

**FOR ACTION**

**I. REQUEST**

Consider Authorizing the Executive Director to Amend That Certain Lease Dated March 4, 2022, With Zimmer US Inc., a Delaware Corporation, for Store #2124963-A Located at 610 Ward Avenue, Honolulu, Hawaii, and Further Described by TMK (1) 2-1-049: 063 por., to Extend the Lease Term by an Additional Year Until June 30, 2026 and Increase the Rent.

**II. BACKGROUND**

On January 13, 2025, the Hawaii Community Development Authority (HCDA) completed its purchase of the parcel and improvements located at 610 Ward Avenue and 875 Kapiolani Boulevard in the Kakaako Mauka district (Block P-3) from Victoria Ward, Limited (Seller). As part of the purchase and sale agreement, the Seller assigned to the HCDA all three (3) existing tenant leases for the Block P-3 property.

One of those leases is with Zimmer US, Inc. dba Zimmer Medical, a company that warehouses and distributes medical supplies and related products out of a 2,251 square foot commercial space located at 610 Ward Avenue (Store #2124963-A). The Zimmer US, Inc. lease was executed by the Seller on March 4, 2022 and is currently set to terminate on June 30, 2025.

The original lease is attached hereto as Exhibit A.

**III. DISCUSSION**

Zimmer US, Inc. requests a lease extension until June 30, 2026 to allow them to continue operating their facility until the HCDA is ready to redevelop the site. They agree to increase the base rent by three percent (3%) to \$5,919.75 a month for the additional one-year term.

Zimmer US, Inc. also requests the HCDA pay a brokerage commission to Colliers International equivalent to two months gross rent (\$11,494.66). Their request letter is attached hereto as Exhibit B.

Zimmer US, Inc.'s lease currently includes a special termination provision (Section 25.28) that allows the HCDA to terminate the lease for the purposes of redeveloping the parcel, provided at least 180-days written notice is given to the tenant.

HCDA's Planning and Development team is currently in the planning and assessment stages for potentially developing a 99-year leasehold pilot project on the Block P-3

property. Any potential project would still require HCDA board approval before a construction timeline can be established.

Due to this early stage of planning, HCDA staff believe it is prudent to extend tenant leases on the Block P-3 property for at least another year. This will enable us to maintain a source of revenue and to keep the property occupied and secure until it can be developed.

HCDA staff proposes reducing the termination notification requirement to 90-days written notice instead of 180-days to allow us greater flexibility in planning. However, it remains HCDA's intent to notify the tenant as soon as development plans are solidified.

HCDA staff recommends accepting the proposal for a one-year lease extension with a 3% rent increase but rejecting the request for a brokerage commission. As a state agency, the HCDA is unable to pay such fees to an agent that was not properly procured by the state. It is also not consistent with HCDA leasing policy to waive lease rent for tenants to pay such commissions.

All other terms and conditions of the original lease shall remain unchanged.

**IV. RECOMMENDATION**

It is recommended that the Board Authorize the Executive Director to Amend That Certain Lease Dated March 4, 2022, With Zimmer US Inc., a Delaware Corporation, for Store #2124963-A Located at 610 Ward Avenue, Honolulu, Hawaii, and Further Described by TMK (1) 2-1-049: 063 por., to Extend the Lease Term by an Additional Year Until June 30, 2026, Increase the Rent by 3%, and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit A – Zimmer US Inc. Lease Dated March 4, 2022

Exhibit B – Zimmer US Inc. Lease Extension Request Letter Dated January 15, 2025

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Craig Nakamoto, Executive Director *Craig Nakamoto*

# LEASE

between

**VICTOR WARD, LIMITED**

and

**ZIMMER US INC.**

**dba ZIMMER MEDICAL**

**610 WARD AVENUE**

**STORE #2124963-A**

## INDEX TO LEASE

<b>DATA SHEET</b>	<b>1</b>
(1) Term	1
(2) Minimum Annual Rental .....	2
(3) Parking Validation Charge.....	2
(4) Non-Structural Alterations by Tenant.....	2
(5) Permitted Use .....	2
(6) Trade Name .....	2
(7) Security Deposit .....	2
(8) Legal Notice Address .....	2
<b>ARTICLE I GRANT AND TERM.....</b>	<b>4</b>
Section 1.01. Conditions of Grant.....	4
Section 1.02. Term .....	4
Section 1.03. Tenant's Opening; Late Charge. ....	4
Section 1.04. Ultimate Rental Commencement Date .....	5
<b>ARTICLE II: RENTAL .....</b>	<b>5</b>
Section 2.01. Minimum Annual Rental. ....	5
Section 2.03. Intentionally Omitted. ....	5
Section 2.04. Intentionally Omitted. ....	5
Section 2.05. Trash Removal Charge.....	5
Section 2.06. Additional Rent .....	6
Section 2.07. Intentionally Omitted. ....	6
Section 2.08. Tenant's Payment Obligations; Late Charge.....	6
<b>ARTICLE III: INTENTIONALLY OMITTED .....</b>	<b>6</b>
<b>ARTICLE IV: CONSTRUCTION OF PREMISES .....</b>	<b>7</b>
Section 4.01. Construction of Premises.....	7
Section 4.02. Certificate of Occupancy .....	9
Section 4.03. Condition of Premises .....	9
<b>ARTICLE V: ALTERATIONS, CHANGES AND ADDITIONS.....</b>	<b>10</b>
Section 5.01. Alterations by Tenant .....	10
Section 5.02. Removal by Tenant .....	10
Section 5.03. Changes and Additions.....	11
Section 5.04. Relocation Right .....	11
<b>ARTICLE VI: CONDUCT OF BUSINESS BY TENANT .....</b>	<b>12</b>
Section 6.01. Permitted Use.....	12
Section 6.02. Operation of Business .....	12
Section 6.03. Hazardous Materials.....	13
<b>ARTICLE VII: COMMON AREAS.....</b>	<b>15</b>
Section 7.01. Operation and Maintenance of Common Areas.....	15
Section 7.02. Use of Common Areas .....	15
<b>ARTICLE VIII: SIGNS .....</b>	<b>16</b>

Section 8.01. Tenant's Signs .....	16
<b>ARTICLE IX: MAINTENANCE OF PREMISES</b> .....	16
Section 9.01. Landlord's Obligations For Maintenance.....	17
Section 9.02. Tenant's Obligations For Maintenance .....	17
<b>ARTICLE X: INSURANCE AND INDEMNITY</b> .....	18
Section 10.01. Tenant's Insurance.....	18
Section 10.02. Landlord's Insurance.....	20
Section 10.03. Covenant to Defend, Indemnify, and Hold Harmless .....	20
Section 10.04. Waiver of Right of Recovery.....	21
<b>ARTICLE XI: UTILITIES</b> .....	21
Section 11.01. Utility Charges .....	21
<b>ARTICLE XII: ESTOPPEL STATEMENT, ATTORNMENT AND SUBORDINATION</b> .....	23
Section 12.01. Estoppel Statement.....	23
Section 12.02. Attornment.....	23
Section 12.03. Subordination.....	24
Section 12.04. Notice to Mortgagee, Beneficiary or Ground Lessor.....	24
<b>ARTICLE XIII: ASSIGNMENT AND SUBLETTING</b> .....	24
Section 13.01. Restrictions on Transfer .....	24
Section 13.02. Procedure for Transfer.....	26
Section 13.03. Transfer Rent Adjustment .....	26
Section 13.04. Required Documents and Fees .....	27
Section 13.05. Sublease Rentals.....	27
Section 13.06. Intentionally Omitted. ....	27
Section 13.07. Additional Provisions Respecting Transfers.....	28
<b>ARTICLE XIV: WASTE OR NUISANCE</b> .....	28
Section 14.01. Waste or Nuisance.....	28
<b>ARTICLE XV: [INTENTIONALLY OMITTED]</b> .....	29
<b>ARTICLE XVI: DAMAGE AND DESTRUCTION</b> .....	29
Section 16.01. Reconstruction of Damaged Premises .....	29
Section 16.02. Landlord's Option To Terminate Lease .....	30
<b>ARTICLE XVII: EMINENT DOMAIN</b> .....	31
Section 17.01. Total Condemnation of Premises.....	31
Section 17.02. Partial Condemnation.....	31
Section 17.03. Landlord and Tenant Damages.....	32
<b>ARTICLE XVIII: DEFAULT</b> .....	32
Section 18.01. Rights Upon Default .....	32
<b>ARTICLE XIX: ACCESS BY LANDLORD</b> .....	34
Section 19.01. Right of Entry.....	34
<b>ARTICLE XX: TENANT'S PROPERTY</b> .....	35

Section 20.01. Taxes on Tenant's Property .....	35
Section 20.02. Loss and Damage .....	35
Section 20.03. Notice by Tenant .....	36
<b>ARTICLE XXI: HOLDING OVER.....</b>	<b>36</b>
Section 21.01. Holding Over .....	36
<b>ARTICLE XXII: RULES AND REGULATIONS .....</b>	<b>36</b>
Section 22.01. Rules and Regulations.....	36
<b>ARTICLE XXIII: QUIET ENJOYMENT .....</b>	<b>36</b>
Section 23.01. Landlord's Covenant.....	37
<b>ARTICLE XXIV: SECURITY DEPOSIT .....</b>	<b>37</b>
Section 24.01. Security Deposit .....	37
<b>ARTICLE XXV: MISCELLANEOUS .....</b>	<b>38</b>
Section 25.01. Waiver; Election of Remedies .....	38
Section 25.02. Entire Agreement .....	38
Section 25.03. Interpretation; Use of Pronouns; Authority .....	39
Section 25.04. Unavoidable Delays .....	39
Section 25.05. Notices .....	39
Section 25.06. Captions and Section Numbers.....	39
Section 25.07. Broker's Commission .....	39
Section 25.08. No Recording .....	40
Section 25.09. Financial Statements .....	40
Section 25.10. Transfer of Landlord's Interest.....	40
Section 25.11. Floor Area; GLA; Re-Measurement .....	40
Section 25.12. Interest on Past Due Obligations .....	41
Section 25.13. Liability of Landlord and Exculpation.....	41
Section 25.14. Accord and Satisfaction; Landlord Cure.....	41
Section 25.15. Execution of Lease; Counterparts; No Option .....	41
Section 25.16. Governing Law; Enforceability .....	42
Section 25.17. Successors .....	42
Section 25.18. Survival of Obligations .....	42
Section 25.19. Certain Rules of Construction .....	43
Section 25.20. Confidentiality .....	43
Section 25.21. Attorney Fees .....	43
Section 25.22. Waiver of Trial by Jury .....	43
Section 25.23. Real Estate Investment Trust/Landlord's Allocations .....	44
Section 25.24. Non Discrimination .....	44
Section 25.25. Advertising.....	44
Section 25.26. OFAC.....	45
Section 25.27. Mixed Use Development.....	45

## LEASE

This LEASE is made as of this 4<sup>th</sup> day of March, 2022 (this "Lease"), by and between **VICTORIA WARD, LIMITED**, a Delaware corporation, whose address is c/o The Howard Hughes Corporation, The Woodlands Towers at The Waterway, 1240 Ala Moana Boulevard, Suite 200, Honolulu 96814 ("Landlord"), and **ZIMMER US INC.**, a Delaware corporation, whose address is 1800 West Center Street, Warsaw, Indiana 46580 ("Tenant").

Landlord, in consideration of the rent to be paid and the covenants to be performed by Tenant, does hereby, subject to the provisions of this Lease, demise and lease unto Tenant, and Tenant hereby rents and hires from Landlord, those certain premises identified on the Exhibit A-2 attached hereto and made a part hereof (the "Premises") which is located in and part of the project (the "Project"), known as "610 Ward" having an address of 610 Ward Avenue situated in Honolulu, Honolulu County, Hawaii, identified as Tax Map Key No. (1) 2-1-049-063, a general site plan of the Project is shown on Exhibit A-1 attached hereto and made a part hereof (the "Site Plan"). In the event Landlord elects to modify or expand the Project, any additional area may be included by Landlord in the definition of the "Project" for purposes of this Lease. The Premises are further described as follows:

**Store No. 2124963-A**, being deemed to be **2,251 square feet** of Floor Area.

## DATA SHEET

The following references are integral parts of this Lease and furnish data which are hereby incorporated in the specified sections of this Lease in all respects and shall be construed as if set forth in this Lease:

(1) **Section 1.02: Term:**

- (a) Delivery Date: "**Delivery Date**" shall be May 1, 2022; provided, however, that, Tenant acknowledges and agrees that Landlord does not guaranty that any Landlord's Work pursuant to Schedule B hereof ("Landlord's Work") shall be completed by such Delivery Date of May 1, 2022.
- (b) Rental Commencement Date: "**Rental Commencement Date**" shall be the earliest to occur of (i) the date on which Tenant opens the business operation to be conducted by Tenant on the Premises, or (ii) the date that is ninety (90) days from the Delivery Date (as herein defined).
- (c) Expiration Date: "**Expiration Date**" shall be the last day of the thirty-sixth (36<sup>th</sup>) full calendar month after the Rental Commencement Date, except as may be sooner terminated pursuant to the terms of this Lease.

(2) **Section 2.01: Minimum Annual Rental:**

<u>Year</u>	<u>Monthly Installment</u>	<u>Minimum Annual Rental</u>
Year 1	\$5,417.41	\$65,008.88
Year 2	\$5,579.93	\$66,959.15
Year 3	\$5,747.33	\$68,967.92

(3) **Section 2.07: Parking Validation Charge:** NONE.(4) **Section 5.01: Non-Structural Alterations by Tenant:** An aggregate of \$ 25,000.00 of interior, non-structural, cosmetic alterations permitted in each calendar year without Landlord's consent, and otherwise the same are subject to the provisions of Article V hereof.(5) **Section 6.01: Permitted Use:** The Premises shall be used solely for a general office and warehouse for the distribution of medical supplies and other medical supply-related products (but no other kinds or categories of products) produced or sold by the parent company, subsidiary or sister companies of Zimmer Biomet (the "Permitted Use") and for no other use or purpose whatsoever without Landlord's consent; provided, however, that in no event will the Premises be used for any use set forth on Exhibit C.(6) **Section 15.01: Trade Name:** N/A(7) **Section 24.01: Security Deposit:** \$5,416.67.(8) **Section 25.05: Legal Notice Address:**Landlord:

VICTORIA WARD, LIMITED  
c/o The Howard Hughes Corporation  
The Woodlands Towers at The Waterway  
9950 Woodloch Forest Drive  
Suite 1100  
The Woodlands, Texas 77380  
Attn: General Counsel

with a copy to:

Victoria Ward, Limited  
c/o The Howard Hughes Corporation  
1240 Ala Moana Boulevard, Suite 200  
Honolulu, Hawaii 96814  
Attn: Senior Vice President

Tenant:

Zimmer US, Inc.  
1800 West Center Street  
Warsaw, Indiana 46580  
Attn: Director of Global Real Estate

with a copy to:

c/o Zimmer US, Inc.  
610 Ward Avenue  
Honolulu, Hawaii 96814  
Attn: Site Manager



Address for Rental Payments:

Victoria Ward, Limited  
MSC 77772  
P.O. Box 1300  
Honolulu, Hawaii 96807-1300

**EXHIBITS**

The following exhibits are attached hereto, and such exhibits, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

- Exhibit A-1: ..... Site Plan
- Exhibit A-2: ..... Premises Layout
- Exhibit B: ..... Design and Construction of the Building and Premises
- Exhibit C: ..... Restricted Uses
- Exhibit D: ..... Intentionally Omitted
- Exhibit E: ..... Intentionally Omitted
- Exhibit F: ..... Intentionally Omitted
- Exhibit G: ..... Intentionally Omitted
- Exhibit H: ..... Confirmation of Commencement and Expiration Date Certificate

## ARTICLE I

### GRANT AND TERM

#### **Section 1.01 CONDITIONS OF GRANT.**

The exterior walls, the floors above, the roof and the area beneath the Premises are not demised hereunder, and the use thereof, together with the right to locate, both vertically and horizontally, install, maintain, use, repair and replace pipes, utility lines, ducts, conduits, flues, refrigerant lines, drains, , access panels, wires and structural elements leading through the Premises serving other parts of the Project is hereby reserved unto Landlord. Landlord agrees to use reasonable efforts (i) to locate or cause to be located any such items in locations that do not materially interfere with Tenant's use of the Premises and (ii) to avoid materially interfering with Tenant's operations when accessing such areas to the extent commercially, reasonably possible and practical.

#### **Section 1.02 TERM.**

(a) The "Term" of this Lease shall commence on the date (the "Commencement Date") of the full execution of this Lease and shall include the Renewal Term so exercised, if any. Tenant's obligation for payment of Minimum Annual Rental and Additional Rent (as defined in Section 2.06) (Minimum Annual Rental, and Additional Rent are collectively referred to as "Rental") shall commence upon the Rental Commencement Date except as otherwise provided herein.

(b) Tenant's occupancy of the Premises prior to the Rental Commencement Date shall be subject to all terms and conditions of this Lease other than payment of Minimum Annual Rental and all regularly scheduled Additional Rent (other than utilities payable under Article XI). The Term of this Lease shall end on the Expiration Date, unless sooner terminated in accordance with this Lease. The first Lease Year (herein so called) hereunder shall be the period commencing on the Rental Commencement Date and ending on the last day of the month in which the first annual anniversary of the Rental Commencement Date occurs, unless such Rental Commencement Date is the first day of the month in which case the first lease year shall terminate on the date twelve (12) calendar months after such Rental Commencement Date; subsequent Lease Years shall consist of twelve (12) consecutive calendar months ending on the last day of the month of the subsequent annual anniversaries of the Rental Commencement Date. The final Lease Year hereunder shall additionally include the period of time from the last such annual anniversary of the Rental Commencement Date until the January 31<sup>st</sup> next following. Upon determination of the Rental Commencement Date, Landlord shall deliver to Tenant for execution a Confirmation of Commencement and Expiration Date Certificate (hereafter called the "Commencement Certificate"), in the form shown on Exhibit H attached hereto and made a part hereof.

(c) Termination of Existing Lease. Upon the date on which Tenant commences operating its business in the Premises for the Permitted Use, the Landlord shall thereafter terminate that certain Poukaina Center Space Lease by and between Landlord, as landlord, and Tenant, as tenant, dated July 1, 2013, as thereafter amended (the "Existing Lease"); provided, however, that, such termination by Landlord of the Existing Lease shall occur by no later than June 30, 2022, so long as Tenant has commenced operating its business in the Premises for the Permitted Use by no later than June 30, 2022.

#### **Section 1.03 TENANT'S OPENING; LATE CHARGE.**

Unless otherwise approved in writing by Landlord, Tenant shall use good faith efforts to open the Premises for business to the public fully fixtured in accordance with Governmental Requirements (as defined herein) and operating, by the Rental Commencement Date.

**Section 1.04 ULTIMATE RENTAL COMMENCEMENT DATE.**

Notwithstanding anything contrary contained herein, if for any reason whatsoever (including, without limitation, excusable delay), the Rental Commencement Date shall not have occurred within three (3) years after the Commencement Date, this Lease shall be automatically terminated without further act of either party and neither party shall have any further obligation or liability to the other hereunder except as expressly set forth herein.

**ARTICLE II****RENTAL****Section 2.01 MINIMUM ANNUAL RENTAL.**

(a) From and after the Rental Commencement Date, Tenant shall pay to Landlord the Minimum Annual Rental set forth in the Data Sheet in equal consecutive monthly installments in advance, in lawful money of the United States of America, on or before the first day of each month during the Term, without prior demand or notice. All Rental shall be paid to Landlord at the address designated therefor in the Data Sheet or if elected by Landlord or Tenant, by direct electronic payment or such other place as Landlord may designate, without, except as specifically provided in this Lease, any deductions or offsets whatsoever.

(b) Should the Rental Commencement Date occur on a day other than the first day of a calendar month, then the Minimum Annual Rental for such fractional month shall be one three hundred sixty-fifth (1/365th) of the Minimum Annual Rental multiplied by the number of days remaining in the month.

**Section 2.02 INTENTIONALLY OMITTED.****Section 2.03 INTENTIONALLY OMITTED.****Section 2.04 INTENTIONALLY OMITTED.****Section 2.05 TRASH REMOVAL CHARGE.**

Tenant, at Tenant's expense, shall at all times keep the Premises (including, without limitation, the service areas adjacent to the Premises, grease-trap areas (if any), display windows and signs) orderly, safe and clean, and shall store all trash and other solid waste within the Premises or in such areas as may be reasonably designated by Landlord for such storage. Landlord may use, and may require Tenant to use, such solid waste disposal contractors designated by Landlord, and at such intervals as Landlord may reasonably require. Tenant shall be solely responsible for and shall promptly pay, in a manner and at the place provided in this Lease, all fees and charges for trash removal required to properly service the Premises irrespective of whether such charges are initially paid in advance by Landlord, or otherwise; provided that the fees charged hereunder shall be reasonable and competitive for such service in the geographic area in which the Project is located. Landlord, at its sole option, may, subject to the limitations on cost contained in this Section 2.05, elect to furnish such trash removal services, the cost of which will be, at Landlord's sole election, either (a) paid as Additional Rent to Landlord, each calendar month during the Term of this Lease in the manner specified in Section 2.01 for the payment of Minimum Annual Rental, based upon Landlord's reasonable allocation thereof amongst Project occupants, (b) included in Operating Expenses paid by Tenant pursuant to this Lease or (c) paid directly to Landlord's third-party contractor.

At any time during the Term hereof, Landlord may, upon thirty (30) days' prior written notice to Tenant, discontinue furnishing trash removal services to the Premises without thereby affecting this Lease in any manner or otherwise incurring any liability to Tenant except that Landlord will no longer be required to

furnish trash removal services to the Premises. If Landlord does not provide such services, Tenant shall arrange for the regular pickup of all trash and other solid waste.

**Section 2.06 ADDITIONAL RENT.**

In addition to Minimum Annual Rental hereunder, Tenant shall pay, as "Additional Rent" (whether or not so designated herein), in a manner and at the place provided in this Lease, all sums of money required to be paid by Tenant under this Lease and in lawful money of the United States of America. If such amounts or charges are not paid at the time and in the manner as provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum Annual Rental thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of Landlord. All Rental payable in a given month shall be deemed to comprise a single rental obligation of Tenant to Landlord.

**Section 2.07 INTENTIONALLY OMITTED.**

**Section 2.08 TENANT'S PAYMENT OBLIGATIONS; LATE CHARGE.**

(a) Landlord may, at its option and its sole discretion, apply all payments received from Tenant to such items of Rental, then due and payable, as Landlord may elect, in its sole discretion. If Landlord shall not make any such specific application, payments received from Tenant shall be applied first to Rental which has been longest overdue. No designation of any payment by Tenant for application to a specific item of Rental shall be binding upon Landlord. No sums received by Landlord after expiration or earlier termination of this Lease shall constitute rent, but shall be received only as reimbursement for use and occupancy of the Premises. No breach of this Lease by Landlord shall relieve Tenant of its obligation to pay all Rental.

(b) All Rental payable hereunder is due and payable when stated herein, without any demand or notice from Landlord and, except as expressly provided herein, independent of any obligation of Landlord and without any deductions or offsets whatsoever. Late payment of any Rental will cause Landlord to incur certain costs and expenses (such as administrative, accounting and collection costs) not contemplated by this Lease, the exact amount of which costs are extremely difficult and impracticable to fix. Therefore, if Tenant pays Landlord any Rental more than two (2) days after the date the same is due and payable, Tenant shall pay, as Additional Rent, a late charge equal to five percent (5%) of the amount due as liquidated damages, and not as a penalty, for such failure, which charge Landlord and Tenant hereby acknowledge and agree represents a fair and reasonable estimate of the costs and expenses so incurred by Landlord. Acceptance of such late charge by Landlord, with or without the payment of the late amount(s) shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted in this Lease, at law or in equity, subject to Tenant's rights to cure the same as provided under the terms of this Lease..

