



HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION

677 Queen Street / Honolulu HI 96813
Fax: (808) 587-0600

CRAIG K. HIRAI
EXECUTIVE DIRECTOR

ADDENDUM NO. 1

October 24, 2017

RFP NO: DEV-RFP-17-001

**RFP TITLE: MIXED-USE DEVELOPMENT FOR AFFORDABLE RENTAL HOUSING
AND JUVENILE SERVICES CENTER/SHELTER AT 902 ALDER STREET
HONOLULU, OAHU, HAWAII
TMK (1) 2-3-012: 019**

PROPOSALS DUE: FEBRUARY 28, 2018 NOT LATER THAN: 2:00 PM

This Addendum modifies or clarifies the solicitation documents only to the extent indicated herein, and all portions thereof not specifically affected by the addendum shall remain in full force and effect. All addenda shall be added to and made a part of the RFP documents.

Item #1 Change: Exhibit B, Ground Lease Form, is hereby amended and replaced in its entirety with the attached Exhibit B (REVISED), Ground Lease Form, included with this addendum.



Craig K. Hirai, Executive Director

END OF ADDENDUM NO. 1

Please execute the receipt on this page and return immediately to the Hawaii Housing Finance and Development Corporation, 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.

Receipt of Addendum No. 1

Receipt of Addendum No. 1 is hereby made a part of the Request for Proposals DEV-RFP-17-001 – Mixed-Use Development for Affordable Rental Housing and Juvenile Services Center/Shelter at 902 Alder Street, issued by HHFDC on October 18, 2017.

Signed: _____ Title: _____

Company: _____ Date: _____

The Offeror shall be responsible for incorporating Addendum No. 1 into its copy of the Request for Proposals.

Return by Mail () Pickup () To: **Land Court () Regular () Double ()**

Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attention: Stan S. Fujimoto, Project Manager

Total pages _____

TYPE OF DOCUMENT: **Ground Lease**
(_____ – **Affordable Rental Housing Project**)

PARTIES TO DOCUMENT:

Lessor: **Hawaii Housing Finance and Development Corporation**, a public body and a body corporate and politic of the State of Hawaii, State of Hawaii

Lessee: _____, a Hawaii limited liability company

PROPERTY DESCRIPTION

DOCUMENT NO.

DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO:

TAX MAP KEY NO. _____

GROUND LEASE
(_____ – **Affordable Rental Housing Project**)

THIS INDENTURE ("Lease"), made this _____ day of _____, 20____, ("Effective Date") by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, **STATE OF HAWAII** ("Lessor"), and _____, a Hawaii limited liability company, whose principal place of business and mailing address is _____, Honolulu, Hawaii, 96818 ("Lessee");

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner in fee simple of the premises described in this Lease.

WHEREAS, the premises was set aside to Lessor by Executive Order No. ____, dated _____ and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____.

NOW, THEREFORE, by virtue of the authority granted pursuant to Executive Order No. _____, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises at _____, State of Hawaii more particularly described in Exhibit "A" which is attached and incorporated by reference (the "premises" or the "Leased Land").

It being expressly understood and agreed by Lessor that, except as provided herein, Lessee is the leasehold owner of all buildings and real property improvements and fixtures which are now or hereafter situated on such land described in Exhibit "A"; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 27 of this Lease, the buildings and real property improvements and fixtures shall not be separated from the premises demised hereby and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent if required as provided below in Section 13 pertaining to "Assignment of Lease" even though not expressly mentioned or described in the conveyance or other instrument.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of: Sixty-Five (65) years, commencing on the Effective Date, up to and including the _____ day of _____, 20____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Lessor, an annual and additional quarterly rent as provided hereinbelow:

- A. Base Lease Rent. A base lease rent of \$1.00 per year for the full term of the

Lease shall be payable in advance in a lump sum payment of SIXTY-FIVE AND NO/100 DOLLARS (\$65.00) upon the execution of this Lease.

Lessee understands and agrees that the base lease rent of \$1.00 per year for the term of this Lease is substantially less than the fair market rent for the leased premises and is in furtherance of the public purpose of providing affordable housing opportunities in the State of Hawaii. For the allocable portion of the Project attributable to the Affordable Units as described in Section 12 below, except for a reasonable management fee for operation of the Project, Lessee shall not benefit financially from any conveyance or refinancing of this Lease, unless approved in writing by the Lessor, except for the following:

1. The sales price of Lessee's leasehold interest in the Project shall be subject to the following:
 - a. The Lessee shall be permitted to recapture documented advances made for the Project; and
 - b. Any excess proceeds of any sale shall be placed in escrow or other mutually agreeable vehicle or mechanism and used to create additional affordable housing in the State of Hawaii;
2. Lessee's reserves for the Project will be identified and transferred to any transferee of the Project; and
3. Lessor reserves the right to impose less, different or additional conditions to any extensions of this Lease.

This restriction set forth in this Section A. shall not apply if Lessee acquired its leasehold interest through foreclosure of a mortgage secured by this Lease (whether by judicial proceedings or by virtue of any power of sale contained in the mortgage), nor any conveyance of the Lease to the mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument as described in Section 20 below.

