

**GROUND LEASE**  
( \_\_\_\_\_ **Project**)

THIS GROUND LEASE (this “**Lease**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by and between **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, (“**Lessor**”), and \_\_\_\_\_, a \_\_\_\_\_ [state & entity type], the principal place of business and mailing address of which is \_\_\_\_\_ (“**Lessee**”).

W I T N E S S E T H:

WHEREAS, Lessor is the owner in fee simple of the parcel of property situated at 690 Pohukaina Street, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, TMK No.: (1) 2-1-051: 041, being approximately 2.167 acres, more particularly described in **Exhibit “A”**, which is attached and incorporated by reference (the “**Premises**”).

WHEREAS, Lessor and Lessee have also entered into the certain unrecorded Development Agreement for the Project (as hereinafter defined) on or around the same date as this Lease (the “**Development Agreement**”), which contains among other things certain requirements for the development of the Project.

NOW, THEREFORE, 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, Lessor does hereby lease unto Lessee, and Lessee does lease from Lessor, the Premises.

It being expressly understood and agreed by Lessor that Lessee is the owner of all buildings and real property improvements and fixtures existing as of the Effective Date or hereafter situated on such land described in **Exhibit “A”** during the term of this Lease, and Lessor retains fee interest in such land; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 29 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 a conveyance or encumbrance of this Lease subject to Lessor’s approval or consent as provided below in Section 15, even though not expressly mentioned or described in the conveyance or other instrument.

SUBJECT to all liens and encumbrances affecting the Premises as of the Effective Date, including without limitation leases, licenses, rental agreements and contracts, and occupancy, use, and similar agreements, whether recorded or unrecorded.

TO HAVE AND TO HOLD the Premises unto Lessee for the term of \_\_\_\_\_ **years**, commencing on the Effective Date, up to and including the \_\_\_\_\_ **day** of \_\_\_\_\_, **20**\_\_\_\_, unless sooner terminated as hereinafter provided, Lessor reserving

and Lessee yielding and paying to Lessor at the office of Lessor, an annual rental as provided hereinbelow, payable annually in advance, without notice or demand, as follows (the “**Annual Rent**”):

The sum of \_\_\_\_\_ **AND 00/100 U.S. DOLLARS (US**  
\$ \_\_\_\_\_) per annum, increasing by three percent (3%) on each \_\_\_\_\_.

RESERVING UNTO LESSOR, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING:

(A) Minerals and Waters. (a) All minerals, as hereinafter defined, in, on, or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. “Minerals,” as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of 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 Lessor of the rights reserved in this paragraph, Lessor shall make reasonable efforts to minimize the taking of any improvements or any interference to Lessee’s use or enjoyment of the Premises, and just compensation shall be paid to Lessee for any of Lessee’s improvements taken.

(B) Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises.

(C) Lessor Reservations. The right to designate easements thereon and thereupon to grant such easements as shall be shown on a duly approved map to any public utility, or governmental authority or adjoining or nearby owner(s) of land and to record any documents against the Premises, as amended, with respect to such grant(s), subject to the prior written consent of Lessee, which consent may not be unreasonably withheld, delayed, or conditioned. Lessee shall not withhold, delay, or condition its consent so long as any such recorded document or easement granted with respect to the Premises, as amended, after the date hereof does not (i) contravene, hinder, or impair any right or privilege granted Lessee in this Lease, or (ii) result in any material interference with the use by Lessee of the Premises for the purposes permitted hereunder, or result in damage to existing structures or improvements and/or unrepaired damage to existing water, sewer, electrical, or cable systems and roads.

LESSEE COVENANTS AND AGREES WITH LESSOR AS FOLLOWS:

1. **Payment of Rent.** Lessee shall pay the Annual Rent to Lessor at the times and in the manner and form provided in this Lease and at the place specified above, or at any other place Lessor may from time to time designate, in legal tender of the United States of America. Any and all amounts payable by Lessee to Lessor pursuant to the terms of this Lease, other than the Annual Rent, are hereinafter collectively referred to as the “**Additional Rent**”, and the Annual Rent and Additional Rent are collectively referred to as “**Rent**”. All Additional Rent that is payable to Lessor shall be paid at the time and place specified in this Lease, and if no specific time or place shall otherwise be provided in this Lease with respect to the payment of Additional Rent, such Additional Rent shall be payable by Lessee to Lessor within thirty (30) days after written demand by Lessor at the place for the payment of Annual Rent. Lessor will have the same remedies for a default in the payment of any Additional Rent as for a default in the payment of Annual Rent.

2. **Taxes, Assessments, Etc.** Lessee shall pay or cause to be paid, before due, the amount of all taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or 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 become due and payable during the term. Concurrently with Lessee’s execution of this Lease, Lessee shall pay the actual amount of the conveyance tax due in connection with the execution of this Lease. Lessee shall pay the entire amount of any conveyance tax or related tax imposed by law on account of this Lease or any amendment to this Lease (including, without limitation, to the extent any conveyance tax or related tax results from any increase in Annual Rent under this Lease). At the request of Lessor, Lessee shall within ten (10) days after receipt thereof execute such affidavits and other documents as may be required by law in connection with such tax.

Lessee acknowledges that the Premises may have been operated as one or more qualified housing projects and may have resulted in exemptions from real property tax. Lessee shall be responsible for payment of and shall promptly pay all future rollback taxes or deferred real estate taxes and interest and penalties imposed on a retroactive basis or assessed or reassessed against the Premises after the Effective Date on account of any change of use by Lessee or its successors or assigns or other actions by Lessee or its successors or assigns. Lessee shall indemnify, defend, and hold Lessor and the State of Hawaii harmless from and against any and all such rollback taxes, deferred real estate taxes, together with any interest and penalties, assessed or charged or imposed against the Premises after the Effective Date, whether applicable for the period prior to or on or after the Effective Date.

3. **Utility Services.** Lessee shall pay when due all charges, duties, and rates of every description related to utility services provided to the Premises, including water, sewer, gas, refuse collection, or any other charges, as to which the Premises or any part, or any improvements, or Lessor or Lessee may become liable for during the term, whether assessed to

or payable by Lessor or Lessee. Lessee shall be solely responsible for obtaining any and all utilities and other services for the Premises, and in no event shall Lessor be responsible for interruption or failure in the supply of any utility or services to the Premises.

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, including gender identity or expression, sexual orientation, age, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection. Additionally, Lessee shall not discriminate against the use of vouchers by residential tenants under the Housing Choice Voucher Program provided by the United States Department of Housing and Urban Development or similar housing assistance program.

5. **Sanitation.** Lessee shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition in accordance with customary operational standards for similar types of properties in the same geographical area as the Premises.

6. **Waste and Unlawful, Improper or Offensive Use of Premises.** Lessee shall be responsible for the repair and 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, improper, or offensive use of the Premises or any part. Lessee shall be responsible for responding to any complaints against the Premises and for resolving any issues arising from the complaints, including but not limited to, taking commercially reasonable action to halt any waste, nuisance, or unlawful use of the Premises. Upon Lessor's receipt of actual notice that illegal acts are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Premises, to any governmental authority, Lessor shall so notify Lessee, and Lessee shall thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity. If Lessee does not or refuses to take reasonable and appropriate action intended to cause the cessation of such illegal activity within two (2) business days of receipt of written notice from Lessor, then such failure or refusal shall constitute an event of default under this Lease and Lessor may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. Lessor, merely by having the right to take certain actions in this Section, is neither obligated nor required to take any such action and shall not be liable to Lessee or any governmental authority if Lessor does not exercise such right.