(c) In addition to the late charge described in Section 2.07(b) hereof, Tenant shall pay to Landlord interest on all Rental which is not paid on or before the date the same is due and payable, at the rate and on the terms described in Section 25.12 hereof.

**ARTICLE III**

**INTENTIONALLY OMITTED**

## ARTICLE IV

## CONSTRUCTION OF PREMISES

**Section 4.01 CONSTRUCTION OF PREMISES.**

(a) All improvements to be made to the Premises shall be substantially as set forth in Exhibit B attached hereto and all Tenant's Work (as defined in paragraph (e) below) shall be subject to the provisions of this Lease. Each of the parties hereto shall perform the obligations imposed upon such party in Exhibit B at the times and in the manner therein provided. It is understood and agreed by Tenant that any minor changes from any plans or specifications covering Landlord's Work as defined in Exhibit B, not materially affecting Tenant's operations or the use of the Premises, shall not affect or change this Lease or invalidate the same.

(b) Without limiting the generality of the incorporation by reference of all exhibits and/or addenda to this Lease, Tenant's failure to furnish the plans and specifications required pursuant to Exhibit B ("Plans and Specifications") to Landlord within the time periods and in the form required by Exhibit B, or failure to perform any other obligation under Exhibit B, shall constitute a default under this Lease pursuant to Article XVIII below if the failure is not cured within the applicable notice and cure period, which shall entitle Landlord to all remedies set forth in Article XVIII below if the failure is not cured within the applicable notice and cure period. No material deviation from the final Plans and Specifications, once approved by Landlord (the "Approved Plans and Specifications"), shall be made by Tenant without Landlord's prior written consent, not to be unreasonably withheld. Approval of the final Plans and Specifications by Landlord shall not constitute the assumption of any responsibility by Landlord for their accuracy, efficacy or sufficiency, and Tenant shall be solely responsible for such items. Any occupancy of the Premises by Tenant prior to the Rental Commencement Date shall be solely for the purpose of inspection, measurement and obtaining information necessary to prepare Plans and Specifications and to construct its Tenant's Work, and shall be subject to all terms and conditions of this Lease applicable to such entry prior to the Rental Commencement Date pursuant to Section 1.02 above.

(c) Notwithstanding anything contained herein to the contrary, Tenant shall keep the Premises and all other parts of the Project free from any and all liens or application of liens (collectively, "Mechanics' or Materialmen's Liens") arising out of any work performed, materials furnished or obligations incurred (or alleged work performed, materials furnished or obligations incurred) by or on behalf of Tenant. Within ten (10) days after written request therefor by Landlord, Tenant shall have all such Mechanics' or Materialmen's Liens unconditionally released from the public records by bonding or other recorded release of such Mechanics' or Materialmen's Liens or shall provide other security for the same in a manner reasonably acceptable to Landlord, and on the date of such release, Tenant will provide Landlord with a copy of the recorded bond, cancellation, and other evidence reasonably acceptable to Landlord showing the full unconditional release of such Mechanics' or Materialmen's Liens or the creation of other adequate security as required above. Tenant shall reimburse Landlord as Additional Rent for any and all costs and expenses including, without limitation, attorneys' fees, which may be incurred by Landlord by reason of the filing of any such Mechanics' or Materialmen's Liens and/or removal of same, such reimbursement to be made within ten (10) days after receipt by Tenant from Landlord of a statement setting forth the amount of such costs and expenses such reimbursement to be paid to Landlord in the manner and at the place provided in this Lease. Tenant's failure to comply with any provision of this Section 4.01 shall be a material breach of, and constitute Tenant's default under, this Lease without the requirement to provide any additional notice or opportunity to cure.

(d) The term "Landlord's Work" shall mean and be limited to the scope of Landlord's total responsibilities (and all portions thereof) for the construction and improvement of the Project building and

the Premises, as specifically set forth herein. The cost of Landlord's Work shall be borne as set forth in Exhibit B. Landlord's Work shall be of a design, type, size, location, elevation and quantity as may be selected by Landlord, in Landlord's sole discretion. In no event shall Landlord's Work include the performance, procurement and/or installation of those items of work, fixtures and equipment which are described as "Tenant's Work."

(e) The term "Tenant's Work" shall mean Tenant's total responsibilities (and all portions thereof) for the construction, restoration, alteration, or repair of any work of improvement within the Premises as provided for in Exhibit B. Tenant's Work shall be performed at Tenant's sole cost and expense. Tenant's Work shall include, but not be limited to, all work necessary and/or required to complete the Premises, except those items of work specifically set forth in this Lease as Landlord's Work. Tenant's Work shall be subject to Landlord's prior approval, not to be unreasonably withheld as provided in Exhibit B, and shall be designed and constructed to comply with the requirements set forth in Landlord's most current edition (from time to time) of Tenant's Construction Requirements, as such term is defined in Exhibit B, for the Project. All details and information contained in the Tenant's Construction Requirements, whether appearing on Tenant's plans or not, shall be considered a part of Tenant's plans and construction requirements. By this reference, Tenant's Construction Requirements are incorporated herein and made a part of this Lease. The cost of any Tenant's Work carried out by Landlord on behalf of Tenant, as approved by Tenant, shall be the cost paid by Landlord and based on the cost, including a ten percent (10%) administrative fee, of similar work and will include any loading for overtime or any other loading as a result of carrying out emergency-type work.

(f) Promptly following the Delivery Date and approval of all plans, Tenant shall cause its contractors and subcontractors to commence Tenant's Work in the Premises as provided in Exhibit B. Tenant hereby expressly agrees that the entry or occupancy of the Premises by Tenant or Tenant's agents or contractors prior to the date herein fixed for the commencement of the Term of this Lease shall be governed by and shall be subject to all of the terms and provisions of this Lease, other than those requiring the payment of the Rental and other charges reserved hereunder, except as otherwise provided in this Lease with respect to insurance to be provided by Landlord for the account of Tenant. If it shall be necessary or if Landlord shall reasonably deem it consistent with good construction practice for Tenant to perform any item of Tenant's Work in the Premises in order to permit Landlord to continue and complete Landlord's Work therein, then Tenant shall cause such work to be commenced on the date fixed by Landlord in a written notice to Tenant during Landlord's review of the initial plans for Tenant's Work thereto and Tenant shall thereafter cause such work to be completed with due diligence. If Tenant shall fail to comply with the foregoing, Landlord may, at its election, proceed with Landlord's Work and upon the completion thereof, or so much thereof as can be completed in the absence of such work by Tenant. Landlord shall be deemed to have fulfilled all of its obligations with respect to the Landlord's Work to be performed in the Premises.

(g) Tenant agrees to perform and cause Tenant's contractor and subcontractors to perform Tenant's Work in a manner so as not to damage, delay or interfere with the prosecution or completion of any work being performed by Landlord or its contractors in the Premises or in or about any other portion of the Project, and to comply with Tenant's Construction Requirements and the coordination of such work with any work being performed by Landlord and its contractors. Landlord, acting reasonably and in good faith, shall have the right to order Tenant to terminate any construction work at any time (i.e., either in the initial construction of the Premises or at any time during the Term of this Lease) being performed by or on behalf of Tenant in the Premises. Upon notification from Landlord to cease any such work, Tenant shall forthwith remove from the Premises all agents, employees and contractors of Tenant performing such work, until such time as Landlord shall have given its written consent for the resumption of such construction work, and Tenant shall have no claim for damages of any nature whatsoever against Landlord in connection therewith.

(h) Tenant shall fully equip the Premises with all trade fixtures and equipment, lighting fixtures, furniture, furnishings, and floor coverings, and any other fixtures and equipment necessary for the proper operation of Tenant's business.

**Section 4.02 CERTIFICATE OF OCCUPANCY.**

No later than the earlier of: (a) ten (10) days after completion of construction of Tenant's Work in accordance with the Approved Plans and Specifications (as described in Section 4.01 and Exhibit B); or (b) ten (10) days after Tenant opens the Premises for business, Tenant shall deliver to Landlord the original of the Certificate of Occupancy for the Premises issued by the appropriate governmental agency, original execution copies of lien waiver and releases executed and notarized by all persons performing work on, or supplying materials for, Tenant's Work, copies of all building permits indicating inspection and approval by the issuer of said permits, an architect's certification that Tenant's Work has been constructed in accordance with the Approved Plans and Specifications and is fully complete in accordance with Exhibit B and a copy of the affidavit of publication filed with the clerk of the first circuit court required by Section 4.01(i) above. Upon Landlord's request, after the time for recording for Mechanics' or Materialmen's Liens pursuant to Hawaii Revised Statutes Section 507-43, as applicable, has expired, Landlord may require Tenant to obtain a preliminary title report covering the Premises, at Tenant's sole cost and expense, showing that no Mechanics' or Materialmen's Liens or other liens have been recorded against the Premises or Tenant's interest therein with respect to Tenant's Work and that no action has been filed with respect thereto..

**Section 4.03 CONDITION OF PREMISES.**

(a) Except as otherwise specifically provided in this Lease (including, without limitation, in Exhibit B attached hereto), Tenant hereby agrees that upon the Delivery Date, Tenant shall accept such delivery of possession of the Premises in its then existing "AS IS-WHERE IS" condition subject to latent defects, and Tenant hereby (i) will accept the Premises in their condition on the date of delivery of possession and agrees that this condition will be suitable for the commencement of Tenant's Work and the Permitted Use, (ii) agrees to perform the Tenant's Work and the maintenance, repairs, and replacements that become necessary during the term to keep the Premises in a condition suitable for the Permitted Use, (iii) waives all obligation on Landlord's part to keep the Premises safe and/or in a condition suitable for the Permitted Use except as is otherwise provided in the Lease, and (iv) waives all express and implied representations and warranties on the part of Landlord, including, but not limited to, all warranties that the Premises are suitable for the Permitted Use or are free from defects, or deficiencies, whether hidden or apparent, and any and all warranties under applicable Governmental Requirements, to the fullest extent permitted by Hawaii law, provided that the foregoing shall not limit Landlord's repair and maintenance obligations set forth in the Lease. Without limiting the generality of this waiver, Tenant acknowledges (A) that Tenant shall have inspected the Premises and shall be aware of the condition of the Premises as of delivery of possession; (B) that Landlord shall have no obligation to improve or alter the Premises for the benefit of Tenant; (C) that, except as may be expressly provided in this Lease, neither Landlord nor any of Landlord's employees, agents, representatives, contractors nor brokers has made any representation or warranty of any kind respecting (1) the condition of the Premises, or the Project, (2) the suitability thereof for Tenant's use or the conduct of Tenant's business, or (3) occupancy or operation within the Project by any other person or entity. Tenant also irrevocably waives any claim based upon or related to any such claimed representation by Landlord or any claimed representation by Landlord as to traffic to be expected at the Premises or sales to be expected at the Premises. Tenant's taking possession of the Premises shall constitute Tenant's formal acceptance of the same and acknowledgment that the Premises are in the condition called for under this Lease, subject to all field conditions existing at the time of delivery of possession. In no event shall Landlord be liable for damages or otherwise as a result of any failure to make the Premises available within the time and/or in the condition provided in this Lease and no such failure shall permit Tenant to rescind or terminate this Lease. Landlord hereby warrants that the Premises are zoned for office/warehouse use.

(b) No approval by Landlord shall make Landlord responsible for the condition of the Premises or constitute a representation by Landlord of compliance with any applicable requirements or constitute a waiver of any rights and remedies that Landlord may have under this Lease or at law or in equity. If Tenant shall open the Premises in violation of the requirements of Exhibit B, such action by Tenant shall constitute a material default under this Lease without the requirement to provide any notice or opportunity to cure, unless Landlord specifically approves such action in writing. On the date Tenant opens for business in the Premises, Tenant shall be deemed to have accepted the Premises and agrees that it is in the condition, with respect to any of Landlord's obligations, which is required under this Lease.

## ARTICLE V

### ALTERATIONS, CHANGES AND ADDITIONS

#### **Section 5.01 ALTERATIONS BY TENANT.**

Tenant shall not make or cause to be made or permit to be made any alterations, additions or improvements to the Premises (collectively, "Alterations", and each, an "Alteration") without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. However, Tenant may make such alterations, additions and improvements to the interior of the Premises as do not in the aggregate exceed in any calendar year the amount set forth in the Data Sheet, provided (a) the same are cosmetic and not structural in nature, do not affect a utility system, the exterior of the building, the storefront or storefront sign, are not inconsistent with the final Plans approved by Landlord and do not trigger a legal requirement upon Landlord to make any alteration, addition or improvement to the Project; (b) that Tenant strictly complies with the provisions of Exhibit B and this Lease; (c) that Tenant shall provide notice to Landlord at least fifteen (15) days prior to the commencement of any of the foregoing; and (d) Tenant shall furnish to Landlord the Plans therefor, in accordance with Exhibit B and this Lease. Tenant's Work is of limited scope consisting only of the following: removal of existing carpeting; cleaning and polishing the floor covered by carpeting; and epoxy filling larger cracks (collectively, "Tenant's Initial Alterations"). With respect to Tenant's Initial Alterations, Tenant shall comply with the requirements in this Lease and in Exhibit B to the extent applicable to the limited scope of Tenant's Initial Alterations as provided above.

#### **Section 5.02 REMOVAL BY TENANT.**

All improvements made and equipment installed by Tenant shall be deemed to have attached to the Premises and to have become the property of Landlord upon such attachment, without any obligation on the part of Landlord to reimburse or compensate Tenant or any other person or entity for any such improvements or equipment. Upon the expiration or earlier termination of this Lease, Tenant shall not remove any of such improvements or equipment, except that trade fixtures, equipment and other personal property installed by Tenant (collectively, "Property") but not affixed to the Premises may be removed; provided that Tenant immediately repairs all damage caused by such removal. Further, Landlord may designate by written notice to Tenant those improvements, at the time when such improvements are approved for installation by Landlord (the "Approved Tenant Installations"), which shall be removed by Tenant at the expiration or earlier termination of this Lease, and Tenant shall, at its sole expense, and prior to the expiration or earlier termination of this Lease, remove the same and immediately repair all damage caused by such removal. The Approved Tenant Installations shall remain with the Premises and shall not be removed. If Tenant shall fail to remove any of its Property, Landlord may, at Landlord's option, either (i) retain any or all of such Property, and title thereto shall thereupon vest in Landlord without compensation to Tenant or any other person or entity; or (ii) remove all or any portion of the Property from the Premises



and dispose of the Property in any manner, without compensation to Tenant, in which event Tenant shall, upon demand, pay to Landlord the actual expense of such removal and disposition and the repair of any damage resulting from or caused by such removal. The obligations contained in this Section 5.02 shall survive the expiration or earlier termination of this Lease.

**Section 5.03 CHANGES AND ADDITIONS.**

(a) Subject to the provisions of this Lease, and notwithstanding the depiction of the Project on Exhibit A-1, Landlord reserves the right at any time, and from time to time, in its sole discretion, to increase, reduce and/or otherwise (a) make alterations to, and to build additional stories on, the building in which the Premises is located, and (b) to construct other buildings and improvements in and near the Project, including, without limitation, modifications of the Common Areas in connection therewith and the sale and/or acquisition of land, whether or not currently subdivided. Landlord also reserves the right at any time, and from time to time, to change, modify, or eliminate any temporary off-site utility serving the Project.

Notwithstanding anything contrary contained in this Lease, Landlord shall not make or permit any changes or revisions of the buildings or common areas of the Project which shall affect the location or dimensions of the Premises, or which shall materially adversely affect access to or visibility of the Premises or the relative location of the Premises in the Project, or which shall prevent Tenant's use in the Premises for the Permitted Use, unless such changes or revisions are required to comply with Governmental Requirements.

(b) Landlord shall have the exclusive right to use all or any part of the roof of the Premises for any purpose; to erect additional stories or other structures or improvements over all or any part of the Premises; to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises, provided that access to the Premises shall not be denied and Tenant's operation in the Premises for the Permitted Use shall not be materially interfered with; and. Landlord shall have the right to install, maintain, use, repair and replace within the Premises pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Project, all in locations as will not unreasonably impair Tenant's use of the Premises. Landlord may make any use it desires of the side or rear walls of the Premises (including, without limitation, freestanding columns and footings for all columns), provided that such use shall not encroach on the interior of the Premises unless (i) all work carried on by Landlord with respect to such encroachment shall be done during hours when the Premises are not open for business and otherwise shall be carried out in such a manner as not to unreasonably interfere with Tenant's operations in the Premises, (ii) Landlord, at its expense, shall promptly repair all damage to the Premises resulting from such work, and (iii) such work shall not materially interfere with Tenant's operations in the Premises for the Permitted Use. Notwithstanding anything contained herein to the contrary, in no event shall Landlord place or cause to be placed any wires, conduits, pipes or utility lines which materially affect Tenant's use of the Premises.

(c) Landlord agrees to use commercially reasonable efforts to minimize interruption of Tenant's business in the performance of any Landlord work in the Premises. In the event that Tenant is unable to and does not operate its business for a period in excess of seventy-two (72) hours following written notice thereof to Landlord as a result of Landlord's work, Minimum Annual Rental, Percentage Rental and all regularly scheduled Additional Rent (other than utilities payable under Article XI) will abate from the fourth (4<sup>th</sup>) day following such notice until the date on which Tenant can reasonably reopen for business.

**Section 5.04 RELOCATION RIGHT.**

As a material inducement for Landlord to enter into this Lease, Landlord hereby reserves the right to relocate the Premises at any time after January 1, 2025 to a new premises (the "Substitute Premises") of

Landlord or a related entity and located within the development commonly known as Ward Village in Honolulu, Hawaii ("Ward Village" generally bounded by Queen Street to the northeast, Queen Street to the southeast, Ala Moana Boulevard to the southwest and Ward Avenue to the northwest together with additional property of Landlord located west of Ward Avenue and north of Queen Street), as the Project may be expanded from time to time; provided such Substitute Premises shall contain approximately the same number of square feet as the original Premises, and the Minimum Annual Rental payable therefor shall not be in excess of the Minimum Annual Rental payable by Tenant hereunder. In the event Landlord elects to exercise such right, it shall so advise Tenant by one hundred eighty (180) days prior written notice, and Tenant hereby agrees to be bound by such election and to execute, upon receipt from Landlord, whatever amendments or other instruments as may be required to correctly reflect the foregoing; provided, however, that, if (i) Tenant deems the Substitute Premises to be unacceptable for its use for the Permitted Use hereunder, and (ii) Tenant is not then in default of its obligations hereunder, subject to any applicable notice and cure periods pursuant to the terms of Section 18.01, then Tenant may terminate the Lease upon not less than thirty (30) days' prior written notice to Landlord. Landlord shall pay the reasonable costs of renovating the Substitute Premises so that the same are reasonably comparable to the original Premises (including leasehold improvements) and of moving and reinstalling Tenant's trade fixtures and storefront sign. Landlord shall have no liability for such relocation or the closing of the original Premises other than as specifically set forth in this paragraph and Tenant waives all such claims including, without limitation, claims for lost profits.

## ARTICLE VI

### CONDUCT OF BUSINESS BY TENANT

#### **Section 6.01 PERMITTED USE.**

Tenant shall use the Premises only for the purpose of conducting the Permitted Use. Tenant, at Tenant's sole expense, shall duly procure, thereafter maintain, and comply with, all such licenses and permits required for the proper and lawful conduct of all activity conducted in the Premises, or if a failure to procure such a license or permit might or would in any way adversely affect Landlord, or the Project. Tenant shall furnish a copy of all such licenses and permits to Landlord at Landlord's request.

#### **Section 6.02 OPERATION OF BUSINESS.**

(a) Tenant, at Tenant's own cost and expense, shall promptly comply with all current and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities having jurisdiction affecting or applicable to the Premises related to Tenant's specific operations, specific use or manner of use of the Premises, damage to the Building or Premises by Tenant's acts or omissions, violations due to Tenant's acts or omissions, or Tenant's Work ("Governmental Requirements"), whether or not any such Governmental Requirements are substantial, or foreseen or unforeseen, or ordinary or extraordinary, or shall necessitate changes or improvements (other than structural changes or improvements) or interfere with the use and enjoyment of the Premises. Landlord shall be responsible for compliance with all Governmental Requirements related to (i) Project or the Building in which the Premises are located, unless applicable solely to Tenant's specific use or specific manner of use of the Premises, violations due to Tenant's acts or omissions, or damage or destruction to the Building or Premises by Tenant's acts or omissions or (ii) violations due to Landlord's acts or omissions. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of others, nor shall Tenant use or allow the Premises to be used for any improper or illegal purposes or do any act tending to injure the reputation of the Landlord, its partners or sponsors, or Project generally. Tenant shall not give samples, approach customers or otherwise solicit business in the Common Areas, nor shall Tenant distribute any handbills or other advertising matter in the Common Areas other than the Premises. Notwithstanding the foregoing, Tenant need not comply with Governmental Requirements which require structural alterations, changes, repairs or additions, all of which shall be the obligation of Landlord unless made necessary by (i) Tenant's unique operation (as opposed to those applicable to retail operations generally),

(ii) work performed by Tenant in the Premises or (iii) the negligence or default of Tenant, in all of which events, Tenant shall comply at Tenant's sole expense.

(b) No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted or advertised by sign or otherwise in the Premises. Tenant shall not sell or display any merchandise within two feet (2') of the storefront leaseline or opening unless such sale or display shall be expressly approved on the Plans and Specifications or otherwise approved by Landlord, in writing, except that Tenant shall be permitted to display merchandise in the display windows, if any. Tenant shall not store anything in service or exit corridors. All receiving and delivery of goods and merchandise for the Premises, and all removal of merchandise, supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas designated by Landlord. Tenant shall be solely responsible for prompt disposal within the Premises or in such areas as may be designated for such disposal by Landlord of all trash and debris from the Premises. Tenant shall not use or permit the use of any portion of the Premises as sleeping quarters, lodging rooms, for any unlawful purpose, or for cooking (unless the Permitted Use permits cooking). Tenant shall not install any radio, television, communication dish or other similar device or related equipment exterior to the Premises, shall not cause or make any penetration of the roof of the Premises or the building in which the Premises is located and shall not erect any aerial or antenna on the roof or exterior walls of any building.

(c) If Tenant shall fail to comply with any of the provisions of this Section 6.02 more than twice in any calendar year, then, provided Landlord shall have furnished written notice to Tenant of such failures, Tenant shall pay, within ten (10) days of demand therefor by Landlord, Additional Rent in the amount of One Hundred Fifty Dollars (\$150.00) per day until such time as Tenant is in compliance. Landlord and Tenant acknowledge and agree that, in the event of a breach of this Section 6.02(b), Landlord's damages would be impracticable and extremely difficult to quantify and that accordingly, the amount payable to Landlord by reason of Landlord's exercise of the rights described in the preceding sentence is a reasonable estimate of the total net detriment that Landlord would suffer as a result of such breach. This remedy shall be in addition to any and all other remedies provided in this Lease or by law to Landlord.