- B. Twenty percent (20%) of Funds. In accordance with HRS Sec. 10-13.5, twenty percent (20%) of all funds Lessee derives from the premises, other than rent from affordable housing as approved by Lessor, shall be paid quarterly to Lessor, by the end of the calendar month following the quarter for which such amount is based. The amount shall be submitted in arrears with an itemized list of all funds Lessee derives from the premises, other than rent from leases of affordable housing, for the quarter upon which such amount is based.
- C. Increase of Base Lease Rent. In the event of a foreclosure of a mortgage secured by this Lease (whether by judicial proceedings or by virtue of any power of sale contained in the mortgage), or any conveyance of the Lease to the mortgagee or

its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument as described in Section 20 below, if any of the dwelling units in the Project on the leased premises are not used as Affordable Units as described in Section 12 below, the base lease rent of the leased premises shall be increased in the following manner:

1. From and upon the first day (the "Rent Increase Commencement Date") of the first full calendar month after the use of any or all of such dwelling units as other than Affordable Units, the annual rent for the leased premises shall be calculated as follows:

Fair market value of the land x 8% x percentage of such dwelling units not used as Affordable Units + rent otherwise due under Paragraph A hereof x percentage of such dwelling units used as Affordable Units. For purposes hereof, the fair market value of the land shall be determined exclusive of buildings and improvements, and based upon the actual then existing use for which the Lessee shall use the improvements on the land, and exclusive of the encumbrance of this Lease.

2. The fair market value of the land shall be determined as of the Rent Increase Commencement Date and each fifth anniversary of the Rent Increase Commencement Date. If the Lessor and the Lessee are unable to agree upon the fair market value of the land within 45 days after the Rent Increase Commencement Date or each such adjustment date, the fair market value of the land shall be determined in the manner set forth in Paragraph C.7 hereof.
3. The percentage of dwelling units used as Affordable Units shall be adjusted on each anniversary of the Rent Increase Commencement Date. Such percentage shall be certified to the Lessor by the Lessee in a written report as of the Rent Increase Commencement Date and each anniversary thereof, which report shall show the calculation of any adjustments and shall be delivered to the Lessor with the rental payment then due.
4. Adjustments to the fair market value of the land or to such percentages may be upwards but not downwards, and the rent due under the above formula shall in no event be less than the rent paid for the previous rental period.
5. The adjusted rent shall be paid in advance in equal monthly installments on the first day of each month.
6. Notwithstanding anything elsewhere stated in this Lease, if the dwelling unit in the Project on the leased premises designated as the manager's unit is not being used as an Affordable Unit, then, and notwithstanding such

use, so long as 75% or more of the dwelling units in the Project are being used as Affordable Units, the dwelling unit designated as the manager's unit shall be deemed to be used as an Affordable Unit.

7. In the event of failure to agree on a fair market value of the land for any of the periods within the time specified in Paragraph C hereof, either party may give to the other written notice of a desire to have an arbitration by three appraisers to determine the said fair market value in the manner proved for in Chapter 658A of the Hawaii Revised Statutes, as the same may be amended, and name one of the appraisers in said written notice, whereupon the other party shall, within ten days after receipt of such notice, name a second appraiser, and in case of failure so to do the party who has already named an appraiser may have the second appraiser selected or appointed by one of the judges of the Circuit Court of the Third Circuit, State of Hawaii, and the two appraisers so appointed in either manner shall select and appoint a third appraiser, and in the event the two appraisers shall fail to appoint the third appraiser within ten days after the naming of the second appraiser, either party may have the third appraiser selected or appointed by one of the said judges, and the three appraisers so appointed shall thereupon proceed to determine the fair market value of the land on the basis hereinafter set forth, and the decision and award of any two of them shall be final, conclusive and binding upon all parties, unless the same shall be vacated, modified or corrected, all as provided in said Chapter 658A, as the same may be amended. The appraisers shall be recognized real estate appraisers, and shall have all the powers and duties prescribed in said Chapter. It is understood and agreed that the appraisers' duty will be to only determine the fair market value of the land, exclusive of buildings and improvements but based on the actual then existing use or uses for which Lessee shall use the improvements, and exclusive of the encumbrance of this Lease. In all cases of arbitration, the Lessor and the Lessee shall each pay the expenses of their own attorney's, appraiser's and witnesses' fees, and all other expense of such arbitration shall be divided equally between the Lessor and the Lessee. If and whenever the fixing of such rental is under arbitration, the Lessee, pending the determination thereof, shall continue to pay the same rental which the Lessee had been paying during the last preceding rental period. However, if the rental which the Lessee had been paying during the last preceding rental period was only \$1.00 each year, Lessee, pending the determination by the appraisers of the fair market value of the land, shall pay the amount which Lessor considers to be the rent due in accordance with Paragraph C hereof. Lessor shall promptly repay Lessee for rental overcharge or Lessee shall promptly pay Lessor the deficiency, if any, upon the conclusion of the arbitration proceeding, in either case, together with interest thereon at the rate of 12% per annum.

