

**ENHANCED – USE LEASE**  
**of Certain Real Property and Buildings**  
**Located at the Former Barbers Point Naval Air Station**  
**in Oahu, Hawaii**

This **Enhanced-Use Lease** (hereinafter referred to as the "Lease"), is made and entered into this the 17 day of MARCH, 2003, ~~2002~~, by and between the Secretary of Veterans Affairs, an officer of the United States on behalf of the Department of Veterans Affairs ("Department" or "VA"), and Cloudbreak Hawaii, LLC, a Hawaii limited liability company, ("Cloudbreak") for the property described in **Exhibit A** (hereinafter referred to as the "Property"), and subject to Article 24 of this Lease;

**RECITALS**

WHEREAS, the Department has jurisdiction and control of certain real property and buildings at the former Barber's Point Naval Air Station in Oahu, Hawaii, which provides health care services and other benefits to the nation's veterans. The Property subject to this Lease is approximately 6 acres, including three existing barracks buildings totaling 65,963 square feet, and is more fully described in **Exhibit "A"**; and

WHEREAS, 38 U.S.C. Section 8161, et seq., "Enhanced-Use Leases of Real Property," permits the Department to enter into long-term Leases of certain property under its jurisdiction and control; and

WHEREAS, Cloudbreak desires to construct a Transitional Housing Facility of not less than 118 beds (also referred to as "the Facility") for the purpose of providing Transitional Housing for homeless veterans and non-veterans, and to be financially responsible for the construction, operation, and maintenance of the Facility; and

WHEREAS, a long-term use of the Property as a Transitional Housing Facility at the former Barbers Point Naval Air Station through an Enhanced-Use Lease, as authorized by the provisions of 38 U.S.C. Section 8161, et seq., by Cloudbreak would result in the availability of safe, decent, and affordable housing to the veteran homeless population and result in significant cost avoidance to the Department by reducing reliance on inpatient and domiciliary resources and permit more cost effective out-patient services. The cost reductions will permit more resources to be directed toward direct patient care.

NOW, THEREFORE IN CONSIDERATION OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED AND ACCEPTED, IT IS HEREBY AGREED THAT the Department grants to Cloudbreak a fifty (50) year Enhanced-Use Lease of that certain real property described in **Exhibit "A"** attached hereto and incorporated by reference herein, under its jurisdiction and control, subject to the terms and conditions set forth in this Lease.

## ARTICLE 1 - DEFINITIONS

- A. "Ancillary Services" means services (i.e., food, laundry, housekeeping, pest control, utilities, etc.), other than rent, that Cloudbreak is monetarily responsible for paying under the lease.
- B. "Cloudbreak" or "Lessee" means Cloudbreak Hawaii, LLC, a Hawaii Limited Liability Company, or its successors or assigns under Articles 17 and 18 of this Lease.
- C. "Commencement of Occupancy" means the date of actual physical occupancy by a tenant for the first unit of the Facility.
- D. "Congress" means the Congress of the United States of America.
- E. "Commencement of Construction" means the date that Cloudbreak, its construction contractor, any subcontractor, or builder associated with the Project commences any reasonable act (i.e., groundbreaking, erection, etc.) on the Property aimed at, or which effectively establishes, builds, erects, constructs, raises, develops, or furthers any portion of the Project's development, including any portion of the Project's subsurface region(s). Such Commencement of Construction shall occur by the Lessee no later than 365 days after the Effective Date, subject to extension of such Commencement of Construction by a period equal to the period of an event of Force Majeure.
- F. "Department" means the United States Department of Veterans Affairs.
- G. "Designated VA Representative" means the individual of the Department who is designated by the Department to act on matters of Lease administration but does not possess the authority to execute amendments or modifications to the Lease and/or its Exhibits unless the individual then has or acquires such designated authority through a written Delegation of Authority from the Secretary.
- H. "Effective Date" means the date this Lease is executed by both parties.
- I. "Facility" means a development of not less than 118 beds of Transitional Housing and supportive service space, including community cooking and eating facilities, management, counseling, training, and recreational space for homeless veterans and non-veterans.
- J. "Force Majeure" means any of the following that directly cause any of Lessee's obligations hereunder not to be performed in a timely manner: (i) an earthquake, hurricane, tornado, flood, or other similar act of God; (ii) fire; (iii) strikes or similar labor disputes provided such strike or similar dispute is beyond Lessee's control and provided Lessee takes all steps reasonably possible to remediate such strike or similar dispute; (iv) acts of the public enemy; (v) inability to obtain labor or materials or clear access to the Project by reason of acts or omissions of any governmental body not

caused by Lessee's actions or omissions; (vi) rebellions, riots, insurrections or civil unrest; (vii) unusually severe weather conditions that actually cause similar construction or development activities in the area of the Project to be suspended; or (viii) an unknown environmental hazard or unknown hazardous substance (i.e., unknown to Lessee) affecting the Property.

K. "Gross Revenues" means any and all monies that Cloudbreak receives or collects over an identified period of time, in accordance with its operation and management of the Facility, including without limitation subleases permitted by Article 17 and any item of real or personal property, or service given or exchanged for the use of the Property or any part thereof.

L. "Improvements" means any renovations, construction, or rehabilitation of the Facility as defined in the Development Plan that the Lessee will provide to the Department in accordance with Article 9 of this Lease.

M. "Lease" means this Enhanced-Use Lease between the Department and Cloudbreak.

N. "Lease-Up" means the date on which the first referred tenant becomes a resident in the Facility.

O. "Leasing Agent" means the individual authorized to act in behalf of the Department for the purposes of this Lease.

P. "Project" means the development and operation of a Transitional Housing Facility consisting of not less than 118 beds at the Property (as defined below) in Oahu, Hawaii for purposes of providing Transitional Housing beds to homeless veterans and non-veterans.

Q. "Property" means that certain real property of approximately 6 acres, including three existing barracks buildings totaling 65,963 square feet, more fully described in **Exhibit "A"**, and all of the buildings, improvements, facilities, structures, utility systems, or other fixtures or improvements which are constructed, erected or placed on the Property.

R. "Secretary" means the Secretary of Veterans Affairs or the individual delegated to act for and on his/her behalf.

S. "Total Development Cost" means the total cost that Cloudbreak, its parent company, partners, affiliates, or subsidiaries, incurred in development and construction of the Facility, not including any capital grant monies that the Department issued to Cloudbreak, its parent company, partners, affiliates, or subsidiaries for such development and construction of the Facility.

T. "Transitional Housing" means "case managed" (i.e., through VA's social services program(s) or some other program administered by Cloudbreak) housing

term continuum of care designed to meet his or her housing needs.

U. "VAM&ROC" means the Spark M. Matsunaga VA Medical and Regional Office Center, in Honolulu, Hawaii, or successor thereto.

## **ARTICLE 2 - TERM**

The term of this Lease shall be for fifty (50) years, commencing on the Effective Date of this Lease.

## **ARTICLE 3 – PROPERTY TO BE LEASED TO CLOUDBREAK**

The Property subject to this Lease shall constitute all real property, facilities, buildings, structures, utility systems, fixtures, or other Improvements located on the parcel of land described in **Exhibit "A."**

## **ARTICLE 4 – OPERATIONS AND CONSIDERATION**

It is the understanding of both parties that Cloudbreak is undertaking this Lease to achieve public interest objectives that are mutually beneficial, namely to:

A. Improve the availability of Transitional Housing and support services for homeless veterans and non-veterans in Oahu, Hawaii; and

B. Assure through a community-based effort that veterans and non-veterans have access to safe, decent and affordable Transitional Housing in Oahu, Hawaii.

Accordingly, in consideration of the rights, benefits, and privileges accruing to Cloudbreak resulting from this Lease, all exhibits thereto, and of its use of the Property, Cloudbreak agrees to undertake and complete certain actions and activities and provide the following consideration, all of which shall constitute fair consideration for this Lease:

1. Cloudbreak, at its sole cost and responsibility, and at no cost or liability to the Department, shall finance, develop, construct, and manage the Facility according to state and local codes, VA requirements, and this Lease. In doing so, Cloudbreak shall obtain and maintain appropriate performance bonds, maintenance reserves, and insurance to ensure completion and satisfactory operation of the Facility.

2. Cloudbreak shall, on the Effective Date of this Lease, be solely responsible for any and all costs associated with the demolition and removal of all materials, including hazardous waste, and any structures on the Property, that are necessary for Cloudbreak to undertake the development, construction, operation, and management of the Facility in accordance with the terms of this Lease.

3. Cloudbreak shall be solely responsible for any and all repairs and maintenance of the Property and the Facility in accordance with ARTICLES 9 and 11 of this Lease.

4. Cloudbreak, at its own cost, shall be responsible for securing any and all necessary permits necessary for its financing, development, construction, operation, and management of the Facility, and shall commencing on the first day of "Lease Up," establish and maintain a Funded Maintenance Account (the "Funded Maintenance Account") in an interest-bearing account in a financial institution approved by the Department, as discussed in Article 11, Section (B)(2) of this Lease.

5. Cloudbreak shall, throughout the term of the Lease, give first priority for occupancy of all 118 or more beds at the Facility to veterans or residents referred to Cloudbreak by the VAM&ROC.

6. Cloudbreak shall ensure that the Facility is at all times operated and managed as a drug-free environment, will promptly notify the Department if a violation of such operation and/or management occurs, and will take all reasonable and appropriate action(s) to address and resolve such violations.

7. Rent to VA: Beginning on the first day of the month following 730 calendar days after the Effective Date of this Lease, and then on the first day of every subsequent month throughout the term of this Lease, Cloudbreak shall pay rent to the VAM&ROC ("Rent"). Such Rent shall be equal to two percent (2%) of all Gross Revenues that Cloudbreak received for the prior month.

8. Payment to VA for Ancillary Services: From and after the Effective Date, Cloudbreak shall be responsible for and shall reimburse the Department for any and all Ancillary Services that the Department provides to Cloudbreak as Cloudbreak finances, develops, constructs, operates, and manages the Facility. Such costs for Ancillary Services shall be paid in arrears by Cloudbreak (on the fifteenth day of every month), following the receipt of a Bill of Collections (issued on the fifth day of every month) from the Department, detailing the services provided, and the respective cost for those services during the previous month. The Department's charges to Cloudbreak for such services shall only be based upon actual usage and reflect the actual cost thereof to the Department. The Department reserves the right to annually adjust any or all of the Ancillary Services costs owed by Cloudbreak to VA, with the first adjustment starting one year after Commencement of Occupancy, so that such Ancillary Services encompass inflation (CPI) and other actual cost increases to the Department for those services.

9. Grant Recapture Contingency: Subject at all times to Article 17 of this Lease, if:

(i) Cloudbreak refinances its leasehold debt and takes out cash, or sells, assigns or otherwise transfers its leasehold interest to a sub-lessee for cash, or other valuable consideration and

(ii) the amount of such cash or the then present market value of the other valuable consideration exceeds Cloudbreak's Total Development Cost for the Facility, then, Cloudbreak shall, upon such refinancing, sale, or other transfer, pay VA the amount of any "Grant Recapture Contingency" payment determined as follows:

a. subtract (i) the Total Development Cost from (ii) the total amount of the refinancing, sale, or other transfer;

b. from the difference determined under clause "a," subtract for each full year (i.e., 365 days) that Cloudbreak fulfills its operation and management obligations under this Lease, starting from the Effective Date, a credit amount equal to ten percent (10%) of the difference determined under clause "a." Cloudbreak shall be entitled to such credit amount, and VA shall be entitled to the remainder which amount equals the Grant Recapture Contingency.

*Davis* 10. Cloudbreak shall provide to the Department secured office space on the Property of not less than 200 square feet having services, including electricity and telephone lines. The office space must be able to accommodate computers, facsimile and photocopying/reproduction machines. Cloudbreak shall provide janitorial services for the office space and access to restroom facilities for personnel in the Department who use the office space. Department personnel and clients shall also have access to a waiting area. Cloudbreak shall permit and accommodate access to the office space by veterans and other Department clients.

11. On or before the tenth day of January, April, July, and October, Cloudbreak shall submit a report of its activities for the three months preceding each report. At a minimum, the reports shall contain: (i) the names of each veteran screened by Cloudbreak during the period covered by each report, (ii) a rent roll of the property as of the end of each reporting period providing a list of tenants in occupancy at the property; (iii) the amount of Rent paid by each tenant; (iv) the 2% Rent amount payable by Cloudbreak to VA (per Article 4, Section (B)(7) above) for the period covered by each report; and (v) a signed, certified statement from Cloudbreak (at the end of the breakdown) certifying that the information and calculations contained therein to the best of Cloudbreak's knowledge is true, accurate, and complete under the penalty of perjury.

#### ARTICLE 5 – SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY

This Lease is subject to all existing easements and rights of way, whether or not recorded, for location of any type of facility/utility over, across, in, or upon the Property or any portion thereof, and to the right of the Department, upon consultation with Cloudbreak, to grant such additional easements or rights of way over, across, in, or upon the Property; provided that any such additional easements or rights of way shall not be inconsistent with Cloudbreak's quiet use and enjoyment of the Property under this Lease, and shall be conditioned on the assumption by the grantee thereof of liability to the Department and to Cloudbreak for such damages as the Department or

Cloudbreak shall suffer for property destroyed or property rendered unusable as a result of grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights of way as presently in existence, whether or not recorded, outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities/utilities located thereon, and to any Federal, State, or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Property as shall be necessary for the performance of their duties with regard to such facilities/utilities.

## ARTICLE 6 – REPRESENTATIONS AND COMMITMENTS

A. Cloudbreak and the Department hereby represent, warrant, and covenant that:

1. Each party has complied with all applicable laws and requirements in connection with the execution, delivery, and performance of this Lease; and

2. Each party is duly authorized to execute and deliver this Lease; and

3. This Lease constitutes a legal, valid, and binding obligation of each party, enforceable in accordance with its terms subject to equitable principles, which could affect specific performance.

