

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii

June 7, 2017

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Kakaako Board Members:

SUBJECT:

Shall the Authority Authorize the Executive Director to execute a ground lease with Hale Kewalo LP, for land parcel identified as Tax Map Key (TMK) (1) 2-3-007-026 (Parcel 26) for construction of the 128 unit affordable rental project (Hale Kewalo).

SUMMARY:

The developer of Hale Kewalo, Hale Kewalo LP is requesting a ground lease of Parcel 26 for construction of the 128 unit affordable rental project.

AUTHORITIES:

Hawaii Revised Statutes (HRS) Chapter 206E HAR § 206E-4. Previous Authority Actions.

BACKGROUND:

Timeline:

1. October 5, 2011: The dedication and conveyance of land parcel TMK: (1) 2-3-007:26 (Parcel 26) for the 404 Piikoi Phase IVA (Project) from the developer, Kewalo Development LLC was approved by the Authority.
2. January 20, 2012: The development agreement was amended to include the requirement for dedication and conveyance of Parcel 26 to the Hawaii Community Development Authority (HCDA).
3. December 4, 2013: The Authority authorized the amendment of the planned development permit (Permit) to assign the remaining reserved housing requirement for the project to SCD Piikoi LLC (Carr), a Stanford Carr Development affiliate.
4. April 10, 2014: The development agreement was further amended to incorporate amendments to the Permit as authorized by the Authority at its March 19, 2014 meeting.
5. January 7, 2015: Further amendments to the Permit were authorized by the Authority. These Permit amendments notes that Kewalo Development LLC, has agreed to enter

- into an amended and restated development agreement with Carr for the development of a reserved housing project (RH Project) on land parcel identified as TMK No. 2-3-007:049 (Parcel 49) and located at 450 Piikoi Street and 1235 Kona Street which will satisfy the remaining reserved housing obligations under the Permit.
6. November 24, 2015: The HCDA Executive Director administratively amended the planned development agreement, to provide Carr additional time to complete certain obligations of the amended planned development agreement.
 7. May 4, 2016: The Authority ratified the November 24, 2015 administrative amendment of the planned development agreement.
 8. June 24, 2015: Hale Kewalo, LP (Kewalo), Carr's development entity for RH Project (Hale Kewalo), submitted a request to HHFDC for approvals from certain exemptions from statutes, ordinances, and rules for the RH Project pursuant to Section 201H-38, Hawaii Revised Statutes (201H Exemptions). On August 19, 2015, Kewalo also submitted a consolidated application for (a) Tax-exempt issuance of \$31,500,000 from the HMMF Bond Program; (b) \$1,880,416 in annual Federal LIHTC and \$940,208 in annual State LIHTC from the non-volume cap pool (4% LIHTC); and (c) A Rental Housing Revolving Fund (RHRF) project award loan of \$10,600,000.
 9. October 15, 2015: The HHFDC approved the Hale Kewalo as eligible for 201H Exemption. Subsequently on November 4, 2015 the City Council approved the 201H Exemption for Hale Kewalo. On March 10, 2016 HHFDC approved Kewalo's application for LIHTC and RHRF.
 10. October 5, 2016: The Authority authorized the Interim Executive Director to execute the Declaration of Land Use and Restrictive Covenant required by the HHFDC over land owned by the HCDA and identified as Parcel 26 for development of Hale Kewalo project.
 11. March 9, 2017: The HHFDC approved an extension of its Resolution No. 083, which provides for official intent with respect to issuance of HMMF tax exempt revenue bonds for the Hale Kewalo project. This extension provides Kewalo additional time to close financing for the Hale Kewalo project.
 12. April 5, 2017: The Authority authorized the Executive Director to amend the Planned Development Agreement for 404 Piikoi, Phase IV to allow additional time for Hale Kewalo, LP to close all financing required for development of Hale Kewalo Project.

ANALYSIS:

On March 31, 2015, the HCDA Executive Director executed a Letter of Intent for Site Control Agreement with Kewalo. A copy of the letter is provided as Exhibit A. The letter authorized Kewalo to submit applications to the Hawaii Housing Finance and Development Corporation (HHFDC) for reservation or allocation of federal and/or state low-income housing tax credits (LIHTC) and to take other reasonable actions regarding development of the RH project. The Letter also indicated that the HCDA, subject to approval by its board, intends to enter into a ground lease with Kewalo for development of the RH Project subject to terms of the January 7, 2015 Amended Permit.

Kewalo submitted construction plans for Hale Kewalo to the City and County of Honolulu, Department of Planning and Permitting (DPP) for review and approval in September 27, 2016. To date, the construction plans have been approved by the Building, Electrical, Fire, Mechanical, and Structural Branches of DPP. DPP Traffic branch is still reviewing the construction plans and it is taking longer due to coordination with HART and Kona Street road widening. Kewalo anticipate receiving approval by mid-June.

Kewalo is working with its underwriter for HUD Section 221(d)(4) Senior Permanent Loan. Kewalo is on track to have credit / investment approvals by early August such that it will be in a position to meet HHFDC's requirements to obtain approval at its August 10 meeting and close shortly thereafter. Kewalo anticipates closing on all financing by September 18, 2017.

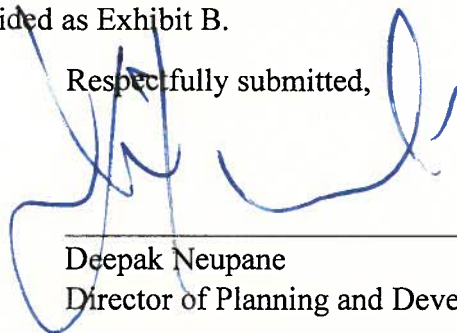
Kewalo anticipates starting demolition and abatement related work on the existing structure to begin immediately following September 18, 2017 financing closing. Construction of the project will start soon thereafter.

Staff has been working with Kewalo and the deputy AG in negotiating the terms of the ground lease. The development agreement requires the project to remain as affordable rental housing project for 61 years at 60% and less of area median income, therefore, staff is recommending a ground lease term of 65 years at an annual lease rent of \$1. A copy of the draft ground lease is provided as Exhibit B.

RECOMMENDATION

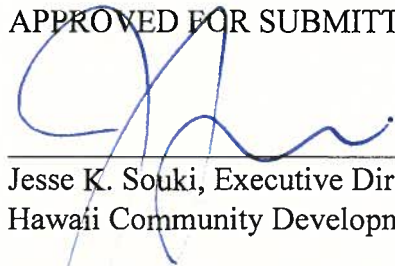
The Authority should Authorize the Executive Director to execute a ground lease with Hale Kewalo LP, for land parcel identified as Tax Map Key (TMK) (1) 2-3-007-026 (Parcel 26) for construction of the 128 unit affordable rental project (Hale Kewalo) substantially in the form presented in the draft ground lease provided as Exhibit B.

Respectfully submitted,



Deepak Neupane
Director of Planning and Development

APPROVED FOR SUBMITTAL:



Jesse K. Souki, Executive Director
Hawaii Community Development Authority

Exhibit-A: March 31, 2015 Letter of Intent for Site Control
Exhibit-B: Draft Ground Lease

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (19.5% of the population).

There is a growing awareness of the need to address the needs of older people, and the Government has set out a strategy for the 21st century in the White Paper on *Ageing Better: The Government's Strategy for Older People* (Department of Health 1999). This strategy is based on the following principles:

- Older people should be able to live independently and actively in their own homes.
- Older people should be able to live in their own communities.
- Older people should be able to live in their own homes and communities for as long as possible.

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EXHIBIT A

LETTER OF INTENT FOR SITE CONTROL AGREEMENT

This is a Letter of Intent for Site Control for the property identified as 1226 Waimanu Street, Honolulu, Hawaii 96814, TMK (1) 2-3-007:026 (the "Property") more particularly described in Exhibit "A" attached hereto and incorporated by reference.

A. SCD Piikoi, LLC (the "SCD") a Hawaii limited liability company whose business address is 1110 Alakea Street , 27th Floor, Honolulu, HI 96813, has experience developing affordable or reserved housing projects in the State of Hawaii, and wishes to develop the Property as a reserved housing project (the "Project") in accordance with that certain Planned Development Permit (PD 2-84) issued by the Hawaii Community Development Authority (the "HCDA"), dated November 7, 1984, as subsequently amended (the "PDP").

B. The HCDA, subject to approval by its board, intends to enter into a ground lease with SCD for the development of the Property subject to the terms of this Agreement and that certain Amended and Restated Development Agreement dated January 7, 2015 (the "Development Agreement").

C. The HCDA hereby authorizes SCD to (1) submit applications to the Hawaii Housing Finance Development Corporation for a reservation or allocation of federal and/or state low-income housing tax Credits and (2) take such other reasonable actions regarding the Property as may be necessary or desirable to develop the Project.

D. SCD shall provide HCDA not less than 24 hours prior notice of entry onto the Property, together with a list of the names of the persons who will be entering the Property and the purpose for the entry. All entries and activity on the Property must be conducted in accordance with applicable laws and in a safe and prudent manner. SCD and all persons entering on behalf of, with, or at the request of SCD (the "Authorized Persons") shall not unreasonably interfere with any other activities on the Property and shall take all reasonable measures for the prevention of dust, noise and other nuisances.

Any damage or injury to the Property or any improvements or property thereon by SCD or any Authorized Persons shall be promptly repaired by SCD at its own cost and expense. SCD and the Authorized Persons shall not commit any act or neglect that may subject the Property to any lien or encumbrance. SCD shall comply with all other reasonable rules and conditions for entry that HCDA may from time to time make and provide in writing to SCD.