7. **Compliance with Laws.** Lessee shall comply with all requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws applicable to the use, condition, or occupancy of the Premises, or to Lessee's business conducted at the Premises, now in force or which may be in force. Lessee shall, at its sole cost and expense, make all alterations to the Premises, and to any adjacent land between the Premises and any public street, that are required to comply with applicable laws, whether in effect as of the Effective Date or thereafter. Lessee's obligations under this Section shall include the obligation that Lessee, at Lessee's own expense, in accordance with the terms of this Lease, make, build,

maintain, and repair all fences, sewers, drains, roads, curbs, sidewalks, parking areas, and other improvements that may be required by laws to be made, built, maintained, and repaired in connection with or for the use of the Premises, whether located on the Premises or on other property. Lessee acknowledges and agrees that Lessor has no obligations under this Lease with respect to the compliance of the Premises with any applicable laws, whether in effect as of the Effective Date or thereafter; provided, however, the foregoing shall not relieve Lessor of Lessor's obligation to comply with all applicable laws with respect to Lessor's activities on the Premises, if any. Without limiting Lessee's obligation to comply generally with all applicable laws, Lessee, at its sole cost and expense, shall cause the Premises, including all improvements, and Lessee's use and occupancy of the Premises, and Lessee's performance of its obligations under this Lease, to comply with the requirements of the Public Accommodations Laws (as hereinafter defined), and shall take such actions and make such alterations as are necessary for such compliance. If the Premises are not in compliance with Public Accommodations Laws as of the Effective Date, or if the Premises thereafter fail to comply with Public Accommodations Laws, and Lessee receives notice from a governmental authority (other than Lessor) that Lessee is required to bring the Premises into compliance with applicable Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within thirty (30) days following such notice or such shorter period as may be required under such notice from the governmental authority. At minimum, such plan shall identify the work to be done to cause the Premises to be in compliance with Public Accommodations Laws and the timetable for completing such work. Any such work shall be subject to Lessor's reasonable approval.

As used herein, the term "Public Accommodations Laws" means Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 USC § 12181, 12183, 12186(b), 12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 USC § 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42, USC § 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 USC § 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190, and the Uniform Federal Accessibility Standards, and any similar laws in effect on the Effective Date or adopted, published, or promulgated thereafter, as the same may have been modified, amended, or supplemented prior to the Effective Date, or may be modified, amended, or supplemented thereafter. Additionally, Lessee shall comply with, as applicable, Hawaii Revised Statutes section 102-14, as the same may be amended, and Hawaii Revised Statutes chapters 104 and 515, as the same may be amended, as the same may relate to improvements made to the Premises by Lessee.

**8. Inspection of Premises.** Lessor, the State of Hawaii, or the City and County of Honolulu and their agents, representatives, successors, and assigns shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties, including without limitation examining the state of its repair and condition; provided, however, in the exercise of these rights, Lessor, the State of Hawaii, or the City and County of Honolulu shall not interfere unreasonably with Lessee's use and enjoyment of the Premises. Lessor shall be responsible for any loss, liability, claim, damage, or expense

(including cost of defense and reasonable attorneys' fees) arising from any such entry onto the Premises by Lessor.

**9. Improvements.** Except with respect to: (a) the work contemplated in the Development Agreement, (b) emergency repairs, (c) interior alterations or minor repairs that are non-structural in nature, do not alter mechanical or electrical systems, and do not materially alter the external appearance or view of any improvements, and (d) routine maintenance work, 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 Lessor. When the approval of the Lessor is required, such approval may be subject to those conditions Lessor may reasonably impose, including, without limitation: (i) the requirement that Lessee only use licensed contractors, subcontractors, materials, mechanics, and materialmen approved by Lessor, (ii) the requirement that Lessee only use certain materials or types of construction, and (iii) the requirement that Lessee provide evidence satisfactory to Lessor that there are funds available and committed to Lessee sufficient to pay for one hundred percent (100%) of the total hard costs and one hundred percent (100%) of any other indirect or "soft costs" associated with such work. Lessee shall reimburse Lessor, as Additional Rent, for any costs and expenses incurred by Lessor in connection with such improvement work, including, without limitation, any costs incurred in connection with Lessor's review and/or approval of such work (whether internal or related to the engagement of third parties). Additionally, Lessee shall not commence construction of any improvement to the Premises 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 therefor 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.

Neither Lessor's approval nor the approval of any architect or engineer engaged by Lessor of any plans or specifications reviewed by Lessor or such architect or engineer pursuant to the provisions of this Lease, or of the construction of any improvements, shall be deemed a warranty or other representation by Lessor that such plans or specifications or the construction of the improvements are legal, structurally safe or sound, or adequate for Lessee's use.

Lessee shall own these improvements until the expiration or earlier termination of this Lease, at which time the ownership shall, at the option of Lessor, become the property of Lessor, or upon written notice by Lessor shall be removed by Lessee, at its sole cost and expense, as set forth in Section 28 below.

**10. Capital Improvements Pursuant to Development Agreement.** As a material inducement to Lessor to enter into this Lease with Lessee, Lessee has agreed to invest substantial capital in the Premises for the improvements as described in the Development Agreement. The Lessee shall satisfy the requirements of the Development Agreement.

**11. Failure to Complete Capital Improvements.** Lessee's failure to timely complete all material work set forth in the Development Agreement shall constitute a material default of this Lease and shall entitle Lessor to exercise all right and remedies under this Lease and at law and in equity for such a default, including without limitation, termination of this Lease. Without limiting the generality of the foregoing sentence, as one possible remedy for Lessee's default, Lessor, at Lessor's option, may make demand on any applicable performance bonds to cause the completion of the work. Notwithstanding anything in this Section 10 to the contrary, if Lessee is delayed, hindered in, or prevented from timely completing the work described in the Development Agreement by reason of a cause beyond Lessee's reasonable control, then completion of such work act shall be extended for a period equivalent to the period of such delay. Such causes shall include, without limitation, fire, flood, earthquake, or other acts of God, boycotts, strikes, lockouts, or general labor disputes impacting the Premises, weather in which work cannot proceed (even if normal), protests, riots, insurrection, terrorism, war, shortage or unavailability of labor or materials from normal sources, moratorium, or acts or failure to act of governmental authorities, including courts. At Lessor's option, Lessor may engage third-party consultants ("Lessor's Consultants") at Lessor's expense to assist Lessor in monitoring the progress of the work under the Development Agreement. Lessor and Lessor's Consultants at all reasonable times during the course of the work shall have the right of entry upon and free access to the construction site and the right to inspect all work done, labor performed, materials and equipment furnished with respect to such construction and to attend and participate in all owner, architect and contractor meetings concerning the planning, development and construction of the improvement work. Neither Lessor's approval nor the approval of any architect or engineer engaged by Lessor of the Development Agreement as it may be revised or modified, or any other documents or materials reviewed by Lessor or such architect or engineer, or of the construction or installation of any improvements, shall be deemed a warranty or other representation by Lessor that the Development Agreement, as revised or modified, or the construction of the improvements pursuant thereto are legal, structurally safe or sound, or adequate for Lessee's use.

**12. Repairs to Improvements.** 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, which obligations shall include, without limitation, all structural and non-structural and capital and non-capital repairs and replacements. Lessee shall also, at its own expense, make any and all repairs and perform all work required by applicable law to keep the property, buildings, and improvements on the Premises in compliance with all applicable County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

Lessee shall establish and maintain a reserve fund for replacements by depositing to an account (the "**Reserve Fund for Replacements**") an annual amount of at least \$300 per dwelling unit in the Project on the Premises per year. The Reserve Fund for Replacements shall be held in a safe, responsible, and federally insured depository approved by Lessor. Such fund, whether in the form of a cash deposit or obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of Lessor, an Authorized

Mortgagee (as defined in Section 21), or other entity approved by Lessor. Disbursements from the Reserve Fund for Replacements shall require prior written approval of Lessor, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, if an Authorized Mortgagee requires the use of funds in the Reserve Fund for Replacements, Lessee shall be entitled to disbursements from the Reserve Fund for Replacements in order to satisfy such requirement. Notwithstanding anything in this paragraph to the contrary, at any time an Authorized Mortgagee or a limited partner of Lessee requires Lessee to maintain an account for similar purposes as the Reserve Fund for Replacements and the said account (i) is required to be held in a safe, responsible, and federally insured depository, (ii) requires the deposit of at least \$300 per dwelling unit in the Project on the Premises per year, and (iii) contains a balance of at least \$300 per dwelling unit in the Project on the Premises deposited per year since the commencement of the account, less authorized expenditures, the requirements of such Authorized Mortgagee or limited partner with respect to the treatment and use of the funds in such account shall control, and the requirements of Lessor pertaining to the Reserve Fund for Replacements in this Section 12 shall be deemed satisfied by virtue of the maintenance of such account.