4. Upon execution of this Lease, the July 21, 2000, Revocable License between VA and Cloudbreak Hawaii, LLC, affecting Buildings 34, 37 and 1772 on Lot 13063-C and Lot 13063-E, attached hereto as **Exhibit B**, is hereby immediately terminated in its entirety.

B. Cloudbreak acknowledges and agrees that:

1. Cloudbreak shall secure financing for the development, construction, operation and management of the Facility and substantially complete the Improvements within 365 days after the Effective Date, subject to extension of such completion date solely by VA's discretion or by a period equal to the period of an event of Force Majeure; and

2. Cloudbreak has inspected the Property, is fully familiar with the physical condition of the Property and accepts all of such Property "as is;" and

3. The Department has made no representations or warranties concerning the condition of the Property, the fitness or suitability for any particular use or access to the Property and the Department shall not be liable for any latent or patent defect in such Property, nor has it agreed to alter, improve or maintain such Property; and

4. No change, revision, modification, or amendment will be made to the Lease except as provided in this Lease; and

5. Cloudbreak will at a minimum, within sixty (60) days after the close of each respective annual fiscal year on which it operates, provide the Department with its financial statement, annual report, and any related financial disclosure documents, which in each instance shall have already been reviewed and certified according to "Generally Accepted Accounting Principles" by a licensed, independent auditor then in good standing so the Department can review them to ensure that Cloudbreak is not undergoing, or about to undergo, an adverse financial condition or circumstance which would negatively impact its ability to perform its Lease obligations. Additionally, Cloudbreak agrees that it will immediately contact the Department telephonically and in writing if a material adverse change to its financial condition occurs.

C. The Department acknowledges and agrees that:

In conjunction with and subject to the terms of this Lease, Cloudbreak and its sub-lessees and assigns shall be permitted all reasonable rights to peacefully hold and enjoy the Property and to ingress and egress, without unreasonable interruption from the Department or any other person or persons lawfully claiming by or through it. Upon payment by Lessee of the rents as aforesaid and upon observance and performance of the covenants and conditions of this Lease by Cloudbreak, Cloudbreak shall peacefully hold and enjoy the Property for the term hereof without hindrance or interruption by the Department or any other person(s) lawfully claiming by, through, or under it, except to which this Lease is made subject in accordance with Article 18.

#### **ARTICLE 7 - USE**

Cloudbreak may use the Property for the purposes stated in the Preamble Recitals to finance, develop, construct, operate, and manage a Transitional Housing Facility of not less than 118 beds. No other uses shall be permitted for the Property without the prior written approval and determination of the Secretary of the Department of Veterans Affairs as set forth in 38 U.S.C. Section 8161, et seq.

#### **ARTICLE 8 – DISPOSAL OF PROPERTY TO CLOUDBREAK**

Should at any time during the term of this Lease or immediately at the end of the term of this Lease, if the Department determines that the Property is no longer needed by the Department, the Department may seek to dispose of the Property to Cloudbreak pursuant to the provisions of 38 U.S.C. Section 8164. If such a determination is made by the Department, Cloudbreak shall have the right to make the first offer to acquire the Property.

## ARTICLE 9 – CLOUDBREAK IMPROVEMENTS OR CONSTRUCTION ON THE PROPERTY

A. **IMPROVEMENTS:** Cloudbreak, at its sole expense, will commence and complete the design, development, renovation and/or construction of the Facility in accordance with a written "Development Plan" (which Cloudbreak will complete and provide to the Designated VA Representative for reasonable review and approval no later than sixty (60) days before the Commencement of Construction, and which by this reference is made a part of this Lease). Such approval (of the Plan) must be received from the Department to Cloudbreak prior to the Commencement of Construction. All construction activities relating to or impacting the use or connections for electricity, water, steam, sewer services, roadways, or pedestrian walkways, shall be coordinated in advance with the Designated VA Representative. Any damage to existing structures, facilities, or utilities which results from Project construction activities shall be the sole responsibility of Cloudbreak, and any affected structures, facilities, or utilities shall be immediately repaired or replaced in a manner acceptable to the Department.

Lessee shall not enter into any contract or agreement with any city, county, or any governmental agency or body or public utility with reference to sewer lines or connections, water lines, or connections, street improvements, including but not limited to curbs, gutters, parkways, and street lighting, or utility connections, lines or easements without the prior written consent of the Department (where such consent shall not be unreasonably withheld). The Department shall approve or disapprove of any proposed contract or agreement within thirty (30) business days after the date of submission thereof by Lessee. The Department's failure to respond within such thirty (30) business days shall be a deemed approval.

B. **CONSTRUCTION DOCUMENTS:** Cloudbreak agrees that prior to undertaking construction of the Facility and for any subsequent construction on the Property where the cost exceeds **TWO HUNDRED THOUSAND DOLLARS** (\$200,000.00), it will provide the Designated VA Representative with a complete copy of all construction documents at least thirty (30) working days prior to undertaking such construction.

1. **DOCUMENT REVIEW AND APPROVAL:** The Department's comments on the construction documents submitted will be returned to Cloudbreak within thirty (30) business days of receipt by the Designated VA Representative of the submitted material.

2. The Department shall have the right to reject any design that varies from the permitted uses or would adversely affect the Department's use and occupancy of Department-controlled space or land adjacent to the property. In such instance, the Department shall, along with its objection, provide a detailed explanation of the reasons for rejection of design. Unless the Department objects to the submitted material within such time period, approval shall be deemed duly granted. Lessee shall then respond to the Department within ten (10) business days and identify specifically how it proposes to address each of the Department's objections. The Department shall then respond to

Lessee within ten (10) business days, and if the Department shall continue to have objections, the Department shall again specify those objections, and the parties shall work together to expeditiously reach an agreed set of plans and specifications.

D. **ACCESS TO PROJECT SITE:** Cloudbreak agrees to permit the Department representatives, agents and employees access to and right of entry onto the Property before, during and after construction undertaken pursuant to this ARTICLE for the purposes of monitoring, observing, and making inquiries in order for the Department to determine compliance with this Lease. It is understood by the parties that such activity does not relieve Cloudbreak of its responsibility for managing any on-site construction.

E. **AS-BUILT DRAWINGS:** Upon completion of any construction, Cloudbreak shall provide to the Department's designated representative one complete set of reproducible drawings (all disciplines) illustrating the original and the then-current configuration of the improved Facility. The as-built drawings will incorporate all significant changes made over the life of the facility. The title block shall be dated and entitled as "As-Built Drawings."

F. **MECHANICS AND LABOR LIENS:** Cloudbreak agrees that Cloudbreak will not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens to stand against the Property for work or materials furnished to Cloudbreak or Cloudbreak's sub-lessees in connection with any construction, Improvements, or maintenance or repair thereof made by Cloudbreak or any agents of sub-lessees of Cloudbreak upon the Property. Cloudbreak shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof, provided, however, that in the event Cloudbreak, in good faith, disputes the validity or amount of any such claim of lien, and if Cloudbreak shall give to the Department such security as the Department may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Cloudbreak shall not be deemed to be in breach of this requirement so long as Cloudbreak is diligently pursuing a resolution of such dispute with continuity and, if litigation or arbitration results therefrom, discharges said lien within the time limits specified above, upon entry of final judgment resolving the dispute.

#### ARTICLE 10 – GENERAL MAINTENANCE OBLIGATION

A. Cloudbreak, at its own expense, shall at all times protect, preserve, maintain, and repair the Property, and shall keep same in good order and condition. All structures, landscaping and grounds shall be maintained to a standard, which is comparable to and consistent with industry standards for a like-kind facility. Cloudbreak shall at all times exercise due diligence in the protection of the Property against damage or destruction by fire or other causes. The Property shall at all times be maintained in a tenantable, safe, and sanitary condition.

B. Such maintenance and repair includes, but is not limited to, interior and exterior care and periodic refurbishment of the building, care of all sidewalks, grounds, parking areas, driveways, access roads, lawns and shrubbery; including all repairs and replacements. All equipment and systems shall be maintained to provide reliable service without unusual interruption, disturbing noises, exposure to fire or safety hazards, and without emissions of dirt. All maintenance work will be done in accordance with applicable codes, and inspection certificates will be displayed as appropriate. Cloudbreak shall provide the labor, material, and supervision to adequately maintain the structure, roof, interior and exterior walls, windows, doors and any other necessary building appurtenances to provide watertight integrity, structural soundness, acceptable appearance, and continuing usability. Cloudbreak shall make all capital repairs, alterations, and replacement as necessary to maintain the usable condition of the Property throughout the term of this Lease.

## **ARTICLE 11 - OCCUPANCY PROVISIONS**

### **A. UTILITIES, RATES, CHARGES, TAXES, AND ASSESSMENTS:**

Cloudbreak shall be responsible for operation and maintenance of all infrastructure and/or distribution lines, connections, meters, taps, etc. required to provide water, gas, electric current, oil or other forms of power, fuel or utility to the Property. Cloudbreak will pay any applicable deposits and hookup fees relative to utilities (water-tap fee, water connection fee, sewer connection fee, and sewer tap fee). Cloudbreak shall ensure that public utilities necessary for the operation of the Property and required in accordance with local codes are available and operable at the site at the time of final inspections.

### **B. MAINTENANCE, REPAIR, CAPITAL REPAIR AND OPERATION OF THE FACILITY; FUNDED MAINTENANCE ACCOUNT:**

1. Cloudbreak is solely responsible for operation of the Facility and for all maintenance, repair (including capital repair and replacement), and for the operation of the Facility and the Property as set forth in the "Maintenance and Operation Plan." Cloudbreak shall prepare and provide the Department with the Maintenance and Operation Plan within one hundred fifty (150) days after the execution of this Lease. Such Maintenance and Operation Plan shall be subject to the Department's review, approval, and final acceptance, which review, approval, or final acceptance shall not be unreasonably withheld, delayed, conditioned, or denied. The Department shall provide Cloudbreak with such final acceptance in writing. The Department, however, reserves the right to unilaterally amend any provisions of the Maintenance and Operation Plan which it deems to be in violation of 38 U.S.C. Section 8161, et seq., or which is contrary to the Department's mission, activities, land use plans at the VAMC, or which it reasonably deems to be outside of the intended scope of this Lease. Upon the Department's final acceptance, subsequent changes to such Maintenance and Operation Plan shall only be made by a written modification approved and executed by both the Department and Cloudbreak, or its assignee pursuant to Article 17 of this

Lease.

2. Commencing on the first day of "Lease Up," Cloudbreak shall establish and maintain a Funded Maintenance Account (the "Funded Maintenance Account") in an interest-bearing account in a financial institution approved by the Department. The Funded Maintenance Account shall be funded to the amount of \$.20 per square foot per annum for the current building area (65,963 sq. ft.) of the Facility located on the Parcel which is actually leased, except that Cloudbreak shall not be required to increase the Funded Maintenance Account to an amount in excess of \$65,963.00. This "amount in excess" ("Amount in Excess") will increase at the rate of \$1.00 per square foot of the building area for any new construction completed during the term of this Lease. This Amount in Excess will also be adjusted for inflation on the 10th, 20th, 30th and 40th anniversary dates of "Lease Up" based on a consumer price index applicable to the cost of building materials and construction labor. Cloudbreak shall deposit \$.20 per square foot per annum on the first day of "Lease Up" and on or before the anniversary date of "Lease Up" for each year thereafter if the Funded Maintenance Account is less than \$65,963.00 or other adjusted "amount in excess" before said anniversary date. The financial institution holding such account shall include the Department as a recipient of all account statements. The account shall be available for use by Cloudbreak to make necessary capital repairs and replacements to the Building and Related Improvements through-out the term of this Lease, including but not limited to repairs to, renovation of, or reconstruction of, the systems and structural elements of the Facility and its related improvements. Cloudbreak shall provide written notice to the Department in accordance with the terms of the Lease prior to using funds from the Funded Maintenance Account. It is understood that this account shall be available only for the use as provided herein and shall not be used or pledged as collateral for any other purpose. It is also understood that the establishment of the Funded Maintenance Account or its use does not in any manner limit Cloudbreak's responsibilities under this Lease and Cloudbreak remains responsible for any necessary costs in excess of the Funded Maintenance Account. Beginning on the 46th anniversary date of "Lease Up" and for each anniversary date of "Lease Up" thereafter until the termination of this Lease, the "amount in excess," adjusted for inflation on the 40th anniversary date of "Lease Up," shall be reduced by 20%. Upon termination of this Lease, Cloudbreak shall pay to the Department at the end of this Lease any balance remaining in the Funded Maintenance Account.

**C. HAZARDOUS SUBSTANCES:**

Cloudbreak shall be fully and completely liable to the Department for any and all clean-up costs, and any and all other charges, fees and penalties (criminal and civil) imposed by any governmental authority with respect to Cloudbreak's use, disposal, transportation, generation and/or sale of hazardous substances in or about the Property. Cloudbreak shall indemnify, defend and hold the Department harmless from any and all of the cost, fees, penalties, and charges assessed or imposed upon the Department as a result of Lessee's use, disposal, transportation, generation and/or sale of hazardous substances in or about the Property.

## ARTICLE 12 - INDEMNIFICATION BY CLOUDBREAK, GOVERNMENT NON-LIABILITY

A. Except for claims for damages or injuries resulting or arising from the negligent acts of its officers, agents or its employees, cognizable under the Federal Torts Claims Act, neither the United States nor the Department shall be responsible for damages to the property or for injuries to persons which may arise on the Property.

B. Cloudbreak further agrees to indemnify, save, hold harmless and defend the Department, its officers, agents and employees, from and against all claims, demands or actions, liabilities, judgment, cost and attorneys' fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of construction, possession, and/or use of the Property, or any services furnished by Cloudbreak in connection with or pursuant to this Lease.