E. The right of entry given to SCD by this Letter of Intent (the "LOI") is non-exclusive. SCD understands that third parties are currently using and occupying the Property pursuant to leases with HCDA. This LOI is not a lease or a grant of an easement or any other interest in the Property, and SCD understands that no property rights are vested. As a material part of the consideration to HCDA for this LOI, SCD will assume all risk of damage to property and bodily injury or death to persons incurred in, on or about the Property arising out of the entry onto the Property by SCD or any Authorized Persons. SCD hereby waives all claims SCD may have, now or later, against HCDA and its officers, employees, agents, contractors and invitees (collectively, the "HCDA and its Agents and Invitees"), for any such damage, injury or death. Further, SCD agrees to indemnify, defend and hold harmless HCDA and its Agents and Invitees from and against any and all claims, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and costs) (collectively, the "Claims") for which HCDA and its Agents and Invitees may become liable, including, without limitation, to Claims made by any Authorized Persons or any person (including insurance companies and employees) claiming under, or reporting to, or under the supervision or control of SCD or any Authorized Persons, which Claims arise out of, are caused by, or result from the entry by SCD or any Authorized Persons onto the Property, the performance by SCD or any Authorized Persons of work

at the Property, or a breach of conditions set forth in this LOI. The provisions of this section shall survive termination of this Agreement.

SCD shall procure, carry, and continuously maintain, or cause to be maintained, at all times during the effective term of this LOI and at its own cost and expense, commercial general liability insurance to protect against claims for bodily injury or death, or for damage to property, which may arise out of SCD's products, operations, use, maintenance, and contractual liability assumed by SCD, or by anyone employed by SCD, or by anyone for whose acts SCD may be liable.

SCD shall maintain in force and effect the following insurance coverages on an occurrence basis with minimum limits of liability as follows:

General Aggregate Limit	\$2,000,000.00
Products-Completed Operations Aggregate Limit	\$2,000,000.00
Personal and Advertising Injury Limit	\$2,000,000.00
Each Occurrence Limit	\$2,000,000.00

Except with HCDA's prior written approval, which shall not be unreasonably withheld, the above shall not have a deductible amount in excess of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for any one occurrence.

SCD shall carry Workers' Compensation and Employers' Liability insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of SCD. SCD shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event SCD has employees, otherwise SCD will require its contractors to maintain):

<u>Workers' Compensation</u>	Hawaii statutory limits	
<u>Employer's Liability</u>		
Bodily Injury By Accident	\$2,000,000.00	Each Accident
Bodily Injury By Disease	\$2,000,000.00	Policy Limit
Bodily Injury By Disease	\$2,000,000.00	Each Employee

SCD shall carry insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. SCD shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event SCD has employees, otherwise SCD will require its contractors to maintain):

Bodily Injury each person	\$2,000,000.00
Bodily Injury each accident	\$2,000,000.00
Property Damage each accident	\$2,000,000.00
Personal Injury Protection/No-Fault Combined Single Limit	Hawaii statutory limits or \$2,000,000.00

SCD shall carry Umbrella/excess liability insurance providing excess coverage over Commercial General Liability limits, Liquor Liability (if applicable), Employer's Liability limits, and Automobile Liability Insurance limits. The Umbrella/Excess Liability policy shall be written on an "occurrence" basis with a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per policy year and a self-insured retention or deductible no greater than TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00). The umbrella/excess insurance coverage shall, at a minimum, "follow form" over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers' Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers' Liability (but not Workers' Compensation), and Business Automobile Liability Insurance. LESSEE shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$2,000,000.00
Aggregate Limit	\$2,000,000.00

F. *[Signatures on Next Page]*

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Agreement as of the date above set forth.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

By: _____

Its Executive Director

Date: March 31, 2015

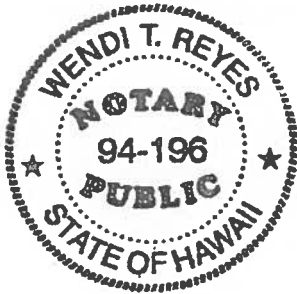
SCD PIKOI, LLC

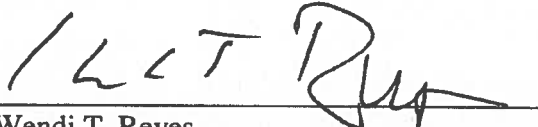
By: _____

Stanford S. Carr
Its Manager

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 31st day of March, 2015, before me personally appeared ANTHONY J.H. CHING, Executive Director of the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, State of Hawaii, a body corporate and a public instrumentality of the State of Hawaii and that said instrument, this (7) page Letter of Intent for Site Control Agreement for SCD Piikoi, LLC signed in the First Circuit of the State of Hawaii on behalf of said body corporate of the State of Hawaii and acknowledged said instrument to be the free act and deed of said body corporate of the State of Hawaii.




Wendi T. Reyes
Notary Public, State of Hawaii
My commission expires: 3/30/2018

STATE OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS:

On this **30th** day of **March, 2015** before me personally appeared **Stanford S. Carr**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Print Name: Lynnette R. Tachi
Notary Public, State of Hawaii
My commission expires: 06/11/18

LS

NOTARY PUBLIC CERTIFICATION	
Lynnette R. Tachi	First Circuit
Doc Description: Letter of Intent for Site Control Agreement	
No of Pages: 6	Date of Doc. Undated at time of notarization
	
Notary Signature	Date

LS

Exhibit "A"
(Legal Description)

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 334-A, area 4,600 square feet, more or less, Section 2, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 (amended) of Bishop Trust Company Limited.

Being land(s) described in Transfer Certificate of Title No. 987,015 issued to KEWALO DEVELOPMENT LLC, a Hawaii limited liability company.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail (X) Pick-up () To:

Land Court (X) Regular ()

Hawaii Community Development Authority
461 Cooke Street
Honolulu, Hawaii 96813

TYPE OF DOCUMENT: Ground Lease

Total pages __

PARTIES TO DOCUMENT:

Lessor: Hawaii Community Development Authority
Lessee: Hale Kewalo, LP

PROPERTY DESCRIPTION

TAX MAP KEY NO.
(1) 2-3-007-026

TABLE OF CONTENTS

A. Minerals and Waters.	1
B. Prehistoric and Historic Remains.....	2
1. Payment of Rent.	2
2. Taxes, Assessments, Etc.	2
a. Lessee’s Right to Contest.....	2
b. Lessor’s Cooperation in Lessee’s Contest.	2
3. Utility Services.	3
4. Covenant Against Discrimination.....	3
5. Sanitation.	3
6. Waste and Unlawful, Improper or Offensive Use of Premises.	3
7. Compliance with Laws.	3
8. Inspection of Premises.....	3
9. Improvements.	4
10. Repairs to Improvements.....	4
11. Liens.	4
12. Character of Use.	5
13. Assignment of Lease, etc.....	5
14. Subletting; Space Leases; Parking Spaces.....	6
15. Indemnity.....	6
16. Costs of Litigation.	6
17. Insurance.....	6
a. Commercial Property Insurance.	7

b. Commercial General Liability.....	8
c. Workers' Compensation and Employers' Liability.....	8
d. Business Automobile Liability.....	9
e. Umbrella/Excess Liability.....	9
f. Builder's Risk Policy.....	9
18. Lessor's Lien.....	10
19. Right to Mortgage.....	10
20. Rights of Approved Mortgagees.....	11
21. Estoppel Certificate.....	15
22. Breach and Events of Default.....	15
23. Remedies Upon Event of Default; Termination of the Lease.....	16
a. Notice of Default.....	16
b. Lessor's Remedies.....	16
c. Cumulative Remedies.....	17
d. Lessor's Right to Act.....	17
24. Notice to Tax Credit Investor.....	17
25. Tax Credit Investor's Opportunity to Replace Lessee's General Partner.....	17
26. Condemnation.....	18
27. Conditions of Premises.....	18
28. Right to Enter.....	18
29. Non-Transferable.....	18
30. Acceptance of Rent Not a Waiver.....	19
31. Extension of Time.....	19

32. Quiet Enjoyment.....	19
33. Surrender.....	19
34. Processing Fees/Documentation.....	19
35. Security of the Premises.	19
36. Bonds.	20
37. Historic Preservation.	20
38. Hazardous Materials.	20
39. Project Commencement.....	21
40. Time of Performance for Project.	21
41. Project Financing.....	21
42. Performance of Project.	21
43. Approvals and Permits.....	21
44. Compliance with Americans with Disabilities Act of 1990.	22
45. Construction Contract.....	22
46. Performance of Construction Contract.	23
47. As-Built Drawings.	23
48. Request to Extend.	23
49. Force Majeure.....	24
50. Interest, Costs and Fees.	24
51. Governing Law.	24
52. Headings.	24
53. Partial Invalidity.....	25
54. Time is of the Essence.	25

55. Counterparts.....	25
56. Entire Agreement; Amendments	25
57. Recordation.....	25
58. Brokers' Commissions.....	25
59. Notices.....	25
60. Additional Terms.....	26
EXHIBIT A (LEGAL DESCRIPTION)	31
EXHIBIT B (USE RESTRICTIONS)	32
EXHIBIT C (PERMITTED LIENS)	34

DRAFT

**GROUND LEASE
(HALE KEWALO)**

THIS INDENTURE ("**Lease**"), made this _____ day of _____, _____ ("**Effective Date**") by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII**, a body corporate and a public instrumentality of the State of Hawaii, the principal place of business and mailing address of which is 547 Queen Street, Honolulu, Hawaii 96813, ("**Lessor**"), and **HALE KEWALO, LP**, a Hawaii limited partnership, whose principal place of business and mailing address is 1100 Alakea Street, Suite 2700, Honolulu, Hawaii, 96813 ("**Lessee**"); (each, a "**Party**", and collectively, the "**Parties**");

W I T N E S S E T H:

The Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as:

Approximately 4,600 square feet on the mauka side of Waimanu Street between Pi`ikoi and Pensacola Streets in Honolulu, Oahu, Hawaii, TMK No. (1) 2-3-007-026; more particularly described in **Exhibit A** which is attached and incorporated by reference (the "**Premises**").

It being expressly understood and agreed by Lessor that, except as provided herein, Lessee is the owner of all buildings and improvements and fixtures which are now or hereafter situated on such land described in **Exhibit A**; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9, 10 and 33 of this Lease, the buildings and improvements and fixtures shall not be separated from the Premises demised hereby and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent if required as provided below in Section 13 pertaining to "Assignment of Lease" even though not expressly mentioned or described in the conveyance or other instrument.