**13. Liens and Encumbrances.** Lessee shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of Lessee becoming subject to any attachment, lien, charge, or monetary encumbrance, except as provided in this Lease, and shall defend, indemnify, and hold harmless Lessor and the State of Hawaii from and against all attachments, liens, charges, and encumbrances and all resulting expenses. Lessee shall keep the Premises free from any liens or encumbrances arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Lessee. Lessee shall remove any lien or encumbrance by bond or otherwise within ten (10) days after Lessee becomes aware of the existence of such lien or encumbrance or application or claim therefor, and if Lessee shall fail to do so, Lessor may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, in addition to such other remedies available to Lessor under this Lease. Lessee covenants and agrees that it will not subordinate its leasehold interest in the Premises to any mortgage, deed of trust, easement, lien, security interest, encumbrance, and/or restriction recorded against Lessor's fee interest in the Premises without the prior written consent of each Authorized Mortgagee. Notwithstanding any provision in this Lease to the contrary, Lessee may place and record non-monetary liens and encumbrances (e.g., easements) that do not affect Lessor's interest in the Premises and solely affect Lessee's leasehold interest in the Premises, without having to obtain Lessor's consent or approval, but Lessee shall provide written notice thereof to Lessor within two (2) business days after such placement or recordation.

Lessor shall not (i) change or modify the zoning or land use designations applicable to the Premises; (ii) make any development, land use, or other applications related to the Premises other than as a co-applicant with Lessee; or (iii) cause any liens, encumbrances, or any other items to be recorded against the Premises, without the prior written consent of Lessee and any Authorized Mortgagee, which consent may not be unreasonably withheld, delayed, or conditioned. Lessee and any Authorized Mortgagee shall not withhold, delay, or condition their

consent so long as any such action does not (a) contravene, hinder, or impair any right or privilege granted Lessee in this Lease, or (b) result in any material interference with the use by Lessee of the Premises, for the purposes permitted hereunder or result in damage to existing structures or improvements and/or unrepaired damage to existing water, sewer, electrical, or cable systems and roads, and so long as such lien, encumbrance, or any other items to be recorded against the Premises expressly provides that it is and shall remain subject and subordinate at all times in lien, operation, and otherwise to this Lease and to all renewals, modifications, amendments, consolidations, and replacements hereof (including new leases entered into pursuant to Section 23 and extensions).

**14. Character of Use.** Lessee shall at all times use or cause the Premises to be used for the purposes of developing, constructing, operating, and maintaining a \_\_\_\_\_ project (the “**Project**”), as described and subject to the affordability and use restrictions prescribed herein, and for no other purpose whatsoever. Lessee shall ensure that the use and occupancy of the Premises complies with all applicable county, state, and federal laws and regulations. Lessee shall manage and operate the Premises and perform its duties and obligations under this Lease in a manner consistent with the standards followed by institutional quality owners and management companies that are managing comparable multifamily housing projects for affordable families. Lessee shall cause the Premises to be inspected periodically by qualified personnel to ensure that the repair, maintenance, and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied.

**15. Assignment of Lease.** Lessee shall not assign this Lease without the written approval of Lessor. An approved assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have received an executed copy of such assignment that includes the written undertaking of the assignee to perform all obligations of Lessee hereunder accruing from and after the effective date of such assignment. No such assignment shall release Lessee or assignor from further liability hereunder. With respect to its review of a requested assignment of this Lease, Lessor may impose a service charge for the processing of such request for approval, which may include the out-of-pocket costs incurred by Lessor in processing such request for approval, including without limitation fees permitted under Title 15, Subtitle 14, Chapter 307 of the Hawaii Administrative Rules, as may be amended or repealed and replaced from time to time. If Lessee shall participate in the Low Income Housing Tax Credit Program described in Section 42 of the Internal Revenue Code of 1986, Lessee may sell and assign this Lease, subject to the foregoing provisions of this Section 15. Notwithstanding anything to the contrary set forth in this Lease, Lessee is not permitted to assign this Lease during the first year of the term of this Lease.

An “assignment” of this Lease shall include one or more sales or transfers by operation of law or otherwise by which: (i) an aggregate of at least fifty percent (50%) of: (a) the total capital stock of a corporate Lessee; (b) the total partnership interests of a general partnership Lessee; (c) the total membership interests of a limited liability company Lessee; or (d) the total beneficial interests of a trust Lessee; (ii) if the Lessee is a limited partnership, at least fifty percent (50%) of the interest in the general partner of such limited partnership or, if there is more than one

general partner, at least fifty percent (50%) of the interests in all such general partners in the aggregate; or (iii) if the Lessee is a limited liability company that is manager-managed, at least fifty percent (50%) of the interest in the manager of such limited liability company or, if there is more than one manager, at least fifty percent (50%) of the interests in all such managers in the aggregate, shall become vested in one or more individuals, firms, or corporations who or which were not stockholders, partners, members, or beneficiaries of Lessee, either legally or equitably, as of the date that Lessee acquired an interest in the Premises; provided, however, that “assignment” shall not include sales or transfers of stock of a corporate Lessee whose capital stock is listed on a nationally recognized stock exchange.

An assignment shall also be deemed to have occurred upon the occurrence of any one or more of the following: (a) any change in “control” of Lessee; (b) any transfer to an entity resulting, by operation of law or otherwise, from the merger, consolidation, or other reorganization of Lessee; or (c) any transfer to a transferee of substantially all of the assets, stock, or operating units of Lessee. “Control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, or ownership of any sort, whether through the ownership of voting securities, by contract, or otherwise.

**16. Subletting.** Except for the renting of the dwelling units in the Project, together with the parking spaces, to eligible persons and families consistent with the provisions of this Lease, and except for the renting of the commercial spaces to commercial tenants consistent with the provisions of this Lease, both of which may be done without the approval or consent of Lessor, Lessee shall not be allowed to sublet the whole or any portion of the Premises without the prior written approval of Lessor.

**17. Indemnity.** Lessee shall defend, indemnify, and hold harmless 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: (a) any occurrence in, on, or about or otherwise relating to the Premises occurring from and after the Effective Date; (b) any acts, omissions, or negligence of Lessee or of any person claiming by, through or under Lessee, in, on, or about the Premises; (c) any failure on the part of 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 Lessee to maintain the Premises in a safe condition; (d) the use, occupancy, or manner of use or occupancy of the Premises by Lessee, any sublessee, or any other person claiming by, through, or under Lessee; (e) the conduct or management of any work or thing done in or on the Premises by Lessee, any sublessee, or any other person claiming by, through, or under Lessee; (f) the design, construction, maintenance, or condition of any improvements to the extent constructed or altered by Lessee during the term; (g) the condition of the Premises to the extent modified by Lessee; and (h) any breach of the terms of this Lease. This Section shall survive the expiration or earlier termination of this Lease.

**18. Lessor Expenses.** Lessee shall pay to Lessor, within thirty (30) days after written demand therefor, all reasonable costs and expenses, including attorneys’ fees, paid or incurred by Lessor: (a) but required to be paid by Lessee under any covenant in this Lease

(including without limitation any indemnity provision), (b) in enforcing any of Lessee’s covenants or obligations in this Lease, (c) in protecting Lessor against any breach of this Lease by Lessee, (d) in remedying any breach of this Lease by Lessee, (e) in recovering possession of the Premises or any part of the Premises, (f) in collecting or causing to be paid any delinquent Rent, taxes or other charges payable by Lessee under this Lease, (g) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor or the State of Hawaii shall without fault be made a party, or (h) for performing any obligations of Lessee. All such costs, expenses, and fees shall constitute Additional Rent. This Section shall survive the expiration or earlier termination of the term of this Lease.