## ARTICLE 13 - RISK OF LOSS AND INSURANCE

A. **ALL RISK:** Cloudbreak shall, in any event and without prejudice to any other rights of the Department, bear all risk of loss of or damage to the Property arising from any causes whatsoever, with or without fault, including, but not limited to, fire; lightning; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbances; malicious damage; or any other casualty or act of God to the fullest extent permitted by law. Cloudbreak, and any heir, executor, purchaser, administrator, transferee, successor, acquirer or assign (hereinafter collectively referred to as "Successor"), to the extent that this Lease is conveyed, transferred, assigned or sub-leased, shall maintain, at its own expense, an "All Risk" insurance policy against the risks enumerated above with a reputable insurance company of recognized responsibility. Such insurance shall be maintained at all times in an amount specified in this ARTICLE. Provided always, however, that Cloudbreak shall bear all risk of loss of or damage to such property for the entire term of the Lease for any work or other responsibilities required to be performed under the provisions of this Lease, except as otherwise provided for by the Federal Tort Claims Act.

In addition, Cloudbreak shall maintain at its sole expense, all that insurance further required in accordance with this ARTICLE. Maintenance of insurance required in accordance with this ARTICLE must include acts resulting from the willful misconduct, lack of good faith, or negligence of Cloudbreak or any of its officers, agents, servants, employees, subtenants, licensees or invitees or by any failure on the part of Cloudbreak to fully perform its obligations under this Lease. Maintenance of insurance required in accordance with this ARTICLE shall effect no limitation on Cloudbreak's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Cloudbreak or any of its officers, agents, servants, employees,

subtenants, licensees, or invitees or by any failure on the part of Cloudbreak to fully perform its obligations under this Lease.

Such insurance shall be maintained at all times in an amount as specified in this ARTICLE. Provided always, however, that Cloudbreak shall bear all risk of loss of or damage to such property for the entire term of this Lease for any work or other responsibilities required to be performed under the provisions of this Lease, except as otherwise provided for by law. Failure to maintain insurance required in accordance with this ARTICLE that stems from the willful misconduct, lack of good faith or negligence of Cloudbreak or any of its officers, agents, servants, employees, subtenants, licensees or invitees shall be cause to terminate this Lease.

**B. INSURANCE:**

1. **CLOUDBREAK INSURANCE:** Cloudbreak, at its expense, shall carry and maintain the following insurance during the term of this Lease:

a. All-risk property and casualty insurance against the risks enumerated in Paragraph A herein in an amount at all times equal to at least 90% of the full replacement value of the Improvements to the Property as specified above;

b. Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this Lease, of not less than one million dollars (\$1,000,000.00) in the event of bodily injury and death to any number of persons in any one accident, and not less than one million dollars (\$1,000,000.00) for property damage;

c. Workers' compensation or similar insurance in form and amounts required by law;

d. All other types of insurance imposed by applicable legal requirements or customarily carried and maintained by owners and operators of similar properties, and as the Department may reasonably require for its protection.

2. **CLOUDBREAK'S CONTRACTOR'S INSURANCE:** During the entire period that this Lease shall be in effect, Cloudbreak shall require any contractor performing work on the Property to carry and maintain at no expense to the Department the following insurance:

a. Comprehensive general liability insurance, including but not limited to, contractor's liability coverage and contractual liability coverage, of at least one million dollars (\$1,000,000.00) with respect to personal injury or death, and one million dollars (\$1,000,000.00) with respect to property damage;

b. Workers' compensation or similar insurance in form and amounts required by law; and

c. Any other insurance as the Department may reasonably require in order to protect itself and its personnel in the discharge of its duties and obligations hereunder.

3. **POLICY PROVISIONS:** All insurance, which this Lease requires Cloudbreak to carry and maintain or cause to be carried or maintained pursuant to this Paragraph B, shall be in such forms, for such amounts, for such periods of time, and with such insurers as the VAM&ROC shall approve. All policies or certificates issued by the respective insurers for public liability and all-risk property insurance will name the Department and Cloudbreak as insured or joint loss payees as their respective interests appear, and shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Department, Cloudbreak, or any other person, provided that no cancellation, reduction in amount, or material change in coverage thereof shall be in effect until at least thirty (30) days after receipt of such notice by the Department. In no circumstances will Cloudbreak be entitled to assign to any third party any right of action Cloudbreak may have against the Department.

4. **DELIVERY OF POLICIES:** Cloudbreak shall deliver promptly to the Department a certificate of insurance or a certified copy of each policy of insurance required by this Lease and shall also deliver no later than ten (10) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with appropriate evidence of payment or the premiums thereof.

**C. LOSS OR DAMAGE:**

1. In the event that the Property, or any part thereof, is damaged by fire or by other casualty, whether or not such casualty is the fault of, or results from negligence of Cloudbreak, other than the results of negligence of the Department, its employees or agents, Cloudbreak will repair, restore, or rebuild the Property to its original condition by applying all insurance proceeds to payment of the cost of such repair, reconstruction or restoration within 120 days of the date of loss or damage. Any repairs or reconstruction shall be performed in accordance with plans and specifications approved by the Department.

2. If Cloudbreak refuses, or fails to repair, restore, or rebuild the Property or any part thereof so damaged or destroyed, to the satisfaction of the Department the Department shall, by 120 days' written notice to Cloudbreak, terminate this Lease. In such event, title to the Facility and any other Improvements placed on the Property shall vest in the Department without notice or further action being required on the Department's part, and the Department may undertake the rebuilding or restoration of the Facility and any other Improvements placed on the Property or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the work site necessary for completing the work. Cloudbreak and/or Bond Trustee and its sureties shall be liable for any damages or cost incurred by the Department to rebuild or restore the Facility and any other Improvements placed on the Property, or the damaged or destroyed portion thereof.

This liability includes any increased cost incurred by the Department in completing the work.

#### **ARTICLE 14 – RESTORATION AND SURRENDER**

A. Unless the Property is disposed of to Cloudbreak in accordance with ARTICLE 8, Cloudbreak shall vacate the Property and remove any personal property of Cloudbreak therefrom on or before the expiration or termination of this Lease. If Cloudbreak shall fail, refuse or neglect to remove such personal property, then upon the expiration or termination of this Lease such personal property shall, at the option of the Department, either become the property of the Department without compensation therefore, or the Department may cause it to be removed and/or destroyed at the expense of Cloudbreak, and no claim for damages against the Department, its officers or agents shall be created or made by or on account of such removal and/or destruction.

B. Unless the Property is disposed of to Cloudbreak in accordance with ARTICLE 8, Cloudbreak upon expiration or termination of this Lease, shall terminate its operations of the Property and vacate and surrender the possession thereof to The Department. Title to all Improvements situated upon the Property shall thereupon immediately vest in the Department without compensation thereafter. During the period prior to surrender, all obligations assumed by Cloudbreak under this Lease shall remain in full force and effect. No claim for damages against the Department or its officers or agents shall be created or made on account of such expiration or termination of this Lease and the Department's actions pursuant to this ARTICLE.

#### **ARTICLE 15 - BONDS OF SECURITY**

Before beginning any construction of more than \$100,000.00 on the Property, Cloudbreak shall furnish evidence of a Payment Bond between Cloudbreak and the construction contractor, with a sum equal to one hundred percent (100%) of Cloudbreak's total costs of construction. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety of Federal bonds will be accepted. The United States of America, acting through the Secretary of the Department of Veterans Affairs, shall be named as co-beneficiary on all Payment Bonds (including subcontract bonds) obtained by Cloudbreak. The Department shall have the right to approve or reject any and all terms and conditions of any and all bonds obtained by Cloudbreak pursuant to this Lease. In addition, the terms and conditions of the Payment Bond shall be subject to the prior approval of the Department.

## ARTICLE 16 - NOTICES

All notices, or other correspondence required under or arising from the terms of this Lease from the Department to Cloudbreak, shall be served on or mailed to Cloudbreak's designated representative who shall notify the Department's designated representative in writing of any change in that party's designated representative, and/or the address or office to be notified. All notices or other correspondence required or arising from the terms of this Lease from Cloudbreak to the Department shall be served on or mailed to the Department's designated representative who shall notify Cloudbreak's designated representative in writing of any change in that party's designated representative, and/or the office to be notified. The designated representative shall be:

Department: Director, Office of Asset Enterprise Management (004B)  
Department of Veterans Affairs  
810 Vermont Avenue, N.W., Washington, D.C. 20420  
Phone (202) 273-9702  
Fax (202) 273-5585

With a copy to: Spark M. Matsunaga VA Medical And Regional Office Center  
Attn: Richard Velasquez (Homeless Coordinator)  
459 Patterson Road  
Honolulu, HI 96819  
Phone (808) 433-0335  
Fax (808) 433-0321

Cloudbreak: Cloudbreak Hawaii, LLC  
Attn: Randall A. Bishop, Chief Financial Officer  
733 South Hindry Avenue  
Inglewood, CA 90301-3005  
Fax (310) 568-9100

For purposes of complying with this ARTICLE, the parties hereby acknowledge and agree that notices issued to the other parties' designated representative(s) via phone and/or facsimile do not constitute proper or sufficient notice.

## ARTICLE 17 - ASSIGNMENT AND SUBLETTING

A. Cloudbreak may not convey, transfer or assign this Lease or any interest therein, or in the Property, or grant an interest, privilege or license in connection with this Lease, except as permitted in this ARTICLE and Articles 7 and 18 of this Lease.

B. Nothing contained in any assignment, purchase, or mortgage under this Lease shall release or be deemed to relieve Cloudbreak from full and faithful observance and performance of its covenants contained in this Lease or from any

liability for the nonobservance or nonperformance thereof. Furthermore, unless otherwise expressly stated in this Article: (i) all of the covenants, conditions, obligations and liabilities contained in this Lease shall be binding upon and inure to the benefit of any successors and assigns of the lender (and any Leasehold Mortgagee as defined in Article 18 B) to the same extent as if the successors and assigns were in each case named as a party to this Lease and (ii) all of the covenants, conditions, obligations and liabilities contained in this ARTICLE are expressly subject to Article 18 B of this Lease.

C. In addition, subject to Article 4, Section B.5 of this Lease and clauses (i) and (ii) of this Section, Cloudbreak may sublease dwelling units in the Facility to residential tenants in accordance with the provisions of ARTICLE 4 and ARTICLE 7 of this Lease, as well as to individuals and organizations that are providing support and services directly in furtherance of providing transitional housing to homeless veterans ("Cloudbreak's Mission").

(i) Any such permitted subleases to individuals and organizations providing support and services directly in furtherance of Cloudbreak's Mission shall in no instance be for more than twenty-five percent (25%) of the 118 or more beds developed under the Project, unless the number of homeless veterans available for such housing is insufficient to occupy the remaining seventy-five percent (75%) of the dwelling units.

(ii) To the extent such dwelling units are vacant for a period not less than thirty (30) days for want of available homeless veterans, Cloudbreak shall be permitted to sublease vacant dwelling units to individuals and organizations in the following order of priority for a term not to exceed six (6) months, or such longer period as may be approved in writing by VA, which approval shall not be unreasonably withheld: (a) first, to veterans that are not homeless who are certified and/or referred to Cloudbreak by VA, (b) second, to homeless individuals that are not veterans, and (c) third, to individuals and organizations directly providing support and services in furtherance of Cloudbreak's mission. At the end of any such aforementioned six (6) month term (or longer if VA's approves in writing), Cloudbreak shall immediately use its reasonably best efforts (and shall seek referrals from the Department) to fill such dwelling units with homeless veterans.

## **ARTICLE 18 - ENCUMBRANCE OF THE PROPERTY**

### **A. PROHIBITION AGAINST ENCUMBRANCE OF THE PROPERTY:**

1. Nothing contained in this Lease shall be construed as authorizing the Lessee or lender (or any Leasehold Mortgagee as defined in section B below) to encumber the fee simple interest of the United States or VA's reversionary rights with respect to the Property, or any Improvements thereon, in any manner whatsoever, except that the Lessee may assign, pledge and/or hypothecate its rights hereunder provided in Section B of this ARTICLE. Such fee and reversionary interest with respect to the Property and any Improvements thereon shall not be subordinated or otherwise made subject to any deed of trust, mortgage, or other lien or encumbrance granted,

suffered or permitted by the Lessee with respect to the Property and/or the Improvements.

2. Except as provided herein, the Lessee covenants that it shall not: (i) engage in any financing or other transaction creating any mortgage upon the Property and/or the Improvements; (ii) place or suffer to be placed upon the Property and/or the Improvements any lien or other encumbrance; or (iii) suffer any levy or attachment to be made on the Lessee's leasehold interest in the Property and/or the Improvements, other than such levy or attachment as may result from a foreclosure of a mortgage, lien or encumbrance permitted by this ARTICLE. Any mortgage, lien or encumbrance which is not permitted by this ARTICLE shall be deemed to be a violation of this covenant and an event of default in accordance with the provisions of Articles 20 and 21 of this Lease on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless said mortgage, lien or encumbrance is removed within five (5) days after the Lessee receives written notice of the execution or filing of such mortgage, lien or encumbrance.

**B. ENCUMBERING CLOUDBREAK'S LEASEHOLD INTEREST FOR FINANCING:**

1. During the term of this Lease, the Lessee may encumber its leasehold interest in the Property and the Improvements by a mortgage, lien or other encumbrance provided that the lender (and any Leasehold Mortgagee as defined by this subsection) under such mortgage, lien or other encumbrance is a bank or other nationally recognized financial institution authorized to do business in the United States of America or otherwise approved by VA, such approval not to be unreasonably withheld, conditioned or delayed. The holder of any such mortgage, lien or encumbrance shall be referred to herein as the "Leasehold Mortgagee" and the transaction under which such mortgage, lien or encumbrance is given is referred to herein as the "Financing." Copies of all loan documents associated with the Financing shall be provided to VA.