TO HAVE AND TO HOLD the Premises unto the Lessee for the term of: Sixty-Five (65) years commencing on the Effective Date, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Lessor, an annual rent as provided hereinbelow:

Base Lease Rent. A base lease rent of \$1.00 per year for the full term of the Lease shall be payable in advance in a lump sum upon the execution of this Lease.

RESERVING UNTO THE LESSOR THE FOLLOWING:

A. Minerals and Waters. (a) All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals

by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the Premises and not for sale to others. (b) All surface waters, ground waters, storm waters and other water systems appurtenant to the Premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this Section, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

B. Prehistoric and Historic Remains. All prehistoric and historic remains found in, on, or under the Premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of Rent. The Lessee shall pay the rent to the Lessor in advance in a lump sum upon the execution of this Lease at Lessor's principal place of business specified above, in legal tender of the United State of America.

2. Taxes, Assessments, Etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this Lease.

a. Lessee's Right to Contest. Lessee shall have the right, at its own expense, to contest the amount or validity of any tax or assessment by appropriate proceedings diligently conducted in good faith. As a condition precedent to Lessee's contesting any tax or assessment, Lessee shall (i) comply with all laws, orders, rules and regulations respecting such contest, (ii) give Lessor prior written notice of Lessee's intent to so contest said amount or validity, and (iii) in order to protect Lessor from any sale or foreclosure against the Premises or any part thereof, provide a good and sufficient surety bond or other security deemed appropriate by Lessor in the amount of such tax or assessment plus estimated penalties and interest that may be imposed. Lessee shall bear any and all costs, liabilities or damages, including reasonable attorneys' fees and costs arising out of such contest. Nothing in this Section relieves, modifies, or extends Lessee's covenant to pay any such tax or assessment at the time and in the manner provided in this Section 2.

b. Lessor's Cooperation in Lessee's Contest. Provided Lessor incurs no cost or liability in doing so, Lessor agrees to reasonably cooperate (and Lessor shall execute

applications, certificates and like documents) with Lessee in any proceedings brought by Lessee to contest the validity or the amount of any taxes or assessments or to recover any taxes or assessments paid by Lessee. If the provisions of any Law at the time in effect shall require that such proceedings be brought by or in the name of Lessor, then, provided Lessor incurs no cost or liability in doing so, Lessor agrees to reasonably cooperate in any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Lessee, Lessee shall, without limiting any other indemnity in this Lease, defend, indemnify and hold the indemnified parties harmless from all claims and liabilities arising from such proceedings.

3. Utility Services. The Lessee shall pay, when due, all charges, duties and rates of every description, including water, sewer, gas, telephone, cable television, communications, refuse collection or any other charges, as to which the Premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee, excluding any utility charges contracted directly by the residential and commercial tenants.

4. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against any one based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the Premises and improvements, once completed, in a strictly clean, sanitary and orderly condition as comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements. Lessee shall be responsible for removal of all trash upon the Premises, whether or not placed on the Premises by Lessee or with or without Lessee's consent, and whether or not placed on the Premises prior to the term of this Lease.

6. Waste and Unlawful, Improper or Offensive Use of Premises. The Lessee shall be responsible for the maintenance of the property during the term of this Lease and shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful or improper use of the Premises or any part thereof. Lessee shall be responsible for responding to any complaints against the Premises and for resolving any issues arising from the complaints, including but not limited to, taking action to halt any waste, nuisance, or unlawful use of the Premises.

7. Compliance with Laws. The Lessee shall comply with the applicable Laws of all governmental authorities having jurisdiction over the Premises, construction of the improvements, and use and operation of the Premises now in force or which may become effective subsequent to the commencement of this Lease. Lessee will at all times during the Lease term, and at its own expense, make, build, maintain and repair all fences, roads, curbs, sidewalks and parking areas that may be required under any Applicable Laws to be made, built, maintained or repaired upon the Premises.

8. Inspection of Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the Lease term, to enter the Premises and examine the state of its repair and condition with three (3) days' prior written notice to Lessee.

9. Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the Premises any building, structure or improvement of any kind and description except with the prior written approval of the Lessor and upon those conditions the Lessor may reasonably impose with exception that Lessee is not required to obtain Lessor's prior approval to effect (i) emergency repairs, (ii) interior alterations or minor repairs that are non-structural and do not significantly alter the external appearance or view of any improvements, (iii) other routine maintenance work that does not otherwise involve major repairs, or (iv) tenant improvement repair(s) in the commercial space. The Lessee shall own the improvements until the expiration or earlier termination of the Lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense. At the expiration or earlier termination of this Lease, provided Lessee is not then in default, Lessee shall remove any or all of Lessee's personal property from the Premises so long as (i) such personal property can be removed without structural damage to the improvements, and (ii) such personal property is removed within thirty (30) days following such expiration or earlier termination of this Lease, and (iii) all resultant damage to the Premises and any improvements are promptly and completely remedied and Lessee takes reasonable steps necessary to preserve the appearance of the Premises and any improvements. Any personal property of Lessee remaining on the Premises after said thirty (30) day period shall automatically vest and become the sole property of Lessor without any payment by Lessor and without any further action or agreement required, including the necessity of any bill of sale, deed, conveyance or other act or agreement of Lessee, and without payment of any kind or nature by Lessor to Lessee or to any other person.

10. Repairs to Improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted as to comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements. Lessee shall also, at its own expense, make any and all repairs and perform all work required to keep the Premises, buildings, and improvements on the Premises in compliance with all County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements. Notwithstanding the foregoing, Lessor and Lessee agree that Lessee may demolish any and all improvements which are existing or located on the Premises as of the Effective Date of this Lease.

11. Liens. Except for the liens permitted by Sections 13, 18 and 19 of this Lease and other Permitted Liens (as set forth in **Exhibit C**) and except for leases and/or rental agreements with residential and commercial tenants for the residential and commercial space(s) in the Project described in Section 12, the Lessee shall at all times keep the Premises free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances. Lessee shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of any improvements with respect to work performed by or for Lessee or materials purchased by or for Lessee so as to prevent any liens attaching to the Premises. Notwithstanding the preceding sentence, Lessee may contest any and all invoices and payment requests from such contractors and materialmen, provided that Lessee, if the amount contested exceeds Twenty-Five Thousand

Dollars (\$25,000), shall first post with Lessor a bond (in an amount equal to 100% of the contested invoices) or other security, in form and amount reasonably acceptable to Lessor, to secure the payment of any contested amounts (plus any fees, interests and penalties) and the removal of any liens which may attach as a result of such nonpayment and contest if such lien remains outstanding for a period of more than twenty (20) calendar days. Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claims for such liens and encumbrances and all resulting expenses.

12. Character of Use. The Lessee shall use or cause the Premises to be used for the purposes of constructing, operating and maintaining parking, ingress and egress facilities ancillary to a 127-unit affordable multifamily rental housing project with one property manager's residential unit, commercial space and other ancillary facilities (collectively, the "**Project**") as described in the Use Restrictions set forth in **Exhibit B** attached hereto and incorporated herein by reference, unless otherwise agreed to by Lessor. Except for the parking, ingress and egress facilities to be located on the Premises, the Project is to be located on a parcel adjacent to the Premises. Lessee shall ensure that the use and occupancy of the Premises complies with all applicable County, State, and Federal laws and regulations.

13. Assignment of Lease, etc. Lessee shall not assign this Lease without the prior written consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment and shall have received either a true executed copy of such assignment or written notice thereof, and also, in any case other than assignment by way of a mortgagor's assignment to or by the Department of Housing and Urban Development or Veterans Administration or upon foreclosure of a mortgage or assignment in lieu of foreclosure, payment of a reasonable service charge and the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money except said service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this Lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this Lease only during the period such person has possession or ownership of the leasehold estate.

Notwithstanding the foregoing, Lessee may sell, assign, convey, or otherwise transfer this Lease with prior written notice to Lessor but without obtaining Lessor's approval or consent only if Lessee participates in the Low Income Housing Tax Credit Program described in Section 42 of the Internal Revenue Code of 1986, in which case Lessee may sell and assign this Lease after the 15 year compliance period pertaining to such program, subject to the provisions of Section 12 above. Any purchaser or assignee of this Lease shall not receive any reserved housing credits for any other development project.

14. Subletting; Space Leases; Parking Spaces. Lessee shall expressly be allowed to lease the whole or any portion of the spaces within the improvements constructed on the Premises consistent with the provisions of Section 12 above. Except as otherwise provided in this Section, Lessee shall not be allowed to sublet the whole or any portion of the Premises.

15. Indemnity. Lessee shall defend, indemnify, and hold harmless Lessor and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death, based upon or arising out of or in connection with: (a) Lessee's breach of this Lease or failure to comply with Applicable Laws; (b) any act or omission on the part of Lessee or Lessee's members, partners, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "**Permitted Persons**") relating to Lessee's use, occupancy, maintenance, or enjoyment of the Premises or any part thereof; (c) any injury sustained or suffered by Permitted Persons while on the Premises; (d) any failure on the part of Lessee to maintain the Premises, including any accident, fire, or nuisance caused by the failure of Lessee to maintain the Premises in a safe condition, and (e) any other act or omission in any way relating to or arising out of this Lease. This provision shall survive the termination or expiration of this Lease.

Lessor shall be responsible for any claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death, based upon or arising out of or in connection with any action by Lessor and the State of Hawaii, and their respective officials, directors, members, employees, and agents, to the extent that Lessor's liability for such claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death has been determined by a court of competent jurisdiction or otherwise agreed to by the State of Hawaii, and provided that funds are authorized by the Legislature of the State of Hawaii for such purposes and funds are allocated by the budget process. This provision shall survive the termination or expiration of this Lease.

16. Costs of Litigation. In case the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings) as a result of this Lease or Lessee's use, occupancy, maintenance or enjoyment of the Premises, the Lessee shall pay all costs, attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the Premises in the event of a breach of this Lease by Lessee, or in the collection of delinquent rents, taxes, and any and all other charges from Lessee in relation to this Lease.

