

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Kakaako Community Development District
Honolulu, HI 96813

April 4, 2018

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

HCDA Board Members:

SUBJECT: Shall the Authority authorize the Interim Executive Director to enter into a ground lease with 630 Cooke Street Partnership LP (Bronx Pro Group) for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051 014] substantially in the form provided in Exhibit A, pending any further review of legal matters by the Deputy Attorney General?

SUMMARY:

The Authority is being asked to authorize the Interim Executive Director to enter into a 65 year ground lease with 630 Cooke Street Partnership LP (Bronx Pro Group) for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051 014] owned by the HCDA for construction of a low-to moderate income microunit affordable rental housing project (Nohona Hale).

AUTHORITIES:

Under Hawaii Revised Statutes (HRS) §206E-4.

BACKGROUND:

In June 2015, following a competitive Request for Proposals process, the Authority selected Bronx Pro Group as the developer for a low-to moderate income micro unit project at 630 Cooke Street. In April 2016, the Authority authorized entering into a development agreement with Bronx Pro Group. Subsequently the development agreement was executed on April 20, 2016. In January 2017, the Hawaii Housing Finance & Development Corporation (HHFDC) approved issuance of Hula Mae Multi-Family Tax-Exempt Revenue Bonds (HMMF), reservation of Low Income Housing Tax Credits (LIHTC), and Rental Housing Revolving Fund Project Award for Nohona Hale. In October 2017, the HHFDC certified Nohona Hale project for Hawaii Revised Statutes (HRS) §201H-38 exemptions from statutes, ordinances and rules. In December 2017, the City Council adopted resolution exempting the Nohona Hale project from certain City and County of Honolulu requirements. In March 2017, the HCDA Interim Executive Director approved an improvement permit for the project. Staff is currently reviewing the building permit for the project.

ANALYSIS:

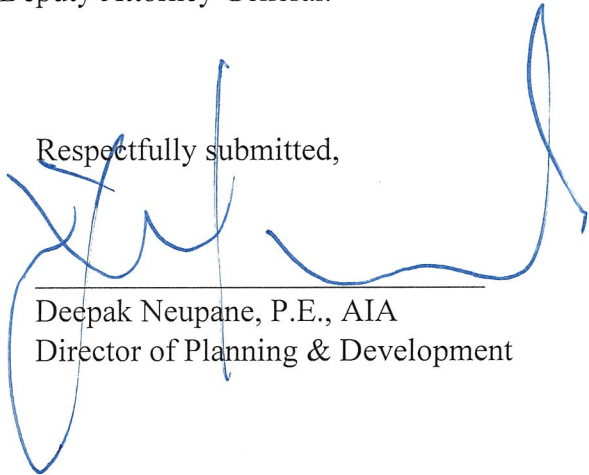
Nohona Hale is an affordable rental housing project that will provide housing for households with income of 60% or below of the Area Median Income (AMI). The project consists of 110 affordable rental units and one (1) resident manager unit. Eleven units will be set aside for households with income of 30% or below of AMI. The project will remain affordable for 65 years. Staff has prepared a ground lease in consultation with the developer and the deputy AG, which is provided as Exhibit A. The ground lease is for a term of 65 years at a nominal lease rent of \$1/year. The ground lease also includes provisions for HCDA sharing in cash distribution from operational cash flow and any cash distribution resulting from recapitalization of the project. In both cases the HCDA will receive 50% of the cash available for distribution.

It is anticipated that the closing of financing for the project will occur by the end of April or early May. An approved and executed ground lease is a condition for closing.

RECOMMENDATION:


Staff recommends that the Authority authorize the Interim Executive Director to enter into a Ground lease with 630 Cooke Street Partnership LP (Bronx Pro Group) for 630 Cooke Street parcel [Tax Map Key (1) 2-1-051 014] substantially in the form provided in Exhibit A, pending any further review of legal matters by the Deputy Attorney General.

Respectfully submitted,



Deepak Neupane, P.E., AIA
Director of Planning & Development

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director
Hawaii Community Development Authority

Attachments
Exhibit A- Ground Lease

GENERAL LEASE NO. ____

THIS INDENTURE OF LEASE ("**Lease**"), is made as of the ____ day of _____, 2018 ("**Effective Date**"), by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("**LESSOR**"), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business is 547 Queen Street, Honolulu, Hawaii 96813, and 630 COOKE STREET PARTNERSHIP LP ("**LESSEE**"), a Hawaii limited partnership, whose mailing address is c/o Bronx Pro Group, LLC, 1605 Dr. Martin Luther King Blvd., Bronx, New York 10453 (each, a "**Party**", and collectively, the "**Parties**").

RECITALS

WHEREAS, LESSOR is the fee simple owner of the Premises (defined below);

WHEREAS, LESSOR authorized the issuance of Development Permit No. KAK _____ to LESSEE for the development of the Project, as hereinafter defined (the "**Development Permit**");

WHEREAS, at its meeting of _____, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY approved this Lease, and authorized the Director to enter into this Lease;

WHEREAS, LESSEE desires to lease the Premises to develop and operate the Nohona Hale, an 16-story, affordable housing project with 111 micro-residential rental units, approximately 300 square feet each, approximately 7,500 square feet of community facility space to benefit the future residences of the Project, approximately 1,200 square feet of commercial space, and 3 parking stalls (the "**Project**") located at 630 Cooke Street, Kakaako, Oahu, Hawaii, identified as Tax Map Key No. (1) 2-1-051:014, with a lot area of approximately 10,400 square feet; (hereinafter "**Project**");

