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August 22, 2012

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The Honorable Ernest Y. Martin, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Members:

Subject: Honolulu Affordable Housing Preservation Initiative
(1) Resolution Authorizing the Execution of Purchase and Sale Agreement with Honolulu Affordable Housing Partners, LLC
(2) Resolution Authorizing the Execution of Leases of City Property
(3) Resolution Authorizing the Transfer of Private Activity Bond Authority

Transmitted herein for your consideration are Resolutions authorizing the execution of a Leasehold Purchase and Sale Agreement (PSA) between the City and County of Honolulu and Honolulu Affordable Housing Partners, LLC (HAHP), relating to (A) the leasehold sale of certain City rental housing complexes through the Honolulu Affordable Housing Preservation Initiative (HAHPI), (B) the execution of leases related to said rental housing complexes pursuant to Section 28-3.5, Revised Ordinances of Honolulu 1990, as amended ("ROH"), and (C) the transfer of the City's current-year private activity bond issuance allocation to the State of Hawaii to support the financing of this leasehold sale.

HAHPI Background

For more than a decade, proposals have been put forth to transition ownership of the City's rental housing complexes to one or more private entities. Previous efforts to accomplish this objective have included proposals to sell the rental units as condominiums, and a proposal for a piecemeal sale of individual rental housing projects. What these various proposals have had in common was the underlying perspective that a transition of the complexes to private ownership would be beneficial to the City, as well as to the residents of the complexes.

The Honolulu City Council, by adoption of Resolution 08-108 on June 4, 2008, articulated its policies for the potential sale of the City's rental housing complexes. Among the stated policy goals were the preservation of affordability, retaining fee interest in the land underlying the properties, a preference of nonprofit ownership over for-profit ownership, and finding a buyer with the right combination of experience and capacity.

On May 19, 2011 the City issued a Request for Proposals for real estate consulting services. The purpose of this Request for Proposals (RFP) was to secure the requisite professional services necessary to prepare an offering of the City's rental housing complexes for sale on a leasehold basis to a private entity. Upon the evaluation of proposals, CBRE Inc. (CBRE) was selected as the real estate consultant for the HAHPI project, a contract between CBRE and the City was executed, and a Notice to Proceed was issued to CBRE on August 15, 2011.

A project team was organized to spearhead the HAHPI program. The team included representatives from the Departments of Budget and Fiscal Services, Community Services, Facility Maintenance, and the Corporation Counsel, and the Office of Housing, to work with CBRE Inc. to (i) develop the policies that would guide the HAHPI Request for Proposals (HAHPI RFP) process, and (ii) gather and organize the background information and materials necessary to make a credible, market-oriented offering to interested parties. In addition, the Department of Community Services and the Office of Housing, with the assistance of Faith Action for Community Equity and the Ohana Housing Network Oahu, convened on-site meetings at each of the rental housing complexes during September and October 2011 to inform the residents of the City's proposal to transition ownership of the rental housing complexes, and to hear resident concerns, comments, and suggestions on the City's proposed sale.

Based on the work of the HAHPI team and input gathered during the meetings with residents, the following guidelines for the HAHPI RFP were adopted:

- **Permanent Rental Housing**. There would be no conversion of any rental housing units into for-sale condominiums.

- **Leasehold Sale**. The rental housing complexes would be offered on a long-term (65-year) leasehold basis with the City retaining ownership of the underlying land. By offering the rental housing complexes on a leasehold basis, the City could retain the underlying land in trust for future generations and provide a mechanism to regain control over the properties should a future owner fail to comply with the terms of the lease. The leasing of the City's rental housing complexes is being pursued under the provisions of Section 28-3.5, ROH.

- **Continuing Affordability**. The existing programs of affordability would be continued in place throughout the term(s) of the lease(s). There would be no conversion of an affordable rental unit to a market rate unit or residential condominium.

- **No Displacement**. All tenants in good standing would be encouraged to remain, and all existing tenant leases would be honored.

- **Consolidated Offering**. The entire portfolio of 12 rental housing complexes would be offered in a single offering with all projects offered for lease in their entirety, inclusive of the commercial and public parking components of mixed use projects. The Honolulu City Council, by adoption of Ordinance 12-12, confirmed that for the purposes of HAHPI, real property and improvements as defined under Section 28-3.5, ROH did include public parking and commercial spaces of City-owned mixed-use buildings.

Request for Proposals

Together with CBRE, the City's HAHPI Team prepared a new offering that reflected the above policies. The unique nature of the offering required the HAHPI Team to begin from scratch. The resulting work products included a Request for Proposals document, a 100-page Offering Memorandum which provided detailed financial and operational information on the HAHPI properties, and a library of due diligence library that filled 28 3-ring binders. CBRE created a custom website where interested parties could obtain access to these materials.