17. Insurance. Lessee shall procure, carry, and continuously maintain, or cause to procure, at all times during the Term and at its own cost and expense, and shall cause Lessee's major contractors to procure, carry, and continuously maintain, insurance coverage on an occurrence basis of the kinds equal to or greater than those specified hereunder, or, if greater, any coverage or limits of liability required by law. "Major contractor," as used herein, shall mean contractors with contracts where the cost of work equals or exceeds \$500,000 or suppliers with contracts where the cost of materials equals or exceeds \$500,000. Lessee's insurance shall

be issued by an insurance company authorized to do business in the State of Hawaii.

Prior to first entry onto the Premises, Lessee shall provide to Lessor an insurance binder to show compliance with the foregoing. Lessee shall name Lessor and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds. Lessor shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in Lessee's insurance coverage. Lessee shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of Lessee in connection with Lessee's use or occupancy of the Premises. The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability under this Lease or to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease. Lessee shall keep such insurance in effect and the certificate(s) on deposit with Lessor during the entire term of this Lease. Upon request by the Lessor, Lessee shall furnish a copy of the policy or policies. Failure of Lessee to provide and keep in force such insurance shall be regarded as a material default under this Lease and Lessor shall be entitled to exercise any or all of the remedies provided in this Lease for default of Lessee.

Lessor is a self-insured State agency. Lessee's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by Lessee.

Lessor reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in Lessor's sole discretion, the above insurance does not provide adequate protection for Lessor, it may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection, if available at commercially reasonable rates.

Lessee shall obtain and maintain, at its own cost and expense, insurance in full force and effect throughout the entire Term of this Lease of the kinds and in amounts greater than or equal to those set forth below:

a. Commercial Property Insurance. Lessee shall procure, carry and continuously maintain, at all times during the Term and at its own cost and expense, commercial property insurance and extended coverage insurance (to the extent not already covered by the commercial property insurance policy) covering, without limitation, all buildings, structures, structures under construction (except as the same may be covered by a builder's risk policy), improvements, furniture, fixtures, machinery, equipment, stock, and any other commercial or personal property owned, borrowed, or used by Lessee on the Premises to the extent of Lessee's interest therein. Additionally, Lessee shall procure, carry, and continuously maintain, at all times during the Term and at its own cost and expense, commercial insurance coverage for risk of loss by hurricane, flood, tsunami, tidal wave, and earthquake, and such other hazards as is reasonably available in the market at a reasonable cost or risks a prudent person would insure against. All insurance coverages shall be in an amount equal to the full replacement cost at the time of loss, without deduction for depreciation, but with such deductibles as reasonably determined by Lessee, provided that such deductibles shall not exceed ONE HUNDRED THOUSAND

DOLLARS (\$100,000.00), except hurricane, flood, tsunami, and earthquake which limits and percentage deductible shall be reasonably determined by Lessee. In the event of partial or total loss occurring during the Term, any proceeds derived from the above policies shall be used by Lessee to rebuild, replace, or repair the damaged improvements according to plans and specifications approved in writing by Lessor, which approval shall not be unreasonably withheld; provided that in the event of partial or total loss during the last ten (10) years of the Term, Lessee shall have the option in its sole discretion to terminate this Lease upon sixty (60) days written notice to Lessor provided all proceeds derived from the above policies are paid to Lessor.

b. Commercial General Liability. Lessee shall procure, carry, and continuously maintain, or cause to be maintained, at all times during the Term and at its own cost and expense, commercial general liability insurance to protect against claims for bodily injury or death, or for damage to property, which may arise out of Lessee's products, operations, use, maintenance, and contractual liability assumed by Lessee, or by anyone employed by Lessee, or by anyone for whose acts Lessee may be liable. Lessee shall maintain in force and effect the following insurance coverages on an occurrence basis with minimum limits of liability as follows:

General Aggregate Limit (other than products-completed operations)	\$2,000,000.00
Products-Completed Operations Aggregate Limit	\$2,000,000.00
Personal and Advertising Injury Limit	\$2,000,000.00
Each Occurrence Limit	\$2,000,000.00

Except with Lessor's prior written approval, which shall not be unreasonably withheld, the above shall not have a deductible amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for any one occurrence.

c. Workers' Compensation and Employers' Liability. Workers' Compensation and Employers' Liability insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of Lessee. Lessee shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event Lessee has employees, otherwise Lessee will require its contractors to maintain):

<u>Workers' Compensation</u>	Hawaii statutory limits	
<u>Employer's Liability</u>		
Bodily Injury By Accident	\$2,000,000.00	Each Accident
Bodily Injury By Disease	\$2,000,000.00	Policy Limit
Bodily Injury By Disease	\$2,000,000.00	Each Employee

d. Business Automobile Liability. Insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. Lessee shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event Lessee has employees, otherwise Lessee will require its contractors to maintain):

Bodily Injury each person	\$2,000,000.00
Bodily Injury each accident	\$2,000,000.00
Property Damage each accident	\$2,000,000.00
Personal Injury Protection/No-Fault Combined Single Limit	Hawaii statutory limits or \$2,000,000.00

e. Umbrella/Excess Liability. The Umbrella/Excess Liability policy shall be written on an "occurrence" basis with a limit of liability of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per policy year and a self-insured retention or deductible no greater than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). The umbrella/excess insurance coverage shall, at a minimum, "follow form" over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers' Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers' Liability (but not Workers' Compensation), and Business Automobile Liability Insurance. Lessee shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$5,000,000.00
Aggregate Limit	\$5,000,000.00

f. Builder's Risk Policy. Lessee shall procure and assume all responsibility for procurement of a Builder's Risk Policy. To the extent of coverage afforded by Builder's Risk or any other property or equipment floater insurance applicable to the Project or equipment used in construction of the Project, regardless of whether such insurance is owned by or for the benefit of Lessee, Lessor, Lessee's contractor and subcontractors, or their respective agents, authorized representatives, and employees (each, a "Beneficiary", and collectively, the "Beneficiaries"), each Beneficiary waives all rights of recovery against each other for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance as per the terms of this Lease. If the policies of insurance referred to in this subsection (f) require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed. Any deductible amount applied to any loss payable under the Builder's Risk insurance shall be borne by the insured interests whose Project is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed or complete, to materials stored on or off site, or to materials in transit. Lessor neither represents nor assumes responsibility for maintaining property insurance on the entire Project or that such insurance, if

any, is adequate to protect the interests of Lessee, its contractor and subcontractors. Lessee, its contractor and subcontractors agree that they will assume the responsibility to satisfy themselves as to whether Builder's Risk insurance in completed value is in force and that it shall be the obligation of Lessee, its contractor and subcontractors to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Project.

18. Lessor's Lien. The Lessor shall have a lien on all the buildings and improvements placed on the Premises by the Lessee, on all property kept or used by the Lessee on the Premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the Premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this Lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid. Notwithstanding the foregoing, this lien shall be subordinate in all respects to any mortgage which Lessee shall be allowed to place on this Lease or to which Lessor shall consent as provided in this Lease. Lessor shall execute such instruments as a permitted mortgagee may reasonably require to evidence the subordination of Lessor's lien. Upon Lessor's request, Lessee shall execute a UCC-1 statement for recording in the Bureau of Conveyances, State of Hawaii, memorializing Lessor's security interest.

19. Right to Mortgage. Upon due application and obtaining the prior written consent of Lessor, which shall not be unreasonably withheld, Lessee may mortgage its interest in the Premises; provided that Lessor's consent is not required if the mortgage or security interest is to a Suitable Lender, as defined hereinbelow. If the mortgage or security interest is to a Suitable Lender, the foregoing waiver of consent shall extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable.

For purposes of this Lease, the term "**holder**" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States. For purposes of this Lease, the term "**Suitable Lender**" shall include (i) any department or agency of the federal government, including U. S. Department of Housing and Urban Development, Federal Housing Administration, Veterans Administration, Rural Development, (ii) any department, agency or public body and body corporate and politic of the State of Hawaii, (iii) any agency or department of the City and County of Honolulu, (iv) any bond issuer, underwriter or trustee, or (v) any lending institution (including, without limitation, any bank, insurance company, pension or retirement fund or mutual fund), in each case, to finance or refinance the development and construction of improvements on the Premises. Any mortgage consented to by Lessor pursuant to, or otherwise permitted under, this Section 19 shall be deemed an "**Approved Mortgage**" for purposes of all other provisions of this Lease and the mortgagee or holder of such Approved Mortgage shall be deemed an "**Approved Mortgagee**." Lessee agrees that it shall not enter into any mortgage unless such mortgage shall substantively provide that if the Approved Mortgagee acquires, through foreclosure or otherwise, all or part of

Lessee's interest in the Premises, the Approved Mortgagee shall take subject to the terms, covenants, and provisions of this Lease to be kept, observed, and performed by Lessee. Nothing contained in the Approved Mortgage shall release or be deemed to relieve Lessee from the full and faithful observance and performance of Lessee's covenants contained in this Lease or from any liability for the non-observance or non-performance thereof, nor be deemed to constitute a waiver of any rights of Lessor under this Lease, and the terms, covenants, and conditions of this Lease shall control in case of any conflict with the provisions of the Approved Mortgage. The Approved Mortgagee shall have the right to perform any term, covenant, condition, or agreement and to remedy any default by Lessee under the Lease, and Lessor shall accept such performance by the Approved Mortgagee with the same force and effect as if furnished by Lessee.