**19. Liability Insurance.** Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by Lessee shall provide the following minimum policy limits and coverages:

<u>Coverage</u>	<u>Minimum Policy Limits</u>
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 \$1,000,000 per occurrence, and \$2,000,000 in the aggregate (the maximum amount paid for claims during a policy term) arising out of or in connection with operations performed under this Lease. Automobile insurance, including automobile contractual liability, uninsured and underinsured motorist coverage, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.
Workers’ Compensation	As required by Hawaii laws.
Property	Including Flood and Windstorm written on a replacement cost basis as is reasonably available in the market at a reasonable cost for risks a prudent person would insure against. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.
Builder’s Risk	Lessee shall procure, prior to commencement of construction, an Inland Marine Builder’s Risk coverage form providing coverage to protect the interests of the State of Hawaii, Lessor, Lessee,

Lessee's contractors, sub-contractors, architects, and engineers including but not limited to property in transit on and off-Premises, which should become a part of the project. The builder's risk insurance shall be written on an all risk, replacement cost, and completed value form basis for 100% of the projected completed value of current improvements to be constructed. Coverage should be evidenced on form Acord 27, Evidence of Property Insurance.

Pollution  
Liability

Lessee's pollution legal liability environmental insurance shall be written on occurrence form with a combined single limit of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate (the maximum amount paid for claims during a policy term) 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.

Contractor's  
Pollution  
Liability

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 legal liability environmental 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 \$1,000,000 and aggregate limit of not less than \$2,000,000. The policy shall have tail coverage extending five (5) years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name Lessor and the State of Hawaii as additional insureds.

The Commercial General Liability Insurance, Automobile Insurance, and Pollution Legal Liability Environmental Insurance shall contain the following four 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 State of Hawaii and Lessor specifically are added as additional insured parties for operations performed on the Premises.
- 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.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the 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 Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, 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 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, a copy of an insurance policy or other documentation sufficient 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 the coverage, form, and amount of the insurance required under this Lease. Lessee shall immediately provide written notice to Lessor should any of the insurance policies evidenced on its certificates of insurance be cancelled, limited in scope, or not renewed upon expiration of the current policy period.

If the State of Hawaii comptroller requires any changes to the insurance requirements set forth in this Lease, including without limitation, coverage, form, and amount to provide adequate protection, Lessee shall obtain such insurance as so required. Notwithstanding the foregoing, every ten (10) years during the term of this Lease, Lessee shall automatically be required to increase the Commercial General Liability Insurance, Automobile Insurance, and Pollution Legal Liability Environmental Insurance coverages carried by Lessee under this Lease by the percentage increase in the CPI over the same period of time. As used herein, "CPI" means the Consumer Price Index for all Urban Consumers, All Cities (base year 1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base period of the CPI changes from the 1982-84 = 100 base, the CPI shall, thereafter, be adjusted to the 1982-84 = 100 base before the computation indicated above is made. If the CPI is at any time no longer published, a comparable index generally accepted and employed by the real estate profession shall be used.

Lessor shall notify Lessee in writing of any changes in the insurance requirements pursuant to the preceding paragraph. If Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to Lessee and Lessor shall be entitled

to all legal remedies, including termination of this Lease, and Lessee shall be liable for all damages, costs, and fees.

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

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

**20. Property Insurance.** 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 and with a minimum financial strength rating of "A" as assigned by A.M. Best Company, insuring all buildings and improvements erected on the 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.

In the event of total or partial loss, an Authorized Mortgagee shall have the right to participate in the adjustment of any losses as to casualty or hazard insurance proceeds. Any proceeds derived from the policy(s) shall be paid to the Authorized Mortgagee, if any, or such Authorized Mortgagee's designee to be used to repair or restore the Premises as nearly as possible to the condition the Premises were in immediately prior thereto, it being understood that, so long as Lessee has fully complied with the requirements of the first sentence of this Section 20, Lessee's obligation to rebuild the Premises shall be limited to the amount of available casualty/hazard insurance proceeds. In such event, neither party shall have the right to terminate this Lease, and this Lease shall continue in effect. If there is no Authorized Mortgagee, the proceeds shall be paid to Lessee and used by 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 Lessor, in which event, following such restoration, the balance of the proceeds shall be paid to Lessee. Lessee may, with the consent of the Authorized Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Lessee shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Lessor to be paid the balance of the proceeds.

Lessee shall furnish Lessor on or before the commencement 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). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to Lessor.

**21. Mortgage.** Except with respect to financing existing as of the Effective Date or as provided in this Lease, Lessee shall not mortgage, hypothecate, or pledge the Premises or any interest in this Lease without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed, and which shall be granted so long as the loan: (A) is made by an institutional lender, which shall include, without limitation, any bank, life insurance company, real estate investment trust, pension fund, the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other state or federal agency, and (B) is on terms and conditions consistent with a standard loan program offered by such institutional lender for similar projects at the time the loan is made, and (C) shall be payable over not more than the remaining term of this Lease, and (D) shall be in an amount that, when aggregated with the outstanding amount of all other Authorized Mortgages affecting the Premises, does not exceed seventy-five percent (75%) of the then fair market value of Lessee's interest in this Lease based on the appraisal of the proposed lender. A mortgage to which Lessor has provided its prior written approval is called an "**Authorized Mortgage**" in this Lease, and the mortgagee thereunder is called an "**Authorized Mortgagee**" in this Lease.

**22. Breach.** Time is of the essence in this Lease, and if 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 Lessor of a written notice of breach or default, 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 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 ten (10) days after delivery by Lessor of a written notice of breach or default, by personal service, registered mail, or certified mail to Lessee at its last known address and to each Authorized Mortgagee (however, in the case where the Lessee has commenced to cure such default within such ten (10) day period and is continuing such cure with all due diligence but cannot by the exercise of due diligence cure such default within such period, such period will be extended for an additional period as may be reasonably required under the circumstances to complete such cure), 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 Lessor, all buildings and improvements shall remain and become the property of 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. If this Lease is recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction. Lessor hereby agrees that any cure of any default made or tendered by Lessee's limited partner or an Authorized Mortgagee shall be accepted or rejected on the same basis as if such cure were made or tendered by Lessee. If Lessor will elect to terminate this Lease pursuant to the foregoing, then an Authorized Mortgagee will have the right to postpone and extend the specified date for the termination of this Lease for a period sufficient to enable such Authorized Mortgagee to acquire Lessee's interest in this Lease by foreclosure of its

mortgage or otherwise. Notwithstanding anything in this Section 22 to the contrary, this Section 22 is subject in its entirety to the provisions of Section 23 below.

**23. Right of Holder of Record of a Security Interest.** Notwithstanding anything to the contrary in Section 22, the following provisions shall apply with respect to any Authorized Mortgagee.

a. Notices to Authorized Mortgagee. Lessor shall give to any Authorized Mortgagee who has given Lessor written notice of its name and address, concurrently when given to or served on Lessee, a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee in accordance with or relating to this Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Lessor may predicate or claim a default. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to an Authorized Mortgagee by Lessor shall be deemed duly served on or given to the Authorized Mortgagee in the manner provided for under this Lease if sent by first class mail to the last mailing address for the Authorized Mortgagee, provided to Lessor in writing by the Authorized Mortgagee or Lessee.

b. No Modification or Termination Without Authorized Mortgagee's Consent. For as long as there is any Authorized Mortgagee in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not modify, amend, restate, or surrender this Lease in any way, and Lessee will not waive any of its rights under this Lease, without the express prior written consent of the Authorized Mortgagee, and any attempt to take any such action without the Authorized Mortgagee's consent shall not be binding on such Authorized Mortgagee at the option of such Authorized Mortgagee. For so long as there is any Authorized Mortgagee in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not, by mutual agreement, cancel or terminate this Lease without the express prior written consent of the Authorized Mortgagee. Lessor agrees for the benefit of any Authorized Mortgagee that this Lease is not terminable by Lessor as a result of status or other defaults of Lessee that by their nature are not capable of being cured by the Authorized Mortgagee so long as Rent and other obligations which are capable of performance by the Authorized Mortgagee are being paid and/or performed.