WHEREAS, LESSEE has entered into that certain Declaration of Restrictive Covenants, recorded in the Bureau as Document No. _____, by and between LESSOR, LESSEE, and Hawaii Housing Finance and Development Corporation, a public body and body corporate and politic of the State of Hawaii ("**HHFDC**"), regarding the affordability requirements, targeted with a preference for tenants with household incomes at or below the applicable Area Median Income ("**AMI**") at the time of the tenant's admission into the Project, as follows, unless otherwise approved by HHFDC:

NOW, THEREFORE, in consideration of the terms, covenants, and conditions contained herein, and other good and valuable consideration, the receipt of which are hereby acknowledged by each of the Parties, LESSOR and LESSEE do hereby agree as follows:

ARTICLE I.
DEMISE

1.1 **Lease.** 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 LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, that certain real

property located at 630 Cooke Street, Kakaako, Honolulu, Hawaii, identified as Tax Map Key No. (1) 21-051:014, with a lot area of approximately 10,400 square feet, more particularly described in Exhibit "A-1" attached hereto and depicted in Exhibit "A-2" attached hereto and made a part hereof, together with all easements, appurtenances, and other rights and privileges now or hereafter belonging or appertaining to the Premises (hereinafter, the "**Premises**"). LESSEE's assets shall include the Project, its leasehold interest in the Premises and the right to construct and install the Project on the Premises (collectively, the "**Lessee Property**").

1.2 Term. The Premises is demised unto LESSEE, together with all of the improvements (if any) and all appurtenant rights, but subject to the terms and conditions of this Lease, commencing at 12:00 pm Hawaii time on _____, 201__ ("**Commencement Date**") through 12:00 p.m. Hawaii time on _____, 20__ ("**Termination Date**"), unless this Lease is earlier terminated as provided herein (hereinafter, the "**Term**").

ARTICLE II. RENT TO LESSOR

2.1 Annual Rent. Annual rent of One Dollar (\$1.00) per annum. By its execution hereof, LESSOR acknowledges receipt of the annual rent for the Term from LESSEE.

2.2 Accounting Records. LESSEE shall at all times keep and maintain accurate accounting records of all proceeds and receipts generated at, by, from or upon the Premises, including accounting records of proceeds received or collected by LESSEE from sublessees or tenants which are located in or upon the Premises. LESSOR shall have the right to require LESSEE to prepare and furnish, at LESSEE's sole expense, audited financial statements prepared in accordance with generally accepted accounting principles and covering any fiscal year regularly employed by LESSEE. All such information shall be held by LESSOR, its agents, attorneys, and accountants in strictest confidence to the extent permitted by law.

2.3 Additional Rent Paid from Net Cash Flow and Recapitalization.

LESSEE covenants that:

(i) seventy-five per cent (75%) of the Net Cash Flow, as defined in Section 7.16(i), received from the Project shall be paid to the HHFDC's Rental Housing Revolving Fund as payment of that certain loan to LESSEE from HHFDC in the amount of \$21,881,809.00 (the "**HHFDC Loan**");

(ii) the remaining twenty-five per cent (25%) of the Net Cash Flow shall be deposited in an account (the "**Residual Receipts Account**") during the term of the HHFDC Loan. Thereafter, 100% of the Net Cash Flow should be deposited in said account, unless otherwise approved by LESSOR;

(iii) on an annual basis, LESSEE shall pay LESSOR as additional rent hereunder, if applicable, fifty per cent (50%) of the amount of Net Cash Flow deposited in the Residual Receipts Account in accordance with subsection (ii) immediately above for such year (up to the maximum amount of \$[_____] for such year, for the avoidance of doubt such additional rent shall not be due during any year when no Net Cash Flow is deposited into the

Residual Receipts Account), provided that the provisions of this Section shall terminate and be of no further effect upon the transfer of title by foreclosure or deed in lieu of foreclosure to an Approved Mortgagee, as defined in Section 4.1 (Right to Mortgage), its successors, transferees or designees, and shall not be binding upon any Approved Mortgagee, its successors, transferees or designees; and

(iv) Should LESSEE decide to make a cash distribution following a Recapitalization, as defined in Section 7.16(k), of the Project, LESSEE shall pay LESSOR fifty per cent (50%) of the distribution as additional rent.

ARTICLE III. RESERVATIONS

3.1 Minerals, Waters, and Historic Remains. Subject to the rights of native Hawaiians and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including Hawaii Revised Statutes Chapter 6E (Historic Preservation), LESSOR hereby reserves the following:

(a) Minerals. All minerals as hereinafter defined, in, on, or under the Premises and the right, on its own behalf or through person(s) 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; provided that as conditions precedent to the exercise by LESSOR of the rights reserved in this subsection (a), (i) LESSOR shall provide thirty (30) days prior written notice with details regarding access to the Premises and (ii) just compensation shall be paid to LESSEE for any portion of the Premises or of LESSEE's improvements so taken. "**Minerals**," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic 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 any Premises, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use in general construction in furtherance of LESSEE's permitted activities on the Premises and not for sale to others.

(b) Waters. All surface waters, ground waters, and storm water 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 that as a condition precedent to the exercise by LESSOR of the rights reserved in this subsection, (i) LESSOR shall provide thirty (30) days prior written notice with details regarding access to the Premises and (ii) just compensation shall be paid to LESSEE for any portion of the Premises or LESSEE's improvements so taken.

(c) Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the Premises.