20. Rights of Approved Mortgagees. For purposes of this Section 20, "Approved Mortgagee" includes assignees of Approved Mortgagees.

a. Every Approved Mortgagee shall have the right, but not the obligation, to: (i) make any payments due under this Lease, (ii) assign its Approved Mortgage; and (iii) enforce its Approved Mortgage.

b. No Approved Mortgagee shall have any duty, obligation, or liability under this Lease prior to the time of its entry into physical possession of the Premises or its commencement of performance of Lessee's obligations under this Lease.

c. Provided that an Approved Mortgagee provides Lessor with its name and current address, Lessor hereby covenants and agrees to faithfully perform and comply with the following provisions in this subsection (c) with respect to the corresponding Approved Mortgage.

i. No action by Lessee or Lessor to voluntarily cancel or surrender (except in accordance with the terms herein) or materially modify the terms of this Lease or the provisions of this Section 20 shall be binding upon an Approved Mortgagee without its prior written consent.

ii. If Lessor shall give any notice, demand, election, or other communication which may adversely affect the security for an Approved Mortgage, including without limitation a notice of an Event of Default hereunder, to Lessee, Lessor shall simultaneously give a copy of each such notice, demand, election, or other communication to the Approved Mortgagee.

iii. In the event of an Event of Default by Lessee in the payment of any monetary obligation hereunder, Lessor agrees not to terminate this Lease unless and until Lessor provides written notice of such Event of Default to any Approved Mortgagee and such Approved Mortgagee shall have failed to cure such Event of Default within thirty (30) days after delivery of such notice.

iv. In the event of an Event of Default by Lessee in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, Lessor agrees not to terminate this Lease unless and until Lessor provides written notice of such Event of Default to any Approved Mortgagee and such Mortgagee shall have failed to cure such

Event of Default within sixty (60) days following the expiration of any grace or cure periods granted Lessee in this Lease; provided that if such Event of Default cannot practicably be cured by the Approved Mortgagee without taking possession of the Premises, or such Event of Default is not susceptible of being cured by the Approved Mortgagee, then Lessor shall not terminate this Lease if and as long as:

In the case of an Event of Default which cannot practicably be cured by the Approved Mortgagee without taking possession of the Premises, the Approved Mortgagee has delivered to Lessor, prior to the date on which Lessor shall be entitled to give notice of termination of this Lease, a written undertaking wherein the Approved Mortgagee agrees that it will attempt to cure such Event of Default and the Approved Mortgagee proceeds diligently to obtain possession of the Premises as a mortgagee or holder (including, at its option, possession by receiver), and, upon obtaining such possession, proceeds diligently to cure such Event of Default in accordance with said undertaking in no event later than one hundred eighty (180) days after obtaining possession, and

In the case of an Event of Default which is not susceptible to being cured by the Approved Mortgagee, the Approved Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire this Lease either in its own name or through a nominee by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured. If the Approved Mortgagee, its nominee, or a purchaser in the foreclosure sale shall acquire title to Lessee's estate hereunder and shall cure all Events of Default which are susceptible of being cured by the Approved Mortgagee or said purchaser, as the case may be, then prior Events of Default which are not susceptible to being cured by the Approved Mortgagee or said purchaser shall no longer be deemed Events of Default under this Lease.

v. Foreclosure of any Approved Mortgage, or sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Approved Mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Approved Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision or a default under this Lease, and upon such foreclosure, sale, or conveyance Lessor shall recognize the Approved Mortgagee or such designee as the lessee hereunder. If any Approved Mortgagee or other third party shall acquire Lessee's estate hereunder as a result of a judicial or non-judicial foreclosure under an Approved Mortgage, or pursuant to a non-judicial power of sale in an Approved Mortgage, or by means of an assignment in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Approved Mortgagee or such other third party purchaser shall thereafter have the right to further assign or transfer Lessee's estate hereunder to an assignee in accordance with Section 29 (Non-Transferable). Upon such acquisition of Lessee's estate hereunder as described in the immediately preceding sentence by such Approved Mortgagee or its designee, Lessor shall immediately execute and deliver an acknowledgement of the Premises to such Approved Mortgagee in the form of a lease amendment, upon the written request therefor by such Approved Mortgagee or its designee given not later than one hundred twenty (120) days after such party's acquisition of Lessee's estate hereunder (for purposes of this Section 20(c)(v), the "**amended lease**"). Such amended lease shall confirm the provisions of this Lease, except with respect to the parties thereto, the term

thereof (which shall be co-extensive with the remaining term hereof), and the elimination of any requirements which have been fulfilled by Lessor prior thereto, and such amended lease shall have priority equal to the priority of this Lease.

vi. Lessor agrees that in the event of termination of this Lease by reason of any Event of Default by Lessee, or by reason of the disaffirmance or rejection hereof by Lessee or a receiver, liquidator, or trustee for Lessee or its property, Lessor will execute an amendment and/or reinstatement of this Lease (for purposes of this Section 20(c)(vi), an "amended lease") with the most senior Approved Mortgagee requesting an amended lease for the remainder of the term of this Lease, effective as of the date of such termination, confirming the rent, and the terms, provisions, covenants, and agreements as herein contained and subject to the rights, if any, of the parties then in possession of any part of the Premises, provided that: (A) the senior Approved Mortgagee shall make written request upon Lessor for the amended lease within sixty (60) days after the date of termination; (B) the senior Approved Mortgagee shall pay to Lessor at the time of execution and delivery of the amended lease any and all sums which would, at the time of execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Lessor shall have incurred by reason of the Event of Default; (C) the senior Approved Mortgagee shall perform and observe all covenants herein contained on Lessee's part to be performed which are susceptible to being performed by the senior Approved Mortgagee, and shall further remedy any other conditions which Lessee was obligated to perform, to the extent the same are curable or may be performed by the senior Approved Mortgagee; and (D) the lessee under the amended lease shall have the same right, title, and interest in and to all improvements located on the Premises as Lessee. Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any amended lease made pursuant to this Section 20(c)(vi) shall be prior to any Approved Mortgage or other lien, charge, or encumbrance on the Premises, to the same extent as the prior Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, lien, charge, or encumbrance created by Lessor) for a term of years equal to the term of the amended lease, subject to the reversion in favor of Lessor upon expiration or sooner termination of the amended lease. The rights to an amended lease granted in this Section 20(c)(vi) to any Approved Mortgagee shall survive any termination of this Lease. If an Approved Mortgagee shall elect to demand an amended lease under this Section 20(c)(vi), Lessor agrees, at the request of, on behalf of, and at the sole cost and expense of the Approved Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove Lessee from the Premises, and those sublessees actually occupying the Premises, or any part thereof, as designated by the Approved Mortgagee and subject to any non-disturbance or attornment agreements with such sublessees. Unless and until Lessor has received notice from all Approved Mortgagees that the Approved Mortgagees elect not to demand an amended lease as provided in this Section 20(c)(vi), or until the period therefor has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Approved Mortgagees. Nothing in this Lease shall require any Approved Mortgagee to enter into an amended lease pursuant to this Section 20(c)(vi).

vii. In the event any Approved Mortgagee or its designee becomes the lessee under this Lease or under any amended lease obtained pursuant to Sections 20(c)(v) or (vi) above, the Approved Mortgagee or its designee shall be personally liable for the obligations of

Lessee under this Lease or any amended lease only for the period of time that the Approved Mortgagee or its designee remains the actual beneficial holder of Lessee's estate hereunder, and only to the extent provided in this Lease or such amended lease. No Approved Mortgagee shall have any personal liability beyond its interest in the Premises for the performance or payment of any covenant, liability, warranty, or obligation hereunder or under any amended lease, new agreement, or other agreement entered into in connection herewith, and Lessor agrees that it shall look solely to the interests of such Approved Mortgagee in the Premises for payment or discharge of any such covenant, liability, warranty, or obligation.

viii. The Parties shall give all Approved Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims, as each may relate to the Premises, and any Approved Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The Parties hereby consent to such intervention. In the event that any Approved Mortgagee shall not elect to intervene or become a party to the proceedings, such Approved Mortgagee shall receive notice of and a copy of any award or decision made in connection therewith.

ix. Lessor shall upon reasonable request sign such reasonable confirmations as may be requested by an Approved Mortgagee confirming the provisions hereof.

x. So long as any Approved Mortgage remains outstanding, (A) the insurance policies required to be maintained by Lessee pursuant to this Lease shall name the Approved Mortgagee as an additional named insured and loss payee/mortgagee; (B) except as provided in Section 17(a) (Commercial Property Insurance) above, all proceeds of such insurance policies shall be payable first to such Approved Mortgagee as loss payee to be applied by such Approved Mortgagee in accordance with the terms of the applicable loan documents; (C) any and all awards payable to Lessor or Lessee in connection with any taking or condemnation shall be payable to such Approved Mortgagee and disbursed as follows: (1) first, to such Approved Mortgagee for the value of the leasehold estate created by this Lease and the value of the improvements located on the Premises up to an amount equaling the outstanding principal balance of any loan secured by such Approved Mortgage, and any interest accrued thereon and reasonable collection costs, and (2) second, to Lessor and Lessee in accordance with the terms of this Lease. In the event of a partial or total loss as set forth in Section 17(a) occurring during the Term, proceeds shall be payable first in accordance with Section 17(a) and then in accordance with the steps set forth herein.

xi. Lessor and Lessee agree to cooperate in including in this Lease by suitable amendment (or in such other documents containing terms and provisions customarily required by mortgagees in connection with their financing) from time to time any provision which may reasonably be requested by any Approved Mortgagee or proposed Approved Mortgagee for the purposes of: (A) allowing such Approved Mortgagee or proposed Approved Mortgagee reasonable means to protect or preserve the lien of the Approved Mortgagee or proposed Approved Mortgagee, or (B) implementing the Approved Mortgagee protections contained in this Lease; provided that any such amendments or documents shall not in any way affect the Term of or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Lessor under this Lease.

21. Estoppel Certificate. Each Party agrees promptly following request by the other Party or an Approved Mortgagee to execute and deliver an Estoppel Certificate (hereinafter defined) to the requesting Party. "**Estoppel Certificate**" means an estoppel certificate certifying: (a) that this Lease is unmodified, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any; (b) that there are no uncured defaults on the part of Lessor and Lessee, as applicable, under this Lease, or if there exist any uncured defaults on the part of Lessor or Lessee, as applicable, under this Lease, stating the nature of such uncured defaults; and (c) the correctness of such other information regarding the status of this Lease as may be reasonably required by the Party requesting execution of such Estoppel Certificate. A Party's failure to so execute and deliver an Estoppel Certificate within thirty (30) days after receiving a written request for an Estoppel Certificate shall be conclusive upon such Party that as of the date of such written request: (i) this Lease is in full and force and effect without modification, except as may be represented by the Party requesting execution of such Estoppel Certificate, (ii) there are no uncured defaults of Lessor's or Lessee's obligations, as applicable, under this Lease except as may be represented by the Party requesting execution of such Estoppel Certificate, and (iii) no rent has been paid in advance, except as may be represented by the Party requesting execution of such Estoppel Certificate.