RESERVING UNTO THE LESSOR THE FOLLOWING:

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

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of Rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

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

a. Lessee's Right to Contest. Lessee shall have the right, at its own expense, to contest the amount or validity of any tax or assessment by appropriate proceedings diligently conducted in good faith. As a condition precedent to Lessee's contesting any tax or assessment, Lessee shall (i) comply with all laws, orders, rules and regulations respecting such contest, (ii) give Lessor prior written notice of Lessee's intent to so contest said amount or validity, and (iii) in order to protect Lessor from any sale or foreclosure against the premises or any part thereof, provide a good and sufficient surety bond or other security deemed appropriate by Lessor in the amount of such tax or assessment plus estimated penalties and interest that may be imposed.

Lessee shall bear any and all costs, liabilities or damages, including reasonable attorneys' fees and costs arising out of such contest. Nothing in this section relieves, modifies, or extends Lessee's covenant to pay any such tax or assessment at the time and in the manner provided in this Section 2.

b. Lessor's Cooperation in Lessee's Contest. Provided Lessor incurs no cost or liability in doing so, Lessor shall cooperate (and Lessor shall execute applications, certificates and like documents) with Lessee in any proceedings brought by Lessee to contest the validity or the amount of any taxes or assessments or to recover any taxes or assessments paid by Lessee. If the provisions of any law at the time in effect shall require that such proceedings be brought by or in the name of Lessor, then, provided Lessor incurs no cost or liability in doing so, Lessor shall join in any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Lessee, Lessee shall, without limiting any other indemnity in this Lease, defend, indemnify and hold the Lessor and the State of Hawaii harmless from all claims arising from such proceedings.

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

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

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition as comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the Improvements.

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

7. Compliance with Laws. The Lessee shall comply with the applicable laws of all governmental authorities having jurisdiction over the Leased Land, construction of the Improvements, and use and operation of the premises now in force or which may become effective subsequent to the commencement of this Lease.

8. Inspection of Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the Lease term, to enter the premises and examine the state of its repair

and condition with three (3) days prior written notice to Lessee.

9. Improvements. Except as provided in Section 12 of this Lease and in Section 2 of Exhibit B of this Lease, the Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Lessor and upon those conditions the Lessor may reasonably impose with exception that Lessee is not required to obtain Lessor's prior approval to effect (i) emergency repairs, (ii) interior alterations or minor repairs that are non-structural and do not significantly alter the external appearance or view of any improvements, (iii) other routine maintenance work that does not otherwise involve major repairs, or (iv) tenant improvement repair(s) in the retail commercial space. The Lessee shall own the improvements until the expiration or earlier termination of the Lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense. Accordingly, at all times during the term of this Lease, Lessee shall be deemed to exclusively own the improvements for federal and state and local tax purposes, and Lessee alone shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recover deductions, the right to claim the tax credits available to the Lessee under Section 42 of the Internal Revenue Code, with respect to the improvements, and the right to amortize capital costs and to claim any other federal or state or local tax benefits attributable to the improvements. Lessee and Lessor shall each report this transaction consistent with the provisions of this Section 9 on any federal, state or local tax return filed by each. At the expiration or earlier termination of this Lease, provided Lessee is not then in default, Lessee may remove any or all of Lessee's personal property from the premises so long as (i) such personal property can be removed without structural damage to the improvements, and (ii) such personal property is removed within thirty (30) days following such expiration or earlier termination of this Lease, and (iii) all resultant damage to the premises and any improvements are promptly and completely remedied and Lessee takes reasonable steps necessary to preserve the appearance of the premises and any improvements. Any personal property of Lessee remaining on the premises after said thirty (30) day period shall automatically vest and become the sole property of Lessor without any payment by Lessor and without any further action or agreement required, including the necessity of bill of any sale, deed, conveyance or other act or agreement of Lessee, and without payment of any kind or nature by Lessor to Lessee or to any other person.

Notwithstanding any provision herein or elsewhere to the contrary, Lessee shall own in fee simple all buildings, structures and real property improvements which are now or hereafter situated on the premises; provided that Lessee, for itself and its successors and assigns, covenants that the buildings, structures and real property improvements shall not be separated from the premises and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent as provided below in Section 13, Assignment of Lease etc.

9a. Bond. Lessee shall not commence construction of any improvement to the Premises or improvements at a cost of more than \$25,000.00 without first obtaining and depositing with Lessor performance and labor and material payment bonds naming Lessor and the State of Hawaii as additional obligees with a responsible surety authorized to do business in

the State of Hawaii, which bonds shall guarantee completion of such construction in accordance with the contract therefore free and clear of all mechanics' and materialmen's liens and shall be in a penal sum not less than 100% of the cost of such construction.

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

11. Liens. Except for the liens permitted by Section 13, Section 19 and Section 20 of this Lease and except for leases and/or rental agreements with residential and commercial tenants for the residential and commercial spaces in the project described in Section 12, the Lessee shall at all times keep the premises free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances. Lessee shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of any improvements with respect to work performed by or for Lessee or materials purchased by or for Lessee so as to prevent any liens attaching to the premises. Notwithstanding the preceding sentence, Lessee may contest any and all invoices and payment requests from such contractors and materialmen, provided that Lessee, if the amount contested exceeds Twenty-Five Thousand Dollars (\$25,000), shall first post with Lessor a bond (in an amount equal to 100% of the contested invoices) or other security, in form and amount reasonably acceptable to Lessor, to secure the payment of any contested amounts (plus any fees, interests and penalties) and the removal of any liens which may attach as a result of such nonpayment and contest if such lien remains outstanding for a period of more than twenty (20) calendar days. Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claims for such liens and encumbrances and all resulting expenses.