### **Section 6.03 HAZARDOUS MATERIALS.**

(a) For the purposes of this Section 6.03 the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean means those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", or "solid waste" under any current or future federal, state, or local statute, law, ordinance, rule, or interpretation thereof; and (ii) the term "Environmental Requirement" shall include all state and local Hazardous Materials laws; all as presently in effect and as the same may hereafter be amended, any regulation pursuant thereto, or any other present or future law, ordinance, rule, regulation, order or directive addressing environmental, health or safety issues of or by any Governmental Authority; and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, any local government, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) Tenant will ensure that no Hazardous Material will be located at, in, on, under or near the Premises in a manner which violates, or requires any action under, any Environmental Requirement, or which could lead to the imposition on Landlord, the Project of any liability or lien of any nature whatsoever, resulting from the action or omission of Tenant, its agents, employees or invitees.

(c) Tenant shall (i) notify Landlord promptly in the event of any release of any Hazardous Material at, in, on, under or about the Premises which is required to be reported under any Environmental Requirement; (ii) promptly forward to Landlord copies of all notices received by Tenant relating to alleged

violations of an Environmental Requirement; and (iii) promptly pay when due all fines and assessments against Tenant, Landlord, or the Project relating to any Environmental Requirement or the existence of Hazardous Materials at the Premises, if such fine or assessment results from Tenant's breach of its obligations under this Section 6.03.

(d) If at any time it is determined that the operation or use of the Premises resulting from the action, omission negligence or willful misconduct of Tenant, or its agents, employees, contractors, licensees, subtenants, invitees, successors or assigns results in the presence of Hazardous Materials in violation of any applicable Environmental Requirement, Tenant shall, at Tenant's sole expense within ten (10) days (or such earlier time period if required by Governmental Requirements) after receipt of notice thereof from any Governmental Authority or from Landlord take all such actions as may be necessary to fully comply in all respects with all Environmental Requirements pursuant to a remediation plan approved by Landlord; provided, however, that if such compliance cannot reasonably be completed within such ten (10) day period, Tenant shall commence such necessary action within such ten (10) day period and shall thereafter diligently proceed to fully comply in all respects with all Environmental Requirements. If Tenant fails to timely do so, Landlord may, in its sole and absolute discretion (without an obligation to do so), make advances or payments towards the performance or satisfaction of the same. All sums so advanced or paid by Landlord (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Tenant. If Tenant fails to make such payment within ten (10) days of such demand, Tenant shall be in default under this Lease without the requirement to provide any additional notice or opportunity to cure and Landlord may, without any further notice to Tenant, pursue any and all remedies available to Landlord hereunder. Tenant will execute and deliver, promptly upon request, such instruments as Landlord may deem useful or necessary to permit Landlord to take such action, and provide such security as Landlord may require securing all such sums.

(e) Tenant shall and does hereby agree to defend, indemnify, and hold harmless Landlord, Landlord's affiliates, partners, management company, mortgagees, tenants, subtenants, contractors, successors and assigns, and all of their respective employees, agents, officers, directors and attorneys and all mortgagees and ground lessors and their successors or assigns (collectively, the "Landlord Indemnified Parties") from and against any and all losses, claims, demands, penalties, judgments, causes of action, awards, suits, proceedings, fines, liabilities, judgments, injuries, bodily harm (including death), settlements, damages, liens, costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses in all tribunals and whether or not legal proceedings are commenced) (collectively, "Claims") directly, indirectly or consequentially arising out of, or in any way related to any breach of any of the provisions of this Section 6.03. This indemnification shall, notwithstanding any exculpatory or other provision of any nature whatsoever to the contrary set forth in this Lease, or any other document or instrument now or hereafter executed between Landlord and Tenant, constitute the personal recourse undertaking, obligation and liability of Tenant and all guarantors of this Lease. The obligations set forth in this Section 6.03 shall survive the expiration or earlier termination of this Lease.

(f) If the Lease is assigned to, or assumed by another party, or in the event of a sublease, it shall be a condition of such assignment, assumption or sublease that the assignee, party assuming or sublessee shall assume the obligations of this Section 6.03 in addition to such obligations of Tenant continuing after and surviving such sublease, assignment or assumption. The obligations and liabilities of Tenant under this Section 6.03 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of any assignment, sublease or assumption and irrespective of any other fact or circumstance of any nature whatsoever.

## ARTICLE VII

### COMMON AREAS

#### **Section 7.01 OPERATION AND MAINTENANCE OF COMMON AREAS.**

Following the Delivery Date, Landlord shall cause to be operated and maintained during the Term all Common Areas at a level Landlord commercially, reasonably deems to be appropriate for the region in which the Project is located. The manner in which such Common Areas shall be operated and maintained, and the expenditures therefor, shall be at the sole discretion of Landlord so long as Tenant's use of the Premises for the Permitted Use are not materially affected thereby and so long as Tenant has access to the Common Areas and the use of such Common Areas shall be subject to such reasonable regulations as Landlord may make from time to time.

#### **Section 7.02 USE OF COMMON AREAS.**

The term "Common Area(s)", as used in this Lease, means, to the extent provided by Landlord, all improved and unimproved areas, space, facilities, equipment, signs and special services from time to time made available by Landlord, on a non-discriminatory manner with respect to Tenant and other tenants of the Project, within the Project for the convenience and common and joint use and benefit of Landlord, the owners and occupants of any Mixed Use Development and their employees and customers, the occupants of the Project, and their respective concessionaires, agents, employees, subtenants, licensees, sponsors, partners and customers and all other invitees including, without limitation: (i) parking lot and areas (collectively, "parking facilities"), traffic control and traffic information signs and equipment, , pedestrian sidewalks, curbs, driveways, , delivery areas, landscaped areas, community rooms, office facilities, elevators, , roofs, skylights, beams, stairs and ramps not contained within any Floor Area, public restrooms and comfort stations, service areas, service and fire exit corridors, passageways and signs. The use and occupancy by Tenant of the Premises shall include the non-exclusive use of the Common Areas in common with Landlord and with all others for whose convenience and use the Common Areas have been or may hereafter be provided including the owners and occupants of any Mixed Use Development to the extent provided in the Operating Agreements, subject, however, to such reasonable and non-discriminatory rules and regulations for the use thereof as may be prescribed from time to time, including the right to determine the hours and mode of operation of the elevators and escalators serving the Project. In no event, however, shall Tenant, its agents or employees, use the Common Areas for the display or sale of merchandise, sponsored activations or promotions.

Subject to the provisions of this Lease, Landlord shall have the right, but not the obligation, from time to time, to modify the Common Areas, to remove portions of the Common Areas from common use, to permit entertainment events, advertising displays, educational displays and other displays in the Common Areas, to erect buildings or other improvements on the Common Areas, to lease kiosks and other retail merchandising units therein.

Tenant and its employees shall not park their vehicles in the parking facilities except in the areas specifically designated by Landlord for employee parking, if any, and as set forth in the Data Sheet. Automobile license numbers of employees' cars shall be furnished by Tenant to Landlord upon Landlord's request. In the event that Tenant or its employees park their cars in the parking areas of the Project, other than areas specifically designated by Landlord for Tenant, then Landlord, at its option, may charge Tenant and Tenant shall pay to Landlord as additional rent Fifty Dollars (\$50.00) per day per car so parked. In addition to the above, Landlord shall have the right to have any such vehicle of Tenant or its employees parking in violation of this provision or any other provision of this Article, towed away from the Project and Tenant shall be liable to pay to Landlord upon demand as additional rent all costs incurred by Landlord

in having the vehicle towed away and Tenant shall indemnify and hold Landlord and its related entities harmless from liability of any nature whatsoever, including, without limitation, costs and attorneys' fees, arising out of or in connection with the removal of any such vehicle.

Landlord may at any time close any Common Area to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage non-customer parking, or to use areas for attendant or valet parking, and may do such other acts in and to the Common Areas as in its sole judgment may be desirable to improve the convenience thereof, so long as the same do not prevent Tenant's use of the Premises for the Permitted Use hereunder.

## ARTICLE VIII

### SIGNS

#### **Section 8.01 TENANT'S SIGNS.**

Tenant shall have the right to install a sign to the exterior surface of the storefront of the Premises located inside the Project, all subject to advance notice (email to suffice) to Landlord and coordination with Landlord in connection with such installation. Tenant shall pay all costs of fabricating, constructing, operating and maintaining such sign including, without limitation, all charges for electricity to the extent applicable. If installed, Tenant shall, at its sole cost and expense, maintain said sign in good condition and repair in compliance with all applicable Governmental Requirements during the entire Term of this Lease unless removed by Tenant. Said sign shall conform to the criteria for signs contained in Exhibit B, and the size, content, design and location thereof shall be subject to the prior written approval of Landlord, not to be unreasonably withheld. Except as hereinabove mentioned, Tenant shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Premises, or on the interior or exterior surface of the glass of any window or door of the Premises, or on any sidewalk or other location outside the Premises, or on or within any display window space in the Premises, or within five feet (5') of the front of the storefront leaseline, whether or not there is display window space in the Premises, or within any entrance to the Premises, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description unless approved by Landlord not to be unreasonably withheld; provided, however, that subject to the prior written approval of Landlord with respect to design and placement, Tenant may place decals for safety purposes on glass storefronts where warranted and may install commercially appropriate decals that show Tenant's name or logo or of any Zimmer Biomet business unit. No symbol, design, name, mark or insignia adopted by Landlord for the Project shall be used without the prior written consent of Landlord, in its sole discretion. No illuminated sign located in the interior of the Premises and visible from outside the Premises shall be permitted without the prior written approval of Landlord. All signs located in the interior of the Premises shall be in good taste so as not to detract from the general appearance of the Premises or the Project. In the event Tenant shall be in default of this Section 8.01, subject to applicable notice and cure periods, Tenant shall pay as Additional Rent, immediately on demand, the sum of One Hundred Dollars (\$100.00) for each day of default in order to reimburse Landlord for the additional administrative expenses resulting therefrom. Landlord and Tenant acknowledge and agree that, in the event of a breach of this Section 8.01 Landlord's damages would be impracticable and extremely difficult to quantify and that accordingly, the amount payable to Landlord by reason of Landlord's exercise of the rights described in the preceding sentence is a reasonable estimate of the total net detriment that Landlord would suffer as a result of such breach. This remedy shall be in addition to any and all other remedies provided in this Lease or by law to Landlord. Landlord and Tenant agree that Tenant shall have no obligation to install any signage.

## ARTICLE IX

## MAINTENANCE OF PREMISES

### **Section 9.01 LANDLORD'S OBLIGATIONS FOR MAINTENANCE.**

Landlord shall keep and maintain, in a working order and repair, the Common Areas, the roof (excluding any skylights, Tenant rooftop HVAC units installed by Tenant and/or roof penetrations made by Tenant, any of which shall only be permitted with Landlord's prior written consent and by a roofing contractor designated by Landlord), foundation, load bearing walls, structural columns, systems for drainage of water from the roof, structural portions of the floor, all utility lines not within and exclusively servicing the Premises, and the exterior surface and structural elements of the exterior walls of the building in which the Premises are located (exclusive of storefronts, doors, door frames, door checks, other entrances, windows and window frames not part of Common Areas) in good repair, except that Landlord shall not be obligated to make any such repairs to the extent caused by the negligent acts or omissions of Tenant, its agents, employees, licensees, subtenants, customers, invitees, contractors, successors or assigns, subject to Section 10.4 below. Landlord shall not be obligated to make any other improvements except as provided in Articles XVI and XVII hereof, or, repairs of any kind upon the Premises and appurtenances, except as may be required under the terms of this Lease, and nothing contained in this Section 9.01 shall limit Landlord's right to reimbursement from Tenant for maintenance, repair costs and replacement costs as provided elsewhere in this Lease. In no event shall Landlord be liable for consequential damages or Tenant's lost profits claimed to be caused by the performance of or any failure to perform maintenance or repair by Landlord.

### **Section 9.02 TENANT'S OBLIGATIONS FOR MAINTENANCE.**

(c) Tenant hereby assumes all responsibility for the condition of the Premises and all fixtures, facilities, signs and equipment therein throughout the Term. Except as provided in Section 9.01, Tenant, at Tenant's expense, shall keep and maintain in good condition and repair, and at a minimum, in a condition equal to or better than that which existed when Tenant initially opened the Premises for business, reasonable wear and tear excepted, the Premises and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, exterior and interior portions of all doors, door checks and operations, windows, showcases, plate glass, storefronts, all plumbing and sewage facilities within and exclusively servicing the Premises (including free flow to the main sewer line), the ground mounted split HVAC system exclusively serving the Premises, the electrical systems exclusively serving the Premises (whether or not located in the Premises), , walls, floors and ceilings (including floor and ceiling coverings but excluding the parts of the floor and ceiling not included in the Premises), and all other repairs, replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen. Notwithstanding the foregoing, , Tenant shall be responsible at its sole cost and expense to maintain the ground mounted split HVAC system, exclusively serving the Premises.

(b) Tenant shall keep and maintain the Premises in a clean, sanitary and safe condition in accordance with applicable Governmental Requirements and Tenant shall comply with all Governmental Requirements affecting the Premises, all at Tenant's sole cost and expense, except as otherwise provided in the Lease. Tenant also agrees to comply with requirements of all insurance underwriters, inspection bureaus and similar agencies designated by Landlord with respect to the Premises. At the end of the Term, Tenant shall surrender the Premises in good order, condition and repair, equal to or better than that which existed when Tenant initially opened for business, subject to the terms of Section 5.02 hereof, and free of Hazardous Materials and all violations of Environmental Requirements, reasonable wear and tear damage by casualty or eminent domain and repairs which are Landlord's obligation excepted.

(c) In the event Tenant fails, refuses or neglects to perform any act or fulfill any obligation required of Tenant pursuant to this Section 9.02, subject to the notice and cure period in Article XVIII, Landlord may, but shall not be required to, perform or fulfill the same prior reasonable notice (except in the case of emergencies or in situations where failure to act may result in death to individuals) to, but at the

sole cost and expense of, Tenant, together with an administration fee of 15% of any such costs undertaken on Tenant's behalf. Tenant shall reimburse Landlord, as Additional Rent, for all such amounts within thirty (30) days after receipt by Tenant from Landlord of a statement therefor.

## ARTICLE X

### INSURANCE AND INDEMNITY

#### **Section 10.01 TENANT'S INSURANCE.**

Tenant, at its sole cost and expense, shall, as of the date possession of the Premises is delivered or access is otherwise made available to Tenant, and continuing thereafter throughout the entire Term hereof, procure and keep in force all of the insurance coverage set forth in this Article X.

(d) Property Insurance; Builder's Risk. Commercial property insurance covering the Premises and all the improvements thereto including all fixtures, Tenant's furniture, trade fixtures, equipment, improvements and betterments and Tenant's other business personal property located in the Premises, with coverage as provided for in other Zimmer Biomet United States office leases.

During any construction in or about the Premises by or on behalf of Tenant, Tenant shall cause to be maintained the insurance required in Exhibit B

Property insurance and builder's risk insurance shall name Tenant as the insured, and reflect Landlord's and Tenant's mortgagees as loss payees. Any coinsurance requirement shall be eliminated through the attachment of an agreed amount endorsement. The activation of an agreed value option shall be set forth in the policy or attached by endorsement. The amount of coverage provided under such property insurance and builder's risk insurance shall be 100% of replacement cost (without deduction for depreciation), including such added replacement costs as may result by reason of any change or changes in applicable ordinances or building codes.

(b) Commercial Liability Insurance. A policy of commercial general liability insurance or equivalent and, if necessary, commercial umbrella insurance ("Commercial Liability Insurance"), including coverage against all claims, demands or actions arising out of or in connection with the Premises, or by the condition of the Premises, including products-completed operations and coverage for host liquor liability or liquor liability, if sale of alcohol is included in the Permitted Use. The limits of such policy shall not be less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) any one person or organization for personal and advertising injury, Three Million Dollars (\$3,000,000) general aggregate: (i) property/operations liability; (ii) personal injury liability; (iii) independent contractors liability, if applicable; and (iv) broad form contractual liability. The standard commercial general liability separation of insured language must not be modified. Defense will be provided as an additional benefit and not included within the limit of liability. Each party's Commercial Liability Insurance policy shall be endorsed to waive the insurance carrier's right of subrogation against the Landlord and the Indemnified Parties. The umbrella policy shall be written on an umbrella basis in excess over and no less broad than the liability coverage referenced herein. Inception and expiration date will be the same as the Commercial Liability Insurance policy. Umbrella coverage must "drop down" for exhausted aggregate limits under the liability coverage referenced herein. The policy shall be endorsed to provide aggregate limits on insurance for this location. Tenant's Commercial Liability Insurance policy shall name Landlord, Landlord's affiliates, partners, management company, mortgagees, successors and assigns, and all of their respective employees, agents, officers, directors and their successors or assigns as additional insureds, and will be primary and noncontributory. The Additional Insured's other insurance will be excess coverage and not contribute to the primary coverage provided by the named insured's policy.



(c) Worker Compensation Insurance. Workers compensation insurance as required by the State of Hawaii and Employers Liability, with limits of not less than One Million Dollars (\$1,000,000) bodily injury by accident, One Million Dollars (\$1,000,000) bodily injury by disease, and One Million Dollars (\$1,000,000) bodily injury by disease each employee. Tenant's workers compensation policy shall be endorsed to waive the insurance carrier's right of subrogation against Landlord and the Indemnified Parties.

(d) Business Auto Coverage Policy. If applicable, business auto policy with a minimum limit of \$1,000,000 per occurrence (including umbrella), naming the Landlord and the Indemnified Parties as additional insureds and endorsed to waive the insurance carrier's right of subrogation against Landlord. Coverage shall include contractual liability and shall apply to owned, hired and non-owned autos.

(e) General Requirements. All policies of insurance required to be carried by Tenant pursuant to this Section 10.01 shall be written in Tenant's name by insurance companies of adequate financial capacity with a Best's rating and Financial Size Category of not less than A-/VIII and authorized to do business in the State of Hawaii. Payment of Tenant's premiums, deductibles and self-insured retentions shall be the sole responsibility of Tenant. All such insurance may be furnished by Tenant under any blanket policy carried by it or under a separate policy therefor provided such policy identifies the particular address of the Premises as being covered and complies with all other minimum terms and conditions contained in this Lease without any pro-rata distribution requirement. An insurance certificate (and declarations pages or endorsements where same become necessary to evidence coverage) certifying that such policy has been issued and provides the minimum coverage required by this Section 10.01 shall be delivered to Landlord prior to any entry by Tenant or Tenant's contractors onto the Premises or Project and otherwise prior to the commencement of the Term of this Lease, and such insurance information shall also be provided in connection with all renewals, not less than ten (10) days' prior to the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent.

(f) Required Clauses. Each policy evidencing insurance required to be carried by Tenant pursuant to this Section 10.01 shall contain the following clauses and provisions: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by the Landlord or the Indemnified Parties and that any coverage carried by the Landlord or the Indemnified Parties be excess insurance; (ii) a waiver by the insurer of any right to subrogation against the Indemnified Parties which could arise by reason of any payment under such policy or by reason of any act or omission of any of the Indemnified Parties; (iii) a severability of interest clause or endorsement; and (iv) such policy shall be an "occurrence form" policy. Tenant shall notify Landlord in writing no less than thirty (30) days prior to any cancellation or decrease in policy limit for all policies of insurance required to be carried by Tenant pursuant to Section 10.01.

(g) Self-Help. In the event Tenant fails to procure or to maintain, at the times and for the duration specified in this Section 10.01, any insurance required by this Section 10.01, or fails to carry insurance required by Governmental Requirements, Landlord may (but shall not be required to) at any time or from time to time, after notice to Tenant, procure such insurance and pay the premiums therefor, and the cost of same shall be deemed Additional Rent and shall be payable upon Landlord's demand.

(h) Enhanced Risk. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord or

of others within the Project to be increased beyond the minimum rate from time to time applicable to the Premises or to any property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such increase upon Landlord's demand. Landlord hereby acknowledges, however, that, as of the date hereof, the Permitted Use will not adversely affect Landlord's fire or liability insurance premium rating or prevent Landlord from procuring such policies.

(i) Security Guards. In the event Tenant retains any security guard contractor to service the Premises, Tenant shall cause Landlord to receive a customary waiver of subrogation under the worker's compensation insurance policy covering such security guard. No employee retained by Tenant at the Premises (including a security guard) shall be permitted to carry any weapons or firearms upon the Premises, the Project, or any other portion of the Mixed Use Development.

**Section 10.02 LANDLORD'S INSURANCE.**

Landlord shall keep the building in which the Premises are located and all other improvements on the Project insured against loss or damage by fire, with the usual extended coverage endorsements, in amounts equal to at least the full insurable value thereof, and so as to prevent the application of co-insurance provisions, with reasonable deductibles. Such insurance shall cover improvements in the Premises owned by Landlord to the extent that the same are customarily insurable as part of the realty, but shall not include the cost of restoration of Tenant's movable equipment, fixtures, furniture, furnishings or decorative effects. The foregoing insurance and any other insurance carried by Landlord may be effected by a policy or policies of blanket insurance shall be in place for the sole benefit of Landlord and under Landlord's sole control.

**Section 10.03 COVENANT TO DEFEND, INDEMNIFY, AND HOLD HARMLESS.**

Tenant covenants to defend and indemnify Landlord and the Landlord Indemnified Parties and save them harmless (except to the extent of loss or damage resulting from the intentional or grossly negligent fault of Landlord) from and against any and all Claims (as defined in Section 6.03(e) of this Lease) in connection with all losses, including loss of life, personal injury and/or damage to property, arising directly, indirectly or consequentially from or out of any occurrence (or arising from or out of Tenant's failure to comply with any provision of this Lease) within the Premises, or otherwise wholly or in part by any operations, act or omission of Tenant, its concessionaires, agents, contractors, suppliers, employees, servants, customers, invitees, licensees, successors or assigns and including any product liability claim or any labor dispute involving Tenant or its contractors and agents, to the fullest extent permitted by Hawaii law. In case Landlord or any other Indemnified Party so indemnified shall be made a party to any litigation commenced by or against Tenant, then Tenant shall defend, indemnify, protect and save them harmless and shall pay, as the same becomes due and payable, all costs, expenses and reasonable attorneys' fees and court costs incurred or paid by them in connection with such litigation. The provisions of this Section 10.03 shall survive the expiration or earlier termination of this Lease.

**Section 10.04 WAIVER OF RIGHT OF RECOVERY.**

Notwithstanding anything to the contrary in this Lease, Landlord and Tenant each hereby severally waive any and every claim (and Tenant hereby waives any claim which Tenant might otherwise have against the owners of the Mixed Use Development) which arises or may arise in its or its insurer's favor and against the other party during the term of this Lease for any and all loss of and loss of use of and damage to any of such waiving party's property (including autos and the contents thereof), or the property of others under its control, which is or could be insured against by any policy maintained, or required to be maintained hereunder, by such waiving party even though such loss or damage might have been occasioned by the negligence of the other party or their agents, affiliates, employees, contractors or invitees. The foregoing waiver shall apply to deductibles and self-insured retentions. Landlord and Tenant shall, if needed, deliver written notice of the terms of said mutual waivers to each insurance company and shall cause said insurance policies to be properly endorsed to prevent the invalidation of said insurance coverages by reason of said waivers. Tenant agrees waive and shall have included in each of its other insurance policies required in Section 10.01 a waiver of the insurer's right of subrogation against Landlord and the Indemnified Parties. Landlord shall not be liable to Tenant, or to those claiming through Tenant, and Tenant hereby waives all claims, for any loss or damage which may result from (a) the acts or omissions of persons occupying space in any part of the Project other than Landlord, or their agents, employees, contractors or invitees, and (b) from the breaking, bursting, stoppage or leaking of electrical cable and wires, or water, gas, sewer or steam pipes, not due to the negligence or intentional misconduct of Landlord. Tenant acknowledges that its use of the Premises and the Project is at its own risk.