22. Breach and Events of Default. Time is of the essence of this Lease, and following the notice and cure provisions described in this Section 22 or in Section 23 below, as applicable, any one or more of the following events shall constitute an "**Event of Default**" by Lessee under this Lease:

- a. If Lessee shall fail to make any required rent payment within five (5) days after due and such failure shall not have been cured within fifteen (15) days after receipt of written notice from Lessor respecting such overdue payment;
- b. If Lessee shall fail to make any other payment when due;
- c. If Lessee shall abandon the Premises, except in accordance with Section 33 (Surrender) below;
- d. If this Lease and the Premises shall be attached or taken by operation of law, if not released or appropriately bonded within ninety (90) days after receipt of written notice by Lessor;
- e. If Lessee shall fail to observe, perform, or comply with any material non-payment term, covenant, agreement, or condition of this Lease;
- f. If Lessee fails to substantially complete the Project by the date to be determined in accordance with Section 40 (Time of Performance for Project), subject to any Force Majeure event and extensions agreed to by Lessor;
- g. If Lessee shall fail to observe, perform, or comply with the Applicable Laws described in Section 7 (Compliance with Laws).

23. Remedies Upon Event of Default; Termination of the Lease.

a. Notice of Default. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 22(a)), Lessor shall deliver a written notice of the occurrence of such event in accordance with Section 59 (Notices) below, making demand upon Lessee to cure or remedy such event within thirty (30) days from the date of receipt of the notice. In the event Lessee shall fail to cure such noticed event within thirty (30) days following receipt of Lessor's written notice or, in the case of any non-monetary event which cannot reasonably be cured within thirty (30) days following receipt of Lessor's written notice, Lessee shall fail to commence the cure of such non-monetary event and diligently prosecute such cure to completion, an Event of Default shall be deemed to have occurred and Lessor may pursue its rights and remedies. In the case of an Event of Default described in Section 22(a) above, an Event of Default shall be deemed to have occurred and Lessor may pursue its rights and remedies if any required rent payment is not made within the cure period provided for in Section 22(a) above.

b. Lessor's Remedies. Upon an Event of Default and following expiration of the applicable notice and cure periods, Lessor shall have the absolute unconditional right if it so elects: (i) to any and all remedies available at law or in equity; (ii) to terminate this Lease after having provided a second written notice to Lessee stating that Lessor intends to terminate the Lease unless Lessee cures such Event of Default within fifteen (15) days from the date of such second notice or commences and diligently pursues such cure where the cure is not reasonably susceptible to cure within fifteen (15) days; (iii) to receive liquidated damages as and to the extent set forth in this Lease; (iv) to institute and prosecute proceedings to enjoin or restrain Lessee from commencing or continuing said breach, and/or to cause by injunction Lessee to correct and cure said breach or threatened breach; (v) to recover from Lessee all rent due through the date this Lease is terminated, plus any amount necessary to compensate Lessor for the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom which shall include, without limitation: (A) court and all other costs and reasonable attorneys' fees for services in connection with an Event of Default, in recovering possession, or for prosecuting any action or proceeding against Lessee in which Lessor prevails, (B) all reasonable costs and expenses of any re-letting, including without limitation all reasonable costs of alterations and repairs, and (C) all reasonable brokerage commissions or other similar expenses of Lessor in connection with such re-letting; plus, at the sole option of Lessor, the present worth at the time of termination of this Lease of the excess, if any, of the total rent payable under this Lease for the remainder of the Term, over the then reasonable rental value of the Premises for the same period and all of the foregoing amounts shall be immediately due and payable by Lessee to Lessor upon demand; and (vi) Lessor may, but is not required to, pay any amounts which Lessee is required to pay under this Lease, and if Lessor makes any such payment, Lessor may collect interest on the amount paid at the Default Rate (defined hereinbelow). In the event of termination of this Lease, all improvements made by Lessee shall remain and become part of the Premises of Lessor, and Lessor may retain all rent paid in advance as payment toward Lessor's damages. Except as otherwise provided herein, none of the remedies enumerated herein is exclusive, and nothing herein shall be construed as prohibiting Lessor from pursuing any other remedies at law, in equity, or otherwise available to it under this Lease.

c. Cumulative Remedies. The rights and remedies of Lessor, whether provided by law or by this Lease, shall be cumulative, and the exercise by Lessor of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, to the extent permitted by law. No waiver made by Lessor shall apply to obligations beyond those expressly waived in writing.

d. Lessor's Right to Act. If Lessee shall fail or neglect to do or perform any covenant or condition required under this Lease and such failure shall not be cured with any applicable cure period, then without limiting any of Lessor's rights under this Lease, Lessor may, but shall not be required to, make any payment payable by Lessee under this Lease, discharge any lien, take out, pay for and maintain any insurance required under this Lease, or do or perform or cause to be done or performed any such other act or thing (including but not limited to entering upon the Premises for such purposes). Lessee shall repay to Lessor upon demand the entire out-of-pocket cost and expense incurred by Lessor in connection with the cure, including without limitation compensation to the agents, consultants, and contractors of Lessor and reasonable attorneys' fees and expenses. Lessor may act upon shorter notice or no notice at all if necessary, in Lessor's reasonable judgment, to address any emergency situation related to health or safety or governmental or municipal time limitation, or to protect Lessor's interest in any portion of the Premises. Lessor shall not be required to inquire into the correctness of the amount or validity of any tax or lien that may be paid by Lessor, and Lessor shall be duly protected in paying the amount of any such tax or lien claimed and in such event Lessor also shall have the full authority, in Lessor's sole judgment and discretion and without prior notice to or approval by Lessee, to settle or compromise any such lien or tax. Any act or thing done by Lessor pursuant to the provisions of this subsection (d) shall not be or be construed as a waiver of any such failure by Lessee, or as a waiver of any term, covenant, agreement, or condition contained in this Lease, or of the performance of any term, covenant, agreement, or condition contained in this Lease.

24. Notice to Tax Credit Investor. So long as any Tax Credit Investor (hereinafter defined) is a partner of Lessee, Lessor agrees that, simultaneously with the giving of each notice hereunder, to give a duplicate copy of such notice to the Tax Credit Investor; provided that failure of Lessor to give such notice to Tax Credit Investor shall not affect the validity and effectiveness of the notice to Lessee. Tax Credit Investor shall have the same cure period as Lessee, plus sixty (60) days after the giving of notice aforesaid to Tax Credit Investor for remedying the default or causing the same to be remedied as is given to Lessee after notice to such Tax Credit Investor.

25. Tax Credit Investor's Opportunity to Replace Lessee's General Partner. Lessor agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving Tax Credit Investor reasonable time, not to exceed sixty (60) days, to replace Lessee's general partner and cause a new general partner to cure such default, provided that: (a) Lessor receives notice of the substitution of a new general partner within thirty (30) days following notice to the Tax Credit Investor, (b) the Lessee, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default, and (c) if the Event of Default relates to Substantial Completion of the Project, then the extended cure period shall be limited to the period, if any, prior to the date by which the Project must be placed into service in order to preserve the low income housing tax credits for the Project.

26. Condemnation. If at any time, during the term of this Lease, any portion of the Premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the Premises condemned. Subject to written consent of Lender, the Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the Lessor's interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises were leased, the Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that Lessee may remove its property and the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

27. Conditions of Premises. Lessee hereby agrees and acknowledges that Lessor has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. The Premises are being leased "AS IS, WHERE IS." Lessee further agrees that Lessor shall not be held responsible for any injury or damage to Lessee due to the presence of hazardous materials on or in the Premises. Lessee further agrees that any property left on the Premises during the term of this Lease shall be left there at the sole risk of Lessee.

28. Right to Enter. The Lessor, State of Hawaii, or the City and County of Honolulu and their agents, representatives, successors or assigns shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided that in the exercise of these rights, the Lessor shall not interfere unreasonably with Lessee's use and enjoyment of the Premises and Lessor shall provide at least three (3) business days' prior written notice to Lessee.

29. Non-Transferable. Except as otherwise contemplated under this Lease, Lessee shall not sell, transfer, assign, convey, dispose, lease, mortgage, sublet, or otherwise alienate or encumber this Lease or any rights hereunder without Lessor's express prior written consent. If Lessee is a partnership, limited liability company, joint venture or corporation, the sale or transfer (except by way of devise, bequest, intestate succession, or transfer to trust) of more than FIFTY PERCENT (50%) of the ownership interest in any such partnership, limited liability company, joint venture, or corporation (whether accomplished through one or multiple transactions in which case only the transaction that triggers a 50% assignment or by dissolution, merger, or any other means), shall be deemed an assignment for purposes of this Section, and Lessor may either withhold its consent to the transfer in its sole discretion or condition Lessor's consent on an adjustment of the Annual Rent or other terms in this Lease as Lessor deems desirable in its sole discretion; provided that this Section shall not apply to leases or rental agreements with tenants in the ordinary course of the Lessee's business. Notwithstanding the

foregoing, the transfer of limited partnership interests in Lessee to any person making an equity investment in Lessee in exchange for federal and/or state low income housing tax credits (each a “**Tax Credit Investor**”) or assumption of the general partner of Lessee by the Tax Credit Investor, its successors and assigns, shall not be deemed an assignment for the purposes of this Section.

30. Acceptance of Rent Not a Waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this Lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

31. Extension of Time. Notwithstanding any provision contained in this Lease, when applicable, the Lessor may, for good cause shown, allow additional time beyond the time or times specified in this Lease for the Lessee to comply, observe, and perform any of the Lease terms, conditions, and covenants.

32. Quiet Enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the Premises for the term of the Lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under Lessor.

33. Surrender. The Lessee shall, at the end of the term or other sooner termination of this Lease, peaceably deliver unto Lessor possession of the Premises, together with all improvements existing or constructed thereon, or Lessee shall remove such improvements, at the option of the Lessor, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should the Lessee fail to remove any and all of Lessee's personal property from the Premises, after notice thereof, the Lessor may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Lease.