12. Character of Use. The Lessee shall use or cause the premises to be used for the purposes of developing, operating and maintaining a ___-unit (includes 1 resident manager's unit) multifamily rental housing project, all of which (except the resident manager's unit) shall be affordable to families at or below 60% of the U.S. Department of Housing and Urban Development area median income ("AMI")("Affordable Units"), and ancillary facilities as described in the Use Restrictions set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless otherwise agreed to by Lessor ("Project"). Lessee shall ensure that the use and occupancy of the premises complies with all applicable County, State, and Federal laws and regulations.

13. Assignments of Lease, etc. Lessee shall not assign this Lease without the written approval or consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment and shall have received either a true executed copy of such assignment or written

notice thereof, and also, in any case other than assignment by way of a mortgagor's assignment to or by the Department of Housing and Urban Development or Veterans Administration or upon foreclosure of a mortgage or assignment in lieu of foreclosure, the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this Lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this Lease only during the period such person has possession of ownership of the leasehold estate.

14. Subletting; Space Lease; Parking Spaces. Except for renting the dwelling units in the Project, together with the parking spaces, to eligible persons and families consistent with the provisions of Section 12 above, Lessee shall not be allowed to sublet the whole or any portion of the premises.

15. Indemnity. The Lessee shall defend, indemnify, and hold harmless the Department of Land and Natural Resources, Lessor and the State of Hawaii from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) the use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this Lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. This provision shall survive the expiration or earlier termination of this Lease.

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

17. Liability Insurance. Lessee, at its cost and expense, shall maintain at all times the following insurance policies in full force and effect throughout the term of this Lease, with the following minimum policy limits and coverage, with insurance company(s) licensed to do business in the State of Hawaii with a minimum insurer financial strength rating of B+ from A.M. Best or BBB- from Fitch Ratings, Inc., or otherwise acceptable to Lessor:

Coverage

Minimum Policy Limits

Commercial General Liability and Automobile Insurance

Lessee's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$5,000,000. The policy shall name the State of Hawaii, Department of Land and Natural Resources, and the Lessor as additional insureds.

Workers' Compensation

As required by Hawaii laws

Property

Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. State of

Hawaii, Department of Land and Natural Resources, and Lessor shall be a loss payee under the Property Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following five provisions:

- a. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The Department of Land and Natural Resources (for lands set aside to Lessor), Lessor, and the State of Hawaii are added as additional insured parties with respect to operations performed on the property under this Lease.
- c. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Lease.
- d. Insurance shall include a cross liability or severability of interest clause.
- e. The Lessee shall immediately provide written notice to the Lessor should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the Effective Date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and

amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within thirty (30) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15 or 29 of this Lease.

All rights or claims of subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

17A. Contractor's Pollution Liability Insurance. Any general contractor contracted to build a building or undertake substantial rehabilitation of the Project on the premises shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the Department of Land and Natural Resources, Lessor, and the State of Hawaii as additional insureds.

18. Property Insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this Lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and

improvements erected on the leased premises in the joint names of Lessor and Lessee, with the standard mortgage clause for mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

Subject to the prior written approval of mortgagee, in the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Lessor; provided, however, that with the approval of the Lessor, the Lessee may surrender this Lease and pay the balance owing on any mortgage and the Lessee shall then receive after payment of such balance, that portion of the remaining proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the Effective Date of this Lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s).

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

Notwithstanding the foregoing, this Lease may not be terminated in the event of a casualty without the prior written consent of the Leasehold Mortgagee, and all insurance proceeds to which Lessee is entitled shall be paid to the Leasehold Mortgagee and disbursed only in accordance with the applicable loan documents.

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

20. Mortgage. Except for those certain leasehold mortgages to encumber this Lease in connection with certain financing from Freddie Mac under its Direct Purchase of Tax Exempt Loan Program (the "Permitted Leasehold Mortgages") and Tax Credit Investor and as otherwise provided in this Lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any

portion, or any interest in this Lease without the prior written approval of the Lessor and the Tax Credit Investor and any mortgage, hypothecation, or pledge without Lessor's and Tax Credit Investor's approval shall be null and void.