3.2 Withdrawal for public purposes. LESSOR hereby reserves the right to withdraw at any time during the Term of this Lease, with reasonable notice and without compensation, except as provided herein, any portion of the Premises for public uses or purposes, including construction of new roads or extensions, or changes in line or grade of existing roads, and for rights of way, and the right to remove soil, sand, rock, or gravel as may be necessary, together with the right to enter upon the Premises to remove said soil, sand, rock, or gravel; provided, that as conditions precedent to the exercise by LESSOR of the rights reserved in this subsection, LESSOR shall provide thirty (30) days prior written notice to LESSEE and just compensation shall be paid to LESSEE for any of LESSEE's improvements taken. In connection with any actions taken by LESSOR under this provision, in no event shall LESSOR withdraw any portion of the Premises that would permanently, materially and adversely impact or affect the financial feasibility of the Project and LESSEE's use and enjoyment of the Premises.

3.3 Right to enter. LESSOR hereby reserves the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties or to inspect the Premises; provided, however, in the exercise of such rights, the LESSOR shall not interfere unreasonably with LESSEE's use and enjoyment of, or ingress or egress to or from, the Premises and any entry or inspection shall be conducted during business hours after written notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE.

3.4 Easements. LESSOR hereby reserves the right and option to create, designate, grant, and relocate from time to time, at its sole cost and expense, any and all necessary easements for utilities and services, including drainage, water, sewer, electricity, cable television, communications, and other utilities under, across, and through the Premises, provided that LESSOR shall use best efforts to assure that: (a) such easements do not cross under, across, or through any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct or install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption (or as minimal disruption as possible) to LESSEE's use and enjoyment of the Premises. In no event shall LESSOR create, designate, grant, locate or relocate, construct or install any easement which would materially and adversely impact or affect LESSEE's use and enjoyment of the Premises. If any work on or relating to an easement will temporarily materially and adversely impact or affect LESSEE's use and enjoyment of the Premises, LESSOR shall use its best efforts to expedite any work with respect to the easement. Upon completion of any such work by LESSOR, the Premises shall be returned, at LESSOR's sole cost and expense, to substantially the same condition as it was prior to the commencement of such work.

ARTICLE IV. LEASEHOLD FINANCING

4.1 Right to Mortgage. Upon due application and obtaining the prior written consent of LESSOR, which shall not be unreasonably withheld, LESSEE may mortgage the Lessee Property; provided that LESSEE's consent is not required if the mortgage or security interest is to a Suitable Lender, as defined herein. If the mortgage or security interest is to a Suitable Lender, the 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. 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 Federal Home Loan Mortgage Corporation, 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. Any mortgage consented to by LESSOR pursuant to, or otherwise permitted under, this Section 4.1 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. LESSOR hereby approves of JPMorgan Chase Bank, N.A., as senior lender, and HHFDC, as subordinate lender, as Approved Mortgagees in connection with the loan each is providing the LESSEE for the construction of the Project.

4.2 Rights of Approved Mortgagees. For purposes of this Section 4.2, "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 4.2 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, as defined in Section 4.4 (Breach and Events 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:

1. 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

2. In the case of an Event of Default which is not susceptible to being cured by the Approved Mortgagee, or is an Excluded Cost (as defined in Section 7.16 (Definitions)), 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, and the First Transferee (as defined in Section 7.16 (Definitions)), 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 or transferee as the lessee hereunder. If any Approved Mortgagee, its designee, or First Transferee 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, designee or First Transferee 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 5.10 (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 4.2(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 or for any other reason, LESSOR will execute an amendment and/or reinstatement of the lease (for purposes of this section 4.2(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) Intentionally Omitted; (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, other than Excluded Costs; 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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(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 4.2(c)(v) or (vi) above, the Approved Mortgagee or its designee shall be 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 5.15(a)(Commercial Property Insurance), 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 in accordance with an appraisal of the Leasehold estate performed by LESSOR and LESSEE at the time of such condemnation 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 Section 7.7 of this Lease. In the event of a partial or total loss as set forth in Section 5.15(a) occurring during the Term, proceeds shall be payable first in accordance with Section 5.15(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.

4.3 Estoppel Certificate. LESSEE agrees promptly following request by LESSOR to execute and deliver an Estoppel Certificate (as hereinafter defined) to LESSOR. LESSOR agrees promptly following request by LESSEE or an Approved Mortgagee to execute and deliver an Estoppel Certificate to whichever of them has requested the same. "**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

4.4 Breach and Events of Default. Time is of the essence of this Lease, and following the notice and cure provisions described in this Section 4.4 or in Section 4.5 (Remedies Upon Event of Default; Termination of Lease) 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 5.17 (Surrender and Termination of the Lease) or Section 4.5 (Remedies Upon Event of Default; Termination of the Lease) 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, as defined in Section 7.16 (Definitions) by the date to be determined in accordance with Section 6.3 (Time of Performance for Project), subject to any Force Majeure event, as defined in Section 7.3 (Force Majeure) and extensions agreed to by LESSOR;

(g) If LESSEE shall fail to observe, perform, or comply with the Applicable Laws described in Section 5.6 (Compliance with Laws).

4.5 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 Sections 4.4(a) and 4.4(b)), LESSOR shall deliver a written notice of the occurrence of such event in accordance with Section 7.2 (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 4.4(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 4.4(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; 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. 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.