**ARTICLE XI****UTILITIES****Section 11.01 UTILITY CHARGES.**

(a) Commencing on the Delivery Date and continuing thereafter at all times during the Term, Tenant shall be solely responsible for, and shall promptly pay, all fees, deposits and charges, including use and/or connection fees (other than capital connection fee or impact fees), hook-up fees, standby fees, and/or penalties for discontinued or interrupted service, and the like, for water, gas, electricity, fire alarm, burglar alarm, telephone, cable television, sewer and sanitation, solid waste disposal and all other services and utilities used in or upon or furnished to the Premises, including, without limitation, all services to be supplied by Landlord from a central utility plant or other utility system, if any, irrespective of whether any of the foregoing are initially paid in advance by Landlord, or otherwise. Landlord, at its sole option, may (i) designate providers for any or all of such services and utilities, and/or (ii) elect to furnish any or all of such services with a separate charge therefor to Tenant, at a cost, not in excess of Landlord's cost, such charge to be based upon the services used by Tenant, as reflected by meter, submeter or otherwise; provided, however, that if any utilities are supplied by Landlord, Tenant's charges for such utilities will not exceed the amount which would have been charged to Tenant had Tenant obtained the same directly from the local utility provider serving the Project. In such event, Tenant shall pay such charge, as Additional Rent, at such time and upon such terms as installments of Minimum Annual Rental are due or as otherwise required by Landlord. In the event Landlord supplies any utilities to the Premises, Tenant may, at Tenant's option and expense, install a submeter to monitor Tenant's actual consumption of such utility; such installation to be made in accordance with and in observation of all state and local codes, ordinances and restrictions and the requirements of Exhibit B or Section 5.01, as applicable.

(b) In no event shall Landlord be liable for damages or otherwise for any interruption or change in the supply, quality or character of any utility or other service, nor shall any such interruption or change constitute or be deemed to constitute a constructive eviction of Tenant, or excuse or relieve Tenant from its obligations under this Lease, including but not limited to, the payment of Rental. Notwithstanding the

above, Landlord shall use commercially reasonable efforts to cause any interruption in utility services to be restored in a timely manner and if (i) such utility services are disrupted for more than three (3) days after Landlord's receipt of Tenant's notice thereof (which may be verbal notice delivered to the on-site Project manager, if any), and (ii) the interruption is so extensive that Tenant cannot reasonably open and operate its business and does not open and operate its business on the Premises or any part thereof, and (iii) such interruption is caused solely by the gross negligence or willful acts of Landlord, or its agents, employees or contractors, then, as Tenant's sole remedy, Minimum Annual Rental, Percentage Rental and regularly scheduled Additional Rent (other than utilities payable under Article XI) shall abate commencing upon the fourth (4<sup>th</sup>) such consecutive day, until the date upon which Tenant is able to open any portion of the Premises for business.

(c) Landlord may at any time and from time to time, upon thirty (30) days' prior written notice to Tenant, elect to have Tenant obtain, and/or discontinue furnishing, and/or resume furnishing, as applicable, any utility to the Premises, without thereby affecting this Lease in any manner or otherwise incurring any liability to Tenant, and Landlord shall no longer be obligated to furnish such utility to the Premises. If Landlord shall give Tenant notice of such election, Tenant may contract for and receive such utility directly from the public utility entity then serving the Project, and if Tenant does so, Landlord shall permit Tenant, at Tenant's sole cost, to use Landlord's utility installations then serving the Premises for such purpose, if any, to the extent that the same are available, suitable and may be safely so used, consistent with concurrent and anticipated future use by Landlord and other tenants. If Landlord is the initial provider of a utility service to Tenant, Landlord agrees not to discontinue furnishing any utility to Tenant pursuant hereto until such time as Tenant shall be able to receive said utility service from an alternate source of supply and all costs related to Tenant's procurement of said utility service from an alternate source of supply (but not the actual costs of consumption by Tenant of such utility, for which, Tenant shall be solely responsible to pay the costs and expenses thereof), shall be paid by Landlord. Tenant agrees to act diligently in connecting to such alternate source as soon as it becomes available.

(d) To the extent utilities provided by Landlord are utilities which could be supplied to Tenant as a direct customer of a public utility, the value of such utility used by Tenant shall be computed for the purposes of this Article so as not to exceed the rate schedules which would be applicable if Tenant were at the time a direct customer of such public utility corporation.

(e) Any obligation of Landlord to furnish utility services from a central utility plant shall be conditioned upon the availability of adequate energy sources. Landlord shall have the right to reduce heating, cooling and lighting within the Premises and the Common Areas as required by any mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program.

(f) Tenant shall operate its heating, ventilating and air conditioning ("HVAC") system(s) serving the Premises so as to maintain comfortable conditions during regular Project business hours. Temperatures in the Premises shall be compatible with temperatures in the Project.

(g) If Tenant desires to install any equipment which shall exceed the capacity of any utility facilities or which shall require additional utility facilities, Tenant shall not have the right to do so without Landlord's prior written approval of Tenant's Plans and Specifications therefor, in Landlord's sole discretion. If such installation is approved by Landlord, and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, the cost of providing such additional utility facilities or utility facilities of greater capacity. Tenant shall in no event use any of the utility facilities in any way which shall overload or overburden the utility systems.

## ARTICLE XII

### ESTOPPEL STATEMENT, ATTORNMENT AND SUBORDINATION

#### **Section 12.01 ESTOPPEL STATEMENT.**

Within ten (10) business days after request therefor by Landlord, Tenant shall execute, and deliver to Landlord and/or its designee, a statement, in a mutually agreeable form, in writing, certifying (a) that this Lease is in full force and effect, (b) the Effective Date, the Rental Commencement Date and the expiration date of this Lease, (c) that Rental and all other charges hereunder are paid currently without any offset or defense thereto, (d) the amount of Rental and all other charges hereunder, if any, paid in advance, (e) whether this Lease has been modified and, if so, identifying the modifications, (f) that there are no uncured defaults by Landlord or stating in reasonable detail those claimed by Tenant (provided that, in fact, such details are accurate and ascertainable), and (g) certifying the matters set forth therein and such other matters as may be reasonably requested by Landlord, and addressed to such parties as Landlord may direct, including, without limitation, current and prospective lenders and/or purchasers of the Project. Tenant and Landlord acknowledge and agree that if the requested party fails to execute and deliver to the other party any requested estoppel certificate(s), such failure shall be deemed to be the acknowledgement that the terms and conditions contained in such estoppel certificate are true and correct and that such terms and conditions may also be relied upon by any third party or parties identified in such estoppel certificate, if the requested party fails to respond within ten (10) business days after such requested party's receipt of written notice from the requesting party that such requested party's continued failure to execute and deliver the requested estoppel within ten (10) business days of such written notice shall be deemed acknowledgement, which notice shall contain at the top, in bold, capitalized letters of not less than 16-point type: "**YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS SHALL BE CONSIDERED DEEMED APPROVAL.**"

#### **Section 12.02 ATTORNMENT.**

(e) In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage and/or deed of trust made by Landlord covering the Premises, or in the event Landlord sells, conveys or otherwise transfers or assigns its interest in the Project or any portion thereof containing the Premises, or in the event of a termination or cancellation of any ground or underlying lease covering the Project or any part thereof, including the Premises, this Lease shall remain in full force and effect and Tenant hereby agrees to automatically attorn to and recognize such transferee, assignee, purchaser, ground or underlying lessor or mortgagee as Landlord under this Lease. Tenant covenants and agrees, within twenty (20) days following such new party's request, to execute an instrument evidencing such attornment reasonably satisfactory to such new party recognizing such new party as the landlord under this Lease.

(b) Tenant acknowledges that such new transferee, assignee, purchaser, ground or underlying lessor or mortgagee shall not be bound by (i) any prepayment of Rental more than one (1) month in advance of its due date (except a security deposit, but only to the extent actually received by said successor) or (ii) any amendment of the Lease made after the later of the Commencement Date, or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment or (iii) any claims, offsets or defenses of Tenant arising prior to such attornment, except for those specifically provided in the Lease, including ongoing maintenance, repairs or replacement obligations of Landlord under the Lease. Payment by or performance of this Lease by any person, firm or corporation claiming an interest in this Lease or the Premises by, through or under Tenant without Landlord's prior written consent, in Landlord's sole discretion, shall not constitute an attornment or create any interest in this Lease or the Premises. At Tenant's request, the new owner shall acknowledge in writing that, subject to the provisions of this Section 12.02, Tenant's interest in the Premises and rights under this Lease shall not be disturbed so long as Tenant is not in default under the terms of this Lease beyond the time permitted to cure such default.

**Section 12.03 SUBORDINATION.**

Provided the holder of any superior instrument agrees in writing not to disturb Tenant's rights under this Lease so long as Tenant is not in default hereof, Tenant further agrees this Lease shall be subordinate to the lien of all mortgages, deeds of trust and all ground leases that may be placed upon the Premises, or the Project or the Mixed Use Development and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, modifications, replacement and extensions thereof. The foregoing shall be self-operative and no further instruments shall be required to effect such subordination of this Lease. Tenant also agrees that any mortgagee, beneficiary or ground lessor may elect to have this Lease constitute a prior lien to its mortgage, deed of trust or ground lease, and in the event of such election and upon notification by such mortgagee, beneficiary or ground lessor to Tenant to such effect, this Lease shall be deemed a prior lien to such mortgage, deed of trust or ground lease, whether this Lease is dated prior to or subsequent to the date of said mortgage, deed of trust or ground lease. Tenant agrees that upon the request of Landlord, or any mortgagee, beneficiary or ground lessor, Tenant shall, within twenty (20) days of the receipt of said demand, execute an appropriate recordable subordination and attornment agreement in a form as shall be reasonably required by Landlord or such mortgagee, beneficiary or mortgagee.

**Section 12.04 NOTICE TO MORTGAGEE, BENEFICIARY OR GROUND LESSOR.**

If Tenant is given notice of the name and address of a mortgagee, beneficiary or ground lessor, then Tenant shall give written notice of any default by Landlord to such mortgagee, beneficiary or ground lessor specifying the default in reasonable detail. Tenant shall afford mortgagee, beneficiary or ground lessor the right to cure such default including as may be necessary, such additional reasonable time as may be necessary, and if such mortgagee, beneficiary or ground lessor does perform on behalf of Landlord, such default shall be deemed cured.

**ARTICLE XIII****ASSIGNMENT AND SUBLETTING****Section 13.01 RESTRICTIONS ON TRANSFER.**

(a) Tenant agrees not to mortgage, encumber, pledge or hypothecate all or any part of this Lease (or the estate created hereby or any of its rights hereunder), Tenant's interest in the Premises. Further, except to a Permitted Transferee (as defined in paragraph (c) below), Tenant shall not transfer, assign, sublet, enter into franchise, license or concession agreements, or cause assignment of all or any part of this Lease (or the estate created hereby or any of its rights hereunder) (including but not limited to an assignment by operation of law), Tenant's interest in the Premises (each, a "Transfer") without first procuring the written consent of Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants and conditions contained in this Lease and to the right of Landlord to elect to terminate this Lease as provided in Section 13.02 below. Any attempted or purported Transfer without Landlord's prior written consent shall be void and of no force or effect. Further, each such attempted or purported Transfer shall entitle Landlord immediately to terminate this Lease and all further obligations of Landlord hereunder. Landlord's consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer. No Transfer of this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor from liability under this Lease, regardless of whether such liability shall accrue before or after the date of such Transfer.

(b) It shall not be unreasonable for Landlord to withhold its consent to any proposed Transfer for any of the following reasons, which are not exhaustive:

(1) the proposed use of the Premises by the proposed transferee, assignee or sublessee (each, a "Transferee") is incompatible with the uses in the Project;

- (2) the proposed use of the Premises by the proposed Transferee, if substantially different than the Permitted Use, is inconsistent with the retail tenant mix desired by Landlord;
- (3) the net worth and/or financial stability of the proposed Transferee is inadequate to meet all of Tenant's financial and other obligations under this Lease;
- (4) the proposed Transferee's reputation (or that of any of its affiliates) would have an adverse effect upon the reputation of the Project or the other businesses located therein;
- (5) the proposed Transferee would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease, financing agreement or other agreement relating to the Project;
- (6) Tenant is in default pursuant to this Lease beyond any applicable notice and cure period;
- (7) the nature of the proposed Transferee's proposed or likely use of the Premises would involve any risk of the introduction of Hazardous Materials into the Project;
- (8) the proposed Transferee is not likely to conduct on the Premises a business of a quality substantially equal to that conducted by Tenant; or
- (9) any ground lessor or mortgagee whose consent to such transfer is required fails to consent thereto following Landlord's good faith efforts to obtain such consent, provided none of the other reasons set forth in this subsection (b) exist, in Landlord's reasonable judgment.

(c) Provided each Transferee described in this paragraph (c) (i) assumes in writing all of Tenant's obligations hereunder, in the event of an assignment, or (ii) agrees to sublet the Premises or a part thereof subject to the terms of this Lease, then, notwithstanding the provisions of paragraph (a) of this Section 13.01, Tenant may assign this Lease or sublet the Premises, without Landlord's consent provided Landlord receives at least thirty (30) days' prior written notice thereof, accompanied by a copy of the Transfer documentation and other documentation required herein to evidence such Permitted Transfer, to (each, a "Permitted Transferee" or "Permitted Transfer" as the case may be): (i) a parent, subsidiary or other affiliate of Tenant, or (ii) in connection with (A) a merger or consolidation of Tenant's business, (B) the sale of all or substantially all of the assets or stock of Tenant, (C) the sale or issuance of Tenant's stock in connection with a public offering, (D) any transfer of the outstanding voting stock of Tenant registered under the applicable securities laws which are traded on a recognized national securities exchange or over-the-counter, (E) any transfer of Tenant's stock among shareholders or to employees of Tenant or its affiliates, (F) any transfer of Tenant's stock by shareholders to family members by gift, trust or otherwise, (G) any transfer of Tenant's stock upon the death of any shareholder, or (H) any transfer of a controlling interest of Tenant to or institutional investors where an institutional investor is a major banking institution, insurance company, venture arm of a Fortune 1000 company, pension fund, money management firm, or an asset management fund which controls net assets in excess of \$100,000,000.00.

**Section 13.02 PROCEDURE FOR TRANSFER.**

(a) Should Tenant desire to make a Transfer to a Transferee other than a Permitted Transferee, Tenant shall, in each instance, give written notice of its intention to do so to Landlord at least thirty (30) days before the intended effective date of any such proposed Transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into license, franchise or concession agreements, the proposed date thereof, and specifically identifying the proposed Transferee, the net worth and previous business experience of the proposed Transferee, including without limitation copies of the proposed Transferee's last two years' income statements, balance sheets and statements of changes in financial position (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the chief financial officer of the proposed Transferee. Such notice shall be accompanied, in the case of a proposed assignment, subletting, license, franchise or concession agreement, by a copy of the proposed assignment, sublease, license, franchise or concession agreement. In the event Landlord has consented to a proposed Transfer as required herein, Tenant shall deliver to Landlord within fifteen (15) days (or as soon thereafter as is reasonably practicable) after the effective date of such Transfer an executed duplicate of such transfer agreement.

(b) Landlord shall, within thirty (30) days after its receipt of such notice of a proposed Transfer requiring Landlord's consent, by giving written notice to Tenant of its intention to do so: (i) withhold its consent to the Transfer; (ii) consent to the Transfer; or (iii) if the Transfer is for an assignment or a sublease of all of the Premises, terminate this Lease, which termination shall be effective thirty (30) days after receipt of such notice by Tenant; provided, however, Tenant may withdraw its notice of proposed Transfer within five (5) days after receipt of Landlord's notice under this clause (iii), in which event any such right of Landlord to terminate this Lease shall be null and void, but Tenant's failure to so withdraw such notice shall be deemed Tenant's election to forego such withdrawal. Landlord shall not unreasonably withhold consent to a proposed Transfer requiring Landlord's consent. Failure of Landlord to give Tenant written notice of Landlord's action with respect to any request for Landlord's consent to a proposed Transfer shall not constitute or be deemed Landlord's consent to such Transfer; provided, however, that if Landlord fails to respond within said 30-day period, Tenant shall have the right to provide Landlord with a second notice of the proposed Transfer, clearly marked "SECOND NOTICE – IMMEDIATE RESPONSE REQUIRED" and if Landlord fails to respond to the second notice within thirty (30) days of delivery, Landlord shall be deemed to have provided its consent to the proposed Transfer.

(c) If Landlord shall exercise its termination right hereunder, Landlord shall have the right to enter into a lease or other occupancy agreement directly with the proposed Transferee, and Tenant shall have no right to any of the rents or other consideration payable by such proposed Transferee under such other lease or occupancy agreement, even if such rents and other consideration exceed the rent payable under this Lease by Tenant. Landlord shall have the right to lease the Premises to any other tenant, or not lease the Premises, in its sole discretion. Tenant acknowledges and agrees that each of the rights of Landlord set forth herein in the event of a proposed Transfer is a reasonable restriction on Transfer for purposes of Governmental Requirements. Tenant shall have the burden of proving that Landlord's withholding of its consent to the proposed Transfer was in violation of its rights under this Lease and Governmental Requirements. Landlord shall have no liability to Tenant or to any proposed Transferee if it is adjudicated that Landlord's withholding of its consent shall have constituted a breach of this Lease. In such event, Tenant's sole remedy shall be to have the proposed Transfer declared valid, as if Landlord's consent had been duly and timely given (although Tenant shall be entitled to reasonable attorneys' fees if it is the successful party in such litigation, in accordance with the terms of this Lease).

**Section 13.03 TRANSFER RENT ADJUSTMENT.**

If Tenant shall make a Transfer hereunder which requires Landlord's consent, the Minimum Annual Rental shall be increased, effective as of the date of such Transfer, to the highest of: (a) the total rent payable by the Transferee pursuant to such Transfer, less any reasonable and customary costs or expenses



actually paid by Tenant as a result of such Transfer including reasonable and customary broker's fees and reasonable attorney fees actually paid by Tenant in connection with any such Transfer; or (b) an amount equal to the total of the Minimum Annual Rental, required to be paid by Tenant pursuant to this Lease during the 12-month period immediately preceding such Transfer.

**Section 13.04 REQUIRED DOCUMENTS AND FEES.**

Each Transfer which requires Landlord's consent to which Landlord has consented shall be evidenced by a written instrument in form reasonably satisfactory to Landlord, executed by Tenant and the Transferee, under which the Transferee shall agree in writing for the benefit of Landlord to assume, perform and abide by all of the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant or, in the instance of a sublease, the duties, rights and obligations Transferee therefor shall be subject to the terms and provisions of the Sublease. Tenant shall reimburse Landlord for Landlord's reasonable attorneys' and administrative fees incurred in the processing of, and documentation for, each such requested Transfer requiring Landlord's consent, whether or not the Transfer is consummated, in an amount equal to \$1,000.00.

**Section 13.05 SUBLEASE RENTALS.**

The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein; provided however, Landlord shall not exercise its rights under this Section 13.05 unless Tenant is in default after the giving of notice and expiration of any applicable cure period. Prior thereto, Tenant may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease:

(a) Tenant hereby collaterally assigns and transfers to Landlord all of Tenant's interest in all rentals and income arising from any sublease of all or a portion of the Premises, and Landlord may collect such rent and income and apply same toward Tenant's obligations under this Lease. Landlord shall not, by reason of this or any other assignment of such sublease to Landlord, nor by reason of the collection of the rents from a subtenant, be deemed liable to the subtenant for any failure of Tenant to perform and comply with any of Tenant's obligations to such subtenant under such sublease. Tenant hereby irrevocably authorizes and directs any such subtenant, upon receipt of a written notice from Landlord stating that a breach exists in the performance of Tenant's obligations under this Lease, to pay to Landlord the rents and other charges due and to become due under the sublease. The subtenant shall rely upon any such statement and request from Landlord and shall pay such rents and other charges to Landlord without any obligation or right to inquire as to whether such breach exists and notwithstanding any notice from or claim from Tenant to the contrary. Tenant shall have no right or claim against said subtenant, or, until the breach has been cured, against Landlord, for any such rents and other charges so paid by said subtenant to Landlord.

(b) In the event of a breach by Tenant in the performance of its obligations under this Lease, Landlord, at its option and without any obligation to do so, may require any subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of the sublandlord under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Landlord shall not be liable for any prepaid rents or security deposit paid by such subtenant to Tenant or for any other prior defaults or breaches of Tenant as sublandlord under such sublease.

**Section 13.06 TRANSFER OF STOCK OR PARTNERSHIP INTEREST.**

For the purposes of this Lease, any transaction (or related series of transactions)(including any transfer(s) of stock, partnership interests or other equity interests) which results, directly or indirectly, in a change of control of Tenant shall be deemed an assignment of this Lease; provided, however, that, notwithstanding the foregoing, as used in this Section 13.06, the term "transaction" shall not include sales effected through the "over the counter market" or through any recognized stock exchange, unless such sales

are effected by persons deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended. For the purposes hereof, the term "control" shall mean, in the case of a corporation, ownership or voting control, directly or indirectly, of at least fifty percent (50%) of all the voting stock, and in case of a joint venture or partnership or similar entity, ownership or voting control, directly or indirectly, of at least fifty percent (50%) or all the general or other partnership (or similar) interests therein.

**Section 13.07 ADDITIONAL PROVISIONS RESPECTING TRANSFERS.**

(a) If such consent is required, Landlord's mortgagee(s) shall have consented in writing to such transfer;

(b) The acceptance by Landlord of the payment of Rental following any Transfer prohibited by this Article XIII shall not be deemed to be a consent by Landlord to any such Transfer nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder;

(c) Neither Tenant nor any other entity having any interest in the possession, use or occupancy of the Premises shall enter into any Transfer which provides for payment based, in whole or in part, on the net income or profits derived by any entity from the Premises or portion thereof, and any such purported Transfer shall be absolutely void and ineffective; and

(d) If Tenant receives Bonus Rental (as defined hereinbelow) in connection with any Transfer, Tenant shall pay Landlord fifty percent (50%) of any such Bonus Rental. Landlord may, without waiving any rights or remedies or creating any obligation to do so, collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. "Bonus Rental" shall mean all rent or other consideration payable by an assignee or sublessee in connection with Transfer in excess of the Rent payable by Tenant under this Lease during the term of the Transfer (and if any subletting is for less than all of the Premises, then the Bonus Rental shall be calculated on a rentable square foot basis). Bonus Rental shall be calculated after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises paid for by Tenant in connection with the Transfer and (ii) any brokerage commissions and attorneys' fees paid for by Tenant in connection with the Transfer; however, for purposes of calculating Bonus Rental for any particular month, only the amortized portion of such expenses may be deducted against the rent and other consideration received from the Transfer for such month, which amortization shall be calculated on a straight-line basis over the number of months of the term of the assignment or subletting, without the imputation of interest.

## ARTICLE XIV

### WASTE OR NUISANCE

**Section 14.01 WASTE OR NUISANCE.**

Tenant shall not commit, nor permit any of its employees, invitees, contractors, subcontractors, licensees, subtenants or agents to commit, any waste upon the Premises and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Tenant shall not permit any of its employees, invitees, contractors, subcontractors, licensees, subtenants or agents to commit any nuisance, annoyance, disturbance or other act or thing which disturbs the quiet enjoyment of any other resident or occupant of the Project. Tenant shall not use or permit to be used any sound producing or other device which will carry sound or odors outside the Premises, will not permit any odors to emanate from the Premises and, upon written notice from Landlord, Tenant shall cause any such noise or odors to cease. Tenant agrees that all equipment used by Tenant which cause vibration or noise reasonably objectionable to Landlord or to any Project occupant or resident shall be operated and maintained by Tenant at its expense in a manner sufficient to eliminate such vibrations or noise.