Upon due application and with the written consent of the Lessor and Tax Credit Investor, the Lessee may mortgage, pledge or otherwise transfer this Lease if Lessee obtains a loan, the repayment of which is to be secured by one or more mortgages on the leasehold estate in favor of (i) any department or agency of the federal government, including U. S. Department of Housing and Urban Development, Federal Housing Administration, Veterans Administration, Rural Development, (ii) any department, agency or public body and body corporate and politic of the State of Hawaii, (iii) any agency or department of the County, (iv) any bond issuer, underwriter or trustee, or (v) any lending institution (including, without limitation, any bank, insurance company, pension or retirement fund or mutual fund), in each case, to finance or refinance the development, construction, repair or alteration of improvements on the premises (together with the Permitted Leasehold Mortgages, each a "Leasehold Mortgage" and the holder of any such Leasehold Mortgage (which includes any and all Permitted Leasehold Mortgages) referred to as a "Leasehold Mortgagee"). It is understood and agreed that such Leasehold Mortgagee, or its designee, or any purchaser in foreclosure proceedings, or any grantee pursuant to an assignment in lieu of foreclosure, may become the legal Lessee under this Lease through foreclosure proceedings, by assignment of this Lease in lieu of foreclosure or otherwise. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Lessee to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Lessor under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Lease. Lessee is authorized otherwise to comply with the requirements of the mortgagee for obtaining such mortgage loan. No liability for the performance of Lessee's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Lessee under this Lease, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee, its nominees and assigns; and provided further, such liability shall be limited to value of the Leasehold Mortgagee's, nominee's or assign's interest in this Lease. If a Leasehold Mortgagee shall acquire title to Lessee's interest, by foreclosure of a Leasehold Mortgage thereon, by assignment in lieu of foreclosure or by an assignment from a nominee or wholly-owned subsidiary of such Leasehold Mortgagee; or under a new lease created pursuant to Section 20.e. below, or otherwise, such Leasehold Mortgagee may subsequently assign such Lease or sublet or underlet the premises in accordance with the terms of this Lease, without the prior consent of Lessor, and such assignee shall enjoy all rights, powers and privileges granted herein. No Leasehold Mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease or any new lease entered into in accordance with the provisions of Section 20.e. below, unless and until it becomes, and then only for as long as it remains, the owner of the leasehold estate pursuant to this Lease.

During the term of any Permitted Leasehold Mortgages and if any future Leasehold Mortgagee shall give written notice to Lessor of its Leasehold Mortgage, together with the name

and address of such future Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Permitted Leasehold Mortgages and any such future Leasehold Mortgage shall be satisfied and release of record:

a. No act or agreement between or on the part of Lessor or Lessee to cancel, terminate, surrender, amend, or modify this Lease or Lessee's right to possession shall be binding upon or effective against the Leasehold Mortgagee without its prior written consent.

b. If Lessor shall give any notice, demand, election or other communication required hereunder (hereafter collectively, "Notices") to Lessee hereunder, Lessor shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by personal delivery, by an overnight delivery service, or by registered or certified mail, return receipt requested, and shall be deemed given upon receipt if sent by personal delivery, on the next business day if sent by an overnight delivery service, and seventy-two hours after the time such copy is deposited in the United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Lessor to Lessee shall be binding upon or affect Lessee or the Leasehold Mortgagee unless a copy of the Notice shall be given in writing to the Leasehold Mortgagee pursuant to this subsection. Lessor will not exercise any right, power or remedy with respect to any default hereunder, and no notice to Lessee of any such default shall be effective, until Lessor shall have so given to the Leasehold Mortgagee written notice or a copy of its notice to Lessee of such default. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Lessor, may change the address to which such copies of Notices are to be sent.

c. There shall be added to the grace periods provided in Section 21 hereof to Lessee for curing any default, an additional ten (10) days in the case of a default in payment of any rents, and an additional sixty (60) days in the case of all other defaults, for such Leasehold Mortgagee to cure the same beyond the time allowed to Lessee. Lessor will not terminate this Lease because of any default by Lessee hereunder or other cause whatsoever if, within such additional applicable time period after Lessor has mailed written notice of intention to terminate this Lease for such cause to the Leasehold Mortgagee at its last known address and also, if such Leasehold Mortgage is insured by the Department of Housing and Urban Development or guaranteed by the Veterans' Administration, to such Department or Administration, the Leasehold Mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such Leasehold Mortgage, and in case of such undertaking, Lessor will not terminate this Lease within such further time as may be required by the Leasehold Mortgagee or such Department or Administration to complete foreclosure of such Leasehold Mortgage or other remedy thereunder, provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this Lease, the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due

diligence. Notwithstanding the foregoing, if a Leasehold Mortgagee completes a foreclosure of this Lease or otherwise diligently exercises its rights and remedies hereunder, Lessor shall waive any events of default that cannot reasonably be cured by such Leasehold Mortgagee.

d. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified above for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

e. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, a rejection or termination of this Lease in bankruptcy or any other default by Lessee), Lessor, if requested by any Leasehold Mortgagee, will enter into a new lease of the premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease (and any renewal term, if any), at the base rent and additional lease rent and upon the terms, covenants and conditions herein contained, provided:

i. Such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that this Lease has been terminated;

ii. Such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination;

iii. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under this Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

iv. The lessee under the new lease shall have the same right of occupancy to the buildings and improvements on the premises as Lessee had under this Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 20 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge or encumbrance on the fee of the premises, and any sublease under this Lease shall be a sublease under the new lease and shall not be deemed to have terminated by their termination of this Lease.

f. To the extent permitted by law, Lessor shall not convey, transfer, assign, mortgage or encumber its interest in the Leased Land, without the prior written consent of

Leasehold Mortgagee, and shall prohibit Lessee from subordinating Lessee's interest in this Lease to any subsequent mortgage of the fee estate granted by Lessor without the approval of the Leasehold Mortgagee.

Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 20 or to cure any default of Lessee referred to above.