4.6 Notice to Investor Limited Partner. So long as any Investor Limited Partner, as defined in Section 7.16 (Definitions) 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 Investor Limited Partner at the address provided in Section 7.2 (Notices); provided that failure of LESSOR to give such notice to Investor Limited Partner shall not affect the validity and effectiveness of the notice to LESSEE. Investor Limited Partner shall have the same cure period as LESSEE, plus sixty (60) days after the giving of notice aforesaid to Investor Limited Partner for remedying the default or causing the same to be remedied as is given to LESSEE after notice to such Investor Limited Partner.

4.7 Investor Limited Partner'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 Investor Limited Partner as defined in Section 7.16 (Definitions), reasonable time, not to exceed the cure periods provided in Sections 4.4 and 4.5 plus 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 Investor Limited Partner, (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, as defined in Section 7.16 (Definitions), 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.

ARTICLE V. LESSEE'S COVENANTS

Unless specifically provided otherwise in this Lease, the following covenants shall apply during the Term:

5.1 Taxes and Assessments. LESSEE shall pay or cause to be paid, when due or prior to delinquency, the amount of all taxes, rates, assessments of every description as to which the Premises or any portion thereof, or any improvements thereon, or as to which LESSEE is now or hereafter may be assessed or become liable for by authority of law during the Term; provided 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 may be charged thereunder, which become due and payable during the Term. LESSEE shall reimburse to LESSOR, within ten (10) days after receipt of invoices and/or reasonable supporting documentation, for any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document relating to this transaction to which LESSEE is a party, creating or transferring an interest or an estate in the Premises. LESSEE shall have the right to contest any tax, rate, assessment, or other charge imposed against the Premises, including any assessments imposed as part of LESSOR's District-Wide Improvement Program, provided that such contest shall not result in a sale of, or a lien being attached to, the Premises. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment, or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE. LESSOR acknowledges that LESSEE may undertake efforts to obtain exemptions from taxes allowed by law, including without limitation exemptions from General Excise Tax and real property taxes pursuant to Hawaii Revised Statutes Chapters 201H, HRS §237-29, Hawaii Administrative Rules Chapter 15-306, and Revised Ordinances of Honolulu Chapter 8, Article

10, and to the extent that such efforts may require LESSOR's reasonable cooperation, as the fee owner of the Premises, LESSOR shall reasonable cooperate with LESSEE in any such application. To the extent that LESSOR shall receive the same, LESSOR agrees to submit to LESSEE all real property tax or assessment valuation notices within ten (10) days after receipt by LESSOR, and all real property tax or assessment invoices within ten (10) days after receipt by LESSOR.

5.2 Utility Services. During the Term, LESSEE shall be responsible for obtaining any utility services and shall pay or cause to be paid when due, all utility charges, duties, and rates of every description, including water, sewer, gas, telephone, cable television, communications, refuse collection, relocation of utility poles and lines or any other charges relating to utility services for the Premises or any part thereof, or any improvements thereon, whether assessed to or payable by LESSOR or LESSEE.

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

5.4 Sanitation. During the Term, LESSEE shall keep the Premises and improvements in a reasonably sanitary and clean condition. LESSEE shall be responsible for the removal of all trash upon the Premises, whether or not placed on the Premises by LESSEE or with or without LESSEE's consent.

5.5 Waste and Unlawful, Improper or Offensive Use of the Premises. LESSEE shall not commit, suffer, or authorize to be committed any waste, nuisance, or unlawful, improper, or offensive use of the Premises or any part thereof. Except as necessitated by the construction of the Project, LESSEE shall not cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises without first securing LESSOR's prior written consent; provided, however, that LESSEE's development of the Project shall be in compliance with all Applicable Laws as defined herein.

5.6 Compliance with Laws. LESSEE shall comply with the applicable law, regulations and requirements of all municipal, state, and federal authorities, and shall observe all municipal ordinances and state and federal statutes and rules and regulations properly promulgated thereunder ("**Applicable Laws**"), applicable to the Premises, now in force or that may hereafter be in force, including but not limited to, all applicable federal, state, and county environmental impact regulations. LESSEE will at all times during the 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.

5.7 Improvements. Except for the Project and for those improvements which may be required by law or this Lease, including without limitation Section 5.8, 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, or allow or permit any person, entity, or

sublessee to construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind and description, except with the prior written consent of LESSOR, which shall not be unreasonably withheld, and upon those conditions LESSOR may impose, including the adjustment of annual rent under this Lease. Any improvements made, built, installed, or constructed by LESSEE on the Premises shall be at LESSEE's sole cost and expense, including but not limited to improvements required by law. LESSEE shall own any improvements made in or on the Premises during the term of this Lease. As such, LESSEE shall be entitled to all depreciation deductions and low-income housing tax credits and other benefits for income tax purposes related to the Project. Upon the expiration or termination of this Lease, the Project and any other improvements consented to by LESSOR as permanent improvements are to remain on the Premises and become the property of LESSOR and any improvements consented to by LESSOR as not permanent are to be removed by LESSEE at LESSEE's sole cost and expense.

5.8 Repairs to Improvements. During the Term of this Lease, LESSEE shall, at its own expense, keep, repair, and maintain all buildings and improvements constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted.

5.9 Liens. Except as otherwise provided in this Lease, LESSEE shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Lease, and shall indemnify, defend, and hold harmless LESSOR from and against all such attachments, liens, charges, and encumbrances and all resulting expenses, including all attorneys' fees and costs incurred by LESSOR arising from or based out of such actions. This provision shall survive the termination or expiration of the Lease Term. Notwithstanding anything to the contrary in this Lease, LESSEE shall not be in default under this Lease with respect to any lien which LESSEE is contesting or has bonded or otherwise secured or intends to contest, bond or otherwise secure within sixty (60) days after notice to LESSEE thereof.