c. Cure Rights. During the continuance in effect of any Authorized Mortgagee of this Lease, Lessor will not terminate this Lease because of any monetary default on the part of Lessee if the Authorized Mortgagee or its assigns shall cure the default, within the later of: (a) sixty (60) days after Lessor has mailed to the Authorized Mortgagee or its assigns at the last known address thereof a written notice of intention to terminate the interest of Lessee under this Lease for such cause, or (b) sixty (60) days after the expiration of the time period granted to Lessee under this Lease for curing such default. Further, as to any non-monetary default, the Authorized Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Lessor, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default. In case of such undertaking, Lessor will not so terminate if the Authorized Mortgagee has commenced foreclosure proceedings or within such

further time as may be required by the Authorized Mortgagee to complete foreclosure of such Authorized Mortgage or other remedy thereunder provided (i) that such remedy is pursued promptly and completed with due diligence, and (ii) that the Authorized Mortgagee has paid all Rent and other charges accruing hereunder as the same become due and has performed all the covenants of this Lease until such time as this Lease shall be sold upon foreclosure of the Authorized Mortgage. Any default consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to the Authorized Mortgage shall be deemed to be duly cured if such Authorized Mortgage shall be foreclosed by appropriate action instituted within said sixty (60) day period and thereafter prosecuted in diligent and timely manner. Ownership of Lessor's interest and Lessee's interest by or for the same person shall not affect the merger thereof without the prior written consent of any Authorized Mortgagee to such merger.

d. Other Rights. An Authorized Mortgagee or its assigns under an Authorized Mortgage shall also have the right, at any time during the term of this Lease and the existence of such Authorized Mortgage, to do any one or more of the following:

i. Acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in the Authorized Mortgage, which may limit any exercise of any such right, remedy or privilege;

ii. Rely upon and enforce any provisions of this Lease to the extent that such provisions are for the benefit of the Authorized Mortgagee;

iii. Perform any of Lessee's obligations under this Lease, or do any act or thing required of Lessee under this Lease, and Lessor agrees to accept the performance by the Authorized Mortgagee of Lessee's obligations under this Lease or any such act or thing done and performed by such Authorized Mortgagee for and on behalf of Lessee or in the place of Lessee, as if such performance, action or thing were done by Lessee;

iv. Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Authorized Mortgage;

v. Transfer, convey, or assign the title of Lessee to the leasehold estate created by this Lease to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Authorized Mortgage, or to an assignee under an assignment in lieu of foreclosure;

vi. Acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Authorized Mortgage, or by virtue of an assignment in lieu of foreclosure.

No Authorized Mortgagee shall, as a condition to the exercise of its rights hereunder, be required to assume personal liability for the payment and performance of the obligations of Lessee hereunder. Any such payment or performance or other act by an Authorized Mortgagee hereunder shall not be construed as an agreement by such Authorized Mortgagee to assume such personal liability except to the extent such Authorized Mortgagee actually takes possession of the Premises.

e. New Lease to Authorized Mortgagee. If this Lease is terminated for any reason, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, Lessor agrees to give immediate written notice of the termination of this Lease to the Authorized Mortgagee and shall include in the notice a statement of all sums which would be due under this Lease at the time of termination and all other defaults of Lessee existing at such time, and to enter into a new lease for the Premises with such Authorized Mortgagee, as Lessee (a "New Lease"), provided all of the following conditions are satisfied:

i. A written request for the New Lease is served on Lessor by the Authorized Mortgagee within thirty (30) days after such Authorized Mortgagee's receipt of written notice from Lessor of the termination of this Lease;

ii. The New Lease is for a term ending on the same date the term of this Lease would have ended had this Lease not been terminated; provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining term of this Lease had this Lease not been terminated; and contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that in the reasonable determination of Lessor (i) have already been fulfilled, (ii) are prohibited by virtue of Authorized Mortgagee's legal status; (iii) are impossible for the Authorized Mortgagee to perform; or (iv) are no longer applicable);

iii. The Authorized Mortgagee, upon execution of the New Lease by Lessor, shall pay any and all sums that would at the time of the execution of the New Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Lessee that are capable of being remedied by the Authorized Mortgagee, and any defaults or breaches of this Lease which are not capable of being remedied by the Authorized Mortgagee shall be deemed cured or waived;

iv. The Authorized Mortgagee, on execution of the New Lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred in terminating this Lease, recovering possession of the Premises from Lessee or the representative of Lessee, and preparing the New Lease;

v. The New Lease shall be subject to all existing subleases between Lessee and subtenants;

vi. The New Lease shall be assignable by the Authorized Mortgagee and by any affiliate of the Authorized Mortgagee or nominee of the Authorized Mortgagee, but not by their respective successors, without the prior written consent of Lessor, and upon any such assignment to an assignee assuming the obligations of Lessee under this Lease, the Authorized Mortgagee shall be released from any and all further liability under the New Lease arising following the date of such assignment; and

vii. Any New Lease made pursuant to this Section will have the same priority with respect to other interests in the Premises as this Lease. The provisions of this Section will survive the termination, rejection, or disaffirmance of this Lease and will continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by Lessor, Lessee and the Authorized Mortgagee.

f. Obligations of Authorized Mortgagee Upon Foreclosure. No Authorized Mortgagee shall be liable to Lessor as an assignee of this Lease unless and until such Authorized Mortgagee acquires all rights of Lessee under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Authorized Mortgage, and such liability shall be limited to (a) the monetary obligations that arise during the period of time that such Authorized Mortgagee has ownership of the leasehold estate created by this Lease; and (b) the value of the Authorized Mortgagee's interest in such leasehold estate. Furthermore, any Authorized Mortgagee or other subsequent owner shall only be liable for acts or omissions arising out of events or conditions first occurring during the period that such Authorized Mortgagee or subsequent owner holds title to the Premises.

g. Lessee's Personal Property. In the event of any default by Lessee under this Lease or any loan documents, Lessor will allow Authorized Mortgagee to enforce its lien and security interest in Lessee's personal property located at the Premises and Lessor will allow Authorized Mortgagee to assemble and remove all of Lessee's personal property located on the Premises to the extent that such personal property does not inhibit or limit the ongoing operation of the Project or negatively impact the health and safety of persons on the Premises. Lessor hereby waives any Lessor's lien it might hold, statutory, constitutional, contractual, or otherwise, in any personal property owned or leased by Lessee and now or hereafter located on the Premises. If so requested by Lessee, Lessor shall execute a waiver of any right, title, or interest in or right to seize any of Lessee's personal property on the Premises that may be subject to a lien or security interest in favor of Authorized Mortgagee or a seller of Lessee's personal property or creditor holding a security interest in such personal property.

h. No Merger of Leasehold and Fee Estates. So long as any Authorized Mortgage is in existence, unless the Authorized Mortgagee shall otherwise expressly consent in writing, or unless this Lease has expired, has been terminated in accordance with its terms as a result of a default under this Lease by Lessee, or has otherwise terminated earlier in accordance with its terms, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the

acquisition of said fee title and/or said leasehold estate by Lessor or by Lessee, or by a third party, by purchase or otherwise.

i. Authorized Mortgagee as Including Subsequent Security Holders.

The term “Authorized Mortgagee” as used in this Lease shall mean not only the party that is named as mortgagee, secured party, or security holder in the Authorized Mortgage but also its affiliates to the Authorized Mortgagee’s interest as mortgagee and/or secured party, as applicable, of the Authorized Mortgage.

j. Two or More Authorized Mortgagees.

In the event two or more Authorized Mortgagees each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of such Authorized Mortgagees, the Authorized Mortgagee whose mortgage would have senior priority in the event of a foreclosure shall prevail.

k. Extension of Time for Authorized Mortgagee Performance.

All time periods for an Authorized Mortgagee’s cure of non-monetary defaults under this Lease that require possession of the Premises for such cure and all time periods for the Authorized Mortgagee’s foreclosure or exercise of other remedies for Lessee’s default are extended for a period of time equal to any stay, prevention or other delay resulting from bankruptcy, injunction or similar legal action or proceeding.

l. Bankruptcy.

i. Affecting Lessee.