34. Processing Fees/Documentation. Notwithstanding anything to the contrary in this Lease, Lessee agrees to pay to Lessor a reasonable fee for Lessor's processing of consents and assignments and for providing documents required, or authorized by the terms, covenants, and conditions of this Lease.

35. Security of the Premises. Lessee shall be solely responsible for the security of the Premises during the Term as deemed prudent by Lessee acting in a commercially reasonable manner. Lessor shall not be obligated to provide any security services, facilities, or equipment for the Premises during the Term, and Lessor shall not be liable to Lessee or any Permitted Persons for any failure to provide security services during the Term or any loss, injury, or

damage suffered as a result of such failure, and Lessee shall indemnify, defend, and hold Lessor and the State of Hawaii, and their respective officials, directors, members, employees, and agents, harmless from any claim(s) for such loss, injury, or damage if the basis for such claim(s) arose during the Term. This provision shall survive the termination of the Lease.

36. Bonds. Any bonds required by this Lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii.

37. Historic Preservation. In the event any historic properties or burial sites, as defined in Hawaii Revised Statutes Chapter 6E, are found on the Premises, Lessee shall immediately stop all land utilization or work or both and contact the Historic Preservation Office. Lessee assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, protection, or removal of such sites or remains. Lessee shall, at all times during the Term, comply fully with all Applicable Laws and regulations with respect to all prehistoric or historic remains or sites of archaeological significance present or discovered at the Premises.

38. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Lessee.

Lessee agrees to defend, indemnify, and hold harmless Lessor from any damages and claims resulting from the release and/or presence of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. This covenant shall survive the expiration or earlier termination of the Lease.

For the purpose of this Lease "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other applicable federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

If Lessee discovers any hazardous materials on the Premises (other than groundwater contamination not directly caused, created or contributed to by Lessee), the presence of which violates any applicable laws, Lessee shall immediately undertake, at Lessee's expense, to

remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance and use of the Premises.

39. Project Commencement. Lessee shall commence the visible construction of the Project within seven hundred thirty (730) calendar days after the Effective Date (hereinafter, "**Project Commencement**"). If Lessee fails to achieve a timely Project Commencement, Lessor may, in its sole discretion, terminate this Lease by providing written notice to the Lessee within sixty (60) days of Lessee's failure. Notwithstanding anything to the contrary provided herein, Lessee expressly acknowledges and agrees that Lessor is in no way obligated to afford Lessee any opportunity to cure or remedy its failure to achieve a timely Project Commencement.

40. Time of Performance for Project. Time being of the essence, Lessee shall prosecute its work on the Project diligently and continuously. The Project shall be substantially completed within three (3) consecutive calendar years after Project Commencement. Such date shall be subject to any Force Majeure event.

41. Project Financing. Lessee represents that, prior to Project Commencement, Lessee will have secured the funds sufficient to complete the Project.

42. Performance of Project. Lessee, at its own cost and expense, before Project Commencement, shall procure and deposit with Lessor a copy of the contractor's performance bond (HS/AIA Document A311 or its equivalent) and labor and materials payment bond (HS/AIA Document A311 or its equivalent) naming Lessor and the State of Hawaii as additional obligees thereunder in an amount equal to ONE HUNDRED PERCENT (100%) of the construction cost of the Project, with a surety reasonably satisfactory to Lessor and qualified to do business in the State of Hawaii, that assures the performance of such contract(s) by the contractor pursuant to the terms of the construction contract, and the completion of such by the contractor pursuant to the terms of such contract free and clear of all mechanics' and materialmen's liens and claims.

43. Approvals and Permits. Prior to Project Commencement, Lessee shall have obtained all the necessary governmental approvals, permits and entitlements (collectively, the "**Approvals**") for such part, portion, or phase then sought to be commenced and shall have so certified to Lessor in writing, along with copies of the Approvals obtained. Lessor shall use its reasonable best efforts to cooperate with Lessee in securing all necessary Approvals from Governmental Authorities; provided that nothing in this Lease shall adversely affect, influence, limit, restrict or reduce the right of Lessor, as the redevelopment authority for the Kakaako Community Development District (the "**Redevelopment Authority**"), to exercise its governmental power and authority and act in regulatory matters in accordance with applicable Governmental Requirements. If required, and consistent with the approval authorized under the Development Permit, Lessor shall consent and allow Lessee to apply for and prosecute all necessary Approvals required for the construction and operation of the Project, in the name of Lessor and at Lessee's sole cost and expense. Lessee expressly acknowledges that Lessor, as the Redevelopment Authority for the Kakaako Community Development District, has not guaranteed, promised, or otherwise indicated that Lessee will be granted any Approvals it may require from Lessor, as the Redevelopment Authority. From time to time, Lessee may request modifications to the Lease to satisfy the requirements of financing sources, which financing

sources include without limitation, private lenders, equity sources and governmental agencies. Lessor, in its capacity as fee owner of the Premises, will use all reasonable efforts to accommodate the request of such financing sources and will not unreasonably withhold, condition or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof.

44. Compliance with Americans with Disabilities Act of 1990. Lessee shall cause to be performed, any construction, demolition, alteration, or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances, and regulations of all duly constituted authorities, including without limitation and to the extent applicable, the Americans with Disabilities Act of 1990 Title III Regulations, the ADA Accessibility Guidelines and the Minimum Guidelines and Requirements for Accessible Design promulgated by the Architectural and Transportation Barriers Compliance Board, Title II (Public Accommodations) of the Civil Rights Act of 1964, the Architectural Barriers Act of 1968, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended, or supplemented.

45. Construction Contract.

a. At least fifteen (15) days prior to Project Commencement, Lessee shall deliver to Lessor a copy of the executed construction contract for construction of the Project improvements (the "**Construction Contract**"). Lessee represents and warrants that it shall only contract with a contractor who is licensed and registered to do business as a contractor in the State of Hawaii, and who maintains such licensing and registration throughout the course of the Project. The Construction Contract shall describe the methods of construction that are designed to facilitate compliance with applicable Governmental Requirements relevant to the reduction of the negative impact of construction (e.g., dust control) on adjacent properties and on businesses in the vicinity of the construction, if any. These shall include policies regarding scheduling of certain activities (e.g., delivery of materials and equipment) that disrupt vehicular and pedestrian traffic, such activities being limited to off-peak hours to the extent possible, policies concerning the placement of temporary structures (e.g., field offices, scaffolding, hoists), and temporary utility connections (e.g., light, heat, power) that may adversely affect surrounding businesses, if any.

b. Lessee shall require that the contractor and any subcontractors, consultants, or independent contractors who furnish materials to be integrated into the Project or perform work on the Project, indemnify, defend, and hold Lessor and the State of Hawaii harmless from and against any and all claims, actions, penalties, damages, liabilities, costs, and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon, resulting from, or arising out of or in connection with: (i) their non-observance or non-performance of any Applicable Laws; (ii) any injury sustained or suffered by them while on the Premises; (iii) any other act or omission on their behalf relating to the materials furnished to or work performed on the Project; and (iv) any materialman's or mechanic's liens arising from or relating to the Project.

c. Lessee shall also cause the Construction Contract to bind its contractors and any subcontractors, to comply with applicable laws and regulations, as amended, of the U.S.

Department of Labor; safety and health regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Pub. L. 91-596); and any other safety and health regulations applicable to work on the Project, including without limitation the Hawaii Occupational Safety and Health Law (Hawaii Revised Statutes Chapter 396) and the rules and regulations promulgated thereunder and Hawaii Revised Statutes Chapter 104 (Wages and Hours of Employees on Public Works). Nothing in these laws and regulations shall be construed to supersede or in any manner affect any workers' compensation law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

d. Lessee shall require that its contractor and any subcontractors, consultants, or independent contractors who furnish materials or services to be integrated into the Project or perform work on the Project, add Lessor and the State of Hawaii, and their respective officers, employees, and agents as additional insureds to their policy or policies of insurance.

46. Performance of Construction Contract. Lessee shall take reasonably prudent precautions to protect from damage to property adjacent to, or in close proximity to, the Project, caused by the work or the actions or omissions of Lessee and Lessee's contractors and consultants, or their respective employees, agents, guests, or subcontractors with respect to performance of the Construction Contract. Lessee shall be responsible for damage or injury to adjacent public and private property resulting from its construction operations. This applies, but is not limited, to public utilities, trees, lawn areas, buildings, dwellings, monuments, fences, pipes, underground structures, and public streets (except natural wear and tear of streets resulting from legitimate use thereof by Lessee), and wherever such property is damaged due to the activities of Lessee or Lessee's contractors or consultants, or their respective employees, agents, guests, or subcontractors, it shall be restored or remedied promptly by Lessee, at its own expense, to the same or better condition which existed immediately before such damage. In case of failure on the part of Lessee to restore or remedy or take steps to restore or remedy and diligently prosecute such restoration and remediation, or make good such damage or injury, Lessor may, upon thirty (30) days written notice to Lessee and thereafter upon fifteen (15) days following a second written notice to Lessee, proceed to repair, rebuild, or otherwise restore or remedy such property as may be necessary, and the cost thereof (including a reasonable administrative fee) shall be immediately due and payable by Lessee to Lessor. With respect to performance of the Construction Contract, Lessee shall confine the equipment, apparatus, materials, and supplies of Lessee and Lessee's contractors and consultants, or their respective employees, agents, guests, or subcontractors, to the Premises, or as otherwise permitted by law or by separate agreement.

47. As-Built Drawings. Within six (6) months after issuance of a permanent certificate of occupancy with respect to any part, portion, or phase of the Project, as such parts, portions, or phases are determined by Lessee in its sole discretion, Lessee shall deliver to Lessor two copies of the "as-built" plans and specifications for such part, portion, or phase.