5.10 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 residential subleases within the Project. Notwithstanding the foregoing, the assumption of the interest of the general partner of LESSEE by the Investor Limited Partner, as defined in Section 7.16 (Definitions), its successors and assigns, shall not be deemed an assignment or transfer for the purposes of this section, nor require the consent of LESSOR, nor shall any transfers, hypothecations, assignments and/or pledges of the Investor Limited Partner's interests (or

portions thereof), or LESSEE's general partner as contemplated in LESSEE's Partnership Agreement, Investor Limited Partner's loan documents, if any, or otherwise, be deemed an assignment for the purposes of this section. Further, transfers of the Investor Limited Partner's interests in LESSEE to an affiliate of Investor Limited Partner, as contemplated in LESSEE's Partnership Agreement, shall not require the consent of LESSOR.

5.11 Subletting. LESSEE shall not sublease the Premises or any part thereof without prior written approval of LESSOR; provided, however, that prior to this approval, LESSOR shall have the right to review the terms and conditions of any proposed sublease. Notwithstanding anything to the contrary in this Lease, LESSEE shall be permitted, without any additional approvals from LESSOR, to sublet the Project to an Affiliate of LESSEE pursuant to a sublease between LESSEE and such sublessee ("**Sublease**"). The restrictions and limitations under this Section 5.11 shall not apply to any residential subleases within the Project, or to individual leases for units within the Project to be entered into by the LESSEE or an Affiliate of LESSEE and a commercial tenant.

(a) Prior to any consent, LESSOR shall have the right to review the terms and conditions of the sublease and request that amendments be made, including but not limited to, requesting that the sublessee defend, indemnify, and hold harmless LESSOR and the State of Hawaii, and obtain and maintain liability insurance of the kinds and in the amounts that LESSOR reasonably determines; provided that LESSOR shall not have the right to approve or request changes to the rent to be charged to the proposed sublessee. For good cause, LESSOR may waive the requirement that LESSEE obtain prior written consent to sublet all or any portion of the Premises. Any sublease executed without the prior written consent of LESSOR or without LESSOR's waiver of the consent requirement shall be null and void.

(b) Upon written request, LESSOR shall issue a commercially reasonable non-disturbance and attornment agreement to each sublessee requesting the same, which agreement shall provide that, notwithstanding a default under this Lease, LESSOR shall recognize the sublease and not disturb the sublessee's possession thereunder so long as the sublessee is not in default under its sublease and agrees to attorn to LESSOR, if applicable, for the balance of the term of such sublease with the same force and effect as though said sublease were originally made directly from LESSOR to the sublessee.

5.12 Hazardous Materials. Neither LESSEE nor any person acting on LESSEE's behalf shall release any hazardous materials at, onto, or from the Premises, store or use at the Premises such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for storage and use of such materials, or bring onto the Premises any such materials, unless LESSEE obtains LESSOR's prior written consent, which LESSOR may withhold in its sole and absolute discretion. LESSEE shall be responsible for the cost of any testing required by any governmental agency to ascertain whether LESSEE or any person acting on LESSEE's behalf has released any hazardous materials at, onto, or from the Premises. At LESSOR's request, LESSEE shall execute affidavits, representations and the like concerning LESSEE's knowledge and belief regarding the presence of any hazardous materials that LESSEE or any person acting on its behalf has brought onto or released at, onto, or from the Premises. LESSEE shall indemnify, defend and hold LESSOR harmless from any damages and claims resulting from any release by LESSEE or any person acting on LESSEE's behalf, during the

term of this Lease, of hazardous materials at, onto, or from the Premises or elsewhere except if arising solely from the acts of LESSOR. For purposes of this Lease, "**hazardous material**" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. For purposes of this paragraph, to "release" hazardous material means to (a) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or disperse hazardous material, in any manner not sanctioned by law, in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (b) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment, in any manner not sanctioned by law.

5.13 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 except if arising solely from acts of LESSOR. 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.

5.14 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 (d) 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.

(a) 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 have been authorized by the Legislature of the State of Hawaii for such purposes and funds have been allocated by the budget process. This provision shall survive the termination or expiration of this Lease.

5.15 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 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. 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 shall not require the waiver of any right of subrogation by LESSEE's insurers.

LESSOR reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in LESSOR's reasonable 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.

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 TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), 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, if allowed by any Approved Mortgagee, 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. If any Approved Mortgagee does not make insurance proceeds available for the restoration of the Project, the balance of any insurance proceeds available for restoration of the Project after payment to Approved Mortgagee, shall be paid to LESSOR. Thereafter, the obligations of LESSEE in connection with the Project under this Lease and any other documents executed with LESSOR in connection with the Project shall cease as of the date of the casualty and only those liabilities explicitly stated as surviving the termination of this Lease or in any other documents executed with LESSOR in connection with the Project shall survive.

(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 exceed 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.** 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 FIVE MILLION DOLLARS (\$5,000,000.00) per policy year and a self-insured retention or deductible no greater than TWO HUNDRED AND 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.

5.16 Notification of Certain Events. As soon as practicable after obtaining knowledge or notice thereof, LESSEE shall deliver to LESSOR, together with copies of all relevant documentation with respect thereto, notice of: (a) any loan default; (b) all summons, citations, directives, complaints, notices of violation or deficiency, and other communications from any Governmental Authority other than LESSOR, asserting a material violation of Governmental Requirements (defined below) applicable to the Premises; and (c) any litigation or proceeding relating to the Premises in which LESSEE is a party if an adverse decision therein would, in LESSEE's reasonable opinion, have a material adverse effect on LESSEE's ability to perform its obligations hereunder.