21. Breach. Time is of the essence in this agreement, and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor, or shall be removed by Lessee, in either case, at no cost or expense of Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

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

To the extent that the Lessee is entitled to any condemnation award, it shall be paid to the most senior Leasehold Mortgagee to be used in accordance with the applicable mortgage documents, with any remaining balance being paid directly to Lessee. In the event of partial condemnation, this Lease shall continue unless Lessee and Lessor agree to terminate this Lease

with the prior written consent of the Leasehold Mortgagee. Finally, Lessor will provide reasonable prior written notice to Leasehold Mortgagee and Lessee of any proceeding for adjustment or adjudication of any condemnation claim involving the Leased Land, and shall permit the Leasehold Mortgagee and Lessee to participate therein as interested parties.

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

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

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

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

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

28. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased "AS IS."

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

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

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

If Lessee discovers any hazardous materials on the premises (other than groundwater contamination not directly caused, created or contributed to by Lessee), the presence of which violates any applicable laws, Lessee shall immediately undertake, at Lessee's expense, to remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance and use of the premises.

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

31. No Merger of Fee. The fee estate of Lessor and the leasehold estate of Lessee shall at all times remain distinct separate estates and shall not merge, notwithstanding any acquisition by any means of both such estates by Lessor, Lessee, any post-foreclosure lessee, any Leasehold Mortgagee or a third party.

32. Estoppel Certificates. Upon written request by Lessee or any existing or prospective Leasehold Mortgagee, Lessor shall within (10) business days following a request for same, deliver an estoppel certificate, confirming any matter relevant to this Lease, to the extent

of Lessor's knowledge, including all defaults presently claimed and the scope, status and remaining duration of any cure rights for such default, as well as any Leasehold Mortgagees that Lessor has notice of. All such estoppels shall be in such form as Lessee or other requesting party shall reasonably require. Notwithstanding the foregoing, in no event shall Lessor be required to give any consent or execute any document which increases its liabilities or obligations under this Lease or decreases its rights or benefits under this Lease.

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

34. Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

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

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

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

38. Archeological Sites. In the event any sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 692-8015 in compliance with Chapter 6E, Hawaii Revised Statutes ("HRS").

39. Set Aside. (If applicable for lands from DLNR) This Lease is subject to the terms and conditions contained in the set aside of the premises to Lessor, Governor's Executive Order No. ____, dated _____, 20____.

40. Counterparts. This Lease may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

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

42. Notices. Wherever in this Lease one party to this Lease is required or permitted to give or serve a notice, request or demand to or on the other, such notice, request or demand shall be given or served upon the party to whom it is directed in writing and shall be delivered personally with a delivery receipt, delivered by facsimile or forwarded by registered or certified mail, postage prepaid, return receipt requested or by commercial delivery service with a delivery receipt. All notices delivered by personal delivery, certified mail or commercial delivery service

shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this section.

43. Authority. The parties represent that the undersigned individuals possess the legal authority to enter into this Lease and that the signatures shall be sufficient to bind the parties to the terms of this Lease.

44. Additional Terms. The provisions of Exhibit B, Use Restrictions, are hereby incorporated and made an integral part of this Lease.

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

Ground Lease
Lessor: Hawaii Housing Finance and Development Corporation
Lessee: _____, LLC
TMK: (1)

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

Approved by the Board of Directors
of Hawaii Housing Finance and
Development Corporation at its
meeting held on:

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION, a public
body and a body corporate and politic of the
State of Hawaii, STATE OF HAWAII

By _____
Craig K. Hirai
Executive Director

"Lessor"

APPROVED AS TO FORM:

Deputy Attorney General

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: _____, LLC

TMK: (1)

_____, LLC
a Hawaii limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

"Lessee"

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

On this _____ day of _____, 201_, before me appeared CRAIG K. HIRAI, personally known to me, who, being by me duly sworn, did say that (s)he is the Executive Director of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, STATE OF HAWAII, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Doc. Date _____

of Pages _____

Doc. Description: Ground Lease

Name:
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires: _____

ACKNOWLEDGMENT/NOTARY CERTIFICATION

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

On this _____, 201_, in the First Circuit of the State of Hawaii, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this ____-page Ground Lease (_____ Apartments – Affordable Rental Housing Project), as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: _____
Name:
Notary Public, State of Hawaii
First Judicial Circuit
My commission expires:

ACKNOWLEDGMENT/NOTARY CERTIFICATION

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

On this _____, 201_, in the First Circuit of the State of Hawaii, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this ____-page Ground Lease (____ Apartments – Affordable Rental Housing Project), as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: _____
Name:
Notary Public, State of Hawaii
First Judicial Circuit
My commission expires:

EXHIBIT "A"

(Legal Description of Property)

[End of Exhibit "A"]

EXHIBIT "B"

USE RESTRICTIONS

SECTION 1. Definitions.

All words and phrases not otherwise defined in this Lease shall have the meanings as defined under applicable regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD").