If Lessee (as debtor in possession) or a trustee in bankruptcy for Lessee rejects this Lease in any bankruptcy, insolvency, reorganization, composition, or similar proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any similar state or federal statute for the relief of debtors, including any assignment for the benefit of creditors or similar proceeding (each, a “Bankruptcy Proceeding”) affecting Lessee, then such rejection shall be deemed Lessee’s assignment of its interest in this Lease and the leasehold estate created by this Lease to a new tenant to be designated in writing by the Authorized Mortgagee holding the most senior Authorized Mortgage, in the nature of an assignment in lieu of foreclosure, subject to all security instruments. Upon such deemed assignment, this Lease shall not terminate. Each Authorized Mortgagee shall continue to have all the rights of an Authorized Mortgagee as if the Bankruptcy Proceeding had not occurred, unless such Authorized Mortgagee shall disapprove such deemed assignment by written notice delivered to Lessor within thirty (30) days after such Authorized Mortgagee receives written notice of the rejection of this Lease in any Bankruptcy Proceeding. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the deemed assignment provided for in place of rejection of this Lease, then each Authorized Mortgagee shall continue to be entitled to a New Lease as provided in this Lease.

ii. Affecting Lessor.

If Lessor (as debtor in possession) or a trustee in bankruptcy for Lessor rejects this Lease in any Bankruptcy Proceeding affecting Lessor, then:

(1) Assignment. Lessor and Lessee acknowledge that an Authorized Mortgagee's collateral includes all rights of Lessee under 11 U.S.C. § 365(h), all of which rights have been validly and effectively assigned to such Authorized Mortgagee.

(2) Lessee's Election. Lessee's right to elect to treat this Lease as terminated is subject to and conditioned upon each Authorized Mortgagee's express prior written consent. If Lessee purports, without each Authorized Mortgagee's express prior written consent, to elect to treat this Lease as terminated, then such election and purported termination shall be null, void, and of no force or effect at the option of such Authorized Mortgagee. Each Authorized Mortgagee shall have the right, to the exclusion of Lessee, to make any election and exercise any rights of Lessee under 11 U.S.C. § 365(h)(1). Provided that an Authorized Mortgagee shall have received written notice of Lessor's Bankruptcy Proceeding simultaneously with written notice delivered to Lessee, such Authorized Mortgagee's rights under the preceding sentence must be exercised, if at all, subject to such time limits and requirements as would apply to Lessee, except that as against an Authorized Mortgagee, every such time period shall be extended by thirty (30) days.

(3) Continuation of Lease. If Lessee does not, with each Authorized Mortgagee's express written consent, treat this Lease as terminated, then (notwithstanding any purported election by Lessee to the contrary made without each Authorized Mortgagee's express prior written consent) Lessee shall be deemed to have elected to continue this Lease pursuant to 11 U.S.C. § 365(h)(1)(A)(ii). This Lease shall continue in effect without change upon all the terms and conditions set forth in this Lease.

(4) Continuation of Security Instruments. The lien of any security instrument that was in effect before rejection of this Lease shall extend to Lessee's continuing possessory and other rights under 11 U.S.C. § 365(h) in the Premises and this Lease following such rejection, with the same priority as such lien would have enjoyed against the leasehold estate created by this Lease had such rejection not taken place.

m. Additional Lender Assurances. To facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's leasehold estate created by this Lease and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any instruments, including, without limitation, amendments to this Lease, which legal counsel for any lender which is or may become a lender and the holder of a security instrument may reasonably request to grant to the lender the right to act for Lessee in enforcing or exercising any of Lessee's rights or remedies under this Lease, provided that in no event shall Lessor be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the leasehold estate of Lessee nor to subordinate Lessor's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such instrument adversely affect Lessor's rental, Lessee's payment of taxes, assessments, insurance and/or Lessee's payment or performance of other obligations under this Lease or otherwise diminish or reduce Lessor's rights under this Lease (including without limitation, Lessor's rights under this Article).

n. Mezzanine Protections. Provided Lessee provides to Lessor a notice setting forth the name and address of any lender having a security interest in a direct or indirect equity or other ownership interest in Lessee pursuant to a mezzanine loan (a “Mezzanine Loan” and such lender, a “Mezzanine Lender”), Lessor shall thereafter deliver to Mezzanine Lender a copy of any notice required to be sent to an Authorized Mortgagee pursuant to the terms hereof. Mezzanine Lender shall be entitled to exercise any rights granted to an Authorized Mortgagee herein. Nothing contained herein shall be deemed to impose upon Mezzanine Lender the obligation to perform any obligation hereunder or to remedy any default by Lessee; provided that Lessor shall accept performance by Mezzanine Lender of any covenant, condition or agreement on Lessee’s part to be performed hereunder, with the same force and effect as though performed by Lessee. Notwithstanding any provision hereof to the contrary, the rights of Mezzanine Lender shall be subject to the rights of any Authorized Mortgagee, whose rights shall take priority and precedence vis-à-vis Mezzanine Lender.

o. Third Party Beneficiary. Each Authorized Mortgagee shall be a third-party beneficiary of the rights and benefits granted to Authorized Mortgagees under this Lease. Neither Lessee nor Lessor shall be deemed to be a third party beneficiary of the rights granted hereunder to an Authorized Mortgagee and no Authorized Mortgagee shall have any obligation to Lessee or Lessor to account for any decision, action or election it may take or the exercise of its rights hereunder, nor shall any Authorized Mortgagee have any duty to Lessee or Lessor to exercise any right hereunder in any particular manner or order, other than that which such Authorized Mortgagee, in its sole discretion (but in any event subject to the terms of this Lease) shall deem appropriate and in its own best interests.

**24. 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, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee’s interest in the Premises and this Lease and the permanent improvements so taken in the proportion that it bears to the total value of the Premises, and further in proportion that the unexpired term of this Lease bears to the original term. The foregoing rights of Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Any proceeds payable to Lessee hereunder shall be paid to the Authorized Mortgagee, if any, or such Authorized Mortgagee’s designee. Following a partial condemnation, Lessee shall have the option to rebuild and restore the improvements on the remaining portion of the Premises, or, subject to the consent of the Authorized Mortgagee, receive a distribution of the proceeds, in which event such proceeds shall first be applied in accordance with the applicable loan documents. The Authorized Mortgagee shall have the right to supervise and control the receipt and disbursement of any condemnation awards and participate in any condemnation proceedings and settlement discussions. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises were leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by Lessor. Lessor, Lessee, and the Authorized Mortgagee, if any, shall each be entitled to appear and participate in any proceeding which determines any condemnation award. Lessor

agrees to not settle or compromise any condemnation proceeding without the consent of Lessee and any Authorized Mortgagee.

**25. No Extension.** Upon expiration or earlier termination of this Lease, Lessor shall have no obligation to extend or renew this Lease, nor to enter into a new lease with Lessee, and Lessor may lease the Premises to whomever it chooses for the operation in the Premises of a business that is the same as or different from that operated by Lessee in the Premises or for any other reason or use whatsoever. If, during the term of this Lease, Lessee requests to extend the term of this Lease, Lessor may agree to do so as determined in Lessor's sole and absolute discretion and subject to such terms and conditions as Lessor may require in Lessor's sole and absolute discretion, including without limitation, increasing the Annual Rent payable hereunder to a fair market rent.

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

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

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

**29. Surrender.** 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 Lessee, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, Lessee, at Lessee's option, may surrender the Premises with such personal property Lessee may elect to transfer to Lessor, or may elect to remove the same from the Premises, and should Lessee fail to remove said Lessee's personal property from the Premises, after notice thereof, Lessor may remove any and all such personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at Lessor's expense. This Section shall survive the expiration or earlier termination of this Lease.

**30. Non-warranty.** This Lease is made “AS IS” with all faults and Lessee expressly acknowledges and agrees that LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE PREMISES, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF LESSEE’S BUSINESS. Lessee acknowledges and agrees that Lessee has carefully inspected the Premises and accepts the same on an “AS IS” and “WHERE IS” basis, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Lessor, regarding the Premises or matters affecting the Premises. Lessee fully and irrevocably releases Lessee and the State of Hawaii, their successors, and each past, present, or future officer, director, employee, attorney, or agent of Lessor, the State of Hawaii, and their successors, from any and all claims that Lessee may now have or hereafter acquire against it or them from any costs, loss, liability, damage, expense, demand, action, or cause of action arising from information or documentation provided to Lessee with respect to the condition of the Premises.