2. Subject to the provisions contained in this Lease, during the first five (5) years of operation, Cloudbreak may encumber its leasehold interest only to the extent necessary to provide financing, as provided herein, for the costs of construction, operation, and maintenance of the Property as specified in this Lease (and may sublet dwelling units in the Facility pursuant to Article 17 of this Lease.

3. No loan or financing involving a security interest in Cloudbreak's leasehold may be closed until the Department has approved (in writing to Cloudbreak) the amount and purpose of financing. Accordingly, Cloudbreak shall provide the Department with all loan and financing documents, and a notice indicating the amount and purpose of any financing for its review and written approval (and such approval shall not be unreasonably withheld), no later than thirty (30) days prior to any scheduled closing date for the financing. Furthermore, Cloudbreak will provide to the Department, within thirty (30) days subsequent to any closing, copies of all loan documents and other documents establishing the security interest(s).

4. The Financing may be further secured by a conditional assignment of this Lease by the Lessee to the Leasehold Mortgagee. Pursuant to Article 18 G of this Lease, VA, if requested, agrees to execute an estoppel certificate or any similar documentation as may reasonably be requested by the Leasehold Mortgagee for the purpose of consenting to the Lessee's conditional assignment of this Lease and certifying as to the status of this Lease and to the performance by the Lessee of its duties and obligations hereunder as of the date of such certification. The Lessee's duties and obligations under this Lease incurred prior to the date of foreclosure shall survive the termination of this Lease.

5. Promptly after assigning this Lease or encumbering the Property or the Improvements as provided herein, the Lessee shall furnish VA with a written notice setting forth the name and address of such Leasehold Mortgagee. Further, the Lessee shall notify VA promptly of any lien or encumbrance which has been created or attached to the Property or the Improvements or to the Lessee's leasehold interest in the Property or the Improvements, whether by act of the Lessee or otherwise, of which the Lessee itself has notice.

6. If a Leasehold Mortgagee or purchaser at a foreclosure sale shall acquire the Lessee's Leasehold Estate, this Lease shall continue in full force and effect for its entire fifty (50) year term notwithstanding any obligation created in connection with such Financing and secured by such Leasehold Mortgage or purchaser and such Leasehold Mortgagee or purchaser shall be fully bound by the provisions of this Lease (except to the extent that any unperformed obligations of Lessee at the time of foreclosure are personal in nature and incapable of being performed by the Leasehold Mortgagee or such purchaser).

7. Following the Department's written approval of any loan or financing permitted by Section B of this ARTICLE, there shall be no cancellation, surrender and/or modification of such loan or financing documents which substantially affects the Lease terms and/or the Department's rights without the Department's prior review and its providing of written approval to Cloudbreak and the lender, or any of their Successors, and such written approval shall not be unreasonably withheld.

**C. DISCHARGE:**

If a lien, claim, demand or encumbrance (other than an encumbrance permitted under Article 18 B.1) is placed upon Cloudbreak's leasehold interest, Cloudbreak shall initiate appropriate action to quiet any such claim not later than thirty (30) days prior to the expiration or termination of this Lease. Any expenses incurred by the Department as a result of any lien, claim, demand or encumbrance placed upon Cloudbreak's leasehold interest shall be repaid to the Department by Cloudbreak. Such amount will include interest in an amount equal to the rate of interest for "90 Day U.S. Treasury Bills" on the date of discharge. Payment is due within 15 days from the date that Cloudbreak is given written notice of the discharge by the Department. For purposes of this Section, notice shall be deemed to have been given by the Department on the date set forth in the notice document.

**D. NOTICE TO THE DEPARTMENT:**

All loan documents and other documents establishing a security interest shall require that any other holder of any obligation secured by Cloudbreak's leasehold interest through a security interest, to include a mortgage or a deed of trust, shall provide the Department with written notice of any default by Cloudbreak and a minimum of fourteen (14) days to cure such default prior to any acceleration of the indebtedness. Failure to make such notice timely shall constitute an event of default of this Lease.

**E. REDEMPTION OPTION:**

1. Such loan documents and other documents establishing a security interest shall also require that any holder of any obligation secured by Cloudbreak's Leasehold interest through a security interest, to include a mortgage or a deed of trust, shall provide the Department, prior to any termination sale or transfer, notice of the intent to terminate the loan and give the Department the opportunity to redeem the leasehold for an amount not in excess of the fair market value of the leasehold, less expenses associated with the termination of the leasehold, less expenses associated with the termination of that loan or the total indebtedness allowable, pursuant to local law, whichever is less. Such an offer shall remain open for 14 days following written notice to the Department. If the Department takes advantage of the option, the Department shall acquire an interest in the leasehold equivalent to Cloudbreak's interest, which would have been extinguished by the loan termination. If the Department does not elect to redeem the leasehold interest being foreclosed by failing to act within 14 days or through written notice of an intent not to redeem, then the loan holder will be permitted to proceed with loan termination.

**F. EVENT OF DEFAULT:**

Cloudbreak's assent to any loan document establishing a security interest in the leasehold that does not include the provisions recited in this ARTICLE shall constitute an event of default by Cloudbreak.

**G. DEPARTMENT CERTIFICATIONS TO LESSEE'S LENDER:**

Cloudbreak, for the purposes of meeting a lender's requirements for financing the Facility contemplated by this Lease, may request that VA certify upon its knowledge and belief, concerning the following items, which certifications shall not be unreasonably withheld:

1. The execution and delivery by Cloudbreak to the lender of a mortgage of the leasehold interest in the property will not constitute an event of default under this Lease;

2. This Lease is not in default in any respect as of the date hereof nor has any event occurred which with the passage of time or the giving of notice would constitute a default;

3. There are no existing claims of the Department for damages, rents due, or other liability of which the Department is aware against Cloudbreak arising out of this Lease or performance of the terms, covenants or conditions of this Lease;

4. This Lease is in full force and effect and, if amended, was last amended on \_\_\_\_\_, \_\_\_\_, \_\_\_\_\_; and

5. The Department has received an executed copy of such mortgage.

#### H. PROTECTION OF THE LENDER

1. Upon the occurrence of an Event of Default by Lessee as described in Article 20 of this Lease, VA shall provide a copy of the notice of such Event of Default to the Leasehold Mortgagee. The Leasehold Mortgagee under this Article 18 shall have the right to cure said Event of Default on or before that day which is thirty (30) days after the expiration of the time period provided to Lessee hereunder to cure such default, and VA may not exercise any of the remedies available to it until the expiration of such cure period; provided, however, that if in connection with such Event of Default, the Leasehold Mortgagee commences and diligently continues an action to acquire title to the Lessee's leasehold estate, the Leasehold Mortgagee shall have such reasonable additional time as is necessary to complete such action to obtain such title, provided that the Leasehold Mortgagee pays and continues to pay all Rent and other charges accruing under this Lease as the same become due, and upon assignment or foreclosure of this Lease, the time for performance of any obligation of Cloudbreak then in default under this Lease other than the payment of money shall be extended by the time reasonably necessary for the Leasehold Mortgagee and/or Assignee to complete such performance with due diligence.

2. Subject to Section E above, the Leasehold Mortgagee and its assigns may enforce such mortgage, acquire title to the leasehold estate in any lawful way, and pending assignment or foreclosure, may rent the Property or any portion thereof, subject to VA's prior written consent, which shall not be unreasonably withheld.

3. Subject to Section E above and pursuant to and in conjunction with an assignment or foreclosure under this ARTICLE, the Leasehold Mortgagee and its assigns may sell or assign the leasehold estate subject to and consistent with subparagraphs (a)(i) through (a)(v) below, and so long as the Leasehold Mortgagee or assignee: provides fifteen (15) days advance notice to the Department, and determines that the Successor to the Property is a "responsible" party ("Responsible Party"). Factors to be considered by the Leasehold Mortgagee or assignee in making this responsibility determination include, but are not limited to (i) the Leasehold Mortgagee's receipt of written certification ("Certification") by the Successor (which it shall provide to VA upon written request) certifying that the Successor shall at all times use the Property for the operation of a homeless, affordable housing, or transitional housing facility and (ii) for any and all such assignments or foreclosures under this Section "H", the Successor shall expressly assume and agree (and such express assumption and

agreement may be included in the Certification) to observe and perform all the covenants of Cloudbreak contained in this Lease.

a. The Leasehold Mortgagee, (including any and all subsequent Successors) only shall assign or foreclose the Leasehold estate in conjunction with and subject to the following conditions:

(i) Any and all assignments and/or foreclosures shall be subject to the rights, title and interests of VA under this Lease.

(ii) Assignee certifies in writing to the Leasehold Mortgagee and the Department that it is not, and to the best of its knowledge and belief any of its principals are not, presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency and have not, within a three year period preceding the date of certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with commission of any of these offenses.

(iii) Assignor certifies that on a date, which shall be within 5 days before such assignment or foreclosure sale, that Assignor has verified that the Successor is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs, which list is available by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 512-1800, or in electronic version via the internet at <http://epls.arnet.gov>, or Electronic bulletin board (dial (202) 219-0132; settings N-8-1-F).

(iv) Assignee certifies to the Leasehold Mortgagee and the Department that the Assignee has at least three (3) years of experience in the ownership and/or management and operation of a homeless, affordable housing, or transitional housing facility reasonably comparable in size to the Facility.

(v) Leasehold Mortgagee certifies to the Department that the Assignee or purchaser has sufficiently demonstrated to the Leasehold Mortgagee's satisfaction that Assignee can and intends to meet the financial commitments of the leasehold estate and the terms of the Lease.

4. Upon a foreclosure or, prior to any foreclosure, within thirty (30) days after any termination of this Lease by reason of any Event of Default by the Lessee hereunder (including, without limitation, any termination of this Lease in connection with any bankruptcy or similar proceeding), VA agrees to amend this Lease or execute a substitute lease upon the same terms and conditions hereof ("Substitute Lease") with

such Leasehold Mortgagee or subsequent purchaser who complies with the provisions of this Section H, including subparagraphs "a" through "d" immediately below.

a. The Department shall by written notice offer the Substitute Lease to the Leasehold Mortgagee upon condition that the Substitute Lease shall be subject to and encumbered by all liens and encumbrances affecting the demised premises on file in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and/or the Bureau of Conveyances of the State of Hawaii, as the case may be, in the same order and priority and to the same effect as the liens and encumbrances had affected this Lease immediately prior to the effective date of rejection of this Lease;

b. The Substitute Lease shall be for the remainder of the term of this Lease effective as of the effective date of the rejection of this Lease, at the rent and additional rent, if any, and upon the terms, covenants and conditions (including all options to renew but excluding such terms, covenants and conditions which shall have already been fulfilled) of this Lease, together with a provision protecting the mortgagees of the Substitute Lease, including but not limited to the Leasehold Mortgagee.

c. In the event that the Leasehold Mortgagee or its designee shall enter into the Substitute Lease, the Leasehold Mortgagee or its designee shall pay or cause to be paid to the Department any and all sums which are at the time of execution and delivery thereof due under this Lease and in addition all reasonable expenses, including reasonable attorneys' fees which the Department shall have incurred by reason of the actual or deemed rejection of this Lease and the preparation, execution and delivery of the Substitute Lease. Such payments by the Leasehold Mortgagee to the Department shall be deemed to have been made for the protection of such mortgage and shall constitute additional indebtedness of Cloudbreak owed to the Leasehold Mortgagee and secured by such mortgage. By executing the Substitute Lease, the Leasehold Mortgagee or its designee shall undertake to perform all covenants and conditions of the Substitute Lease reasonably capable of performance by the Leasehold Mortgagee or its designee until such time as a Substitute Lease shall be assigned in accordance with subparagraph "d" below. As the holder of a lien encumbering the Substitute Lease, the Leasehold Mortgagee shall be entitled to enforce such mortgage and acquire title to the leasehold estate in any lawful way pursuant to the provisions contained in the Substitute Lease.

d. The Leasehold Mortgagee or its designee may assign such Substitute Lease subject to the conditions of Article 18, Paragraph 3 above and thereupon be released from all liability from the performance and observance of the terms, covenants and conditions contained in such Substitute Lease on the part of Cloudbreak to be observed and performed from and after the date of such assignment, provided a certified copy of such assignment shall be provided to the Department.

5. Notwithstanding any other provision of this Lease, VA agrees that any Leasehold Mortgagee permitted under this Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of the Lessee's obligations or covenants under this Lease (nor shall any rights of such Leasehold Mortgagee be contingent on

the satisfaction of such obligations or covenants), or (ii) required to cure any Event of Default by the Lessee; provided, however, that if such Leasehold Mortgagee (or any purchaser at a foreclosure sale or any subsequent person or entity to whom the leasehold estate hereunder may be subsequently assigned pursuant to Paragraph 3 above) becomes the owner of the Leasehold Estate created hereunder or becomes the lessee under a Substitute Lease, then such Leasehold Mortgagee or other person or entity shall be responsible and liable for all obligations and covenants accruing during such Leasehold Mortgagee's or such other person's or entity's tenure as owner of such leasehold estate or as lessee under a Substitute Lease.

6. There shall be no cancellation, surrender and/or modification of this Lease by VA or the Lessee which substantially affects the Lease terms and/or the Leasehold Mortgagee's rights without the Leasehold Mortgagee's (or its Successor's) prior review and its providing written approval to VA and the Lessee, or any of its Successors, and such written approval shall not be unreasonably withheld.

#### **ARTICLE 19 - TAXES**

The Department's interest in this Lease, and in the Property shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessment or special assessments.

#### **ARTICLE 20 - EVENTS OF DEFAULT BY CLOUDBREAK**

A. The following actions/events shall also be considered events of default:

1. The creation of a mortgage, lien or other encumbrance upon the underlying land in violation of section (A) of ARTICLE 18, or the creation of any loan document or other such instrument which creates such encumbrance which fails to contain the provisions set forth in ARTICLE 18.