**ARTICLE XV****INTENTIONALLY OMITTED.****ARTICLE XVI****DAMAGE AND DESTRUCTION****Section 16.01 RECONSTRUCTION OF DAMAGED PREMISES.**

(a) Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by a Casualty Event. As used in this Article XVI, a "Casualty Event" is defined as a fire or other casualty, including, without limitation, flood, windstorm, hail, explosion, damage from aircraft and vehicles and smoke damage.

(b) In the event the Premises shall be partially or totally destroyed by a Casualty Event insured under the insurance carried by Landlord so as to become and remain partially or totally untenable for a period in excess of thirty (30) days, then either Landlord or Tenant shall have the right to terminate this Lease upon serving the other party, written notice of such election, and this Lease shall terminate on the date that is thirty (30) days following the date of receipt of such notice by the other party. Unless Landlord or Tenant elect to terminate this Lease as provided in this Article XVI, Landlord shall proceed with reasonable diligence upon receipt of all insurance proceeds (provided, that Landlord, in its sole discretion, may elect to proceed prior to receipt of all insurance proceeds), to promptly restore Landlord's Work, as described in Exhibit B to this Lease, to substantially the same condition which existed upon Landlord's delivery of the Premises to Tenant, provided Landlord has received prior Landlord's commencement of any such work (i) its lender's consent, if required (the "Casualty Repair to the Shell") and (ii) Tenant's Restoration Notice (as defined herein below); provided, however, that, notwithstanding anything stated to the contrary herein, in no event shall Landlord shall have any obligation to rebuild or restore any of Tenant's Alterations (including, without limitation, Tenant's Initial Alterations) for any reason whatsoever. No later than thirty (30) days after the occurrence of a Casualty Event, Tenant shall provide Landlord with written notice to confirm whether or to what extent Tenant will **(A)** rebuild and restore any of Tenant's Alterations and Tenant's Initial Alterations, and, **(B)** perform any other repairs to the Premises, including, but not limited to, repairs and/or replacement of all furniture, fixtures, equipment and all other personal property and inventory of Tenant in the Premises, to a condition at least equal to that existing prior to the Casualty Event (such notice referred to herein as, the "Tenant's Restoration Notice", and the Alterations and items that Tenant confirms it will repair and restore per the Tenant's Restoration Notice, being referred to herein as, the "Tenant Casualty Repairs"). If Tenant so elects to perform any such Tenant Casualty Repairs, Tenant shall promptly commence and complete, at its sole cost and expense and within ninety (90) days after Landlord completes the Casualty Repair to the Shell and delivers the Premises to Tenant, all of the Tenant Casualty Repairs. If Tenant elects to restore Tenant's Alterations (including, without, limitation, Tenant's Initial Alterations) per the provisions of this paragraph, Tenant shall be required to complete the Tenant Casualty Repairs, and to perform such work, in accordance with (to the extent applicable) the Plans and Specifications originally approved by Landlord or new drawings prepared by Tenant's architect at Tenant's sole cost and expense and acceptable to Landlord, and shall otherwise comply with the criteria and procedures of Exhibit B; provided, however, that, notwithstanding anything stated to the contrary herein, (i) in no event shall Tenant receive any tenant improvement allowance for any Tenant Casualty Repairs following a Casualty Event, (ii) none of the provisions of this paragraph shall amend, limit, modify, eliminate or excuse Tenant's obligations to perform its duties under Section 6.02 hereof, and (iii) in no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, signs, furnishings, equipment or other items of personal property, but the same shall be repaired or replaced promptly to a condition at least equal to that existing prior to the Casualty Event. Notwithstanding anything in this Lease

to the contrary, if Landlord elects to perform the Casualty Repair to the Shell per the terms of this paragraph, Landlord's obligations under this Lease to rebuild and repair the Premises shall be limited in any event to the amount of insurance proceeds actually recovered by Landlord under its insurance policy or policies as a result of the Casualty Event in question.

**Intentionally Omitted.**

(c) In the event this Lease is not terminated and the Casualty Repair to the Shell is not substantially completed by Landlord, if Landlord does not elect for Tenant to complete such repair, within eighteen (18) months after the occurrence of the Casualty Event, Tenant shall have the right, as its sole remedy, to terminate this Lease at any time thereafter on sixty (60) days' prior written notice to Landlord (unless the Casualty Repair to the Shell shall be substantially completed by Landlord, or if Landlord elects for Tenant to complete such repair, during such sixty (60) day period).

(d) Tenant agrees that during any period of reconstruction or repair of the Premises as a result of a Casualty Event, Tenant will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of the Casualty Event until the earlier of (i) the date Tenant occupies the Premises and is able to conduct its business therein, (ii) ninety (90) days after Landlord completes the Casualty Repair to the Shell and delivers the Premises to Tenant, or (iii) if applicable, ninety (90) days after Tenant completes the Casualty Repair to the Shell (provided that Tenant must complete such Casualty Repair to the Shell within one hundred eighty (180) days after the occurrence of the Casualty Event), Minimum Annual Rental, Percentage Rental and regularly scheduled Additional Rent (other than utilities under Article XI) shall be abated proportionately based on the Floor Area of the Premises which is rendered untenable by the Casualty Event, unless such damage was caused by the negligence or willful misconduct of Tenant, or the agents, employees, licensees or invitees of Tenant; however, there shall be no abatement of the other charges provided for in this Lease.

(e) **Intentionally Omitted.**

(f) If a Casualty Event occurs to the Project, the building in which the Premises is located and/or the Premises prior to the Delivery Date, Landlord may, at Landlord's option, either cancel this Lease, in which event this Lease shall become void and of no effect, or rebuild as soon as practicable, in which event this Lease shall remain in full force and effect but Tenant shall not be liable for any Rental or the payment of any costs until the earlier of (i) the date Tenant occupies the Premises and is able to conduct its business therein, or (ii) the date on which Landlord substantially completes the restoration of the Premises and notifies Tenant that it may re-occupy the Premises (provided, that if Landlord is unable to substantially complete such restoration of the Premises within one hundred eighty (180) days following such Casualty Event, Tenant may, as its sole and exclusive remedy, terminate this Lease by delivering written notice thereof to Landlord in which event Tenant shall have no further obligations or liabilities under this Lease).

(g) Under no circumstances shall Tenant have any interest in any insurance proceeds attributable to said Casualty Event. In the event of a Casualty Event, if Landlord cannot obtain all utilities, permits and authorizations necessary to reconstruct the building in which the Premises is located in accordance with the plans and specifications therefor or cause the completion of reconstruction of the building within eighteen (18) months after the occurrence of a Casualty Event, then Landlord may terminate this Lease by delivering written notice thereof to Tenant, in which event Landlord and Tenant shall have no further obligations or liabilities under this Lease.

**Section 16.02 LANDLORD'S OPTION TO TERMINATE LEASE.**

In the event that (a) during the last twenty-four (24) months of the Term of this Lease or any extension thereof, the Premises shall be damaged (except for damages to a de minimis extent) as a result of a Casualty Event, (b) Landlord's architect certifies, in his or her sole and absolute discretion, that more than

twenty-five percent (25%) of the Floor Area of the Premises is damaged or destroyed as a result of a Casualty Event, (c) Landlord's architect certifies, in his or her sole and absolute discretion, that more than thirty-five percent (35%) of the Floor Area of the building in which the Premises is located is damaged or destroyed as a result of a Casualty Event, (d) the Premises or the building in which the Premises is located shall be destroyed or substantially damaged by a casualty not covered by Landlord's insurance or (e) the holder of a mortgage, deed of trust or other lien on the Premises or a lessor under a ground or underlying lease at the time of the Casualty Event, elects, pursuant to such mortgage, deed of trust or other lien, or ground or underlying lease to require the use of all or part of Landlord's insurance proceeds in satisfaction of all or part of the indebtedness secured by the mortgage, deed of trust or other lien, then, upon the occurrence of any such event, Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Premises. Landlord shall give written notice to Tenant of such election within sixty (60) days after the occurrence of the Casualty Event and, if Landlord elects to rebuild and repair, shall proceed to do so with reasonable diligence pursuant to Section 16.01(b) above, and Tenant shall subsequently complete Tenant's Casualty Repairs pursuant to Section 16.01(b) above. If Landlord elects to terminate this Lease, then this Lease shall terminate at the end of the calendar month in which notice of termination is given and Landlord shall refund to Tenant any Rental previously paid by Tenant and pertaining to the period after the date of the Casualty Event. Landlord's right to terminate this Lease under this Section 16.02 shall be conditioned upon Landlord's termination of the leases of all similarly affected tenants in the building in which the Premises are located whose leases permit such termination as a result of such Casualty Event.

## ARTICLE XVII

### EMINENT DOMAIN

#### **Section 17.01 TOTAL CONDEMNATION OF PREMISES.**

If the whole of the Premises shall be taken by any public authority under the power of eminent domain or sold to a public authority under threat or in lieu of such taking, then the Term of this Lease shall cease as of the day upon which possession is taken by such public authority, and all Rental shall be paid up to such day with a proportionate refund by Landlord of such Rental payments as may have been paid in advance for a period subsequent to the date of taking.

#### **Section 17.02 PARTIAL CONDEMNATION.**

(a) If less than the whole but more than twenty percent (20%) of the Floor Area of the Premises or more than fifty percent (50%) of the square footage of the Common Areas shall be so taken under eminent domain, or sold to public authority under threat or in lieu of such taking, Tenant shall have the right either to terminate this Lease effective as of the day possession is taken by such public authority, or, subject to Landlord's right of termination as set forth in Section 17.02(c), continue in possession of the remainder of the Premises, upon notifying Landlord in writing within ten (10) days after such taking of Tenant's intention. In the event Tenant elects to remain in possession, all of the terms provided herein shall continue in effect except Minimum Annual Rental shall be reduced in proportion to the floor area of the Premises taken; thereafter, Landlord shall, at Landlord's cost and expense to the extent of any available condemnation award, make all the necessary repairs or alterations so as to constitute the remaining building a complete architectural unit, and Tenant, at Tenant's sole cost and expense, shall similarly act with respect to Tenant's leasehold improvements, trade fixtures, furnishings and equipment.

(b) If twenty percent (20%) or less of the Floor Area of the Premises shall be so taken, the Term of this Lease shall cease, only on the part so taken, as of the day possession shall be taken by such public authority, and Tenant shall pay Rental and other charges up to such day. Landlord shall, at Landlord's cost and expense to the extent of any available condemnation award, make all necessary repairs or alterations so as to constitute the remaining building a complete architectural unit, and Tenant, at Tenant's

sole cost and expense, shall similarly act with respect to Tenant's leasehold improvements, trade fixtures, furnishings and equipment.

(c) If more than twenty-five percent (25%) of the Floor Area of the building in which the Premises are located, or more than twenty-five percent (25%) of the Premises, or more than twenty-five percent (25%) of the square footage of the Project or of the Common Areas shall be taken under power of eminent domain, or sold to public authority under threat or in lieu of such taking, Landlord may, by written notice to Tenant delivered on or before the tenth (10th) day following the date of surrender of possession to the public authority, terminate this Lease as of the date possession is taken by the public authority. The Rental shall be paid up to the day possession is taken by the public authority, with an appropriate refund by Landlord of such Rental payments as may have been paid in advance for a period subsequent to such date.

(d) A voluntary sale or transfer of interest of all or any part of the Premises or of the Common Area in the Project by Landlord to any public or quasi-public body, agency, person or other entity, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain for the purposes of this Article XVII.

**Section 17.03 LANDLORD AND TENANT DAMAGES.**

All damages awarded for such taking under the power of eminent domain or proceeds from any sale under threat or in lieu of such a taking, whether for the whole or part of the Premises or leasehold improvements thereto, shall be the property of Landlord, irrespective of whether such damages shall be awarded or proceeds obtained as compensation for diminution in value to the leasehold improvements thereto, or to the fee (ownership) of the Premises, or to the Tenant's leasehold interest, and Tenant shall have no claim against either Landlord or the condemning authority with respect thereto; provided, however, that Landlord shall not be entitled to any award specifically designated as compensation for, depreciation to, and cost of removal of, Tenant's stock and trade fixtures, or (subject to the rights of any mortgagee or beneficiary of any mortgage or deed of trust made by Landlord covering the Premises or the Project) to any award specifically designated as compensation for the unamortized cost of Tenant's leasehold improvements less any Landlord contribution to Tenant's Work, such amortization to be calculated on a straight-line basis over the Term of this Lease.

**ARTICLE XVIII**

**DEFAULT**

**Section 18.01 RIGHTS UPON DEFAULT.**

Notwithstanding any contrary provision herein and irrespective of whether all or any rights conferred upon Landlord by this Article XVIII are expressly or by implication conferred upon Landlord elsewhere in this Lease, in the event: (i) Tenant fails to pay any Rental hereunder for more than two (2) days after written notice from Landlord to Tenant that such Rental was not received when due; or (ii) Tenant fails to perform any other obligation of Tenant hereunder for more than thirty (30) days after written notice from Landlord to Tenant of such failure (unless such default cannot reasonably be cured within thirty (30) days, in which event Tenant shall not be deemed to be in default hereunder if Tenant shall have commenced to cure said default promptly within thirty (30) days and thereafter prosecute such cure to completion with all reasonable dispatch and diligence (but in no event shall such cure period extend beyond one hundred twenty (120) days)); or (iii) the occurrence of any event that is specifically identified herein as a default and either specifically provides that no cure period is available or specifically includes a cure period different than provided in this Section 18.01(a); then, upon expiration of any cure period applicable (as provided

hereunder) to any such default, Landlord shall have the right to avail itself of any and all remedies at law, in equity or elsewhere under this Lease, including, without limitation, the following:

(i) Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rental, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following: (A) the worth at the time of award of any unpaid Rental which has been earned at the time of such termination; plus (B) the worth at the time of award of the amount by which the unpaid Rental which would have been earned after termination until the time of award exceeds the amount of such Rental loss that Tenant proves could have been reasonably avoided; plus (C) the worth at the time of award of the amount by which the unpaid Rental for the balance of the Term after the time of award exceeds the amount of such Rental loss that Tenant proves could have been reasonably avoided; plus (D) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. As used in clauses (A) and (B) above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Section 25.12 of this Lease. As used in clause (C) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(ii) Landlord may, without terminating this Lease, re-let, in Landlord's or Tenant's name but for the account of Tenant, the Premises or any part thereof, either alone or in conjunction with other portions of the Project, for all or any portion of the remainder of the term of this Lease, to a tenant or tenants satisfactory to Landlord, and upon such terms and conditions (which may include concessions concerning rent and the alteration and/or repair of the Premises) as Landlord in its reasonable discretion may determine. In connection therewith, Landlord shall have the right to put the Premises in good order and condition and to make reasonable alterations and repairs, at Tenant's expense, to facilitate such re-letting, and Landlord shall receive such rentals and apply them, first to the payment of the expenses of recovering possession of the Premises and the re-letting thereof, including without limitation, all attorneys' fees and brokers' commissions, together with such expenses as Landlord may have incurred in maintaining and/or putting the Premises in good order and condition or in making such alterations and repairs, and then to the payment of Minimum Annual Rental and Additional Rent and to the fulfillment of the covenants of Tenant, the balance, if any, to be paid over to Tenant, provided that Tenant shall remain liable for any deficiency, which deficiency Tenant agrees to pay monthly as the same may accrue; provided, further, that Landlord shall not be responsible or liable for any failure or inability to collect any rent due upon such re-letting. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If, in connection with any such re-letting, the term of the new lease extends beyond the term of this Lease or the premises demised by the new lease includes areas not demised by this Lease, then the rent received from such re-letting shall be apportioned accordingly in determining the rent received by Landlord from such re-letting.

If, for any period during the term of this Lease, despite Landlord's reasonable efforts to re-let the Premises, Landlord is not able to re-let the Premises to a tenant or tenants satisfactory to Landlord and upon such terms and conditions as Landlord in its reasonable discretion may determine, then, in addition to any costs incurred for putting the Premises in good order and condition and making reasonable alterations and repairs and any other costs incurred in recovering possession of the Premises and in facilitating Landlord's efforts to re-let the Premises (including, without limitation, attorneys' fees and brokers' commissions), Landlord may collect from Tenant the full amount of Minimum Annual Rental, Additional Rent and any other amounts payable by Tenant in fulfilling its covenants and obligations under this Lease for the Premises or any portion of the Premises which has not been re-let.

(iii) Landlord may, without waiving or releasing Tenant from any obligations of Tenant, cure Tenant's default. All sums incurred by Landlord in connection therewith, together with interest thereon at the rate specified in Section 25.12, shall be payable to Landlord on demand.

All remedies of Landlord shall be cumulative and not alternative, and the exercise of one or more remedies shall not impair Landlord's right to exercise any other remedy.

(b) Landlord shall use its reasonable efforts to re-let the Premises and to otherwise mitigate its damages as a result of Tenant's default. Landlord shall be deemed to have mitigated its damages sufficiently if, within forty-five (45) days after Tenant vacates the Premises, Landlord, to the extent it has access to the Premises, has (i) placed a "For Lease" sign at the Premises, (ii) placed the Premises in Landlord's inventory of available space, (iii) made the Premises available to show to prospective tenants during normal business hours, and (iv) shown the Premises to prospective tenants upon request.

(c) If Landlord terminates this Lease as a permitted remedy hereunder, Landlord may remove all property from the Premises and such property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, and Landlord may dispose of such property, without resort to legal process and without Landlord being deemed guilty of trespass, conversion or becoming liable for any loss or damage which may be occasioned thereby.

(d) Any notice required under Section 18.01(a) shall be in lieu of, and not in addition to, any notice that may be required under Hawaii law.

## ARTICLE XIX

### ACCESS BY LANDLORD

#### **Section 19.01 RIGHT OF ENTRY.**

Landlord and Landlord's agents shall have the right to enter the Premises for any reasonable purpose, at reasonable times and upon reasonable advance notice (or without, in the case of emergency, or as necessary to prevent death or injury to persons) to Tenant, including, without limitation, to make such repairs, alterations, improvements and additions as Landlord may deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part, and, except as provided below, no Rental shall abate as a result of such work. In exercising such right of entry, Landlord shall use diligent efforts to minimize the disruption of Tenant's business (provided that Landlord shall not be obligated to use overtime labor). During the twelve (12) months prior to the expiration of the Term of this Lease, Landlord may exhibit the Premises to prospective tenants and their representatives, for purposes including but not limited to inspection and measurement, and may place "For Lease" signs on the Premises.

Notwithstanding the foregoing, in the event in the exercise of Landlord's rights hereunder Tenant shall be unable to conduct and does not conduct its normal business operations in the Premises for three (3) consecutive days following written notice thereof to Landlord, then commencing on the fourth day following such notice, Tenant's payment of Minimum Annual Rental, Percentage Rental and regularly scheduled Additional Rent (other than utilities under Article XI) shall abate until such time as Landlord has rectified the cause of Tenant's inability to operate or Tenant reopens its business in the Premises, whichever shall first occur. The foregoing Rental abatement shall be inapplicable if such work by Landlord was necessitated by a breach of this Lease by Tenant or the negligence or willful misconduct of Tenant or its agents, employees, licensees or invitees.



**ARTICLE XX****TENANT'S TAXES AND TENANT'S PROPERTY****Section 20.01 TENANT'S TAXES.**

(a) Tenant shall pay, prior to delinquency, any and all Taxes and other taxes, assessments, levies, fees and other governmental charges and impositions of every kind or nature, regular or special, direct or indirect, presently foreseen or unforeseen or known or unknown, levied or assessed by the City and County of Honolulu, State of Hawaii, Federal government, or other governmental taxing or assessing authority, upon, against or with respect to (a) Tenant's leasehold interest in the Premises, (b) all furniture, fixtures, equipment, inventory and all other personal property of any kind owned by, or placed, installed or located in, within, upon or about the Premises by Tenant, any concessionaire or any previous tenant or occupant, (c) all alterations, additions, and improvements of whatsoever kind or nature, if any, made to the Premises by Tenant, any concessionaire or any previous tenant or occupant, , irrespective of whether any such tax is assessed, real or personal, and irrespective of whether any such tax is assessed to or against Landlord or Tenant, and (d) the conduct of Tenant's business in the Premises (collectively, "Tenant's Taxes"). Tenant shall provide Landlord with evidence of Tenant's timely payment of Tenant's Taxes upon Landlord's request. If at any time any of Tenant's Taxes are not levied and assessed separately and directly to Tenant (for example, if the same are levied or assessed to Landlord, or upon or against the building containing the Premises and/or the land underlying said building), Tenant shall pay to Landlord Tenant's share thereof as reasonably determined and billed by Landlord. In addition, to the extent Landlord must pay the same, Tenant shall pay to Landlord, as Additional Rent, together with each payment of the monthly installment of Minimum Annual Rental or any other payment hereunder actually or constructively received by Landlord which is subject to the State of Hawaii general excise tax on gross income, as the same may be amended, and all other similar taxes imposed upon Landlord with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, excluding federal or state net income taxes, whether imposed by the United States of America, State of Hawaii or any county, an amount (presently 4.712% of each such payment) which, when added to such rental or other payment, shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such rental or other payment had no such tax been imposed. It is the intent of this Section 20.01 and of the other provisions of this Lease to insure that the Minimum Annual Rental and other sums to be paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatever, except United States and State of Hawaii net income taxes, transfer and mortgage taxes, and developmental impact fees related to the initial construction of the Building or Building additions thereto, and the terms and conditions of this Lease shall be liberally construed to effect such purpose; provided, however, that, notwithstanding the foregoing, Landlord shall be responsible for all real estate taxes and real estate tax assessments due on the Project and the building of which the Premises are a part.

(b) Conveyance Tax. Tenant shall be responsible for paying when due, any conveyance tax imposed in connection with the assignment of this Lease or sublease of the Premises by Tenant and for preparing, executing and/or filing when due such documentation as may be necessary or proper in connection therewith. Landlord shall be responsible for any conveyance tax related to any transfer by Landlord of fee title ownership interest in the Project or the building of which the Premises are a part. Tenant's and Landlord's obligations as aforesaid shall survive the expiration or earlier termination of this Lease.

**Section 20.02 LOSS AND DAMAGE.**

Landlord shall not be responsible or liable to Tenant or to those claiming through Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying the Premises or any part of the area adjacent to or connected with the Premises, or for any loss or damage

resulting to Tenant or its Property from bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the foregoing) for any damage or loss of property within the Premises from any cause whatsoever unless due to Landlord's gross negligence, intentional misconduct, and Tenant hereby waives all claims against Landlord for any such loss or damage.

**Section 20.03 NOTICE BY TENANT.**

Tenant shall give immediate notice to Landlord in case of any damage to or destruction of all or any part of, or of accidents occurring within the Premises, or of defects therein or of any damage to or destruction of any inventory, fixtures or equipment within the Premises.