This Lease is and shall be subject to any matter of record existing as of the Effective Date, including, without limitation, the encumbrances described in Exhibit “A” (the “**Encumbrances**”). Lessee covenants as a material part of the consideration for this Lease to observe, keep, comply with, and perform at Lessee’s sole cost and expense, all of such terms, covenants, and conditions to be kept and performed by or as an owner, occupant, or user of the Premises under the Encumbrances and agrees that this Lease is made upon the condition of such performance.

**31. Hazardous Materials.** 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 (collectively, “**Hazardous Materials Laws**”).

Lessee EXPRESSLY AND FULLY RELEASES Lessor and the State of Hawaii, their successors, and each past, present, or future officer, director, employee, attorney, or agent of Lessor, the State of Hawaii, and their successors, from any and all liability and claims Lessee or Lessee’s successors or assigns may have against it or them, which may arise out of or may directly or indirectly be attributable to the past, present or future use, generation, manufacture, treatment, handling, refining, production, storage, release, discharge, disposal or presence of any Hazardous Materials or any distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about or from the Premises or any part thereof into the environment, not in compliance with Hazardous Materials Laws.

Lessee shall not cause or permit the escape, disposal, or release of any Hazardous Materials except as permitted by Hazardous Materials Laws. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by Hazardous Materials Laws 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 or except as may be contained in household products brought onto the Premises by subtenants. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises, then Lessee shall be responsible for the reasonable costs thereof.

Unless Lessee is required by applicable law to give earlier notice to Lessor, Lessee shall notify Lessor in writing as soon as possible but in no event later than three (3) days after: (i) Lessee becomes aware of the occurrence of any actual release of any Hazardous Materials in, on, under, from, or about the Premises (whether past or present), regardless of the source or quantity of any such release, or (ii) Lessee becomes aware of any regulatory actions, investigations, or proceedings (including any threatened or contemplated investigations or proceedings) relating to or potentially affecting the Premises, or (iii) Lessee becomes aware of any claims relating to any Hazardous Materials in, on, under, from, or about the Premise (all such matters set forth in clauses (i), (ii) and (iii) hereinafter referred to as "Hazardous Materials Claims"). Lessee shall promptly forward to Lessor copies of all orders, notices, and other communications in connection with any Hazardous Materials Claims. Additionally, Lessee shall promptly advise Lessor in writing of Lessee's discovery of any occurrence or condition on, in, under, or about the Premises that could subject Lessee or Lessor to any liability, or restrictions on ownership, occupancy, transferability, or use of the Premises under any Hazardous Materials Laws. Lessee shall not enter into any legal proceeding or other action, settlement, consent decree, or other compromise with respect to any Hazardous Materials Claims without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to join and participate, as a party if Lessor so elects, in such proceedings, and in no event shall Lessee enter into any agreements which are binding on Lessor or the Premises without Lessor's prior written consent. Lessor shall have the right to appear at and participate in any and all legal or other administrative proceedings concerning any Hazardous Materials Claim.

If the existence or any release of any Hazardous Materials in, on, under, from, or about the Premises shall occur at any time during the term of this Lease that requires response actions of any kind, in addition to notifying Lessor as specified above, Lessee, at its own sole cost and expense, shall: (i) immediately comply with any and all reporting requirements imposed pursuant to any and all Hazardous Materials Laws, and (ii) take any and all necessary investigation, corrective, and remedial action in accordance with any and all applicable Hazardous Materials Laws.

Lessee shall be responsible for and shall protect, defend, indemnify, and hold Lessor and the State of Hawaii harmless from and against any and all losses, liabilities, costs, and expenses that first arise during the term of this Lease while Lessee is in possession and Lessor is not in possession, foreseeable or unforeseeable, directly or indirectly arising out of or attributable to the presence, use, generation, manufacture, treatment, handling, refining, production, processing,

storage, release, or presence of Hazardous Materials in, on, under, or about the Premises. The foregoing obligations of Lessee shall include, including without limitation: (i) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; (ii) judgments for personal injury or property damages; and (iii) all costs and expenses incurred by Lessor in connection therewith. Except as set forth above, it is the express intention of the parties to this Lease that Lessee assumes all losses, liabilities, costs, and expenses, and holds Lessor and the State of Hawaii harmless from the same. This Section shall survive the expiration or earlier termination of this Lease.

**32. No Changes to Project.** Lessee shall not without the prior written consent of Lessor, which may be withheld in Lessor's sole and absolute discretion, take any action before any governmental authority the object of which would be to modify, amend, or change the present zoning, land use classifications, or development permits for the Premises, or any portion thereof, or subdivide the Premises, or any portion thereof, or consolidate the Premises, or any portion thereof, with any other land.

**33. Annual Rent Adjustment.** 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 this Lease to the mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument, if any of the dwelling units in the Project on the Premises are not used as affordable units as described in Section 14 above, the Annual Rent shall be increased in the following manner:

(a) From and upon the first day of the first full calendar month after the use of any or all of such dwelling units as other than affordable units (the "Rent Increase Commencement Date"), the Annual Rent shall be increased by the product of the fair market value of the land comprising the Premises, multiplied by eight percent (8%) and multiplied by the percentage of such dwelling units not used as affordable units.

For purposes hereof, the fair market value of the land comprising the Premises shall be determined exclusive of buildings and improvements, and based upon the actual then existing use for which Lessee shall use the improvements on such land, and exclusive of the encumbrance of this Lease.

(b) The fair market value of the land comprising the Premises shall be determined as of the Rent Increase Commencement Date and re-determined as of each fifth anniversary of the Rent Increase Commencement Date thereafter for the remainder of the term of this Lease. If Lessor and the Lessee are unable to agree upon the fair market value of the land comprising the Premises not later than forty-five (45) days after the Rent Increase Commencement Date or each such re-determination date, then fair market value of the land comprising the Premises shall be determined in the manner set forth in paragraph (g) hereof.

(c) 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 Lessor by 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 Lessor with the Annual Rent payment then due.

(d) Notwithstanding anything elsewhere stated in this Lease, adjustments to the fair market value of the land or to such percentages may be upwards but not downwards, and the Annual Rent due under the above formula shall in no event be less than the Annual Rent paid for the previous rental period.

(e) The increased Annual Rent shall be paid in advance in equal monthly installments on the first day of each calendar month.

(f) Notwithstanding anything elsewhere stated in this Lease, if the dwelling unit in the Project 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.

(g) In the event of failure to agree on a fair market value of the land comprising the Premises for any of the periods specified in subparagraph (b) 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 Second 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 comprising the Premises 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 comprising the Premises, 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, Lessor and 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 Lessor and Lessee. If and whenever the fixing of such Annual Rent is under arbitration, Lessee, pending the determination thereof, shall continue to pay the same Annual Rent which Lessee had been paying during the last preceding rental period. However, 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 Annual Rent

due in accordance with subparagraph (a) hereof. Lessor shall promptly repay Lessee for rental overcharge, if any, 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.

**34. Project Rules and Regulations.** Lessee shall maintain rules and regulations for the Project applicable to the use and occupancy of the Project by residential tenants, which shall include a prohibition against smoking in housing units, common areas, and community facilities on and around the Project and the area within twenty (20) feet of each individual building of the Project and any entrance, exit, window, and ventilation intake that serves an enclosed or partially enclosed area where smoking is prohibited, but excluding designated smoking areas, if any, and otherwise in accordance with Hawaii Revised Statutes Chapters 328J and 356D, as may be amended or repealed and replaced from time to time.

**35. Intentionally Omitted.**

**36. Hawaii Law.** This Lease shall be construed and interpreted in accordance with and governed by the laws of the State of Hawaii.

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

**38. 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.

**39. 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.

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

**41. Archeological Sites.** In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, Lessee and Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Hawaii State Historic Preservation Division (SHPD) at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes as the same may be amended.