2. Cloudbreak fails to secure financing for the development, construction, operation and management of the Facility within 365 days after the Effective Date, and the Improvements are not thereafter substantially completed within the same 365 day period, or such other later period of extension permitted solely at VA's discretion or under this Lease for events of Force Majeure. Notwithstanding the foregoing, Cloudbreak may substantially complete the Improvements within thirty (30) days after receiving notice from VA that Cloudbreak has such period to cure its failure to substantially complete the Improvements, in which event this Lease shall not terminate.

3. The failure or refusal of Cloudbreak to discharge any lien, claim, demand, or encumbrance, or to initiate appropriate action, to quiet any such claim within the time specified in section (C) of ARTICLE 18, whether or not the Department exercises its right of discharge, or the failure or refusal of Cloudbreak to make timely repayment to the Department of those sums expended to effectuate such discharge.

4. Failure of Cloudbreak, the Leasehold Mortgagee, or any of their respective Successors, to perform or observe any consideration, covenant or condition required by this Lease to be performed or observed, and such failure, except as otherwise provided in this Lease: (a) is not cured within ninety (90) days after Cloudbreak's receipt of written notice thereof from the Department; and (b) provided that such cure period shall be extended by the Department for an additional sixty (60) days if such default cannot be reasonably cured within ninety (90) days and Cloudbreak is diligently attempting to cure the default.

5. The filing of a voluntary petition under any Federal or State Bankruptcy insolvency or similar law. The filing of a voluntary or involuntary petition in bankruptcy shall result in the automatic termination of this Lease.

6. Cloudbreak's failure to comply with Article 6, Section (B) (5) of this Lease and such failure is not cured within thirty (30) calendar days after Cloudbreak's receipt of notice thereof from the Department.

#### **ARTICLE 21 - REMEDIES FOR DEFAULT BY CLOUDBREAK**

A. Upon the occurrence of an event of default by Cloudbreak, the Department may exercise any right, remedy or privilege, which may be available to it under this Lease or under applicable Federal, State or local law. All remedies shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. Failure to exercise a remedy shall not constitute a waiver thereof. Cloudbreak shall remain liable to the extent permitted by law with respect to all covenants and indemnities of this Lease. Additionally, upon default by Cloudbreak of this Lease, and Cloudbreak's failure to cure or to commence to cure, within any applicable cure period, VA may, subject to Article 18 of this Lease, immediately seek to terminate this Lease and recover its damages in accordance with Article 23 hereto. Upon successful termination of the Lease by the Government, Cloudbreak shall be immediately required to surrender to or as directed by VA, possession of the Property, all Improvements, and all assets (i.e., furniture, fixtures, and equipment) constituting the Property, and Cloudbreak will cooperate fully and in good faith with VA in order to effect an orderly and efficient transition of the Property.

B. Any loss, expense or other cost incurred by the Department resulting from default by Cloudbreak shall constitute an amount owed to the Department.

#### **ARTICLE 22 – EVENTS OF DEFAULT BY THE DEPARTMENT**

A. An event of default by the Department shall occur upon its failure to perform or observe any covenant or condition required by this Lease to be performed or observed, and such failure is not cured within ninety (90) days after the Department's receipt of written notice thereof from Cloudbreak or if the default is such that it cannot

be cured in such 90-day period and the Department is diligently pursuing a cure, the Department shall have an additional sixty (60) days in which to cure the default.

B. Upon default by the Department, and the Department's failure to cure or to commence to cure, within any applicable cure period, Lessee may immediately seek to terminate this Lease and recover its damages in accordance with Article 23 hereto.

### ARTICLE 23 – DISPUTES

A. This Lease is subject to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601-613) (the "Disputes Act").

B. Except as provided in the Disputes Act, all disputes arising, under or relating to this Enhanced-Use Lease shall be resolved under this ARTICLE.

C. "Claim," as used in this ARTICLE, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract Article that provides for the relief sought by the claimant. However, a written demand or written assertion by Cloudbreak seeking the payment of money exceeding fifty thousand dollars (\$50,000) is not a claim under the Disputes Act until certified as required by Section (D)(2) below. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim under the Disputes Act. The submission may be converted to a claim under the Disputes Act, by complying with the submission and certification requirements of this ARTICLE, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

D. A claim by Cloudbreak shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against Cloudbreak shall be subject to a written decision by the Contracting Officer. For Cloudbreak claims exceeding fifty thousand dollars (\$50,000), Cloudbreak shall submit with the claim a certification that:

1. the claim is made in good faith;
2. supporting data are accurate and complete to the best of Cloudbreak's knowledge and belief; and
3. the amount requested accurately reflects the contract adjustment for which Cloudbreak believes the Government is liable.

E. For Cloudbreak claims of fifty thousand dollars (\$50,000) or less, the Contracting Officer must, if requested in writing by Cloudbreak, render a decision within sixty (60) days of the request. For Cloudbreak-certified claims over fifty thousand dollars

(\$50,000), the Contracting Officer must, within sixty (60) days decide the claim or notify Cloudbreak of the date by which the decision will be made.

F. The Contracting Officer's decision shall be final unless Cloudbreak appeals or files suit as provided in the Act.

G. If the claim is resolved in favor of Cloudbreak, the Government shall pay interest on the amount found due and unpaid from:

1. the date the Contracting Officer receives the claim (properly certified if required), or

2. the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

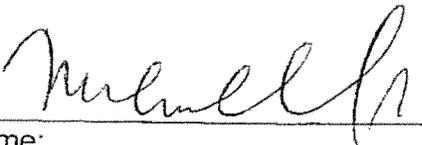
H. Cloudbreak shall proceed diligently with performance of this Lease, pending final resolution of any request for relief, claim, appeal or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

#### **ARTICLE 24 - LEASE SUBJECT TO GENERAL PROVISIONS AND CONDITIONS OF ACCEPTANCE FOUND IN EXHIBIT "A"**

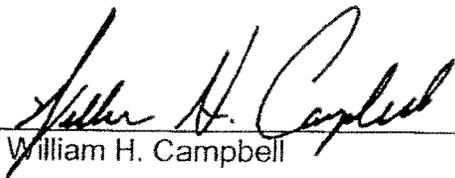
This Lease and Cloudbreak's occupancy of this Property shall be subject to the terms and conditions of the General Provisions attached hereto and by this reference made a part of this Lease. This Lease shall also be subject to the exceptions and reservations in favor of the United States Department of the Navy ("Navy") as stated in **Exhibit "A"** attached hereto. By entering this Lease, Cloudbreak also agrees to fulfill any and all responsibilities undertaken by the Department when it accepted transfer of the Property from the Navy, by accepting accountability, as well as protection and maintenance of the Property, under the "Conditions of Acceptance" found in the description of the Property attached hereto as **Exhibit "A"**, and by this reference made a part of this Lease. Pursuant to a July 21, 2000, grant from the Department to Cloudbreak of a revocable license for use of the Property, Cloudbreak received and reviewed Exhibits "A" thru through "J", which attachments form a part of **Exhibit "A."** Said Exhibits "A" thru through "J," as identified in **Exhibit "A"** attached hereto, are incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the date first above written.

**Cloudbreak Hawaii, LLC**  
**Enhanced-Use Lessee**

By:   
Name:  
Title: Managing Member

**The United States Department of Veterans Affairs**  
**Enhanced-Use Lessor**

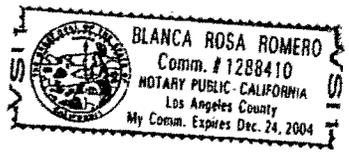
By:   
Name: William H. Campbell  
Title: Assistant Secretary for Management

Pursuant to a delegation of  
authority dated: January 27, 2003

STATE OF California  
COUNTY OF Los Angeles

The foregoing instrument was acknowledged before me in Inglewood,  
Calif., this 12 day of MARCH, 2003 by  
Thomas Richard Costwell Jr of CLOUDBREAK Hawaii LLC.

Blanca Rosa Romero  
[Signature]  
Notary Public



My commission expires: 12-24-04

STATE OF Wash DC )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me in washington,  
DC, this 17<sup>th</sup> day of march, 2003 by  
Katherine L. Siddle of Dept of Vet. Affairs

\_\_\_\_\_  
Katherine L. Siddle  
Notary Public

My commission expires: 6/14/05

## GENERAL PROVISIONS

### ARTICLE 25 - ASSIGNMENT OF CLAIMS

A. Cloudbreak, under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this Lease to a bank, trust company or other financing institution, including any Federal lending agency. This assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

B. Any assignment or reassignment authorized under the Act and this ARTICLE shall cover all unpaid amounts payable under this contract and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the improvements contemplated by this Lease.

### ARTICLE 26 - COMPLIANCE

Cloudbreak warrants that it, and its assignees and sub-lessees will be responsible for and will obtain, prior to the commencement of operations and use of the Property and prior to undertaking any repair, construction, capital repairs or improvement on the Property all applicable permits, approvals necessary for such use and activities on the Property. In addition, Cloudbreak, its assignees and sub-lessees, will at all times during the existence of this Lease comply, at its sole cost and expense, with the provisions of any and all Federal, State and local statutes, ordinances, rules and regulations which may be applicable to its use of the Property or any of the responsibilities undertaken pursuant to this Lease.

### ARTICLE 27 - EQUAL OPPORTUNITY CLAUSE

A. During performance of this Lease, Cloudbreak agrees as follows:

1. Cloudbreak shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

2. Cloudbreak shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. This shall include but not be limited to employment; upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

3. Cloudbreak shall post in conspicuous places available to employees and applicants for employment notices to be provided by the Leasing Agent that explains this ARTICLE.

4. Cloudbreak shall, in all solicitations or advertisements for employees placed by or on behalf of Cloudbreak, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

5. Cloudbreak shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, notice to be approved by the Leasing Agent advising the labor union or workers' representative of Cloudbreak's commitments under this ARTICLE and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. Cloudbreak shall comply with Executive Order 11246, as amended, and the rules, regulations and orders for the Secretary of Labor.

7. Cloudbreak shall furnish to the Leasing Agent all information required by Executive Order 11246, as amended, and further furnish information as required by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within thirty (30) days following the effective date of this Lease, unless filed within twelve (12) months preceding that date.

8. Cloudbreak shall permit access to its books, records and accounts by the Department of Veterans Affairs or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain Cloudbreak's compliance with the applicable rules, regulations and orders.

9. If the OFCCP determines that Cloudbreak is not in compliance with this ARTICLE or any rule, regulation or order of the Secretary of Labor, this Lease may be canceled, terminated or suspended in whole or in part, and Cloudbreak may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended, the rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.

10. Cloudbreak shall include the terms and conditions of subparagraphs 1 through 11 of this ARTICLE in every subcontract or purchase order that is not exempted by rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. Cloudbreak shall take such actions with respect to any subcontract or purchase order as the Leasing Agent may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Cloudbreak

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Cloudbreak may request the United States to enter into the litigation to protect the interests of the United States.

B. Notwithstanding any other provision of this Lease, disputes relative to this ARTICLE will be governed by the procedures in 41 CFR 60-1.1.

## ARTICLE 28 - FACILITIES NONDISCRIMINATION

A. As used in this ARTICLE, the term "facility" means restaurants, cafeterias, restrooms and any other facility of a public nature in the building in which the space covered by this Lease is located.

B. Cloudbreak agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by Cloudbreak solely to occupants, employees, guests and invitees.

C. It is agreed that upon Cloudbreak's noncompliance, the Department may take appropriate action to enforce compliance, may terminate this Lease or may pursue such other remedies as may be provided by law. In the event of termination, Cloudbreak shall be liable for all excess cost of the Department in acquiring space, including, but not limited to, the cost of moving to such substitute space. Substitute space shall be obtained in as close proximity to Cloudbreak's building as is feasible and moving cost will be limited to the actual expenses thereof as incurred.

D. It is further agreed that from and after the date hereof Cloudbreak will, at such time as any Lease is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this ARTICLE in every such Lease or concession pursuant to which any person other than Cloudbreak operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require Cloudbreak to include or require the inclusion of the foregoing provisions of this ARTICLE in any existing Lease or concession arrangement or one in which the leasing party other than Cloudbreak has the unilateral right to renew or extend this Lease or arrangement, until the expiration of the existing Lease or arrangement and unilateral right to renew or extend. Cloudbreak also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such Lease as the leasing agency may direct, as means of enforcing the intent of this ARTICLE, including but not limited to termination of this Lease or concession and institution of court action.

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## ARTICLE 29 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this ARTICLE does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

## ARTICLE 30 - GRATUITIES

The right of Cloudbreak to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the contractor, its agency, or another representative:

- A. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Government; and
- B. Intended by the gratuity, to obtain a contract or favorable treatment under a contract.

The facts supporting this determination may be reviewed by any court having lawful jurisdiction. If this contract is terminated, the Government is entitled to pursue the same remedies as in a breach of the contract. The rights and remedies of the Government provided in this ARTICLE shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## ARTICLE 31 - COVENANT AGAINST CONTINGENT FEES

Cloudbreak warrants that no person or agency has been employed or retained to solicit or obtain this contract upon a Lease or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to obtain consideration or otherwise recover the full amount of the contingent fee.