5.17 Surrender and Termination of the Lease. At the expiration or termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Premises, together with all buildings and improvements that are to remain on the Premises in good order and condition, reasonable wear and tear excepted, and free and clear of all liens and encumbrances other than those matters as LESSOR and LESSEE may mutually agree upon. All inventory, trade fixtures, furniture, machinery, and equipment that LESSEE or LESSEE's tenants/sublessees use or install on the Premises and any other personal property, shall remain such party's property and may be removed by such party. Should LESSEE fail to remove any and all of LESSEE's personal property from the Premises, after notice thereof, 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 LESSEE agrees to pay all costs and expenses for disposal, removal, or storage of the personal property.

5.18 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.

5.19 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.

5.20 Justification of Sureties. 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.

5.21 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.

ARTICLE VI.
IMPROVEMENTS TO AND OPERATIONS OF PREMISES

6.1 Project. LESSEE may construct, at its own cost and expense, the Project on the Premises, provided that it is constructed in accordance with: (a) all Applicable Laws; and (b) the terms and conditions of the Development Permit, which was approved by LESSOR, in its regulatory capacity, on _____, 2018. Consistent with the Development Permit, at the time of the residential tenant's admission into the Project, unless otherwise approved by HHFDC, the residential units shall be offered as follows:

Target Markets:	11	units at 30% and below AMGI
	99	units at 60% and below AMGI
	<u>1</u>	resident manager unit
	111	Total Units

Notwithstanding anything herein to the contrary, the affordability and rent restrictions contained in this Agreement are subject and subordinate in all respects to the liens of the Approved Mortgages and, in the event of a foreclosure, a transfer of title by deed in lieu of foreclosure, or similar event, of any Approved Mortgage, such restrictions shall immediately terminate and be of no further effect.

6.2 Project Commencement. LESSEE shall commence the visible construction of the Project within seven hundred thirty (730) calendar days from the Commencement 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. LESSEE shall have the right to terminate if construction has not commenced on the Project within seven hundred thirty (730) calendar days from the Commencement Date.

6.3 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, as defined in Section 7.16 (Definitions) by three (3) consecutive calendar years after Project Commencement. Such date shall be subject to any Force Majeure event and shall be extended upon the request of an Approved Mortgagee in connection with a cure tendered by an Approved Mortgagee pursuant to Section 4.2 hereof.

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

6.5 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 materialmens' liens and claims.

6.6 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, permits and licenses 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 or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof.

Notwithstanding the provisions of this Section 6.6, LESSOR represents and warrants that the development of the Project as contemplated herein and under the Development Permit shall not constitute a violation or infraction of any prior approvals issued by LESSOR relative to the Premises.

6.7 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.

6.8 Construction Contract.

(a) At least fifteen (15) days prior to Project Commencement, LESSEE shall deliver to LESSOR a copy of the executed 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.

6.9 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. 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. 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 private agreement.

6.10 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.

6.11 Benefits of Improvements During Term. LESSOR acknowledges and agrees that any and all depreciation, amortization, profits, losses, income, and tax credits for Federal or state tax purposes relating to the Project and any and all additions thereto, substitutions therefore, fixtures therein and other property relating thereto shall be deducted by or credited exclusively to the LESSEE during the term of this Ground Lease.

ARTICLE VII.
MUTUAL COVENANTS

7.1 Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, nor of LESSOR's right of reentry for breach of covenant, nor of LESSOR's right to declare and enforce a forfeiture for any breach, and the failure of 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.

7.2 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: 630 COOKE STREET PARTNERSHIP LP
c/o Bronx Pro Group, LLC
1605 Dr. Martin Luther King Blvd.
Bronx, New York 10453
Attention: Samantha Magistro
Telephone: (718) 294-5840
Email: smagistro@bronxprogroup.com

And a copy to HKI Nohona LLC
c/o Hui Kauhale, Inc.
American Savings Bank Tower
1001 Bishop Street, Suite 2880
Honolulu, HI 96813
Attention: Marian Gushiken
Telephone (808) 523-8826
Email: marian.gushiken@eahhousing.org

With a copy by email sent on the same date to:

Jones Day
100 High Street
Boston, MA 02110
Attention: John D. Kelley, Esq.

Telephone: (617) 449-6939
Email: jkelly@jonesday.com

With a copy on the same date to:

- and INVESTOR LIMITED PARTNER(S)
- RSEP Holding, LLC
c/o Redstone Equity Partners
1100 Superior Avenue, Suite 1640
Cleveland, Ohio, 44114
Attention: Managing Director & General Counsel
Email: chris.murray@redstoneequity.com
- and Hawaii Fund 2017 I LLC
c/o Sugar Creek Capital
17 W. Lockwood Avenue
St. Louis, MO 63119
Attn: Legal Dept.
Email: ibosso@sugarcreekcapital.com
- and APPROVED MORTGAGEE(S)
- Hawaii Housing Finance and Development
677 Queen Street
Honolulu, HI 96813
Attention: Dean Skata
Telephone: (808) 587-0620
Email: dean.m.sakata@hawaii.gov
- and JPMorgan Chase Bank, N.A.
270 Park Avenue, 45th Floor
New York, New York 10017
Attention: Jane Silverman
Telephone: (212) 270-2939
Email: jane.e.silverman@chase.com

With a copy by email sent on the same date to:

Applegate & Thorne-Thomsen
440 S. LaSalle St., Suite 1900
Chicago, Illinois 60605
Attention: Bennett P. Applegate, Esq.
Telephone: (312) 491-3312
Email: bapplegate@att-law.com

Rowland Law LLC
P.O. Box 42078
Fredericksburg, VA 22404
Attention: Carolyn Rowland, Esq.
Telephone: (703) 989-0080
Email: crowland@rowlandlawllc.com

Paul Hastings LLP
515 Flower Street, 20th Floor
Los Angeles, CA 90071
Attention: Ken Krug, Esq.
Email: kenkrug@paulhastings.com

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 Commerce and Economic Development Division
425 Queen Street
Honolulu, Hawaii 96813
Attention: Bryan C. Yee, Supervising Deputy Attorney General
Telephone: (808) 587-2978

or at such other address as may be specified from time to time in writing by either Party and delivered to the other Party in accordance with this section. Unless otherwise provided in this Lease, all such notices hereunder shall be deemed to have been given on the date personally delivered or faxed or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of first attempt at delivery (as depicted on any return receipt, as an example) shall be deemed the date notice has been given.

7.3 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:

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

(b) 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;

(c) 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

(d) 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.

7.4 Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants, and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess, and enjoy the Premises for the Term of this Lease, without disturbance, hindrance or interruption by LESSOR, its successors and assigns, or any other person or persons by, through, or under them, unless otherwise provided in this Lease. LESSOR's covenant of quiet enjoyment, however, shall not in any way obligate LESSOR to defend or protect the Premises from political protests.

7.5 Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rental payments shall be TWELVE PERCENT (12%) per annum (the "Default Rate"), prorated daily based on the actual number of days in such calendar year. 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.

7.6 LESSEE's Waiver. LESSOR shall not be responsible for or liable to LESSEE and LESSEE does hereby release LESSOR, waive all claims against LESSOR, and assume the risk for any injury, loss, or damage to any person, Premises or property in, on, over, or under the Project, by or from any cause whatsoever (except to the extent caused by LESSOR's acts or omissions or those of LESSOR's affiliates, agents, representatives, employees, consultants, or advisors, and except as provided in Section 5.14 (Indemnity) above).

7.7 Condemnation. If, at any time during the Term of this Lease, any portion of the Premises should be condemned by any governmental agency or entity, including LESSOR, which renders the remainder of the Premises unsuitable for the use or uses for which the Premises were leased, LESSEE shall have the option to surrender this Lease and be discharged and relieved from any further liability. LESSEE shall be entitled to receive from the condemning authority the proportionate value of LESSEE's improvements so taken in proportion

to the unexpired Term of the Lease and such other just compensation as it may be entitled to by law. LESSEE and an Approved Mortgagee shall have the right to participate in any condemnation proceedings and settlement discussions. The foregoing rights of LESSEE shall not be exclusive of any other rights to which LESSEE may be entitled by law.

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

7.9 Headings. The article and paragraph 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.

7.10 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.

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

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

7.13 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.

7.14 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, LESSOR and LESSEE shall execute a quitclaim termination of LESSEE's interest in this Lease.

7.15 Relationship of the Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint ventures, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto shall be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership or joint venture.

7.16 Definitions. In addition to any definitions set forth above, as used herein, unless clearly repugnant to the context:

(a) "Affiliate of LESSEE" means any entity: (1) that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with LESSEE; or (2) that directly or indirectly owns TWENTY PERCENT (20%) or more of the equity interests of LESSEE; or (3) for which TWENTY PERCENT (20%) or more of its equity interests are directly or indirectly owned by LESSEE. As used herein, "control" means the possession, directly or indirectly of the power to cause the direction of the management and

policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(b) "Expenses of the Project" shall mean, for any period, the current expenses, paid or accrued, of operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, reasonable and customary brokerage commissions and attorneys' fees and expenses, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Loan Documents), a management fee (however characterized) not to exceed 7% of Gross Revenues, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any other subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

(c) "Excluded Costs" are those costs based upon the non-payment of expenses, damages or indemnification obligations of LESSEE to LESSOR under the Lease.

(d) "First Transferee" is the first transferee of the Project obtaining rights to the leasehold estate from the Approved Mortgagee or its designee following (i) a foreclosure, or sale thereunder, or (ii) 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.

(e) "Governmental Authority" or "Governmental Authorities" means any federal, state, county, or municipal governmental authority, including all executive, legislative, judicial, and administrative departments and bodies thereof having jurisdiction over LESSEE or the Project.

(f) "Governmental Requirements" means all laws, ordinances, statutes, executive orders, rules, zoning requirements, and agreements of any Governmental Authority that are applicable to the acquisition, remediation, renovation, demolition, development, construction, and use of the Premises, without limitation all required permits, approvals and any rules, guidelines, or restrictions enacted, promulgated, or imposed by Governmental Authorities.

(g) "Gross Revenues" shall mean all receipts, revenues, income and other moneys received by or on behalf of LESSEE and derived from the ownership or operation of the Project, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Revenues shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by LESSEE in accordance with the applicable law.

(h) "Loan Obligations" shall mean and includes, collectively, and without limitation, each of the following: (A) all debt service payments and other obligations of the LESSEE due on

any Approved Mortgage, (B) all capital expenditures required for the proper maintenance of the Project in accordance with the Approved Mortgage; (C) all amounts required to be deposited into any replacement reserve, completion/repair reserve, operating deficit reserve, principal repayment reserve, replacement hedge reserve or other reserve or escrow established or required by an Approved Mortgagee in connection with the Approved Mortgage, (D) all fees, costs and expenses of any Approved Mortgagee in connection with an Approved Mortgage, and (E) any loans owed to any Affiliate of the LESSEE.