SECTION 2. Affordability and Age requirements

The rental units in the Project shall provide affordable rental housing opportunities for families as defined by State law in accordance with the following affordability requirements at the time of occupancy, unless otherwise approved by Lessor ("Affordable Units"):

| No. of Units | Size, sq. ft. | Unit Types and Target Market |
|--------------|---------------|---|
| | | Studio Units at 60% or below the HUD area median income ("AMI") |
| | | 1-Bedroom Units at 60% or below the AMI |
| | | 2-Bedroom Units at 60% or below the AMI |
| | | Resident Manager's Unit |
| | | Total Affordable Units |
| | | Market Units |
| | | Units Total |

_____ square feet of commercial space
____ Parking Stalls

a. Household income is defined as the total annual income of each member of a tenant's household, excluding minors (i.e., persons under eighteen years) and shall be calculated in a manner that HUD determines annual income under Section 8 of the United States Housing Act of 1936, as amended, together with the Regulations promulgated thereunder.

b. Area median incomes are derived from estimates provided by HUD.

c. The Project and this Lease shall be subject to the terms and conditions of Lessor's Board of Directors' For Action dated _____ approving the set aside of the premises to Lessor and issuance of this Lease to Lessee.

d. (If applicable) The Project and this Lease shall be subject to the

terms and conditions of the Board of Land and Natural Resources' approval dated _____ approving the set aside of the premises to Lessor and issuance of the ground lease to Lessee.

e. (For senior projects) All occupants in the Project shall be age 62 years and older, except for the resident manager.

f. The maximum rent per Affordable Unit including all utilities and one parking stall shall not exceed the maximum net rent per Affordable Unit as described in this Lease.

g. To be eligible for exemptions from general excise taxes pursuant to Chapter 15-306, Hawaii Administrative Rules ("HAR"), non-residential uses, including any commercial space shall be limited to incidental or de minimis uses that are intended to directly benefit the residents of the Project.

h. The Lessee shall be responsible for ensuring that there are no inconsistencies between this Lease and any other programs applicable to the Project. If there any inconsistencies between the requirements of this Lease and other applicable program requirements, the more restrictive requirement shall control.

i. (For new construction) The Project shall be completed no later than _____, unless otherwise approved by Lessor.

SECTION 3. Rent

a. Affordable Units must be rent-restricted to the median income adjusted for family size for the area in which the premises is located.

b. The rent for each unit must remain restricted throughout the term of this Lease, as approved by Lessor.

SECTION 4. [RESERVED]

SECTION 5. Annual Certification

The requirements under this Lease shall be certified annually by the Lessee through the submission of an Annual Report, as required by Lessor. The Annual Report will be due on the first day of the anniversary month of the date of this Lease. This date shall be known as the Effective Date. The Lessee must retain the Annual Report and the supporting documentation verifying the information on the Annual Report for a minimum period of three (3) years after the due date.

SECTION 6. Tenant Income

Applicants for Affordable Units should be advised early in their initial visit to the Project

that there are maximum income limits which apply to the Affordable Units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification (TIC) prior to occupancy and recertified on an annual basis.

SECTION 7. Verification

The applicant's household income figure must be verified to determine the applicant's eligibility and rent. Verification of household income may only be accepted from the source of income. Applicants may not be permitted to obtain their own verifications. The process used to verify an applicant's income and eligibility must be thoroughly documented in the applicant's file. Verifications shall be valid for a period of ninety (90) days prior to move-in, after which the information must be re-verified.

SECTION 8. Certification

Upon acceptance of an applicant for the Affordable Unit, a TIC must be completed for the applicant and certified to by the applicant and the Lessee. The form is a legal document which, when fully executed, qualifies the applicant to live in the Affordable Unit.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the Project unless they are certified and under a lease.

The original TIC form is to be retained by the Lessee in the applicant's file. Upon request of Lessor, a copy of the form shall be sent to Lessor or its designated representative within thirty days of the tenant move-in. The Lessee must retain the TIC and the supporting documentation verifying the TIC for a minimum of three years.

SECTION 9. Recertification

(a) To insure that each unit is complying with the income restrictions, (1) the Lessee shall annually recertify each tenant's income and household composition, and (2) the Lessee shall cause each tenant to report certain changes in income and household composition which occur between regularly scheduled recertification.

(b) If the income of the tenants in an Affordable Unit who have previously verified increases above the applicable income limitation, such Affordable Unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low income tenant, and the rent continues to be restricted for the initial unit.

(c) The Lessee shall complete each tenant's annual recertification by the anniversary date of the tenant's move-in date. The request for recertification shall be made between sixty (60) and ninety (90) days before that date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the Lessee to begin the recertification process. The notice must also state the days and the hours available for the interview, the information the tenant should

bring to the interview, and how and whom to contact to schedule the interview.

(d) Upon recertification of the tenant's income, the Lessee shall complete a new TIC, which shall be certified by applicant and the Lessee. Upon request of Lessor, this new TIC shall be sent to Lessor or designated representative prior to the tenant's anniversary date.

SECTION 10. Past Due Recertification

A recertification is considered past due if, upon request of Lessor, Lessor or its designated representative has not received executed copies of the TIC form from the tenant by the anniversary date of the tenant's move-in date. As of that date, Lessor or its designated representative will notify the Lessee of past due certifications and, within sixty (60) days, will process formal notice to the Lessee that the premises may be in non-compliance.

SECTION 11. Interim Adjustments

Each tenant of an Affordable Unit is obligated to report changes in household income and family composition which occur between the regularly scheduled recertification periods. These changes could include, but are not limited to, any household member moving out of the unit, any adult member of the household, who was previously reported as unemployed, obtaining employment, or the tenant's household income increasing. A new TIC must be completed, retained by the Lessee in the tenant's files, and, upon request of Lessor, submitted to Lessor or its designated representative within thirty (30) days of any change to a previously verified tenant's household income.