**"BONA FIDE EMPLOYEE,"** as used in this ARTICLE, means a person, employed by Cloudbreak and subject to Cloudbreak's supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

**"CONTINGENT FEE,"** as used in this ARTICLE, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

**"IMPROPER INFLUENCE,"** as used in this ARTICLE, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

### **ARTICLE 32 - EXAMINATION OF RECORDS BY COMPTROLLER GENERAL**

The Comptroller General of the United States or duly authorized representative from the General Accounting Office shall, until three (3) years after termination of this Lease, have access to and the right to examine any or the contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

Cloudbreak agrees to include in first-tier subcontracts under this Lease a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until three (3) years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this ARTICLE, excludes:

- A. Purchase orders not exceeding \$10,000.00
- B. Subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

These periods of access and examination for records relating to:

- C. Appeals under the Disputes clause
- D. Litigation or settlement of claims arising from the performance of this Lease
- E. Cost or expenses of this Lease to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

### **ARTICLE 33 - MISCELLANEOUS PROVISIONS**

A. If this Lease or any term or provision thereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

B. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Cloudbreak to the same extent as if each successors and assign were in each case named as a party to this Lease. Any person, corporation or other legal entity acquiring any or all rights, titles and interest of Cloudbreak in and to the Property shall thereby become liable under and be fully bound by all of the provisions of this Lease.

C. The parties herein agree that nothing herein shall, nor shall any prior agreements between Cloudbreak and the Department, be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between the Government and Cloudbreak, it being understood and agreed that no provision of this Lease, nor any act of the Department or Cloudbreak hereafter, shall be deemed to create any relationship between the Department and Cloudbreak other than as set out herein.

D. The specified remedies to which each party may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which each party may be lawfully entitled. The failure of each party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease shall not be construed as a waiver or relinquishment for future of such covenant or option.

E. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

F. All headings used in this Lease are for convenience only and do not constitute legally enforceable rights or obligations.

G. The laws of the United States shall govern this Lease.

H. This Lease, together with any Exhibits, contains and embodies the entire Lease of the parties hereto, and no representations, inducements or agreements between the parties, oral or otherwise, not contained in this Lease and its Exhibits shall be of force or affect. This Lease may not be modified or changed in whole or in part in any manner other than by an amendment to this Lease in writing and duly signed by both parties hereto.

I. This Lease shall not be recorded without the consent of the Department and Cloudbreak. Each party shall upon the request of the other execute a recordable memorandum of this Lease. If the memorandum is recorded, the cost of preparation and recording the memorandum shall be borne by the party requesting execution of the memorandum.

**EXHIBIT "A"**  
**(AND ITS REFERENCED ATTACHMENTS "A" THROUGH "J")**

The Enhanced-Use Lease of which this Exhibit "A" relates, covers that portion of Property located at the Former Barber's Point Naval Air Station which is more particularly described as follows:

1. Lot 13063-C, area 5.162 acres, more or less, and Lot 13063-E, area 1.680 acres, more or less, as shown on Map 966, attached as Exhibit "A" hereto, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Transfer Certificate of Title No. 529,664, issued to the Navy.
2. Buildings 34, 37, and 1772.
3. All personal property thereon.

The Navy, however, excepts and reserves the following from this transfer:

1. Water transmission facilities located within the Property, the location of which is approximately shown on the attached Exhibit "B" hereto, and other water transmission facilities located within the Property which are utilized to provide water service off the Property, together with the right to operate, maintain, repair, replace, and remove the same in accordance with the terms and conditions set forth below.
2. Wastewater transmission and control facilities located within the Property, the location of which is approximately shown on the attached Exhibit "C" hereto, and other wastewater transmission facilities located within the Property which are utilized to provide wastewater service off the Property, together with the right to operate, maintain, repair, replace, and remove the same in accordance with the terms and conditions set forth below.
3. Electrical transformers (excluding concrete pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and other appliances and equipment ("electric utility facilities") located within said Lots 13063-C and 13063-E, which extend from the boundaries of the Property up to the appropriate electrical metering point of each building located on the Property, as said "metering point" is defined in the Hawaiian Electric Company, Inc. "Electric Service Installation Manual" effective on the date of this conveyance and regardless of whether or not those meters have actually been installed; and electric utility facilities that are approximately shown on the attached Exhibit "D" hereto." All of the electric utility facilities described herein are hereinafter referred to collectively as "existing electric utility facilities", together with the right to operate, maintain, repair, replace, and remove the same in accordance with the terms and conditions, set forth below.

The Navy has complied with the National Environmental Policy Act of 1969 (NEPA) in concluding that this transfer is categorically excluded in accordance with

OPNAVINST 5090.1B. The categorical exclusion statement is attached as Exhibit "E" hereto for your information.

The environmental documents listed in Exhibit "F" hereto, which the VA hereby acknowledges receipt of, provide information regarding the environmental condition and investigative and cleanup actions taken by the Navy with respect to the Property. Said documents are not attached due to bulkiness. A determination has been made by the Navy in the Environmental Condition of Property update, attached as Exhibit "G" hereto, that the aforementioned Property is suitable for transfer.

## CONDITIONS OF ACCEPTANCE

The VA has accepted transfer of the Premises under the following conditions:

1. Water Transmission and Wastewater Transmission and Control Facilities:

The Navy reserves the right in perpetuity over, across, under, and through the Property, to operate, maintain, repair, replace, and remove Navy water transmission facilities and wastewater transmission and control facilities (hereinafter called "wastewater facilities") retained by the Navy as shown on Exhibits "B" and "C" hereto, respectively. The Navy further reserves the right to (1) survey land areas beneath said water transmission and wastewater facilities as may be considered by the Navy to be desirable for the provision of water and wastewater service to the VA or occupants of other properties, (2) create metes and bounds maps and/or descriptions of specifically delineated easement areas, (3) designate said easements on Land Court Map(s) over, across, under and through the land conveyed herein for water and wastewater service purposes, and (4) grant such easements, substantially in the form of the attached Exhibits "H" and "I" hereto, to any governmental agency, or to any public quasi public or private entity, upon notice to the VA, but without requirement for joinder or consent of the VA.

2. Electric Utility Facilities:

The Navy reserves the right in perpetuity over, across, under, and through the Property, to operate, maintain, repair, replace, and remove said existing electric utility facilities retained by the Navy as shown on Exhibit "D" hereto. The Navy further reserves the right for itself or any person or entity designated by the Navy, including the Hawaiian Electric Company, Inc., a Hawaii corporation, the right to (1) survey the land beneath said existing electric utility facilities located on the Property, (2) create metes and bounds easement maps and/or descriptions of specifically delineated easement areas, (3) designate said easements on Land Court Map(s) over, across, under and through the land conveyed herein for electric utility purposes, whether or not the easements are for the purpose of serving the land transferred herein upon notice to the VA, but without requirement for joinder or consent of the VA, and (4) the right to grant such easements to Hawaiian Electric Company, Inc., or any other entity, through the execution of a "Grant of Easement" document, substantially in the form of the attached Exhibit "J" hereto, upon notice to the VA, but without requirement for joinder or consent of the VA.

3. Asbestos-Containing Materials (ACM):

ACM identified in the Asbestos Re-inspection Report for Naval Air Station, Barbers Point, Oahu, Hawaii, referenced in Exhibit "F" hereto, is currently in good condition or encapsulated to prevent exposure to building occupants. ACM in good condition will not be removed or replaced by the Navy. The VA is responsible for the maintenance of the ACM and for complying with all applicable federal, state, and local laws and regulations pertaining to ACM to protect building occupants from release of asbestos.

4. Lead-Based Paint (LBP):

LBP may be present in facilities, especially those built prior to 1978. Lead exposure is especially harmful to young children and pregnant women. Due to the presence of LBP, which is identified in the Lead-Based Paint Inspection Report for Naval Air Station, Barbers Point, Oahu, Hawaii, referred to in

Exhibit "F" hereto, and summarized in Exhibit "G" hereto. Buildings 34, 37, and 1772 contain LBP and are unsuitable for residential use or occupancy by children less than six (6) years of age. The VA is responsible for managing all LBP in compliance with all applicable federal, state, and local laws and regulations. The VA is prohibited from using Buildings 34, 37, and 1772 for residential habitation for children less than six (6) years of age unless the VA removes all LBP hazards from the structures in accordance with applicable federal, state, and local laws and regulations pertaining to LBP.

5. Fuel Aboveground Storage Tanks (ASTs): ASTs are located at Buildings 34 and 37 for the purpose of providing hot water to barracks. There is no evidence of releases of diesel fuel from the tanks. The VA will be responsible for all maintenance and future releases at the ASTs.

6. Drywells: One drywell (# 56, also referred to as F13-01), in the approximate location shown on the attachment to Exhibit "G" hereto entitled "Property Map Veterans' Administration Parcels", is located on the Property. Sediment within the drywell did not contain contaminants at concentrations exceeding hazardous waste levels (Toxicity Characteristics Leaching Procedure Criteria). The VA shall apply with the State of Hawaii The Department of Health for Underground Injection Control (UIC) permit(s) for drywells located on the Property within ninety (90) days after July 1, 1999. In the event that any sediment is removed from drywells on the Property by the VA, the VA shall dispose of such sediment offsite in an appropriate facility in accordance with applicable laws and regulations.

7. Regional Groundwater System: The VA shall not extract groundwater from the Property for any purpose until regional groundwater monitoring activities are completed by the Navy, unless the VA notifies the Navy before installing any well(s) and performs sampling required under all applicable laws, regulations and standards, including the Safe Drinking Water Act.

8. Navy Access: The Navy reserves a right of access to any and all portions of the Property transferred herein for environmental investigation, remediation, monitoring, or other corrective actions found to be necessary after the date of this transfer for releases that occurred prior to transfer.

Attachments: Exhibit "A" - Land Court Map 966; Application 1069  
Exhibit "B" - Drawing Showing Retained Water Facilities  
Exhibit "C" - Drawing Showing Retained Wastewater Facilities  
Exhibit "D" - Drawing Showing Retained Electrical Facilities  
Exhibit "E" - Record of Categorical Exclusion  
Exhibit "F" - Listing of Environmental Documents  
Exhibit "G" - Environmental Condition of Property dated June 16, 1999  
Exhibit "H" - Grant of Easement (water facilities)  
Exhibit "I" - Grant of Easement (wastewater facilities)  
Exhibit "J" - Grant of Easement (electrical facilities)



EXHIBIT "A"

SITE PLAN

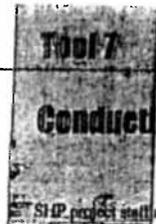
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EXHIBIT "B-1"

INTENTIONALLY OMITTED

EXHIBIT "C"  
INTENTIONALLY OMITTED

**EXHIBIT "D"**  
**MAINTENANCE STANDARDS**



**Conducting A Housing Assessment**

SHP project staff are required to conduct regular inspections of all housing units funded by a SHP grant. Generally, local SHP project staff should use the standards for habitability provided by HUD in 24 CFR 583.300(b) and outlined on the attached *Habitability Standards Worksheet*. (If approved by HUD, SHP projects can instead use the standards set by local housing and health codes.)

Units should be inspected on an annual basis and upon a change in tenancy. The inspection involves a review of any third party documentation (such as a check of housing and public health code inspection certifications) as well as visual inspection of the unit by project staff.



The *Habitability Standards Guide* provided on the next page defines the "primary" and "secondary" means of inspection for each of the Habitability Standards indicated. Note that third party inspections are, in most cases, considered "primary" because these are performed by official, trained inspectors. Staff inspections are considered a "secondary" means of inspection.

## Habitability Standards Guide

Habitability Standard	Primary method of inspection	Secondary method of inspection
Structure and Materials	Review of current local building and occupancy permits, housing/health code inspection certifications.	Walk-through inspection by program staff and observations whether structure appears sound and poses no threat to health and safety of residents and protects residents from the elements.
Access	Observations by program staff whether space is accessible (including accessible to handicapped), is not able to be utilized by unauthorized persons, and has alternate means of egress in case of fire.	
Space and Security	Review of current building and occupancy permits, housing/public health code inspection certifications.	Observation by program staff whether residents are afforded adequate space and security (i.e., residents and their property are reasonably safe from harm), and are provided adequate places to sleep.
Interior Air Quality	Review of current building and occupancy permits, housing/public health code inspection certifications, plus results of any air testing that has occurred (to measure levels of pollutants).	Observations by program staff that all individual rooms and common areas have natural or mechanical ventilation that appear to allow for adequate air circulation.
Water Supply	Review of current building and occupancy permits, housing/public health code inspection certifications, plus results of any water testing that has occurred.	Observations by program staff regarding use of filtration systems, and the nature of circulation/distribution systems used for potable water.
Sanitary Facilities	Review of current building and occupancy permits, housing/public health code inspection certifications.	Observations by program staff whether sanitary facilities are clean, in working order, and may be used in privacy.
Thermal Environment	Review of current building and occupancy permits, housing/public health code inspection certifications, plus any records of inspections, tune-ups, repairs, or replacement of heating/cooling systems.	Observations by program staff regarding temperature being maintained throughout the facility.
Illumination and Electricity	Review of current building and occupancy permits, housing/public health code inspection certifications.	Observations by program staff regarding the quality of illumination and the availability (and condition) of electrical outlets throughout the facility.
Food Preparation	Review of current building and occupancy permits, housing/public health code inspection certifications.	Observations by program staff regarding the cleanliness of food preparation areas, adequacy of food storage area, and whether there are any indications of infestation.
Sanitary Conditions	Review of housing/public health code inspection certifications.	General observations by assessment team.
Fire Safety - Individual Units	Observations by program staff of smoke detectors in each unit, and testing of said equipment by program staff. (Note: in units occupied by hearing-impaired persons, smoke detectors must have an alarm designed for hearing-impaired persons.)	
Fire Safety - Common Areas	Observations by program staff of at least one smoke detector in each public space, and testing of said equipment by the program staff.	

## Habitability Standards Worksheet

Complete the Habitability Standards Worksheet for each unit occupied by an SHP participant. Units should be inspected on an annual basis, or with a change in tenancy. Complete the project name and location for the unit inspected at the top of each form. In the last column indicate with a "P", for primary means of inspection, or an "S", for secondary means of inspection, if the habitability standard was met at the time of inspection. Note any concerns in this column if the housing unit does not meet the standard. For any standard that is not met, steps should be taken immediately to correct the problem or concern.