(i) "Net Cash Flow" shall mean, for the LESSEE's fiscal year, Gross Revenues for such period less the sum of (i) Expenses of the Project for such period, (ii) amounts due on the Loan Obligations for such period other than payments on the HHFDC Loan, (iii) all amounts due to the Investor Limited Partner under the Agreement of Limited Partnership of LESSEE dated as of ____ (the "**Partnership Agreement**"), including payment of the asset management fee, payment of any adjustment due to a difference between anticipated and actual tax credits received, and repayment of any partner loan, (iv) any reserve, escrow, imposition, or special deposits required by the Partnership Agreement, (v) deferred Development Fee due pursuant to the Development Agreement between LESSEE and general partner, and (vi) the fees due in accordance with the terms of the Partnership Agreement.

(j) "Prohibited Uses" means and includes: (i) any establishment featuring explicitly-sexual, adults-only entertainment (including without limitation stores offering adult books or films, adults-only theaters, or nude or semi-nude entertainment facilities); (ii) any illegal activity or conduct, including without limitation any establishment that offers illegal or illicit services under the guise of therapeutic massage; (iii) sale or offering of sale of paraphernalia for use with illegal drugs; (iv) gambling facilities or operations; (v) storage or stockpiling of supplies and materials on exterior parking lots or other areas where they are visible from properties surrounding the Project, except for the temporary stockpiling of construction material for use in the construction of any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, provided that the same is stored in a safe manner and does not pose a hazard to the public or others who may visit or work on the Premises; (vi) obnoxious bright lights, odors, dust, smoke, or other noxious agents which could unreasonably disrupt surrounding properties; and (vii) any prohibited uses within the Central Kakaako zone identified in Figure 1.9 of the Mauka Area Rules, Hawaii Administrative Rules Chapter 15-217.

(k) "Recapitalization" means an event which after its occurrence would result in all of the Loan Obligations that existed prior to such event to be repaid and/or satisfied, as applicable. If there are excess proceeds following the occurrence of such event such proceeds shall be distributed in accordance with Section 2.3(iv) hereof.

(l) "State" means the State of Hawaii.

(m) "Substantial Completion" or "Substantially Complete" means the issuance of a permanent certificate or certificates of occupancy for the residential portion of the Project.

(n) "subcontractor" means a person hired by LESSEE's contractor to do or perform part of the construction of the Project.

(o) "Suitable Lender" means (i) any recognized lending institution, such as a commercial bank or trust company, in the State of Hawaii and/or the United States of America; (ii) Intentionally Omitted; (iii) a foreign chartered bank or other financial institution qualified to make loans in the State of Hawaii; (iv) a diversified financial services company that is a subsidiary of a Fortune 1000 company; (v) a federal, state or local government or quasi-governmental agency; (vi) an educational or charitable institution; (vii) an employee profit-sharing, pension, welfare or retirement fund; (viii) an insurance company duly organized or licensed to do business in the State of Hawaii; (ix) a real estate mortgage investment conduit or securitization trust or other real estate investment trust; (x) a trustee or issuer of collateralized real property mortgage obligations or similar investment entity; (xi) an investment or savings bank; (xii) the Investor Limited Partner or an affiliate of the Investor Limited Partner; (xiii) a corporation, other entity, or joint venture that is a subsidiary, affiliate or combination of any one or more of the foregoing; and (xiv) any Affiliate of the LESSEE.

(p) "Investor Limited Partner" means, collectively or individually as the context may require, (i) LESSEE's limited partner, RSEP Holding, LLC, a Delaware limited liability company, and Red Stone Equity Manager, LLC, a Delaware limited liability company, and their respective successors and assigns, and (ii) LESSEE's limited partner, Hawaii Fund 2017 I LLC, a Hawaii limited liability company, and its successors and assigns.

7.17 Execution.

(a) LESSOR represents and warrants to LESSEE, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSOR is authorized to do so, (ii) LESSOR has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSOR, (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSOR according to the terms of this Lease, and (v) LESSOR owns fee simple good and marketable title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except as listed on Exhibit A.

(b) LESSEE represents and warrants to LESSOR, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSEE is authorized to do so, (ii) LESSEE has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSEE, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSEE according to the terms of this Lease.

[signature pages to follow]

LESSOR:

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

By: _____

Name:

Title:

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

LESSEE:

630 COOKE STREET PARTNERSHIP LP,
a Hawaii limited partnership¹

By: Nohona Hale, LLC
its General Partner

By: BPG Hawaii Partners, LLC
its Managing Member

By: The Magistro Family I L.L.C.
its Manager

By: _____

Name: Peter Magistro

Title: Manager

¹ Note: TBD

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

On this _____ day of _____, 2018, before me personally appeared _____ of the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, personally known/proved to me on the basis of satisfactory evidence, 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.

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	General Lease No. _____
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): First	
Signature of Notary	Date of Notarization and Certification Statement
(Notary Stamp or Seal)	
Printed Name of Notary	

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

On this ____ day of _____, 2018, before me personally appeared _____, of 630 COOKE STREET PARTNERSHIP LP, personally known/proved to me on the basis of satisfactory evidence, 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.

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	General Lease No. _____
Document Date:	_____
No. of Pages:	_____
Jurisdiction (in which notarial act is performed): First	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)