**ARTICLE XXI**

**HOLDING OVER**

**Section 21.01 HOLDING OVER.**

Tenant hereby waives any and all notice to vacate upon the expiration of the Term of this Lease. All holding over after expiration of the Term hereof shall be construed to be, at Landlord's option, a tenancy-at-sufferance or a tenancy from month to month pursuant to the terms of this Lease at an amount equal to one hundred percent (100%) of the Rental for the first 30 days and 150% of the Rental thereafter required to be paid by Tenant for the last full Lease Year of the Term of this Lease, prorated on a daily basis in the case of a tenancy-at-sufferance or on a monthly basis in the case of a tenancy from month to month, and otherwise on the same terms and conditions herein, as applicable. All holding over without Landlord's consent shall entitle Landlord to re-enter the Premises as provided by Governmental Requirements. Tenant shall also indemnify, defend and hold harmless Landlord from and against any and all additional loss, Claims (including, without limitation, attorneys' fees and expenses and claims by third parties) resulting directly, indirectly or consequentially from or related to any failure by Tenant to surrender the Premises in the manner and condition required by this Lease upon the expiration or earlier termination of the Term of this Lease, including, without limitation, any claims made by any proposed new tenant founded upon such failure.

**ARTICLE XXII**

**RULES AND REGULATIONS**

**Section 22.01 RULES AND REGULATIONS.**

Tenant agrees to comply with and observe all reasonable rules and regulations established by Landlord from time to time. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the rules and regulations were contained herein as covenants. In the case of any conflict between such rules and regulations and this Lease, this Lease shall be controlling. Tenant acknowledges and agrees that Landlord and/or its related entities may, from time to time, promulgate a separate set of rules and regulations for all or portions of any Mixed Use Development which, in the reasonable determination of Landlord and/or its related entities, reflect appropriate rules and regulations applicable to the specific uses of such Mixed Use Development. Landlord shall enforce all rules and regulations regarding such Mixed Use Development on a non-discriminatory basis.

**ARTICLE XXIII**

**QUIET ENJOYMENT**

**Section 23.01 LANDLORD'S COVENANT.**

Provided Tenant is not in default under this Lease beyond applicable notice and cure periods, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject nevertheless to the terms, provisions and conditions of this Lease, any mortgages and/or deeds of trust to which this Lease is subordinated, any ground or underlying leases, and all other agreements, encumbrances and other matters of public record.

**ARTICLE XXIV****SECURITY DEPOSIT****Section 24.01 SECURITY DEPOSIT.**

At or before Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum set forth in the Data Sheet as a security deposit and payment and performance guaranty. Landlord shall retain said sum throughout the Term of this Lease as security for the performance by Tenant of all of the terms, covenants and conditions of this Lease. (Such sum is occasionally referred to herein as the "deposit".) If Tenant defaults with respect to any provision of this Lease, beyond expiration of any applicable notice and cure periods, including but not limited to the provisions relating to the payment of Rental, Landlord may use, apply or retain all or any part of the deposit for the payment of any Rental or any other sum in default, or for the payment of any loss or damage which Landlord may suffer by reason of Tenant's default, or to compensate Landlord for any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default. In no event, except as specifically hereinafter provided, shall Landlord be obliged to apply the same to Rental or other charges in arrears or to damages for Tenant's failure to perform said covenants, conditions and agreements; however, Landlord may so apply the deposit, at its option. Landlord's right to bring a special proceeding to recover or otherwise to obtain possession of the Premises before or after Landlord's declaration of the termination of this Lease for non-payment of Rental or for any other reason shall not in any event be affected by reason of the fact that Landlord holds the deposit.

In the event that Landlord regains possession of the Premises, whether by special proceeding, reentry or otherwise, because of Tenant's default or failure to carry out the covenants, conditions and agreements of this Lease, Landlord may apply such deposit to all damages suffered through the date of said repossession and may retain the deposit to apply to such damages as may be suffered or shall accrue thereafter by reason of Tenant's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, or its successors or assigns, or any guarantor of Tenant hereunder, such deposit shall be deemed to be applied first to the payment of any Rental and/or other charges due Landlord for all periods prior to the institution of such proceedings, and the balance, if any, of such deposit may be retained by Landlord in partial liquidation of Landlord's damages.

The deposit shall not constitute a trust fund. Landlord shall not be obligated to keep such deposit as a separate fund but may commingle the deposit with its own funds. Tenant shall not be entitled to interest on the deposit. In the event Landlord applies the deposit in whole or in part, Tenant shall, within two (2) business days after written demand by Landlord, deposit sufficient funds to replenish the deposit to its original amount. Failure of Tenant to deposit such additional funds shall entitle Landlord to avail itself of the remedies provided in this Lease for non-payment of Rental by Tenant. If upon the expiration of the Term of this Lease or Tenant's vacating the Premises, there are no then existing or continuing monetary and non-monetary defaults by Tenant remaining uncured, and, all Minimum Annual Rental, Additional Rent and any and all other monetary sums required to be paid by Tenant as required per the terms hereof have been paid in full to Landlord by Tenant, the security deposit or any balance thereof, less any sums then due Landlord from Tenant under this Lease, shall be returned to Tenant (or, at Landlord's option to the

last assignee of Tenant's interest thereunder) within thirty (30) days following the later of the expiration of the Term of this Lease or Tenant's vacating the Premises.

In the event of any sale, transfer or leasing of Landlord's interest in the building whether or not in connection with a sale, transfer or leasing of the land to a vendee, transferee or lessee, Landlord shall have the right to transfer the unapplied part of the security and the interest thereon, if any, to which Tenant is entitled, to the vendee, transferee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof, and Tenant shall look solely to the new landlord for the return or payment of the same. The provisions of the preceding sentence shall apply to every subsequent sale, transfer or leasing of the building, and any successor of Landlord shall, upon a sale, transfer, leasing or other cessation of the interest of such successors in the building, whether in whole or in part, pay over any unapplied part of said security to any vendee, transferee or lessee of the building and shall thereupon be relieved of all liability with respect thereto. Except in connection with a permitted assignment of this Lease, Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security or any interest thereon to which Tenant is entitled, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

## ARTICLE XXV

### MISCELLANEOUS

#### **Section 25.01 WAIVER; ELECTION OF REMEDIES.**

One or more waivers by either party of the breach of any covenant or condition binding on the other hereunder shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No breach by either party of a covenant or condition of this Lease shall be deemed to have been waived by the other unless such waiver is in writing signed by the waiving party. The rights and remedies of both parties under this Lease or under any specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights and remedies which such party may have elsewhere under this Lease or at law or equity, whether or not such Section, subsection or clause expressly so states.

#### **Section 25.02 ENTIRE AGREEMENT.**

The Data Sheet and all exhibits and/or addenda, and/or riders, if any, attached to this Lease are hereby made a part of this Lease, with full force and effect as if fully set forth herein. This Lease supersedes all prior agreements between the parties regarding the Premises demised to Tenant hereunder, and sets forth all the covenants, promises, agreements, understandings and conditions between Landlord and Tenant concerning the Premises and there are no actual or implied covenants, promises, agreements, conditions or understandings, oral or written, between them, nor shall any of the same be used to interpret, construe, supplement or contradict this Lease. Landlord has made no representations or warranties regarding the profitability of the Premises, the Project, or the Mixed Use Development, and Tenant has not entered into this Lease in reliance on any such representations, warranties or financial projections prepared or furnished to Tenant by Landlord. Although the printed provisions of this Lease were drawn primarily by Landlord, the parties hereto agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties.

**Section 25.03 INTERPRETATION; USE OF PRONOUNS; AUTHORITY.**

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership or joint venture between the parties, it being understood and agreed that neither the method of computation of Rental nor any activities performed by Landlord or Tenant under this Lease shall create any partnership, joint venture, joint enterprise or other relationship between the parties hereto other than as landlord and tenant. Whenever herein the singular number is used the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If this Lease is signed on behalf of an entity, such entity is authorized to enter into and the signer is duly authorized to execute this Lease on behalf of such entity.

**Section 25.04 UNAVOIDABLE DELAYS.**

In the event either party hereto shall be delayed in the performance of its obligations by reason of strike; lockout; labor dispute; Act of God; or shall at any time be so delayed by reason of the diminution of power or power failure(s); restrictive Governmental Requirements; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty, or reasons of a similar nature (each, an "Unavoidable Delay") not the fault of the performing party delayed, then performance of such obligation shall be excused for the period of the delay and time for such performance shall be extended for a period equivalent to the period of such delay; provided, however, that the time for performance shall in no event be extended due to financial or economic problems of either party, their architects, contractors, agents or employees, or delay caused by the inability of architects, contractors, suppliers or other employees and agents to meet deadlines, delivery or contract dates (unless such inability is caused by Unavoidable Delay).

Except as otherwise expressly provided herein, the occurrence of an Unavoidable Delay shall not excuse Tenant's Rental obligations or excuse such obligations as this Lease may otherwise impose on the party to obey, remedy or avoid such event. Should Tenant's Work result in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not excuse Tenant's performance. It shall be a condition of either party's right to claim an extension of time as a result hereof that the claiming party notify the other in writing within ten (10) calendar days after the first occurrence of any such event, and the cause, specifying the nature thereof and the period of time contemplated or necessary for performance.

**Section 25.05 NOTICES.**

Any notice or demand to be given to or served under this Lease shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) when hand-delivered to the recipient party's address(es) set forth in the Data Sheet, (b) , on the date signed for or rejected or returned as undeliverable if sent by United States registered or certified mail (return receipt requested), postage prepaid, or (c) one (1) business day after such item is deposited for overnight delivery or two (2) business days after such item is deposited for second day delivery with Federal Express, UPS Express or other generally recognized overnight courier which guaranty one or two day delivery, as applicable, shipping charges prepaid, addressed to the recipient party's address(es) set forth in the Data Sheet, or at such other address as it shall have theretofore specified by written notice delivered in accordance herewith. No electronic (e-mail) notice shall suffice to satisfy this Section 25.05.

**Section 25.06 CAPTIONS AND SECTION NUMBERS.**

The captions, section numbers, article numbers and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any provisions of this Lease.

**Section 25.07 BROKER'S COMMISSION.**

Landlord and Tenant represent and warrant to each other that there are and shall be no claims for brokerage commissions or finder's fees in connection with this Lease, except for Colliers International whose commission shall be paid by Landlord, and each party agrees to defend, indemnify the other and hold the other harmless from all liabilities, costs and expenses (including, without limitation, attorneys' fees and costs incurred in all tribunals and whether or not legal proceedings have been commenced), directly, indirectly or consequentially arising from any claim therefor by a person or entity claiming through the indemnifying party. Such agreement shall survive the expiration or earlier termination of this Lease.

**Section 25.08 NO RECORDING.**

Neither party shall record this Lease or any short form or memorandum of this Lease in a public record.

**Section 25.09 FINANCIAL STATEMENTS.**

Tenant has provided Landlord as of the date of this Lease with statements reflecting its financial condition as an inducement to Landlord to enter into this Lease, and Tenant hereby represents and warrants that its financial condition has not materially changed since the date of such statements. Upon Landlord's written request in connection with a proposed sale, transfer or financing transaction with respect to all or any portion of the Project or the Mixed Use Development, Tenant shall promptly furnish Landlord, from time to time, but not more frequently than once in any calendar year, with financial statements reflecting Tenant's then current financial condition and written evidence of its controlling ownership. Landlord acknowledges that, if Tenant is a "publicly traded" company or is wholly owned, directly or indirectly, by a publicly traded company and subject to the reporting requirements of Section 14 of the Securities Exchange Act of 1934 (as amended), providing online access to the reports Tenant is required to file with the Securities and Exchange Commission (and so long Landlord is actually able to access such reports by such online access provided by Tenant) shall suffice for purposes of this Section 25.09.

**Section 25.10 TRANSFER OF LANDLORD'S INTEREST.**

In the event of any transfer of Landlord's interest in the Premises (including a so-called sale-leaseback), the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer, provided that (a) the interest of the transferor, as Landlord, in any funds then in the hands of Landlord in which Tenant has an interest shall be turned over, subject to such obligations, to the transferee; (b) notice of such sale, transfer or lease shall be given to Tenant as required by Governmental Requirements; and (c) the transferee assumes, in writing, the obligations of Landlord hereunder which arise from and after the date of such transfer.

**Section 25.11 FLOOR AREA; GLA; RE-MEASUREMENT.**

(a) "Floor Area" means, with respect to all leasable area in the Project, the aggregate number of square feet of floor space of all floor levels therein, including any mezzanine space, measured from (i) the outside faces of all perimeter walls thereof other than any party wall separating such premises from other leasable premises, (ii) the center lines of any such party wall, (iii) the outside face of any interior wall, and (iv) the building and/or leaseline adjacent to any entrance to such premises.

(b) "GLA" means Floor Area leased and occupied by tenants with lease terms in excess of one (1) year, and in determining the GLA of the Project, there shall be excluded therefrom the Floor Area of all premises occupied for the operation of a governmental facility; provided that in no event shall GLA be less than eighty-five percent (85%) of the aggregate Floor Area of the Project. No deduction or exclusion from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts or other interior construction or equipment. The GLA in effect for the whole of any calendar year shall be the average of the GLA in effect on the first day of each calendar month during such calendar year.

(c) "Proportionate Share" means the percentage produced by dividing the Floor Area of the Premises by the GLA.

(d) The Floor Area of the Premises shall be as set forth in the Recitals.

**Section 25.12 INTEREST ON PAST DUE OBLIGATIONS.**

Any amount due from either party to the other which is not paid when due shall bear interest at the lesser of (a) the "Prime Rate" as published in Wall Street Journal plus three percent (3%); or (b) the highest rate then allowed under the usury laws of the state where the Project is located from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by either party.

**Section 25.13 LIABILITY OF LANDLORD AND EXCULPATION.**

Notwithstanding anything in this Lease to the contrary, Landlord and Tenant specifically understand and agree, such agreement being a primary consideration for the execution of this Lease by Landlord, that if Landlord shall fail to perform any covenant, term or condition of this Lease to be performed by Landlord and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the net proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the Project, as the same may then be encumbered, and out of net rents or other income from the Project receivable by Landlord, as the same may then be encumbered, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Project subject, nevertheless to the rights of Landlord's mortgagee, and neither Landlord nor any of the partners, managers, members, officers, directors or shareholders shall be liable for any deficiency. No direct or indirect member, shareholder, partner, principal, affiliate, employee, officer, director, agent or representative of Landlord, (each, a "Related Party"), shall have any personal liability for, nor be joined as a party to, any action with respect to any claim of any nature which Tenant may bring against Landlord. The Landlord entity is the sole entity to which Tenant may look to make any claim or collect any judgment, and any reference to any Related Party within this Lease shall not extend any liability to such Related Party. Notwithstanding any contrary provision herein, Landlord shall not be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

**Section 25.14 ACCORD AND SATISFACTION; LANDLORD CURE.**

Payment by Tenant or anyone occupying the Premises by, through or under Tenant or receipt by Landlord of a lesser amount than the Rental herein stipulated shall be deemed to be on account of Tenant and on account of the earliest Rental due. No endorsement or statement on any check or any correspondence accompanying any payment as Rental shall be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance or to pursue any other remedy provided in this Lease or by law or in equity. In no event shall Tenant be entitled to any liquidated damages or reduction, offset or credit against any element of Rental hereunder (each, a "Deduction") unless and until Landlord has received applicable written notice and has failed to cure the act, omission or condition (each, a "Cause") giving rise to such Deduction within the time period specified herein for the cure of such Cause. In the event this Lease does not otherwise specify such notice requirement and/or specify a cure period for a particular Cause, Tenant shall provide written notice to Landlord and Landlord shall be afforded a period of ten (10) business days to cure such Cause.

**Section 25.15 EXECUTION OF LEASE; COUNTERPARTS; NO OPTION.**

The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of an option for Tenant to lease, or otherwise create any interest by Tenant in the Premises or any other premises in the Project. Execution of this Lease by Tenant and the return of

same to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has executed and delivered this Lease to Tenant. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart.

**Electronic Signatures.** Landlord and Tenant may to enter into this Lease with electronic signatures and consent to entering into this Lease with electronic signatures. Landlord and Tenant hereby agree that the electronic signature of Landlord and Tenant to this Lease shall be as valid as an original handwritten signature of such party to this Lease and shall be effective to bind such party to this Lease. Landlord and Tenant agree that this Lease, as signed by Landlord and Tenant with electronic signatures, shall be deemed (i) to be "written" or "in writing," (ii) to have been signed by the Landlord and Tenant to the same extent as if signed by the Landlord and Tenant with original handwritten signatures, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files, even though containing electronic signatures. Such paper copies or "printouts" of this Lease as signed with electronic signatures, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the Landlord and Tenant to the same extent and under the same conditions as other original business records containing original handwritten signatures and created and maintained in documentary form. Neither Landlord or Tenant shall contest the admissibility of true and accurate copies of this Lease as signed by the Landlord and Tenant with electronic signatures on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means an electronic symbol or process attached to or logically associated with a contract or other record intended to serve as a manual signature.

In order to facilitate the agreements contemplated by this Lease, transmission of photocopy signatures or signatures transmitted via e-mail in a "PDF" format may be used in place of original signatures on this Lease. Each party intends to be bound by such party's photocopy or "PDF" format signature on this Lease, is aware that the other parties are relying on such party's photocopy or "PDF" format signature, and hereby waives any defenses to the enforcement of this Lease based upon the form of signature. Promptly following any transmission of photocopy signatures or e-mail transmittal of "PDF" format signatures, the parties shall deliver to the other parties the original executed Lease by reputable overnight courier to the addresses set forth on the Data Sheet, or such other address(es) as any party may designate by written notice.

**Section 25.16 GOVERNING LAW; ENFORCEABILITY.**

This Lease shall be governed by and construed in accordance with laws of the state of Hawaii. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent be invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions of this Lease shall be deemed valid and enforceable to the full extent.

**Section 25.17 SUCCESSORS.**

All rights and liabilities herein given to, or imposed upon, the parties to this Lease shall inure to and be imposed upon their respective heirs, executors, administrators, personal representatives, successors and assigns; and if there shall be more than one Tenant entity, then each entity that executes this Lease as Tenant shall all be bound solidarily for the full payment of all amounts due under this Lease and the full performance of all of the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless such assignment complies with Article XIII.

**Section 25.18 SURVIVAL OF OBLIGATIONS.**

All obligations of Tenant under this Lease which cannot be ascertained to have been fully performed prior to the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.



**Section 25.19 CERTAIN RULES OF CONSTRUCTION.**

Time is of the essence in Tenant's performance of this Lease and all dates and time periods contained in this Lease. Notwithstanding the fact that certain references elsewhere in this Lease to acts required to be performed by Tenant hereunder, or to breaches or defaults of this Lease by Tenant, omit to state that such acts shall be performed at Tenant's sole cost and expense, or omit to state that such breaches or defaults by Tenant are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by Tenant pursuant to this Lease shall be performed or fulfilled at Tenant's sole cost and expense, and all breaches or defaults by Tenant hereunder shall be deemed material. Tenant shall be fully responsible and liable for the observance and compliance by its concessionaires of and with all the terms and conditions of this Lease, which terms and conditions shall be applicable to subtenants and Tenant's concessionaires as fully as if they were the Tenant hereunder; and failure by a subtenant or Tenant's concessionaire fully to observe and comply with the terms and conditions of this Lease shall constitute a default hereunder by Tenant if such failure is not cured within the applicable notice and cure period. Nothing contained in the preceding sentence shall constitute a consent by Landlord to any concession, subletting or other arrangement proscribed by Article XIII.

**Section 25.20 CONFIDENTIALITY.**

Any and all information contained in this Lease or provided to or by Tenant and/or Landlord by reason of the covenants and conditions of this Lease, economic or otherwise, shall remain confidential between Landlord and Tenant and shall not be divulged to third parties; provided, however Landlord and Tenant shall be permitted to divulge such information in connection with any contemplated sale, transfer, assignment, encumbrance or financing arrangement of (i) Landlord's interest in the Project and/or the Mixed Use Development or Tenant's interest in this Lease or a sublease of the Premises or (ii) in connection with any administrative or judicial proceedings where either party may be required to divulge such information or (iii) otherwise as reasonably necessary for the operation of the Premises, the Project, the Mixed Use Development or the administration of Landlord's or Tenant's business. This Section shall not prohibit Tenant from making reasonably necessary disclosures of the provisions of this Lease to Tenant's employees, representatives, partners, sponsors, and potential sublessees, assignees or purchasers, and as required in any judicial proceeding.

**Section 25.21 ATTORNEYS' FEES.**

If either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local Governmental Requirements, the prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

**Section 25.22 WAIVER OF TRIAL BY JURY.**

Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. **THEREFORE, TO THE EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR OTHER HEARING BROUGHT BY LANDLORD AGAINST TENANT OR TENANT AGAINST LANDLORD OR ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT,**

**TENANT'S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE OR REGULATION, EMERGENCY OR OTHERWISE, NOR OR HEREAFTER IN EFFECT.**

**Section 25.23 REAL ESTATE INVESTMENT TRUST; LANDLORD'S ALLOCATIONS.**

(a) If the ownership of the Project is in a Real Estate Investment Trust, then Landlord and Tenant agree that all Rental paid to Landlord under this Lease shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). Should the Code or the Regulations, or interpretations thereof by the Internal Revenue Service contained in Revenue Rulings, be changed so that any Rental no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the Regulations relating thereto, such Rental shall be adjusted so that it will so qualify; provided, however, that any adjustments required pursuant to this Section 25.23 shall be made so as to produce the equivalent (in economic terms) Rental as payable prior to such adjustment.

(b) The parties hereto acknowledge that all Rental payable hereunder is intended, in part, to reimburse Landlord for all monies expended by Landlord on (i) tenant allowances or tenant improvements made or paid for by Landlord in order to prepare the Premises for occupancy by Tenant and/or to induce Tenant to execute this Lease and (ii) leasing commissions (if any) paid by Landlord with respect to this Lease, whether to brokers representing Landlord (including employees of Landlord's affiliates) or Tenant. For Landlord's internal accounting purposes, Landlord may allocate, at Landlord's sole and absolute discretion, such Rental to such tenant allowance/improvement and leasing commission expenditures in such proportions as Landlord may deem appropriate. In addition, should Tenant pay less hereunder than the full Proportionate Share of Taxes and/or Operating Expenses allocable to the Premises (whether due to limitations on such amounts hereunder or if this Lease is a so-called "gross" lease), Landlord may similarly allocate such Rental to such Taxes and Operating Expenses in such proportions and at such times as Landlord may deem appropriate, in Landlord's sole and absolute discretion.

**Section 25.24 NON DISCRIMINATION.**

It is Landlord's policy to comply with all applicable Governmental Requirements prohibiting discrimination in employment based on race, age, color, sex, creed, national origin, disability, religion, ancestry, sexual orientation or affectional preference, marital status or other protected classification (collectively, "Protected Status"). It is further intended that the Project shall be developed and operated so that all prospective tenants thereof, and all customers, employees, licensees and invitees of all tenants shall have equal opportunity to obtain all the goods, services, accommodations, advantage, facilities and privileges of the Project without discrimination because of Protected Status. To that end, Tenant shall comply with all Governmental Requirements prohibiting discrimination or segregation by reason of Protected Status and shall not discriminate or impose any restriction in the conduct and operation of its business in the Premises against any person or group of persons because of any Protected Status.

**Section 25.25 ADVERTISING.**

Tenant agrees and acknowledges following its written consent, which shall not be unreasonably withheld, delayed or conditioned, that Landlord may utilize Tenant's name, trade-name, and logos in Landlord's advertising of the Project including, without limitation, in conjunction with Project third-party sponsorships. Notwithstanding the foregoing, Landlord shall be permitted to use Tenant's Trade Name in Project leasing materials, any corporate newsletter or industry publication in connection with the description of, advertising and/or promotion of the Project, on Project directories and on the Project website without first obtaining Tenant's consent.