SHP Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_

Habitability Standard	Needed Documentation (in addition to visual inspection)	P or S/ Comments
<b>Structure &amp; Materials</b>		
Is the unit structurally sound, and does it protect residents from the elements?	Building permit; occupancy permit; housing/health code inspection certificates	
<b>Access</b>		
Is the unit accessible and able to be used without going through other units? Is there a second means of egress in case of fire?		
<b>Space and Security</b>		
Is the space adequate for the resident and his/her belongings? Does the resident have an acceptable place to sleep?	Building permit; occupancy permit; housing/health code inspection certificates	
<b>Interior Air Quality</b>		
Does each room have some form of natural or mechanical ventilation? Is the interior air free of pollutants?	Building permit; occupancy permit; housing/health code inspection certificates; results of any air testing that has occurred (to measure levels of pollutants)	
<b>Water Supply</b>		
Is the water supply free from contamination?	Building permit; occupancy permit; housing/health code inspection certificates; results of any water testing that has occurred	
<b>Sanitary Facilities</b>		
Does the resident have access to sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and disposing of human waste?	Building permit; occupancy permit; housing/health code inspection certificates	
<b>Thermal Environment</b>		
Are the heating and/or cooling facilities adequate and in proper operating condition?	Building permit; occupancy permit; housing/health code inspection certificates; any records of inspections, tune-ups, repairs, or replacement of heating/cooling systems	
<b>Illumination and Electricity</b>		
Does the house have adequate natural or	Building permit; occupancy permit;	

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SHP Self-Monitoring Tools

Habitability Standard	Needed Documentation (in addition to the inspection)	P or S Certificate
artificial illumination to permit normal indoor activities and support health and safety? Are there sufficient electrical sources to permit the safe use of essential electrical appliances?	housing/health code inspection certificates	
<b>Food Preparation</b>		
Do food preparation areas contain suitable space and equipment to store, prepare and serve food in a sanitary manner?	Building permit; occupancy permit; housing/health code inspection certificates	
<b>Sanitary Conditions</b>		
Is the unit maintained in sanitary condition?	Housing/health code inspection certificates	
<b>Fire Safety - Individual Units</b>		
Is there at least one working smoke detector on each occupied level of the unit? Are smoke detectors located in hallways adjacent to bedrooms where possible? Does each bedroom occupied by a hearing-impaired person have an alarm system designed for hearing-impaired persons?	None, but equipment must be regularly tested, and in units occupied by hearing-impaired persons, smoke detectors must have an alarm designed for hearing-impaired persons.	
<b>Fire Safety - Common Areas</b>		
Do all public areas (laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas) have at least one smoke detector?	None, but equipment must be regularly tested.	

**EXHIBIT "E"**

**LANDLORD INSURANCE AND TENANT INSURANCE**

"Certificates by both parties will be issued within 30 days as mutually agreed to by both parties"

EXHIBIT "F"

MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5<sup>th</sup> Floor  
Irvine, CA 92614  
Attn: Gary S. McKitterick, Esq.

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Space Above For Recorder's Use

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE dated December 3, 2010 ("Memorandum") is effective upon recordation and is entered into by and between CLOUDBREAK HAWAII, LLC, a Hawaiian limited liability company ("Landlord"), and UNITED STATES VETERANS INITIATIVE, a California not for profit corporation ("Tenant"), who agree as follows:

WITNESSETH:

1. By an unrecorded written Lease of even date (the "Lease"), Landlord leases to Tenant and Tenant hires from Landlord those certain premises and parking spaces located within and/or serving those certain buildings commonly known as 34 Yorktown St., 37 Shangrila St., and 1772 Saipan St., Kapolei, Hawaii (the "Premises"), situated on the "Property" described in EXHIBIT A, attached hereto and by this reference incorporated herein, all set forth in the Lease, for an initial term of five (5) years, plus one (1) option term of five years thereafter. In addition, the Lease contains, among other things, a Right of First Opportunity to Purchase for Tenant to purchase the Premises from Landlord, and an Expansion Option for the benefit of Tenant.

2. This Memorandum is subject in each and every respect to the rental and other terms, covenants and conditions contained in the Lease, which is incorporated herein by this reference, and is executed by Landlord and Tenant for the purpose of providing constructive notice of the Lease with the understanding and agreement that nothing contained herein shall in any manner alter, modify or vary the rental or other terms, covenants or conditions of the Lease.

[SIGNATURES ON FOLLOWING PAGE]



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The Site consists of the parcel(s) of real property located in the City of Kapolei, State of Hawaii, as shown on the site plan attached hereto as Exhibit "A" as such area may be expanded or reduced from time to time. The Project includes the Site and all buildings, improvements and facilities, now or subsequently located on the Site from time to time, including, without limitation, the Building, along with two other buildings known as 34 Yorktown St., 37 Shangrila St., and 1772 Saipan St., Kapolei, Hawaii, with the adjacent surface parking lot, and a vacant lot adjacent to the Building, as depicted on the site plan attached hereto as Exhibit "A".

**EXHIBIT "G"**  
**PUNCH LIST ITEMS**

"SEE ATTACHED"

Hawaii

				
PROPERTY PUNCH LIST				
PLEASE CONDUCT A SURVEY OF THE PROPERTY AND NOTE ANY ITEMS THAT NEED CORRECTING TO MEET HABITABILITY STANDARDS				
SITE: USVI-HI Barbers Point/Kalaheles				
DATE: 6/10/2010				
NAME OF PERSON COMPLETING FORM: Martin J. Coleman				
<span style="font-size: 2em; font-weight: bold;">BLDG 1722</span>				
AREA TO REVIEW	HABITABILITY STANDARDS MET (Y OR N)	IMPROVEMENTS NEEDED	DATE IMPROVEMENTS COMPLETED	
<b>A1</b> Electrical outlet	N	all rooms need paint and carpet/tile		
<b>A2</b> Electrical outlet	N	Broken - needs replacement		
<b>A3</b> Electrical outlet	N	Broken - needs replacement		
<b>A4</b> Electrical outlet	N	Broken - needs replacement		
<b>A5</b> Door	N	Door knob missing		
<b>A6</b> Electrical outlet/locker	N	Missing - needs replacement/locker door stuck		
Dayroom	N	Paint / electrical outlet cover broken		
Bathroom	N	Floor drain not draining properly		
Laundry area	N	Replace tile / needs paint		
all rooms need paint and carpet/tile				
<b>B1</b> A/C vents need cleaning	N	needs cleaning		
<b>B2</b> A/C vents need cleaning	N	needs cleaning		
<b>B3</b> Electrical outlet	N	missing - replace		
<b>B4</b> Electrical outlet	N	broken - replace		
<b>B5</b> Paint peeling	N	needs paint		
<b>B6</b> Ceiling light not working	N	Replace		
Dayroom	N	Electrical outlet cover missing		
Bathroom	N	second Urinal out of order, no valve assembly		
	N	Middle sink basin is cracked.		
	N	Shower floor paint peeling.		
Laundry area	N	Tile flooring needs to be replaced		
all rooms need paint and carpet/tile				
<b>C1</b> Overhead light not working, *C	N	broken - replace		
<b>C2</b> Carpet badly stained	N	Replace		
<b>C3</b> Electrical outlet	N	broken - replace		
<b>C4</b> Overhead light is out,	N	broken - replace		
<b>C5</b> Carpet badly stained	N	Replace		
<b>C6</b> Electrical outlet cover	N	missing - replace		
Dayroom	N	Tile flooring needs to be replaced		
Bathroom	N	Bathroom ceiling is molding up.		
	N	Urinals are calcified.		
	N	Both shower ceilings are severely moldy.		
Laundry area	N	Tile flooring needs to be replaced.		
all rooms need paint and carpet/tile				
<b>D1</b> Carpet badly stained	N	Replace		
<b>D2</b> Overhead light not working,	N	broken - replace		
<b>D3</b> Carpet badly stained	N	Replace		
<b>D4</b> Paint peeling,	N	needs paint		
<b>D5</b> Elec. Outlet covers missing	N	missing - replace		
<b>D6</b> Overhead light cover,	N	missing - replace		
Dayroom	N	Tile flooring needs to be replaced		
Bathroom	N	Bathroom ceiling is molding up.		
	N	Both Urinals are out of order.		
	N	Both shower ceilings are severely moldy.		

	Laundry area	N	Tile flooring needs to be replaced,
	*Stairwells & handrails in need of painting.		
	*2nd floor walkway in need of painting.		
	*All stairs need safety non-slip tape.		
	*Lobby area has exposed wires in addition to elec. Outlet not working.		
	*Lobby area used to have a glass line, not working now.		
	*Lobby area needs some type of walls added to protect from wind & rain.		
	<b>Room</b>		<b>Deficiencies</b>
	101		Carpet stained
	102		Two elec. Outlets not working, carpet stained
	103		Two elec. Outlets not working, carpet stained
	104		Two elec. Outlets not working, carpet stained
	105		Carpet stained
	106		Two elec. Outlets not working, carpet stained
	107		Carpet stained
	108		Two elec. Outlets not working, carpet stained
	109		Smoke detector not connected, carpet stained
	110		Carpet stained
	136		Carpet stained
	138		Carpet stained
	141		Carpet stained
	Conference Rm		Carpet stained
	Store		Shelving needs painting, Carpet stained
	Staff Hallway		Carpet stained
	<b>Room</b>		<b>Deficiencies</b>
	101		Room was renovated 2010
	102		Room was renovated 2010
	106		Room was renovated 2010
	110		Room was renovated 2010
	113		Room was renovated 2010
	115		Room was renovated 2010
			<b>Deficiencies</b>
			Needs painting
			Need Better Ventilation, extremely hot over the summer months
			Floor tile needs to be replaced
			Sun screen awning needed in front of VSO door to block out afternoon sun

**RIDER NO. 1 TO LEASE**  
**EXPANSION OPTION RIDER**

This Rider No. 1 is made and entered into by and between CLOUDBREAK HAWAII, LLC, a Hawaiian limited liability company ("Landlord"), and UNITED STATES VETERANS INITIATIVE, a California not for profit corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Subject to the terms and conditions of this Rider No. 1, Landlord hereby grants to Tenant the option to expand ("**Expansion Option**") into any space within the Building (the "**Expansion Space**"); provided, however, that Tenant's Expansion Option is subject and subordinate to the rights of all other existing tenants of the Building or Project with prior expansion or lease rights relative to the Expansion Space. If Tenant needs space, it shall notify Landlord and if such space is available in the Building, Tenant shall be entitled to lease additional suites. Tenant must exercise its Expansion Option by providing Landlord with written notice of its election to exercise the Expansion Option within twenty (20) business days after Landlord notifies Tenant of available space ("**Expansion Notice**"). Failure to timely deliver the Expansion Notice shall terminate Tenant's Expansion Option with respect to the space offered as Expansion Space. The Term as to the Expansion Space shall be coterminous with the Term with respect to the original Premises as the same may be extended pursuant to any option to extend the Term of the Lease. If Tenant exercises its Expansion Option, then commencing upon delivery of the Expansion Space to Tenant (the "**Expansion Space Commencement Date**"), the Monthly Basic Rent for the Expansion Space consistent with the rent schedule as defined in section 1.8 of the summary.
2. Subject to the foregoing provisions of this Rider No. 1, Tenant's lease of the Expansion Space will be on the same terms and conditions as affect the original Premises; provided, however, effective upon the Expansion Space Commencement Date, Tenant will be entitled to two (2) additional parking spaces with respect to the Suite comprising the Expansion Space.
3. On or prior to the Expansion Space Commencement Date, Landlord and Tenant shall conduct a walk-thru of the Expansion Space and shall prepare a punch list for any and all improvements, repairs and/or alterations to be performed by Landlord (the "**Expansion Space Punch List Items**"), and Landlord shall complete the Expansion Space Punch List Items at Landlord's sole cost and expense, and to Tenant's reasonable approval, within six (6) months after the Expansion Space Commencement Date. Landlord and Tenant acknowledge and agree that the following items shall be included as part of the Expansion Space Punch List Items to be repaired by Landlord: flooring, painting, plumbing fixtures, "clean of bed bugs" (in a manner to be mutually approved by the parties) and doors for each Suite. Subject to the Expansion Space Punch List Items, on the Expansion Space Commencement Date, Landlord shall maintain the Expansion Space except for damage caused by Tenant that is beyond normal wear and tear in good working condition, order and repair at Landlord's sole cost and expense, during the Term of the Lease, all in compliance with, and as the same may be required by, any and all standards required by any agency of the State, the United States Government, including the Code of Federal Regulations, and any local governmental authority, including all building codes, all as modified from time to time.
4. As soon as reasonably practicable following Tenant's delivery of the Expansion Notice to Landlord, the parties will execute an amendment to the Lease in order to include the Expansion Space as part of the Premises and to document the terms of Tenant's lease thereof.

**RIDER NO. 2 TO LEASE**

**EXTENSION OPTION RIDER**

This Rider No. 2 is made and entered into by and between CLOUDBREAK HAWAII, LLC, a Hawaiian limited liability company ("**Landlord**"), and UNITED STATES VETERANS INITIATIVE, a California not for profit corporation ("**Tenant**"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Landlord hereby grants to Tenant one (1) option (the "**Extension Option**") to extend the Term of the Lease for an additional period of five (5) years (the "**Option Term**"), on the same terms, covenants and conditions as provided for in the Lease during the initial Term, except for the Monthly Basic Rent, which shall be equal to ninety-five percent (95%) of the "fair market rental rate" for the Premises for the Option Term as defined and determined in accordance with the provisions of the Fair Market Rental Rate Rider attached to the Lease as Rider No. 2-A.