48. Request to Extend. If Lessee seeks to extend the term of the Project as an affordable multifamily rental housing project beyond the term of this Lease, and if Lessee is not then in default beyond any grace period herein provided in the performance of any of the terms or provisions of this Lease, the Parties acknowledge that Lessee may request a corresponding

extension of this Lease. Provided an extension of this Lease is allowable under applicable statutes and applicable rules and regulations of Lessor or its successor agency, Lessor may, but is not required to, consider such request in conjunction with said potential extension of the term of the Project as an affordable multifamily rental housing project.

49. Force Majeure. A failure or delay in performance by either Party shall not be a breach of this Lease and shall not be an Event of Default under this Lease if such failure or delay arises out of or results from an event of Force Majeure. An event of "**Force Majeure**" shall mean the following events or circumstances:

Strikes, lockouts, labor disputes, failures or delays in transportation, or freight embargoes;

Acts of God, tornadoes, hurricanes, floods, earthquakes, fire or other hazards of the kind typically covered by property damage or business interruption insurance, tsunami, epidemics, quarantine, pestilence, drought or other water shortages, or abnormal or unusually severe weather;

Acts of a public enemy, acts of war, rebellion, sabotage, terrorism, effects of nuclear radiation, hostilities, civil commotions or disturbances, mob violence or malicious mischief, unavoidable casualties, blockades, insurrections, or riots; and

Acts, rules, regulations, orders, or other directives of any Governmental Authority or agency or the order of any court of competent jurisdiction, including any requirements of law related to historic remains or sites of archaeological significance present or discovered at the Premises.

In the event that Lessee shall be delayed in completing the construction of the Project due to an event of Force Majeure, Lessee shall be excused until the cessation of such Force Majeure event, provided that Lessee has previously notified Lessor of such fact in writing within 15 calendar days of such event and Lessor concurs that one or more Force Majeure events have occurred and that but for the Force Majeure event(s), Lessee's progress and performance would not have been delayed. Notwithstanding anything to the contrary provided herein, in no event shall the Term be extended as a result of the occurrence of an event of Force Majeure.

50. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rental payments shall be TWELVE PERCENT (12%) per annum, prorated daily based on the actual number of days in such calendar year ("**Default Rate**"). In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, Lessee shall pay to Lessor, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

51. Governing Law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

52. Headings. The section headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Lease.

53. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

54. Time is of the Essence. Time is of the essence in all provisions of this Lease.

55. Counterparts. This Lease may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

56. Entire Agreement; Amendments. This Lease constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This Lease cannot be modified except by a written agreement signed by both parties. Any amendment to this Lease requires the approval of the HCDA Board.

57. Recordation. Lessor and Lessee shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the term of this Lease, Lessor and Lessee shall execute a quitclaim termination of Lessee's interest in this Lease.

58. Brokers' Commissions. Each party represents to the other that it is not obligated to any broker, finder or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby.

59. Notices. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other Party shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service as follows (or as updated pursuant to a written notice sent in accordance with this Section):

Lessee: Hale Kewalo, LP
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813
Attention: Christopher Oakes
Telephone: (808) 547-2249

Lessor: Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813
Attention: Executive Director
Telephone: (808) 594-0300

And a copy to: State of Hawaii
Department of the Attorney General
c/o Public Safety Hawaiian Home Lands and Housing Division
425 Queen Street
Honolulu, Hawaii 96813

Attention: _____
Telephone: _____

60. Additional Terms. The provisions of **Exhibit B** are hereby incorporated and made an integral part of this Lease.

--The remainder of this page is intentionally left blank; the signature page follows--

DRAFT

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

Approved by the Board of Hawaii
Community Development Authority
at its meeting held on:

HAWAII COMMUNITY
DEVELOPMENT AUTHORITY

By _____

Jesse Souki
Executive Director

"Lessor"

APPROVED AS TO FORM:

Deputy Attorney General

DRAFT

HALE KEWALO, LP,
a Hawaii limited partnership

By its general partner:

SCD Piikoi, LLC,
a Hawaii limited liability company

By _____
Stanford S. Carr
Manager

"Lessee"

STATE OF HAWAII)
) SS
 CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 20__, before me appeared **JESSE SOUKI**, personally known to me, who, being by me duly sworn, did say that he is the **INTERIM EXECUTIVE DIRECTOR** of the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII**, a body corporate and a public instrumentality of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the foregoing instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

 (Print or Type Name of Notary)

 (Signature of Notary)

Notary Public, State of Hawaii
 My Commission Expires:

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: GROUND LEASE (HALE KEWALO)	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____	Jurisdiction: First Circuit (in which notarial act is performed)
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	(Official Stamp or Seal)

STATE OF HAWAII)
) ss.:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20___, before me personally appeared **STANFORD S. CARR**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of Hawaii
My Commission Expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: GROUND LEASE (HALE KEWALO)

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A

LEGAL DESCRIPTION

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 334-A, area 4,600 square feet, more or less, Section 2, as shown on Map 33, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 880 (amended) of Bishop Trust Company Limited.

Being land(s) described in Transfer Certificate of Title No. 1,087,838 issued to HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, a body corporate and a public instrumentality of the State of Hawaii, a Hawaii limited liability company.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KEWALO DEVELOPMENT LLC, a Hawaii limited liability company

GRANTEE : HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, a body corporate and a public instrumentality of the State of Hawaii, a Hawaii limited liability company

DATED : October 17, 2014

FILED : Land Court Document No. T-9087049

Subject, however, to all encumbrances of record.

End of Exhibit A

EXHIBIT B

USE RESTRICTIONS

1. Affordability Requirements. The Project must comply with Hawaii Housing Finance and Development Corporation, State of Hawaii (“**Corporation**”)’s project and affordability requirements. As of the Effective Date, those requirements are:

7	1-Bedroom Affordable Units at 30% or below the area median income (“AMI”) as determined by the U.S. Department of Housing and Urban Development (“HUD”)
20	1-Bedroom Affordable Units at 50% or below the AMI
6	2-Bedroom Affordable Units at 30% or below the AMI
45	2-Bedroom Affordable Units at 50% or below the AMI
20	2-Bedroom Affordable Units at 60% or below the AMI
<u>29</u>	3-Bedroom Affordable Units at 60% or below the AMI
127	Affordable Units
<u>1</u>	2-Bedroom Manager’s Unit
128	Total Residential Units in the Project

Approximately 563 square feet of commercial space

Approximately 618 square feet of recreation room

77 parking stalls

2. Review of Project Operations. Lessee shall be responsible for the operation of the Project. The Project shall be operated for the use and purpose described by the terms of this Lease. Lessor and Lessee acknowledge that the lease rent provided in this Lease is significantly below market lease rent in order to minimize the fees and charges to the end users. To ensure furtherance of this objective, Lessor shall have the right, but not the obligation, to a review of all aspects of Lessee's operation of the Project on a regular basis.

a. Annual Operating Budgets. Upon Lessor’s written request, not later than 30 days prior to the beginning of each calendar year, Lessee shall submit to Lessor an operating budget for the upcoming calendar year. The operating budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incidental to the operation of the Project, and shall show the expected revenue to pay such expenses. The expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof.

b. Annual Audited Financial Reports. Upon Lessor’s written request, not later than four calendar months after each calendar year, Lessee shall submit to Lessor audited financial reports of the Project operations for the calendar year just ended. The reports shall be prepared by an independent certified public accountant. The annual report shall also include a description of the services offered to end users and the charges for the services provided.

c. Inspection Reports. Upon Lessor’s written request, Lessee shall submit to Lessor copies of any inspection reports of the Project required by lenders and licensing agencies. If no inspection reports are required, Lessor may require that inspection reports of the Project be done at Lessee's expense as Lessor deems necessary. The reports shall be done by an inspector approved by

Lessor.

d. Fiscal Year. Upon request by Lessee and approval by Lessor, references to the calendar year may be Lessee's fiscal year.

e. Monitoring Fee. A reasonable annual compliance monitoring fee shall be determined by Lessor and may be charged against Lessee for administrative expenses. It will be the responsibility of Lessor or its designated representative to inform Lessee of any changes in the annual compliance fee. The fee may be adjusted annually. .

f. Operational Expenses. Neither Lessee nor its agents shall make any payments for services, supplies or materials, unless the services, supplies or materials are actually rendered, or used for the Project and are necessary for its operation. Payments for services, supplies, or materials shall not exceed the amount ordinarily paid for services, supplies or materials in the area where the services are rendered or the supplies or materials are furnished.

g. Inspections. Equipment, buildings, plans, offices, devices, books, contracts, records, documents, and other papers relating to the Project shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any time by Lessor and its duly authorized agents. Lessee or its agents shall retain copies of all written contracts or other instruments for a period of up to seven years which affect the Project and the Premises.

h. Inquiries. At the written request of Lessor, its agents, employees, or attorneys from time to time, Lessee shall give specific answers to questions relative to the income, assets, liabilities, contracts, operation, and condition of the Project and the Premises and any other information regarding the Lessee or the Project and the Premises.

i. Licenses. Lessee shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect any licenses to operate the Project from the applicable licensing agency(s).

3. Termination for Illegal Purposes. At any time during the term of this Lease, Lessor shall have the right, notwithstanding any other provision to the contrary, to immediately terminate this Lease if the Premises or any part of the Premises, appurtenances or improvements are used, or intended to be used, in any manner or in part, to commit or to facilitate the commission of a crime or to endanger public safety.

End of Exhibit B

EXHIBIT C

PERMITTED LIENS

1. Any Approved Mortgage, as such term is defined in Section 19 of this Lease.
2. The lien of real property taxes.
3. Reservation in favor of the State of Hawaii of all mineral and metallic mines and water rights.
4. Easements, liens or encumbrances shown on the public records and in existence on the Effective Date.
5. Easements, liens or encumbrances suffered or incurred by the Lessor and not shown on the public records.
6. Affordability, rental and/or use restrictions required by (i) any department or agency of the federal government, including U. S. Department of Housing and Urban Development, Federal Housing Administration, Veterans Administration, Rural Development, (ii) any department, agency or public body and body corporate and politic of the State of Hawaii, (iii) any agency or department of the City and County of Honolulu, or (iv) any provision of any applicable federal, county or state law, including, without limitation, the Hawaii Revised Statutes, the United States Code, and/or the United States Internal Revenue Code.