**42. Counterparts.** This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

**43. Merger.** This Lease, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and

supersedes all previous understandings and agreements between the parties, whether oral or written, relating to the leasing of the Premises and the lessor-lessee relationship between the parties. The parties hereby acknowledge and represent, by affixing their signatures and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract, or other assurance, except those set out in this Lease, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Lease. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct, or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Lease.

**44. 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 (a) delivered personally with a delivery receipt, or (b) delivered by e-mail so long as receipt of the e-mail is confirmed and a copy of such email notice is provided immediately thereafter in accordance with the requirements of this Section by one of the other delivery methods or by first-class mail, or (c) forwarded by registered or certified mail, postage prepaid, return receipt requested, or (d) by commercial delivery service with a delivery receipt, to the following addresses:

Lessor: Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Attention: Executive Director

And to: Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Attention: Supervising Deputy Attorney General  
Public Safety, Hawaiian Home Lands, and Housing Division

Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices delivered by personal delivery, facsimile, 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, the date the item was returned as undeliverable, or the date that receipt was confirmed by the receiving party, or 4:30 p.m. Hawaii-Aleutian Standard Time on the third (3<sup>rd</sup>) business day after being deposited for mailing as aforesaid, whichever is earlier. Either party may change its address for the purposes of this Section by giving prior written notice of the change to the other party in the manner provided in this Section.

**45. Estoppel Certificates.** At any time and from time to time, within fifteen (15) days after notice of request by either party, the other party shall execute and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement (an "Estoppel") certifying that (a) this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement; and (b) to the knowledge of the certifying party, there are no defaults (and no events or circumstances that have occurred, that with the passage of time would, if left unchanged, become a default) in the performance of either party of its obligations under this Lease, or if there are defaults or events or circumstances that will constitute a default, specifying the nature of the default and/or event or circumstance that may become a default. The Estoppel shall also state the amount of Rent then payable, the dates to which the Rent and any other charges have been paid in advance, and shall include such assurances of satisfaction of conditions or other factual matters provided for in this Lease or respecting the Premises as the party seeking the Estoppel may reasonably request, including but not limited to all such matters covered by the required form of estoppel certificate published by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from time to time. The Estoppel shall be such that it can be relied on by the express addressee of the Estoppel, who may include an auditor, creditor, commercial banker, or investment banker of either party or a prospective purchaser or encumbrancer of the Premises or both or of all or any part or parts of Lessee's or Lessor's interests under this Lease, including, without limitation, a lender.

**46. Subordination, Non-Disturbance and Attornment.** At any time and from time to time, within fifteen (15) days after notice of request by Lessee or an Authorized Mortgagee, Lessor shall execute, acknowledge, and deliver to Lessee, or to such other recipient as the notice shall reasonably direct, such subordination, non-disturbance and attornment agreements with respect to any current or prospective commercial sublessees of any portion of the Premises identified in such notice, which subordination, non-disturbance and attornment agreements shall be on a commercially reasonable recordable form and shall provide that Lessor will not disturb the sublessee's occupancy and possession under its sublease so long as no event of default has occurred thereunder and is continuing and the sublessee shall attorn to Lessor or its designee.

**47. Special Terms and Conditions.** This Lease is also subject to the special terms and conditions set forth in Exhibit "B" attached hereto and made a part hereof.

**48. Certain Definitions.** The term “including”, when used herein, shall be construed as to mean “including but not limited to”, and shall in no way be construed as exclusionary unless the context clearly demands otherwise.

**49. 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.

**50. No Partnership Intended.** Lessor and Lessee hereby agree that Lessor in no event and for no purpose is a partner of Lessee in the conduct of any of its business or other affairs or a joint venturer or a member of a joint enterprise with Lessee as a result of this Lease or Lessee’s occupancy or use of the Premises.

[The remainder of this page is blank. The next page is a signature page.]

**SAMPLE**

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Lease as of the date set forth above.

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

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

By \_\_\_\_\_  
Denise Iseri-Matsubara  
Its Executive Director

“Lessor”

**SAMPLE**

*Signature page to Ground Lease (\_\_\_\_\_ Project)*

**EXHIBIT "B" TO RFP**

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“Lessee”

**SAMPLE**

*Signature page to Ground Lease (\_\_\_\_\_ Project)*

**EXHIBIT "B" TO RFP**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared DENISE-ISERI MATSUBARA such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

<b>NOTARY CERTIFICATION STATEMENT</b>	
Document Identification or Description: Ground Lease (Kulia I Ka Nuu)	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____	Jurisdiction: 1 <sup>st</sup> Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Notarization and Certification Statement _____
Printed Name of Notary _____	(Official Stamp or Seal)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_; that this \_\_\_\_\_-page Ground Lease was signed on behalf of \_\_\_\_\_, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of \_\_\_\_\_.

\_\_\_\_\_  
Name:  
Notary Public, State of Hawaii  
1<sup>st</sup> Judicial Circuit  
My commission expires: \_\_\_\_\_

<b><u>NOTARY CERTIFICATION STATEMENT</u></b>	
Document Identification or Description: Ground Lease (Kulia I Ka Nuu)	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ Jurisdiction: 1 <sup>st</sup> Circuit (in which notarial act is performed)	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	(Official Stamp or Seal)

EXHIBIT "A"

PROPERTY DESCRIPTION

**SAMPLE**

EXHIBIT A

Page 1 of 1

**EXHIBIT "B" TO RFP**

EXHIBIT "B"

SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions set forth in this Exhibit "B" (the "Special Conditions") are incorporated into that certain Ground Lease made as of \_\_\_\_\_, 20\_\_ (the "Lease"), by and between **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii ("Lessor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee"). Capitalized terms shall have the meaning set forth in the Lease or as otherwise defined in the Special Conditions. In the event of any inconsistency between the terms of the Lease and the Special Conditions, the terms of the Special Conditions shall control.

1. **Public Land Trust Lands Additional Rent.** Not applicable.
  
2. **Use of Premises.** Notwithstanding Section 13 of the Lease, the Project operated by Lessee may be used for: \_\_\_\_\_.
  
3. **Prohibited Uses.** With respect to the commercial use permitted within the Project, the following uses are strictly prohibited:
  - billiard room;
  - massage parlor;
  - adult book or video store or any other purpose that includes the production, display, or sale of pornographic, x- or NC17- rated, lewd, or obscene materials or entertainment;
  - strip club or similar establishment promoting or displaying entertainment of an explicit sexual content or nature ;
  - betting or gaming facilities or any gambling operations;
  - liquor store or store whose primary purpose is the sale of alcoholic beverages for off-premises consumption;
  - any establishment that serves liquor (such as a bar, cabaret, discotheque, nightclub, dance club, or karaoke bar) or allows the use of liquor by its customers (such as karaoke room rental or restaurant where customers are allowed to bring liquor for consumption on the Premises)head shop or other store selling any paraphernalia commonly employed in the use or ingestion of illicit drugs;
  - tattoo parlor;
  - flea markets, "swap meets" and similar operations;
  - operations where weapons or firearms are used or brought onto the Premises in the ordinary course of business, including, without limitation, firing ranges and/or gun clubs;
  - on-site dry cleaning operations.
  
4. **Condominium.** Not applicable.
  
5. **Parking Structure.** Not applicable.

**6. Future Utility Easements.** Lessee shall consent to easements for utility purposes approved by Lessor, including but not limited to water, sewer, electrical, storm drainage, and other similar uses, through, over, and across the Premises, provided that the location and dimensions of the easements shall be agreed to by Lessor and Lessee, and shall be aligned so as to minimize any disruption or negative impact to the Premises, provided further that Lessee shall bear all reasonable administrative costs related to the conveyance of title of said easements, including surveying, recordation, and attorneys' fees. Thereafter, the locations and dimensions of the easements may be changed from time to time by mutual agreement of Lessor and Lessee, provided, however, that relocation costs shall be borne by the party proposing relocation.

**Maintenance Around Project Site.** Lessee shall be responsible for the maintenance of: (1) any walls and fences which are located on the Property; (2) the Property-facing side of any boundary walls located at or near the Property boundary; (3) the entirety of any boundary fences; and (4) the streetfront area fronting the Property which is not maintained by the City or by the Villages of Kapolei Association, if any.

End of Exhibit "B"