**Section 25.26 OFAC.**

Tenant warrants and represents to Landlord that, to the best of Tenant's knowledge, Tenant is not, and shall not become, a person with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any applicable law, executive order (including, but not limited to, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action, and is not and shall not knowingly engage in any dealings or transactions or otherwise knowingly be associated with such persons.

Landlord warrants and represents to Tenant that, to the best of Landlord's knowledge, Landlord is not, and shall not become, a person with whom Tenant is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any applicable law, executive order (including, but not limited to, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action, and is not and shall not knowingly engage in any dealings or transactions or otherwise knowingly be associated with such persons.

**Section 25.27 MIXED USE DEVELOPMENT.**

(a) Generally. The Project is located in Ward Village, an urban mixed-use development located in the City and County of Honolulu, State of Hawaii containing residential, office and/or hotel uses which may be located on ground level and/or above retail and commercial buildings (Ward Village also referred to as the "Mixed Use Development").

(b) Maintenance and Repair. Landlord shall be responsible to maintain and repair any common areas and facilities of the Project, except Tenant shall be responsible to perform at its sole cost, any such repairs necessitated by or arising from, the negligence, willful misconduct or omissions of Tenant shall be Tenant's responsibility .

**Section 25.28 LANDLORD'S SPECIAL TERMINATION RIGHT.**


As a material inducement to Landlord's willingness to enter into this Lease, Tenant agrees that Landlord, its successors, assigns or designees shall have the right, exercisable at any time during the term of this Lease, but only on or after January 1, 2025, to terminate this Lease solely for the purposes of redeveloping, remodeling, removing or renovating the building of which the Premises are a part, the Project or any portion thereof; provided, however, that Landlord, its successors, assigns or designees shall provide Tenant with no less than one hundred eighty (180) days' prior written notice of said termination of this Lease.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Landlord and Tenant, personally or by their duly authorized agents, have executed this Lease as of the day and year first above written.

LANDLORD:

**VICTORIA WARD, LIMITED,**  
a Delaware corporation

By:  \_\_\_\_\_  
David O'Reilly  
Chief Executive Officer

TENANT:

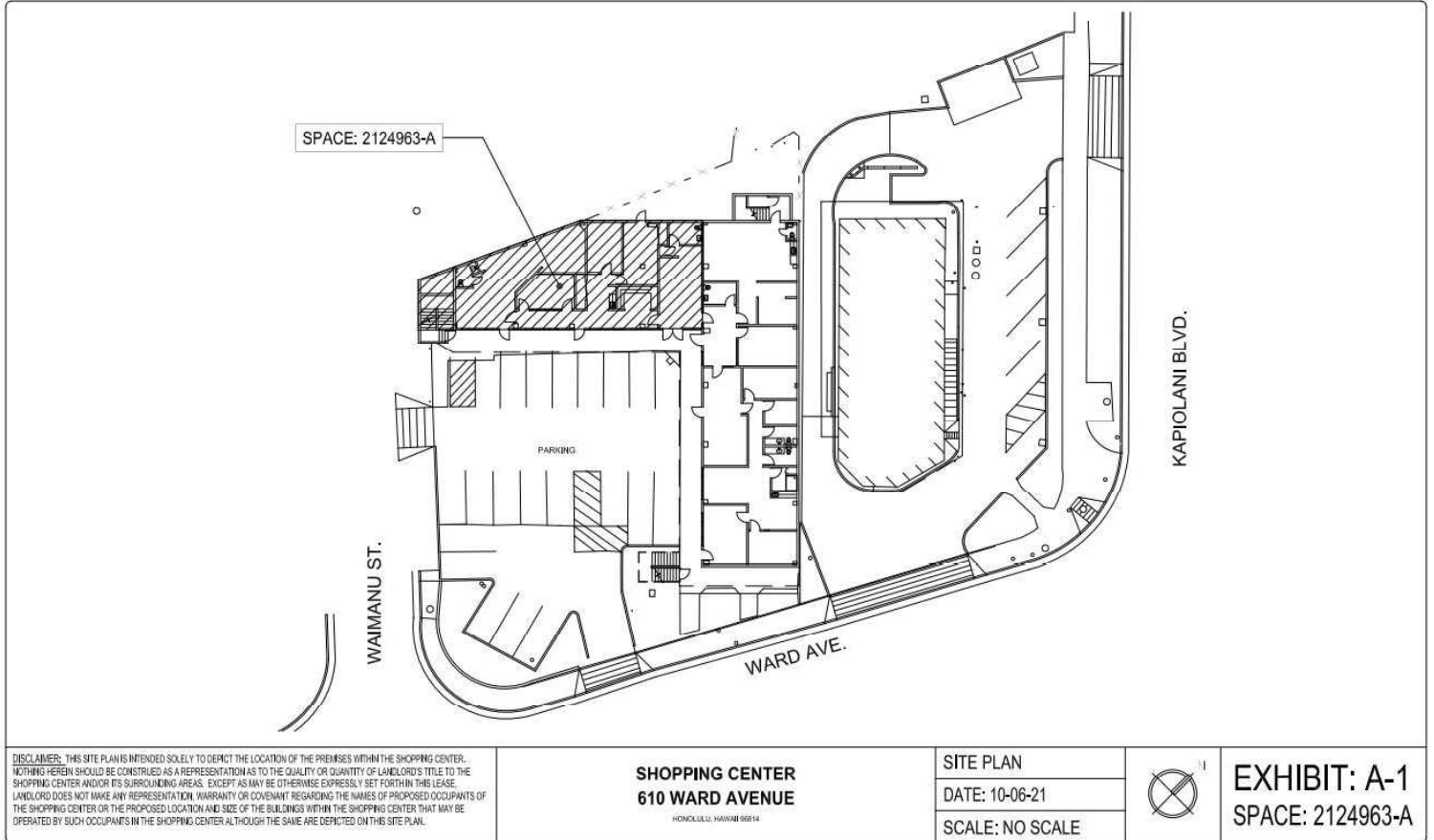
**ZIMMER US, INC.,**  
a Delaware corporation

By:  \_\_\_\_\_  
Name: Donald Ritter  
Title: Sales Operations VP

**EXHIBIT A-1**

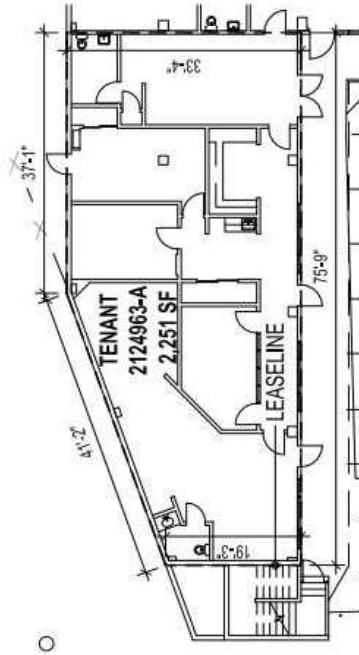
**SITE PLAN**

This **Exhibit A-1** is provided for informational purposes only and is intended to be only an approximation of the layout for the Project and shall not be deemed to constitute any representation by Landlord as to the identity of any tenant or occupant within the Project or the Mixed Use Development or the exact layout or configuration of the Project or the Mixed Use Development.



**EXHIBIT A-2**

**PREMISES LAYOUT**



DISCLAIMER: THIS EXHIBIT IS DIAGRAMMATIC AND IS INTENDED TO CONCEPTUALLY IDENTIFY THE PREMISES AND MAY BE SUBJECT TO CHANGE. IT DOES NOT PURPORT TO SHOW EXACT DIMENSIONS NOR THE FINAL LOCATION OF ANY MECHANICAL, ELECTRICAL, PLUMBING, STRUCTURAL OR ARCHITECTURAL ELEMENTS. ALL SITE CONDITIONS ARE TO BE FIELD VERIFIED BY TENANT OR TENANT'S ARCHITECT. PREMISES DIMENSIONS, UNLESS OTHERWISE NOTED, ARE MEASURED FROM CENTERLINE OF SHARED PARTITIONS AND COLUMN GRIDS OR IN THE CASE OF SHARED COMMON AREA OR EXTERIOR WALLS, THE OUTSIDE FACE OF PARTITIONS OR WALLS. LANDLORD RESERVES THE RIGHT TO ADD, ELIMINATE OR MODIFY ANY SUCH ELEMENT WITHOUT PRIOR NOTICE.

**610 WARD AVENUE**  
 HONOLULU, HAWAII 96814

LEASE OUTLINE DRAWING  
 DATE: 10-08-21  
 SCALE: 1" = 20'-0"

**EXHIBIT: A-2**  
**SPACE: 2124963-A**



**EXHIBIT B****DESIGN AND CONSTRUCTION OF THE PREMISES – AS-IS**

This Exhibit B is part of the Lease between Landlord and Tenant.

**I. GENERAL REQUIREMENTS AND PROVISIONS**

The applicable provisions of this Lease, including this Exhibit B and the "Tenant Design Criteria Program" (consisting of the Tenant Design Criteria and Tenant Technical Design Criteria, Landlord Shell Construction Documents, and the Construction Rules & Regulations (as hereinafter defined)) are hereinafter collectively referred to as "Tenant's Construction Requirements". [COPIES MUST BE PROVIDED] In the event of a conflict between the body of this Lease (including this Exhibit B) and the Tenant Design Criteria Program, the provisions of the former shall govern. Tenant's Work and all portions and aspects thereof must strictly comply with Tenant's Construction Requirements. The term "Construction Rules & Regulations" means, collectively, (i) all applicable laws, ordinances, codes, regulations and the requirements of all authorities having jurisdiction over the Premises; (ii) all applicable standards of the American Insurance Association, the National Electrical Code (latest edition), the American Society of Heating, Refrigeration and Air Conditioning Engineer's Guide (latest edition), and Landlord's insurance carrier; and (iii) Tenant's Final Construction Documents (as hereinafter defined), as approved by Landlord not to be unreasonably withheld. In the event of a conflict between any of such requirements, the most stringent requirement shall govern each aspect of Tenant's Work.

**II. LANDLORD'S WORK AT LANDLORD'S EXPENSE**

Landlord shall deliver the Premises in AS-IS, WHERE LOCATED condition, wherein certain improvements, in part or whole, may have been installed or constructed by others. As part of the base building minimum requirements for Premises delivery, the following, shall be Landlord's responsibility to provide and shall be delivered in AS-IS, WHERE LOCATED condition:

- A. Roof: Repair apparent deficiencies to existing roof system, and install silicone roof coating over approximately half of total existing roof system to ensure a watertight condition at roof.
- B. HVAC: Provide a complete and functional split HVAC system with exterior ground-mounted condenser units and interior ducted air handlers.
- C. Electric: Provide a functional complete electrical system for the Premises including a point of connection from service provider, electrical meters, feeder wires, distribution breaker, electrical panels, lighting and power outlets.

**III. LANDLORD'S WORK AT TENANT'S EXPENSE**

Landlord may, if agreed to by Tenant in writing, provide items of construction, work or services for the Premises as a part of Landlord's Work for which Tenant shall reimburse Landlord as Additional Rent the cost thereof plus fifteen percent (15%) for administration ("Landlord's Work at Tenant's Expense"). If any of Tenant's Work necessitates any work outside of the Premises, Landlord, at Landlord's sole election, may (i) perform such work as Landlord's Work at Tenant's Expense, or (ii) require Tenant to perform the work at Tenant's sole cost and expense.

**IV. TENANT'S WORK AT TENANT'S EXPENSE**

Tenant's Work shall include to the extent consistent with Tenant's Final Construction Documents, but not necessarily be limited to, the following, all of which shall be performed by Tenant at Tenant's expense and in accordance with the Tenant's Construction Requirements. Tenant shall contract with and employ only the Landlord's approved roofing contractor for any required roof work.

- A. Demolition: All demolition as may be required to facilitate Tenant's Work.

- B. Floor Slab: Tenant to cut and patch in accordance with Landlord's specifications for any slab modifications that are made by Tenant. Provide vapor barrier, base course gravel and concrete slab for removed or modified Landlord provided slab per Tenant engineer's specifications.
- C. Storefront and exterior of building: structural, storefront and exterior modifications to building must be approved in writing by Landlord not to be unreasonably withheld.
- D. Signage: design, furnish and install all interior and exterior Tenant signage including all foundations, structural and electrical requirements as applicable. Main, blade and door signs required. If illuminated, Tenant's to connect main sign to Tenant's power and install a 24-hour timer set for Ward Village operation hours.
- E. Interior Finishes and Construction: design, furnish and install all interior walls, ceiling, finishes, fixtures and equipment.
- F. Plumbing: design, furnish and install complete water, sanitary and vent distribution systems from the existing and city provided points of connection, including a sub-water meter (per Landlord's specifications and specified location) and all plumbing fixtures from existing connection point into and throughout the Premises.
1. Gas: design, furnish and install complete gas distribution from the existing Hawaii Gas connection point to and throughout the Premises. Tenant is required to supply and install a seismic gas shut off valve, manifold (if required), all piping, shut offs and equipment. Meter coordination (w/ Hawaii Gas), installation and service connection to be by the Tenant at Tenant Expense; including all utility company charges.
- G. Thermal and Acoustical Insulation: provide as required.
- H. HVAC: design, furnish and install a complete mechanical/HVAC system or modify the existing system, if needed. Tenant HVAC system to be connected to Tenant's electric meter. Provide shut off valve, interior/exterior units, all equipment, specialty or additional equipment as needed, duct work, exhaust systems, fresh air economizer, connections, thermostats, controls, tie-ins, diffusers, visual screening, programming and start up as required for a fully operational and code compliant system; all at Tenant's expense.
1. Fresh Air: design, furnish and install exterior louver, if necessary, in a location and specification approved in writing by Landlord. Tenant shall be required to block off and insulate all unused portions of the louver utilizing galvanized sheet metal caps, secured in place with metal fasteners and sealed airtight. All exterior facing surfaces of the caps shall be painted matte black so as to not be visible from the exterior of the building through the louver. All unused louver section caps shall be insulated with a minimum of 2" of rigid fiberglass duct insulation board on the interior surface of the sheet metal cap.
  2. Exhaust Air: Provide and install exhaust air ducting to roof location, including exhaust fan or cabinet fan with exhaust cap, grilles and controls. No exhaust at ground level, unless otherwise approved by Landlord. Tenant's with kitchen exhaust systems may be required to install scrubber unit if required by AHJ. Air exhausted from the Premises must not produce any odors. If Tenant generates odors, they may be required to provide additional engineered air filtration system(s).
- I. Facade: inspect and repair existing exterior façade, roof, walls and building systems, in order to provide premises with watertight condition.
- J. Electrical: design, furnish and install complete electrical system for the Premises including, but not limited to, service from provider, electrical meter (Tenant to coordinate directly with HECO), conduit, feeder wires, distribution breaker, equipment, transformer, electrical panels, lighting and power outlets, signage and all electrical distribution to meet Landlord's requirements. Any and all modification, upgrades, or additions to existing electrical system shall be completed by Tenant at Tenant's expense.
- K. Fire Protection: design, furnish, modify and install complete fire protection system throughout the Premises. Notice of work form to be sent to Landlord representative 3-days prior to shut down, fire watch, and Landlord's fire alarm company shall be present at all fire sprinkler shutdowns to accommodate drain/refill, all by Tenant at Tenant's expense.



- L. Fire Alarm: design, furnish and install fire alarm system. Tenant to install panel within the premises and connect fire alarm system to Landlord's central fire alarm system to notify Landlord of a fire alarm notification. Tenant must use Landlord's fire alarm vendor for all Tenant Work. Tenant shall be responsible for all fire alarm monitoring, inspections, coordination with Landlord's fire alarm vendor, and fire department notification. Tenant may not open for business without final fire alarm inspections and sign off by AHJ.
- M. Communications: provide all telephone, conduit or cable trays, data wiring, point of sale and security systems from service provider connection point to and throughout the Premises.
- N. Barricade: provide construction barricade as required during construction.
- O. Acoustics: space has an open ceiling; Tenant shall prevent the transmission of all sound and noise in excess of 40 decibels from the Premises or if noise is disturbance to other businesses. Tenant agrees that the Landlord may utilize a sound-level meter to verify Tenant's compliance with the preceding sentence. In the event that Landlord determines that Tenant is not in compliance, Tenant shall immediately resolve the condition in a manner approved by Landlord and subject to confirmation by an acoustical engineer, all at Tenant's expense.
- P. Additional Items: Tenant may be required to provide additional items of work or services as a part of Tenant's Work. If applicable, all such work or services shall be provided in accordance with Tenant's Construction Requirements
- Q. Permits, Fees, etc.: Tenant's Work shall include the procurement of all necessary permits, licenses, variances and utility services required to facilitate Tenant's construction and occupancy of the Premises, and the payment of all fees and taxes associated with such permits, licenses, variances and utility services as may be required by public authorities and serving utility companies. Tenant shall make all necessary applications, provide all necessary information, pay all required monies and take all necessary actions to obtain such items from the applicable jurisdictional authorities and serving utility companies.

V. PLANS

- A. Within 15 calendar days after the date of this Lease, or such other date as may be reasonably required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense:
  - 1. If applicable for Tenant's Work, engage the services of an architect and mechanical, structural, HVAC, plumbing, electrical and sprinkler system engineers, all of which shall be licensed in the state of Hawaii ("Tenant's Architect and Engineers") for the purpose of preparing design documents and specifications for Tenant's Work; and
  - 2. Notify Landlord of the identity of Tenant's Architect and Engineers.
- B. Tenant agrees that Tenant's Architect and Engineers may act as Tenant's agents for all Tenant design and plan development purposes and obligations of this Exhibit B. Tenant shall pay all fees of such architect and engineers.
- C. Within 45 calendar days after the date of this Lease, or such other date as may be reasonably required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense and, if applicable to Tenant's Work, cause Tenant's Architect and Engineers to coordinate, prepare and deliver to Landlord for Landlord's approval not to be unreasonably withheld, one complete pdf file of preliminary drawings, sample boards, and all other submittals for Tenant's Work including Tenant's proposed sign(s), in accordance with the Tenant Criteria Manual.
- D. Tenant covenants and agrees that the preliminary drawings shall be prepared in strict accordance with Tenant's Construction Requirements. Landlord shall promptly review the preliminary drawings and notify Tenant's Architect of the matters, if any, of which Landlord disapproves, acting reasonably and in good faith. Within ten (10) calendar days after receipt of any such notice from Landlord, Tenant shall cause the preliminary drawings to be revised in such manner as is required to obtain Landlord's approval and shall submit the revised preliminary drawings for Landlord's reasonable approval. Upon Landlord's approval of the preliminary drawings, Landlord shall cause one set to be initialed on Landlord's behalf, thereby evidencing Landlord's approval. Landlord shall return such set to Tenant or Tenant's Architect. The

preliminary drawings bearing Landlord's approval shall become and are hereinafter referred to as the "Preliminary Design Documents".

- E. Within 15 calendar days after the date of Landlord's approval of the Preliminary Design Documents, or such other date as may be reasonably required by Landlord for Tenant to achieve its Rental Commencement Date, Tenant shall, at Tenant's sole cost and expense, if applicable to Tenant's Work, cause Tenant's Architect and Engineers to coordinate, prepare and deliver to Landlord, in one package, one complete electronic set in .pdf format, of all applicable final architectural, structural, mechanical (HVAC and plumbing), electrical and sprinkler system working drawings and specifications as and to the extent required for Tenant's Work.
- F. Tenant covenants and agrees that, if applicable to Tenant's Work, the proposed final plans and specifications (the "Proposed Final Construction Documents") will be prepared in conformity to the Preliminary Design Documents and in strict accordance with Tenant's Construction Requirements. The Preliminary Design Documents and the Proposed Final Construction Documents may also be referred to in the Lease as Plans and Specifications. Landlord shall promptly review the Proposed Final Construction Documents and notify Tenant's Architect of the aspects, if any, of which such Proposed Final Construction Documents fail to conform to the Preliminary Design Documents and/or Tenant's Construction Requirements, and in connection therewith, Landlord shall not unreasonably withhold approval therefor. Within ten (10) calendar days after receipt of any such notice from Landlord, Tenant shall, at Tenant's sole cost and expense, cause the Proposed Final Construction Documents to be revised in such manner as is required to obtain Landlord's reasonable approval and shall submit one complete electronic set and a one full-size set of hard copies of the revised Proposed Final Construction Documents for Landlord's approval, utilizing such digital media form as Landlord may specify. Upon Landlord's determination that the Proposed Final Construction Documents (if and as so revised) conform to the Preliminary Design Documents and Tenant's Construction Requirements, Landlord shall cause one set of such Proposed Final Construction Documents to be initialed on Landlord's behalf, thereby evidencing Landlord's approval thereof. Landlord shall return such set to Tenant or Tenant's Architect. Such Proposed Final Construction Documents bearing Landlord's final approval shall become, and are herein referred to as, the "Final Construction Documents" and may be referred to elsewhere in the Lease as Approved Plans and Specifications. Tenant shall commence Tenant's Work, including acquiring applicable permits for such work, promptly after Landlord's approval of the Final Construction Documents, but not prior to the date that the Premises are in the condition for delivery by Landlord.
- G. After Landlord has approved the Final Construction Documents, Tenant shall promptly submit same to the applicable governmental authorities along with all fees and documents required to obtain all permits and approvals necessary for Tenant's performance of Tenant's Work. Upon its receipt of all comments and changes required by any governmental authority, Tenant shall promptly revise the Final Construction Documents to reflect same, which revised documents Tenant shall promptly submit to Landlord for Landlord's written approval. Tenant shall promptly submit the revised Final Construction Documents to the applicable governmental authorities and shall thereafter diligently pursue the issuance of all permits and approvals necessary for Tenant's performance of Tenant's Work. After Landlord's approval of the Final Construction Documents, no changes shall be made in the Final Construction Documents except with the prior written approval of Landlord, such approval not to be unreasonably withheld. However, in the course of construction Landlord or Tenant may make such changes in, on or about the building or the Premises as may be required as a result of "as-built" conditions. During all phases of plan development and prior to bidding plans or commencing construction, Tenant or Tenant's Architect and Engineers shall make a physical on-site inspection of the Premises to verify the "as-built" location, physical conditions and dimensions of the Premises and conformance of the Final Construction Documents therewith. Failure to do so shall be at the sole risk and expense of Tenant. Landlord's review and approval of Tenant's plans, working drawings and specifications is for compliance with Landlord's criteria only, and this approval does not relieve Tenant of responsibility for compliance with the Lease, field verification of dimensions and existing conditions, discrepancies between Final Construction Documents and "as-built" conditions of the Premises, coordination with other trades, job conditions and compliance with all governing codes and regulations applicable to Tenant's Work. No responsibility for proper engineering, safety, design of facilities or compliance with all applicable governing codes and regulations is implied or inferred on the part of Landlord by any such approval.

