to relocate such property. Lessee may terminate the Lease at any time within seven days after receipt of such notice by written notice to Lessor of such termination.
- e. Lessee shall allow Lessor, its agents, contractors, invitees and prospective tenants reasonable access to the Premises to perform due diligence studies including, but not limited to environmental testing.
- f. Lessee shall furnish any locks and chains (if needed) for gates. Lessee shall provide to Lessor a copy of each key or the combination required to open each such lock. For shared lots, Lessee shall utilize the daisy-chain method (i.e. lock to lock).
- g. Lessee shall exchange telephone contact numbers and other appropriate contact information with other tenants in a shared lot and shall coordinate directly with other tenants in a lot whenever locks are not daisy-chained. Lessee shall report incidents of exit and entry problems related to neighboring tenants to Lessor.
- h. Lessee acknowledges that the Premises' soil has environmental contamination soil and shall not disturb or penetrate the soil nor allow customers or invitees onto the Premises.

30. **COUNTERPARTS; FACSIMILE SIGNATURES.** The Lease may be executed in several duplicate counterparts. Such counterparts, when executed, shall constitute a single agreement. Any Party may execute and deliver the Lease by signing the signature page and electronically transmitting a facsimile thereof.

HCDA Standard Revocable Lease as of 12/08