SECTION 12. Rent Restrictions

The maximum rents that tenants may pay shall be approved by Lessor.

Rents may be increased accordingly as the HUD median income increases, provided that the rental rates remain affordable to families earning not more than the median incomes as provided in Section 2 herein.

SECTION 13. Eviction of Tenants

Once an eligible tenant has been certified and admitted to the premises, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

SECTION 14. Audits

(a) The premises shall be subject to a management audit by Lessor or its designated representative at least annually. Notification of an audit shall be given to the Lessee at least 30 days prior to such audit. The results of the management audit and the recommendations for corrective action at the premises shall be transmitted to the Lessee within thirty (30) days following the completion of the audit.

(b) The purpose of the audit will be to conduct a physical inspection of the buildings and/or premises, to review a sampling of the TICs submitted either in that or any prior year (along with the backup and supporting documentation to the TIC), to review the documentation supporting the Annual Report, and to review any other documentation necessary for Lessor or its designated representative to make a determination as to whether the premises is in compliance with this Lease and all applicable statutes.

(c) The Lessee shall have a period of sixty (60) days in which to respond to the findings of the management audit. Lessor or its designated representative shall review the Lessee's response to determine the extent to which the issues raised in the management audit letter are addressed.

(d) In the event there are unresolved issues following the audit and Lessor or its designated representative's review of the Lessee's response, Lessor or its designated representative shall stipulate the remedial actions to be carried out or observed by the Lessee.

(e) The Lessee shall reimburse Lessor for any audit expenses incurred by Lessor, including the costs of an independent consulting firm selected and procured by Lessor.

SECTION 15. Reporting Requirements

(a) The Tenant Income Certification must be submitted, upon request of Lessor, at the following times during the year:

- * Thirty (30) days after the initial rent-up to the tenant;
- * Thirty (30) days after any interim adjustments to tenant incomes and household size have been reported/discovered; and
- * Thirty (30) days after the tenant's move-in anniversary date.

(b) The Annual Report must be submitted annually upon the Effective Date throughout the compliance period. These forms must be sent to Lessor or its designated representative.

(c) The Tenant Income Certification and the Annual Report forms are available from Lessor or its designated representative. Additionally, Lessor or its designated representative has data regarding HUD area median incomes, maximum rental rates, income verification information, and third-party verification forms.

SECTION 16. Fees

A reasonable annual compliance monitoring fee may be charged for administrative expenses. If fees are charged, payments shall be submitted with the Annual Report on the Effective Date for each year of the compliance period. It will be the responsibility of Lessor or its designated representative to inform the Lessee of any changes in the annual compliance fee

prior to the Lessee's Effective Date and submittal of fees. The fee may be adjusted annually each July 1.

SECTION 17. Observation of Laws, Ordinances and Regulations.

The Project shall comply with all applicable rules, regulations, ordinances and codes of the County of Hawaii, and any applicable federal and State of Hawaii laws.

SECTION 18. Nondiscrimination.

Lessor acknowledges that, except for the resident manager's unit, the Project is an affordable rental housing project for seniors who are aged ___ years old and older (if applicable for senior projects). Except for this requirement, the operation and use of the Project shall not be in support of any policy which discriminates against anyone based upon race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.

SECTION 19. Reserved Housing Credits.

This Project shall not be sold, transferred, or otherwise used to satisfy the reserved housing or affordable housing requirement for any other project at any other location, unless approved in writing at the sole discretion of Lessor.

SECTION 20. Reservation for Recapture of General Excise Tax Exemptions.

If the Project is completed with exemptions from Hawaii's General Excise Tax law approved by Lessor, if the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Lease for the full remaining term of this Lease and this Lease is terminated for any reason, Lessor reserves the right to recapture from Lessee, the Project, and the leased premises, a proportionate share of the approximate \$_____ Project development cost savings resulting from Lessor's approval of an affordable housing exemption from Hawaii's General Excise Tax law, based on the unexpired portion of the term of this Lease that would have been remaining but for the early termination. If the Affordable Units do not remain restricted for income-qualified tenants in accordance with this Lease for the full remaining term of this Lease, but this Lease is not terminated, Lessor reserves the right to recapture from Lessee, the Project, and the leased premises, a proportionate share of the approximate \$_____ Project development cost savings resulting from Lessor's approval of the exemption from Hawaii's General Excise Tax law, based on the number of non-compliant Affordable Units relative to the total number of Affordable Units and the unexpired portion of the term of this Lease as of the date such Affordable Units are no longer restricted for income-qualified tenants.

SECTION 21. Incorporation of Development Agreement

a. This Lease incorporates the terms and conditions of the Development Agreement between the Lessor and Lessee for the leasehold development, ownership, management and operation of the Project, dated _____ ("Development Agreement"). An event of

default under the Development Agreement shall constitute an event of default under this Lease.

b. In the event the Development Agreement is terminated or deemed to be terminated for reasons other than completion of the Project (for new construction projects), this Lease shall also be terminated. In such case of termination, the Lessee shall promptly execute a Cancellation of Lease provided by Lessor reflecting such termination.

End of Exhibit "B"