## VI. GENERAL CONSTRUCTION REQUIREMENTS

- A. Tenant shall engage the services of a general contractor licensed in the state of Hawaii ("Tenant's General Contractor") for the purpose of constructing the Premises and performing related services as required to complete Tenant's Work. Tenant's General Contractor shall be bonded and insured as required under the provisions of this Lease. By this reference, Tenant agrees not to act as its own general contractor and further agrees that Tenant's General Contractor can act as Tenant's agent for all Tenant construction purposes and obligations of this Exhibit B.
- B. Each contractor and subcontractor participating in the construction of Tenant's Work shall be duly licensed in the state of Hawaii, and each contract and subcontract shall contain the guaranty of the contractor or subcontractor that the portion of Tenant's Work covered thereby will be free from any and all defects in workmanship and materials for the period of time which customarily applies in good contracting practices, but in no event less than one year after the completion of Tenant's Work. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's Work shall be written so that they shall inure to the benefit of Landlord and Tenant as their respective interests may appear and can be directly enforced by either, and Tenant shall give to Landlord all assignments or other assurances necessary to effectuate the same.
- C. Tenant shall, at least 5 business days prior to the commencement of construction, schedule an onsite pre-construction meeting with Landlord's Tenant Coordinator and provide the following information:
1. The name and address of Tenant's General Contractor that Tenant intends to engage for the construction of the Premises, including names and telephone numbers of on-site and off-site representatives.
  2. A schedule setting forth key dates relating to Tenant's construction.
  3. Copies of insurance certificates required by Article VIII below.
  4. A copy of Tenant's written contract with Tenant's General Contractor and, to the extent consistent with Tenant's Work, an itemized statement of estimated construction costs, including architectural, engineering and contractor's fees.
  5. A copy of the building permit for all of Tenant's Work if required, which may be supplied within five (5) days of construction commencement.
  6. One copy of the full set of Final Construction Documents, and if required for Tenant's Work, endorsed with the approval stamp and permit number of the local municipality's building department, local fire marshal and all other governmental entities having jurisdiction over Tenant's Work or such other evidence acceptable to Landlord that Tenant has received building department approval, to Landlord's Tenant Coordinator;
- D. Tenant shall provide a full-time supervisor or representative, representing either Tenant's General Contractor or Tenant, who will be present at all times when Tenant's Work is being performed; Tenant shall cooperate fully with Landlord's representative and Landlord's Tenant Coordinator. Landlord may, at Landlord's sole election, require any aspect of Tenant's Work to be tested, and Tenant shall cooperate with such testing procedure.
- E. Tenant shall store all building materials, tools and equipment within the Premises or such other locations as may be specifically designated by Landlord's Tenant Coordinator; in no event shall any material be stored in the Common Areas or service corridors;
- F. Tenant will comply with the reasonable instructions of Landlord for the purpose of avoiding, ending and/or minimizing labor disputes. Upon notice from Landlord, Tenant will take such action, including the prosecution of legal proceedings in court or with agencies such as the National Labor Relations Board, as Landlord shall deem appropriate acting reasonably and in good faith.
- G. If reasonably required by Landlord, prior to Tenant's commencement of construction, Tenant shall obtain, or cause Tenant's General Contractor to obtain, payment and performance bonds covering the faithful performance of the contract for the construction of Tenant's Work and the payment of all obligations arising thereunder. Such bonds shall be for the mutual benefit of both Landlord and Tenant, and shall be issued in the names of both Landlord and Tenant as beneficiaries and obligees. Tenant shall submit a copy of all such

bonds, or other evidence satisfactory to Landlord that such bonds have been issued, to Landlord prior to commencement of Tenant's Work.

- H. The work of Tenant's General Contractor and subcontractors shall be subject to inspection by Landlord. All defects and/or deviations from the Final Construction Documents shall be rectified by Tenant's General Contractor and/or subcontractors at no expense to Landlord.
- I. Repair of damage caused to Landlord's Work by Tenant's General Contractor or subcontractors shall be at Tenant's expense. Landlord may, at Landlord's sole option, carry out necessary repairs without notice and Tenant shall pay for the cost of such repairs upon demand including a fifteen percent (15%) administrative fee.
- J. Tenant's General Contractor will be required to abide by the Construction Rules and Regulations. Notwithstanding such requirements, Tenant shall indemnify and protect Landlord with respect to all actual or alleged breaches of such Construction Rules and Regulations by Tenant's General Contractor.
- K. All work to be done during off-operational hours and coordinated with the Landlord for access. Any loud, dusty or otherwise impacting other operating Tenants may need to be postponed until an appropriate time is agree upon by the Landlord.

#### VII. COMPLETION OF CONSTRUCTION

- A. Tenant shall not be permitted to, and shall not, open for business in the Premises until the Opening Requirements (as hereinafter defined) are met. In order that Landlord shall have assurance that the Premises shall be in a good and safe condition, in compliance with all laws, that adequate insurance has been obtained, that the Premises have been constructed in accordance with Tenant's Construction Requirements and that Tenant's obligations under the Lease have been performed, the following requirements (the "Opening Requirements") shall be satisfied, which Opening Requirements shall apply not only to the initial Tenant's Work, but also to any subsequent opening after any temporary closure, casualty, damage or permitted alterations:
  - 1. At least five (5) working days prior to the opening of the Premises for business, Tenant shall deliver to Landlord (a) insurance certificates; (b) certificate by Tenant's Architect or the General Contractor certifying that the construction of the Premises have been completed in accordance with the Tenant's Construction Requirements, to the extent applicable to Tenant's Work; and (c) all evidence typically required in the jurisdiction where the Project is located to provide evidence of compliance with all applicable building and fire codes and all other government requirements including any required certificates of occupancy. In the event that Landlord, in its sole and absolute discretion, determines that Tenant will not satisfy any of the above Opening Requirements prior to the earlier to occur of (i) the date Tenant opens for business in the Premises, and (ii) the Rental Commencement Date as defined in Section 1.02(a) hereof, such that Landlord may be unable to obtain all necessary governmental or quasi-governmental approvals in order to open the Premises on schedule (the "Opening Approvals"), then Landlord may, at such date as it deems necessary to protect its interests, take whatever actions on behalf of Tenant, as Landlord's Work at Tenant's Expense, which it deems are reasonably necessary to obtain the Opening Approvals including, without limitation, entering the Premises without liability to Tenant for any loss or damage which may accrue to Tenant's property or the property of any of Tenant's contractors by reason thereof, in which case the responsibility for any injuries to persons attributable to such work or any persons doing such work shall be borne solely by Tenant, to furnish and install all life safety systems, barricades, mechanical systems and all other construction as required by all governmental authorities such that the Premises shall meet the requirements for the Premises which are necessary for Landlord to obtain the Opening Approvals for the building in which the Premises are located.
  - 2. Tenant shall give Landlord at least five (5) working days' notice of the date of completion of Tenant's Work in the Premises, and Landlord shall have inspected the Premises within 10-working days (following the said 5 working days' notice period) to determine whether Tenant's Work is complete in accordance with the requirements of the Lease and Landlord shall have approved all such work not to be reasonably withheld. Tenant's General Contractor shall file a Notice of Completion when required.

3. Tenant shall pay Landlord all Minimum Annual Rental and Additional Rent, if any, which has then accrued under the Lease.
  4. Tenant has furnished Landlord the Estoppel Certificate in accordance with the terms of the lease, completed and executed by Tenant if so required under the Lease.
- B. Upon completion of Tenant's Work, Tenant shall deliver to Landlord the following:
1. Tenant's notarized affidavit that Tenant's Work has been completed to Tenant's satisfaction and in strict accordance with the Final Construction Documents and Tenant's Construction Requirements, which affidavit may be relied on by Landlord. Any deliberate or negligent misstatement, or any false statement made by Tenant therein, shall constitute a breach of the Lease.
  2. The notarized affidavit of Tenant's General Contractor stating that Tenant's Work has been completed in accordance with the Final Construction Documents and that all subcontractors, laborers and material suppliers engaged in furnishing materials or rendering services for Tenant's Work have been paid in full.
  3. A final notarized unconditional waiver of lien with respect to the Premises executed by Tenant's General Contractor and, if reasonably requested by Landlord, final notarized, unconditional waivers of liens executed by each subcontractor, laborer and material supplier engaged in or supplying materials or services for Tenant's Work. All waiver of lien documents must, in every circumstance, be totally unconditional releases.

#### VIII. INSURANCE

- A. Tenant shall secure, pay for and maintain, or cause Tenant's General Contractor to secure, pay for and maintain, for all periods of construction and fixturing Work within the Premises, all of the insurance policies required in the amounts as set forth below. Tenant shall not permit Tenant's General Contractor to commence any work until all required insurance has been obtained and certificates evidencing such insurance have been delivered to Landlord.
- B. Tenant's General Contractor's and subcontractors' required minimum coverages and limits of liability.
1. Worker's Compensation, as required by law of the jurisdiction in which the Project is located, and including Employer's Liability Insurance with a limit of not less than \$2,000,000.00 each accident, \$2,000,000.00 each employee by disease, \$2,000,000.00 policy aggregate by disease, and all insurance required by all applicable employee benefit statutes and regulations to protect Tenant's General Contractor and all subcontractors from any and all liability under such statutes and regulations. Such insurance shall contain an endorsement waiving all rights of subrogation against Landlord, Landlord's architect, Landlord's general contractor and all subcontractors.
  2. Commercial General Liability insurance (including Contractor's Protective Liability) in which the limits shall be not less than \$3,000,000.00 per occurrence combined single limit, bodily injury and property damage. Such insurance will provide for explosion, collapse and underground coverage. Such insurance shall insure Tenant's General Contractor against any and all claims for bodily injury, including death resulting therefrom and damage to or destruction of property of any kind whatsoever and to whomever belonging and arising from its operations under the contract whether such operations are performed by Tenant's General Contractor, subcontractors, or any of their subcontractors, or by anyone directly or indirectly employed by any of them.
  3. Comprehensive Automobile Liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired and non-owned, in the minimum amount of \$3,000,000.00 combined single limit, bodily injury and property damage. Such insurance shall insure Tenant's General Contractor and all subcontractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others caused by accident and arising from its operations under its contract and whether such operations are performed by Tenant's General Contractor, subcontractors or by anyone directly or indirectly employed by any of them.

- C. Tenant's Protective Liability insurance - Tenant shall provide Owner's Protective Liability insurance insuring Tenant against any and all liability to third parties for damages because of bodily injury (or death resulting therefrom) and property damage liability of others or a combination thereof which may arise from work in connection with the Premises, and its activities related to work off the Premises, and any other liability for damages which Tenant's General Contractor and/or subcontractors are required to insure against under any provisions herein. Said insurance shall provide policy limits which shall provide, at a minimum, coverage of \$3,000,000.00 combined single limit, bodily injury and property damage.
- D. Tenant's Builder's Risk insurance - Completed Value Builders' Risk Material Damage insurance policy covering the work to be performed for Tenant in the Premises as it relates to the building and site within which the Premises are located. The policy shall include as insureds Tenant, Tenant's General Contractor, all subcontractors, Landlord's general contractor and Landlord, as their interests may appear. The amount of insurance to be provided shall be at 100 percent of the replacement cost.
- E. All such insurance policies (other than Workers' Compensation) required under this Exhibit B, except as noted above, shall include as additional insureds Landlord and to the extent the names of the same are provided to Tenant, Landlord's architect, Landlord's general contractor, subcontractors, their respective affiliates, officers, directors, employees and agents, and all other parties designated by Landlord from time to time.
- F. Certificates of insurance shall provide that no reduction in the amounts or limits of liability or cancellation of such insurance coverage shall be undertaken without 30 days prior written notice to Landlord.
- G. The insurance required under this Exhibit B shall be in addition to the insurance required to be procured by Tenant pursuant to the Lease.

**EXHIBIT C****RESTRICTED USES**

1. a "supermarket or grocery store" meaning a store selling items of a scale and scope typically sold in stand-alone supermarkets such as Safeway, Trader Joe's, Whole Foods Market, Natural Grocers by Vitamin Cottage, Kroger, Von's and Ralphs (including perishable items, such as fresh and frozen meat, poultry, and seafood, dairy products and/or fresh fruit and produce, and a variety of other consumer-oriented items, such as cheese, cereals, grains, fruits and vegetables, frozen foods, bulk foods, gourmet foods, bakery goods, alcoholic beverages (including beer and wine) for off premises consumption, and/or vitamins); except occupancy of Block M for the following uses is permitted: (a) one cooking school ("Cooking School") not exceeding 2,000 square feet, and (b) one fitness and/or exercise studio("Fitness Studio") less than or equal to 1,800 square feet provided the Cooking School and Fitness Studio are otherwise subject to the restrictions set forth in this paragraph.

2. the sale of produce, unprepared fresh meat, unprepared fresh poultry, unprepared fresh seafood, dairy, cheese, cereals, grains, fruits and vegetables, frozen foods, grocery products, bulk foods, gourmet foods, bakery goods, alcoholic beverages (including beer and wine), body care products, cosmetics, health care items, beauty aids (except as sold in a salon), plants, flowers, vitamins for off premises consumption, medicinal herbs for off premises consumption, naturopathic or homeopathic remedies for off premises consumption, nutritional supplements for off premises consumption, coffee beans (except as ancillary to the operation of a coffee bar such as Starbucks), smoothies and/or fresh fruit drinks (except as ancillary to the operation of a coffee bar such as Starbucks), ice cream, frozen yogurt and/or gelato; except occupancy of Block M for the following uses is permitted: (a) one cooking school ("Cooking School") not exceeding 2,000 square feet, and (b) one fitness and/or exercise studio("Fitness Studio") less than or equal to 1,800 square feet provided the Cooking School and Fitness Studio are otherwise subject to the restrictions set forth in this paragraph.

3. any use that would impair an occupant's ability to obtain and/or maintain a license to sell alcoholic beverages (including wine and beer) for on- or off-premises consumption; except occupancy of Block M for the following uses is permitted: (a) one cooking school ("Cooking School") not exceeding 2,000 square feet, and (b) one fitness and/or exercise studio("Fitness Studio") less than or equal to 1,800 square feet provided the Cooking School and Fitness Studio are otherwise subject to the restrictions set forth in this paragraph.

4. primary business as a hair salon or the sale of hair care, cosmetics and beauty products.

5. more than five hundred (500) square feet of floor area, for the operation, sale, use, or provision of so-called virtual reality games, bowling, golf simulation, or billiards, pool, shuffle board, carnival type redemption games, mid-way type games, coin operated and non-coin operated amusement games and attractions; or for so-called arcade games; or an arcade or game room (with ten (10) or more coin, token or attendant-operated video, pinball or other arcade or carnival games) or other amusements which are typical of the types of games or amusements found in a Dave & Buster's operation.

6. an Italian restaurant.

7. primarily as a coffee store or coffee restaurant for the sale of brewed coffee or prepackaged coffee, or who operates a cart or kiosk for the sale of coffee and coffee related merchandise outside of such Tenant's premises which exceeds ten percent (10%) of the sales floor area of the Premises.

8. more than twenty-five percent (25%) of Gross Sales are derived from the sale of Mexican fast food items.

9. the operation of a motion picture theatre or other facility showing motion pictures, except a 3-D IMAX® theatre within the Ward Village development so long as such IMAX® theatre does not compete in the showing of any film that is or will be shown in first-run movie theatres.

10. for the following uses: (a) an "adult" theatre or book store or massage parlor; (b) a place of instruction or any other operation catering primarily to students or trainees rather than to customers, including beauty school, barber college or reading room; provided, however, this prohibition shall not apply to a computer training school which occupies, in the aggregate, no greater than 7,500 square feet of GLA in the Center; (c) purposes which would necessitate the long term (over 24 hours) use of the Common Areas for the storage of motor vehicles, including, without limitation, for automotive repair or related uses.

11. the operation of a pharmacy mail order facility, a retail drug store and a pharmacy prescription department. The term "pharmacy prescription department" shall include the dispensing, distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners or entities such as health maintenance organizations for a fee or profit and a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer. A "pharmacy prescription department" shall not include the distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as clinics or health maintenance organizations.

12. For the following uses: (i) Any movie theater, bowling alley, dance hall or discotheque; (ii) Schools of any nature (including, without limitation any cooking school or cooking classes (except as such may be run by Tenant), beauty school, barber college, reading room, place of instruction, or any other operation serving primarily students or trainees rather than retail customers); (iii) Any church, synagogue or other religious facility; (iv) Any gasoline or service station, automotive service or repair business; (v) Any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles; (vi) Except for any use associated with the operation of a Whole Foods Market grocery store (e.g., an in store brew pub), any manufacturing facility; (vii) Any dry cleaner (except that a drop off/pick up only type of facility shall be allowed); (viii) Any retail operation in which more than twenty (20%) percent of the sales area of such operation is used for the display and/or sale of clothing or goods commonly referred to as close outs, manufacturer's overruns, or excess inventory or manufacturer's seconds or imperfect merchandise; (ix) Any "second hand" store, used clothing or thrift store, pawn shop, salvation army type store, "surplus" store or liquidation outlet; (x) Any discount retailer (such as, without limitation, "dollar" stores such as Family Dollar); (xi) Any mortuary or funeral parlor; (xii) Any coin operated laundry; (xiii) Any children's recreational, educational or day-care facility; (xiv) Any massage parlor (except that a therapeutic massage facility such as "Massage Envy" shall be allowed); (xv) Any medical marijuana dispensary; (xvi) Any purposes which would necessitate the long term (over 24 hours) use of the Common Areas for the storage of motor vehicles, including, without limitation, for automotive repair or related uses; (xvii) Any use inconsistent with the customary character of a first-class retail shopping center (such as, without limitation, any "head" shop, adult book shop or adult movie house, or tattoo or piercing parlor) but expressly allowing office and warehouse use.

13. (i) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse; (ii) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (iii) Any "second hand" store, "surplus" store; (iv) Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale



or similarly advertised event; (v) Any central laundry, dry cleaning plant, or laundromat; (vi) Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation; (vii) Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use (other than where incidental to a night club, discotheque, dance hall (whether or not serving alcoholic beverages) or bar, tavern or other establishment selling alcoholic beverages for on- or off-premises consumption, except the sale of alcoholic beverages as an incidental part of a restaurant otherwise permitted hereunder); (viii) Any living quarters, sleeping apartments, or lodging rooms; (ix) Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below); (x) Any mortuary or funeral home; (xi) Any "Pornographic Use" or massage parlor [except for therapeutic massages given in connection with the operation of a day spa or health club]; (xii) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia; (xiii) Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business; (xiv) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall; (xv) Any unlawful use; (xvi) Any church or other place of religious worship; (xvii) Any car wash (except where operated by the valet parking service as an incidental part of such valet service and not as an independent business or structure), automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility; (xix) hotel/motel; (xx) daycare center; (xxi) veterinary office; (xxii) children's entertainment or activity facility; (xxiii) no bailbondsman, (xxiv) lumberyard (other than incidental lumber sales by a home improvement business), (xxv) blood bank, and (xxvi) storage of motor vehicles in the Common Area.

14. Primary business in such premises will be a shabu style restaurant. "primary business" means 35% or more of the menu choices for such restaurant in the Center are allocated a shabu shabu style restaurant.

**EXHIBIT D**

**INTENTIONALLY OMITTED**

**EXHIBIT E**

**INTENTIONALLY OMITTED**

**EXHIBIT F**

**INTENTIONALLY OMITTED**

**EXHIBIT G**

**INTENTIONALLY OMITTED**

**EXHIBIT H**

**CONFIRMATION OF COMMENCEMENT AND EXPIRATION DATE CERTIFICATE**

THIS CONFIRMATION OF COMMENCEMENT AND EXPIRATION DATE CERTIFICATE (this "Certificate") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **VICTORIA WARD, LIMITED**, a Delaware corporation whose address is 9950 Woodloch Forest Drive, Suite 1100, The Woodlands, Texas 77380 ("Landlord"), and **ZIMMER US, INC.**, a Delaware corporation (d/b/a ZIMMER MEDICAL) whose address is 1800 West Center Street, Warsaw, Indiana 46580 ("Tenant"), who have entered into that certain Lease dated March 4, 2022(the "Lease"), covering certain premises in Space No. 2124963-A containing approximately 2,251 square feet (the "Premises"), which is in and part of the Project commonly known as West of Ward. which is in and part of the urban mixed use development commonly known as "Ward Village" located in Honolulu, Honolulu County, Hawaii and more particularly described in the Lease. In connection with the Lease, Landlord and Tenant agree as follows:

1. For purposes of confirming the Commencement Date as provided in Section 1.02 of the Lease, Landlord and Tenant hereby agree that the date of \_\_\_\_\_, 20\_\_\_\_, is hereby established as the "Commencement Date" of the Lease.
2. For purposes of confirming the Rental Commencement Date as provided in Section 1.02 of the Lease, Landlord and Tenant hereby agree that the date of \_\_\_\_\_, 20\_\_\_\_, is hereby established as the "Rental Commencement Date" of the Lease.
3. The "Expiration Date" as provided in Section 1.02 of the Lease is 11:59 p.m. local time of the state in which the Premises are located on \_\_\_\_\_, 20\_\_\_\_.
4. The Lease provides for no renewal terms.
5. The Lease is hereby ratified and confirmed and shall remain in full force and effect, subject to all of the terms, covenants, and conditions therein set forth.
6. The provisions of this Certificate shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Certificate as of the day and year first above written.

LANDLORD:

VICTORIA WARD, LIMITED,  
a Delaware corporation

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

TENANT:

ZIMMER US, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

January 15, 2025

Hawaii Community Development Authority  
c/o Lindsey Doi  
547 Queen Street  
Honolulu, HI 96813

RE: Zimmer US Inc. - Lease Extension  
610 Ward Avenue, Honolulu Hawaii 96814 | Store #2124962-A (“Property”)  
Lessee: Zimmer US Inc. dba Zimmer Medical  
Lessor: Hawaii Community Development Authority

Dear Lindsey:

Zimmer US Inc. dba Zimmer Medical (“Lessee”) has an existing lease for the Property that expires on June 30, 2025 (the “Lease”). Lessee is requesting an extended term for an additional twelve (12) months for Lessor’s consideration. Summary of terms listed below:

**Premises**

An area of approximately 2,251 square feet located at 610 Ward Avenue, Honolulu HI, Tax Map Key No. 1-2-1-049-063, as further described in the Lease, plus any existing improvements thereon.

**Term and Rent**

The term of the Lease shall be extended for twelve (12) months, commencing July 1, 2025 and expiring on June 30, 2026. The proposed rents are:

\$ 5,919.75 per month for the period from July 1, 2025 through June 30, 2026;

**Excise Tax**

Lessee shall pay with each payment due under the Lease an amount equal to the Hawaii General Excise Tax (currently 4.712%), or any successor tax which may be payable thereon.

**Month to Month Tenancy**

At the expiration of the initial renewal term, Lessee’s tenancy shall continue month to month.

**Mutual Termination Right**

Both Lessee and Lessor shall each have the right to terminate the lease by providing the other with six (6) months prior written notice.

**Broker Commission:**

Colliers International represents the Lessee. Landlord shall pay a brokerage commission of two (2) months gross rent plus Hawaii GET upon full execution of the lease agreement.

This non-binding letter is intended to constitute an outline of certain business terms and conditions related to a proposed transaction and is not intended to constitute a complete statement of all relevant terms and conditions, but will be incorporated in definitive documents, including additional changes and qualifications with respect to the proposed transaction. Accordingly, unless and until definitive documents are finalized, executed and delivered by both parties, and except as may otherwise be provided herein, neither party shall have any obligation to the other (whether legal or



Ewa Beach Center, LLC  
IES Retail, LLC  
October 16, 2024  
Page 2

equitable or under this letter or otherwise) including, but not limited to, any obligation to negotiate in good faith, and either party may cease negotiations regarding the proposed transaction at any time and for any reason. If executed, the definitive documents shall supersede this letter, as well as all previous written and oral communication.

Sincerely,

**Zimmer US Inc. dba Zimmer Medical**

---

*Its:*

Global Real Estate Assoc. Director

CC: Kevin Burnett - Colliers  
Alika Cosner – Colliers