2. An Extension Option must be exercised, if at all, by written notice ("**Extension Notice**") delivered by Tenant to Landlord no later than that date which is **one hundred twenty (120) days** prior to the expiration of the then current Term of the Lease. Provided Tenant has timely exercised the Extension Option, the then current Term of the Lease shall be extended by the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Monthly Basic Rent shall be as set forth above. Failure to timely deliver the Extension Notice shall allow Landlord to deliver a written notice of termination giving Tenant fifteen (15) business days to respond and if Tenant fails to respond to such written notice the Tenant's Extension Option shall terminate.

**RIDER NO. 2-A TO LEASE**

**FAIR MARKET RENTAL RATE RIDER**

This Rider No. 2-A is made and entered into by and between CLOUDBREAK LAS VEGAS, LLC, a Nevada limited liability company ("**Landlord**"), and UNITED STATES VETERANS INITIATIVE, a California not for profit corporation ("**Tenant**"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. The term "**fair market rental rate**" as used in the Lease and any Rider attached to the Lease shall not exceed the annual amount per unit as set forth in US Department of Housing and Urban Development ("**HUD**") guidelines for the location of the facility. As of 2010 such information is available "online" at [www.huduser.org/portal/datasets/fmr/fmrs/FY2010](http://www.huduser.org/portal/datasets/fmr/fmrs/FY2010).

LEASE ADDENDUM # 1

Date: March 1, 2011

Project: X Hawaii Houston Las Vegas Phoenix Prescott Westside

Use: Residential Program X Permanent Housing Support Service

Lessor: X Cloudbreak Hawaii, LLC Cloudbreak Houston, LLC  
Cloudbreak Las Vegas, LLC Cloudbreak Phoenix, LLC  
Westside Residence Hall, Inc.

Lessee: United States Veterans Initiative

Change in Premises: Buildings(s) \_\_\_\_\_

X Unit(s) Add units 303 and 307 in 34 Yorktown \_\_\_\_\_

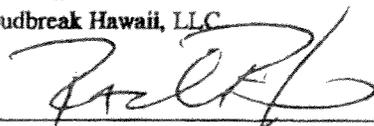
Change in Base Rent: Residential Program: \_\_\_\_\_

Permanent Housing: Increase rent by 2 units @ \$900.00 per month \_\_\_\_\_

Support Service: \_\_\_\_\_

Total Premises:	X Buildings(s) 1772 Saipan, 24 units _____
	Land for modular office location _____
	X Unit(s) _____
	34 Yorktown units 101,102,106,110,113,115,303,307,317
	37 Shangrila units 101-108, 110,136-139, 141,143 _____
Total Rent:	Residential Program: \$28,451.00 _____
	Permanent Housing: 9 units @ \$900 = 8,100.00 _____
	Support Service: \$10,124 + 300 = \$10,424.0 _____
	Total: \$46,975.00 per month _____

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:  
Cloudbreak Hawaii, LLC  
By:   
Name: Randall Bishop  
Title: Manager

LESSEE:  
UNITED STATES  
VETERANS INITIATIVE  
By:   
Name: Stephen Peck, msw  
Title: President + CEO

LEASE ADDENDUM # 2

Date: November 8, 2011

Project: X Hawaii €Houston €Las Vegas €Phoenix €Prescott €Westside

Use: €Residential Program X Permanent Housing €Support Service

Lessor: X Cloudbreak Hawaii, LLC €Cloudbreak Houston, LLC  
€Cloudbreak Las Vegas, LLC €Cloudbreak Phoenix, LLC  
€Westside Residence Hall, Inc.

Lessee: United States Veterans Initiative

Change in Premises: € Buildings(s) \_\_\_\_\_

X Unit(s) Add units 314, Building 34, Yorktown \_\_\_\_\_

Change in Base Rent: Residential Program: \_\_\_\_\_

Permanent Housing: Increase rent by 1 units @ \$900.00 per month \_\_\_\_\_

Support Service: \_\_\_\_\_

Total Premises:	X Buildings(s) 1772 Saipan, 24 units. _____
	Land for modular office location _____
	X Unit(s) _____
	34 Yorktown units 101,102,106,110,113,115,303,307,314, 317
	37 Shangrila units 101-108, 110,136-139, 141,143 _____
Total Rent:	Residential Program: \$28,451.00 _____
	Permanent Housing: 10 units @ \$900 = 9,000.00 _____
	Support Service: \$10,124 + 300 = \$10,424.0 _____
	Total: \$47,875.00 per month _____

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:  
Cloudbreak Hawaii, LLC

By: [Signature]  
Name: Randall Bishop  
Title: Manager

LESSEE:  
UNITED STATES  
VETERANS INITIATIVE

By: [Signature]  
Name: Charles A. Nelson  
Title: VP. Grants Administration + Compliance

LEASE ADDENDUM # 3

Date: March 15, 2012

Project: XX Hawaii  Houston  Las Vegas  Phoenix  Prescott  Westside

Use:  Residential Program  Permanent Housing XX Support Service

Lessor: XX Cloudbreak Hawaii, LLC  Cloudbreak Houston, LLC  
 Cloudbreak Las Vegas, LLC  Cloudbreak Phoenix, LLC  
 Westside Residence Hall, Inc.

Lessee: United States Veterans Initiative

Change in Premises:  Buildings(s) \_\_\_\_\_  
XX Unit(s) Shangrila (Building 37) add unit #202 for support service space \_\_\_\_\_

Change in Base Rent: Residential Program: \_\_\_\_\_  
Permanent Housing: \_\_\_\_\_  
Support Service: \$675.00 monthly effective March 15, 2012 \_\_\_\_\_

Total Premises:	<input type="checkbox"/> Buildings(s) Saipan (building 1772) 24 units _____
	<input type="checkbox"/> Land for Modular building _____
	<input type="checkbox"/> Unit(s) (34) Yorktown units 101,102,106,110,113,115,303,307,314,317 (37) Shangrila units 101-108,110,136-139,141,143,202 _____
Total Rent:	Residential Program: \$28,451.00 _____
	Permanent Housing: \$9,000.00 _____
	Support Service: \$10,799.00 + 300 = \$11,099.00 _____
	Total: \$48,550.00 _____

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:

Cloudbreak Hawaii, LLC

By: [Signature]  
Name: Randall Bishop  
Title: Manager

LESSEE:

UNITED STATES  
VETERANS INITIATIVE

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

LEASE ADDENDUM # 4

Date: April 16, 2012

Project: XX Hawaii  Houston  Las Vegas  Phoenix  Prescott  Westside  
Use:  Residential Program XX Permanent Housing  Support Service  
Lessor: XX Cloudbreak Hawaii, LLC  Cloudbreak Houston, LLC  
 Cloudbreak Las Vegas, LLC  Cloudbreak Phoenix, LLC  
 Westside Residence Hall, Inc.  
Lessee: United States Veterans Initiative  
Change in Premises:  Buildings(s) \_\_\_\_\_  
XX Unit(s) Add Unit number 304  
Change in Base Rent: Residential Program: \_\_\_\_\_  
Permanent Housing: \$900.00/month  
Support Service: \_\_\_\_\_

Total Premises:	X Buildings(s) <u>1722 Saipan, 24 units</u> <u>Land for modular office location</u> X Unit(s) <u>34 Yorktown units 101, 102, 106, 110, 113, 115, 303, 304, 307, 314, 317</u> <u>37 Shangrila units 101-108, 110, 136-139, 141, 143, 202</u>
Total Rent:	Residential Program: <u>\$28,451.00</u> Permanent Housing: <u>11 units @ \$900 = \$9,900.00</u> Support Service: <u>\$10,424 + \$592.02 = \$11,016.05</u> Total: <u>\$49,367.05</u>

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:

Cloudbreak Hawaii, LLC

By: [Signature]  
Name: Randall Bishop  
Title: Manager

LESSEE:

UNITED STATES  
VETERANS INITIATIVE

By: [Signature]  
Name: Darryl J. Vincent  
Title: Chief Operating Officer

LEASE ADDENDUM # 5

Date: June 1, 2012

Project: XX Hawaii  Houston  Las Vegas  Phoenix  Prescott  Westside

Use:  Residential Program XX Permanent Housing  Support Service

Lessor: XX Cloudbreak Hawaii, LLC  Cloudbreak Houston, LLC  
 Cloudbreak Las Vegas, LLC  Cloudbreak Phoenix, LLC  
 Westside Residence Hall, Inc.

Lessee: United States Veterans Initiative

Change in Premises:  Buildings(s) \_\_\_\_\_

XX Unit(s) Remove Unit #113

Change in Base Rent: Residential Program: \_\_\_\_\_

Permanent Housing: \$900.00/month reduction

Support Service: \_\_\_\_\_

Total Premises:	X Buildings(s) <u>1722 Saipan, 24 units</u> <u>Land for modular office location</u>
	X Unit(s) <u>34 Yorktown units 101, 102, 106, 110, 115, 303, 304, 307, 314, 317</u> <u>37 Shangrila units 101-108, 110, 136-139, 141, 143, 202</u>
Total Rent:	Residential Program: <u>\$28,451.00</u> Permanent Housing: <u>10 units @ \$900 = \$9,000.00</u> Support Service: <u>\$10,424 + \$592.02 = \$11,016.05</u> Total: <u>\$48,467.05</u>

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:

Cloudbreak Hawaii, LLC

By: [Signature]  
Name: Randall Bishop  
Title: Manager

LESSEE:

UNITED STATES  
VETERANS INITIATIVE

By: [Signature]  
Name: Darryl J. Vincent  
Title: Chief Operating Officer

LEASE ADDENDUM # 6

Date: October 5, 2012

Project: XX Hawaii  Houston  Las Vegas  Phoenix  Prescott  Westside

Use:  Residential Program XX Permanent Housing Support Service

Lessor: XX Cloudbreak Hawaii, LLC  Cloudbreak Houston, LLC  
 Cloudbreak Las Vegas, LLC  Cloudbreak Phoenix, LLC  
 Westside Residence Hall, Inc.

Lessee: United States Veterans Initiative

Change in Premises: Buildings(s) Building 34, add units 107, 206, 310 and 324  
This is for a 6 month term, units will revert to Cloudbreak Hawaii on March 3, 2013.  
Unit(s) \_\_\_\_\_

Change in Base Rent: Residential Program: \$1,000 per month per unit, \$1,000 per unit security deposit  
Permanent Housing: \_\_\_\_\_  
Support Service: \_\_\_\_\_

Total Premises:	X Buildings(s) <u>1722 Saipan, 24 units</u> <u>Land for modular office location</u>
	X Unit(s) <u>34 Yorktown units 101, 102, 106, 107, 110, 115, 206, 303, 304, 307, 310, 314, 317, 324</u> <u>37 Shangrila units 101-108, 110, 136-139, 141, 143, 202</u>
Total Rent:	Residential Program: <u>\$28,451.00</u> Permanent Housing: <u>10 units @ \$900 + 4 units @ \$1000 = \$13,000.00</u> Support Service: <u>\$10,424 + \$592.02 = \$11,016.05</u> Total: <u>\$52,467.05</u>

This Addendum modifies the provisions of that certain Lease dated December 28, 2010 between Lessor and Lessee regarding premises in the Project named above and is effective as of the date set forth above. This Amendment, together with the Lease, constitutes the entire agreement between the parties pertaining to the subject and supersedes all prior agreements of the parties.

LESSOR:

Cloudbreak Hawaii, LLC

By: [Signature]  
Name: Randall Bishop  
Title: Manager

LESSEE:

UNITED STATES  
VETERANS INITIATIVE

By: [Signature]  
Name: Darryl J. Vincent  
Title: Chief Operating Officer



**ENHANCED – USE LEASE**  
**of Certain Real Property and Buildings**  
**Located at the Former Barbers Point Naval Air Station**  
**in Oahu, Hawaii**

This **Enhanced-Use Lease** (hereinafter referred to as the "Lease"), is made and entered into this the 17 day of MARCH, 2003, ~~2002~~, by and between the Secretary of Veterans Affairs, an officer of the United States on behalf of the Department of Veterans Affairs ("Department" or "VA"), and Cloudbreak Hawaii, LLC, a Hawaii limited liability company, ("Cloudbreak") for the property described in **Exhibit A** (hereinafter referred to as the "Property"), and subject to Article 24 of this Lease;

**RECITALS**

WHEREAS, the Department has jurisdiction and control of certain real property and buildings at the former Barber's Point Naval Air Station in Oahu, Hawaii, which provides health care services and other benefits to the nation's veterans. The Property subject to this Lease is approximately 6 acres, including three existing barracks buildings totaling 65,963 square feet, and is more fully described in **Exhibit "A"**; and

WHEREAS, 38 U.S.C. Section 8161, et seq., "Enhanced-Use Leases of Real Property," permits the Department to enter into long-term Leases of certain property under its jurisdiction and control; and

WHEREAS, Cloudbreak desires to construct a Transitional Housing Facility of not less than 118 beds (also referred to as "the Facility") for the purpose of providing Transitional Housing for homeless veterans and non-veterans, and to be financially responsible for the construction, operation, and maintenance of the Facility; and

WHEREAS, a long-term use of the Property as a Transitional Housing Facility at the former Barbers Point Naval Air Station through an Enhanced-Use Lease, as authorized by the provisions of 38 U.S.C. Section 8161, et seq., by Cloudbreak would result in the availability of safe, decent, and affordable housing to the veteran homeless population and result in significant cost avoidance to the Department by reducing reliance on inpatient and domiciliary resources and permit more cost effective out-patient services. The cost reductions will permit more resources to be directed toward direct patient care.

NOW, THEREFORE IN CONSIDERATION OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED AND ACCEPTED, IT IS HEREBY AGREED THAT the Department grants to Cloudbreak a fifty (50) year Enhanced-Use Lease of that certain real property described in **Exhibit "A"** attached hereto and incorporated by reference herein, under its jurisdiction and control, subject to the terms and conditions set forth in this Lease.