On February 15, 2012, the City issued the HAHPI RFP. The stated purpose of the HAHPI RFP was to solicit proposals from qualified entities to acquire leasehold interest of the 12 City-owned rental housing complexes listed below:

Bachelors Quarters	Manoa Gardens
Chinatown Gateway Plaza	Marin Tower
Chinatown Manor	Pauahi Hale
Harbor Village	Westlake Apartments
Kanoa Apartments	West Loch Village
Kulana Nani	Winston Hale

At a minimum, prospective proposers were required to possess 10 years experience in the management and operation of rental housing, and have a minimum of 1,000 rental units under ownership. The HAHPI RFP was strongly received by the marketplace, and a total of 48 entities, including nonprofit and for profit entities based in Hawaii and the mainland United States obtaining on-line access to the HAHPI RFP materials.

To facilitate the HAHPI program, the Honolulu City Council on May 9, 2012, adopted Bill 23, CD1 (Ordinance 12-12), which clarified and confirmed that with respect to the HAHPI program, the RFP process pursued under Section 28-3.5, ROH may encompass the entirety of each rental complex, including affordable, gap group, and market-rate rental housing units, commercial space, parking facilities, and telecommunication facilities. Ordinance 12-12 also provided for a redevelopment option to be included into the leases for Pauahi Hale, Winston Hale, Bachelors Quarters, and Kanoa Apartments. On May 9, 2012, the Honolulu City Council also adopted Bill 24, CD1 (Ordinance 12-13), which facilitated the HAHPI program by providing for the transfer of public parking at Marin Tower, Chinatown Gateway Plaza, and Harbor Village via long-term leases, while reserving to the City the use of a specific number of parking spaces in these projects for public parking, and reserving for the City Council the right to set time limits, parking fees, and other regulations for the public parking spaces.

CBRE conducted site visits to the HAHPI properties on March 6, 7, 13 and 14, 2012, for prospective proposers, and together with the City, conducted a pre-proposal teleconference with prospective proposers on March 20, 2012. A total of seven initial proposals were submitted by the April 20, 2012 deadline. After reviewing all proposals, the City and CBRE conducted discussions with each of the proposers from May 7 to May 11, 2012. The purposes of the discussions were to allow the City to clarify elements of the proposer's proposal and to offer additional clarifications and guidance to proposers to assist them with the preparation of their Best and Final Offers. All entities which submitted initial proposals participated in discussions. On May 15, 2012, the City issued a request for Best and Final Offers to the entities who submitted initial proposals. Best and Final Offers were received on May 22, 2012.

The initial proposals and the Best and Final Offers were reviewed and summarized into an evaluation document prepared by CBRE that was provided to the HAHPI Selection Committee. The members of the selection committee were also provided access to the actual proposals and the HAHPI RFP documents. The members of the Selection Committee were:

- Chrystn Eads, Deputy Managing Director and Chair of the HAHPI Selection Committee
- Nelson Koyanagi, Deputy Director of the Department of Budget and Fiscal Services
- Patrick Kubota, City Council designated member per Resolution 12-132
- Kenneth Shimizu, Deputy Director of the Department of Facility Maintenance
- Catherine (Cat) Wong of the Ohana Housing Network Oahu and a resident of Chinatown Gateway Plaza.

The evaluation criteria employed by the Selection Committee are shown in the table below. Under this scoring system, the experience and financial capacity of the proposer collectively accounted for 48 percent of the maximum score. This reflected our emphasis on finding a purchaser with the ability, resources, and experience to conclude the transaction, and to own and effectively operate the rental housing complexes going forward. Factors which would directly impact on the living experience of current and future project residents, the amount to be invested in capital improvements and the proposer's policies for the operation of the properties and tenant relations collectively accounted for 26 percent of the total score. Finally, the financial compensation to the City accounted for 24 percent of the total score.

Criteria	Maximum Points	Percent of Total
Experience of the Proposer	60	26%
Financial Compensation to the City	55	24%
Financial Capability of the Proposer	50	22%
Post-Closing Capital Improvements	40	17%
Practices and Policies for Operations of Properties and Tenants	25	11%
Total	230	100%

The Selection Committee convened on June 7, 2012. Committee members scored each proposal individually, and the scores of the members were tabulated to achieve a total score for each proposal. At the conclusion of the scoring, the proposal submitted by HAHP, a partnership of Highland Property Development LLC ("Highland"), Mr. Richard W. Gushman, II and Mr. Stephen M. Gelber, was the highest ranked proposal and as such, HAHP was designated as the Successful Proposer under the HAHPI RFP.

The other two proposals that scored in the top three were, in alphabetical order:

- Carmel Partners/EAH Inc./Devine & Gong/ Catholic Charities Housing Development Corporation, and
- Pier Management/Rockpoint Fund/Pacific Housing Assistance Corporation.

Other proposals that did not score in the top three were, in alphabetical order:

- ABHOW,
- The Bascom Group,
- Blacks and Capital Opportunity Fund/Cirrus Asset Management, Inc., and
- Vitus Group/Forest City Hawaii Residential, Inc.

By letter dated June 12, 2012, HAHP was informed of its selection as the Successful Proposer. As required under the HAHPI RFP and as a precondition for the City to enter into negotiations with it HAHP, Highland, the Managing Member of HAHP, accommodated a delegation from the City to inspect Highland's base of corporate operations and to tour two representative projects. The site visit was conducted on June 25 and 26, 2012, and included visits to Highland's headquarters in Arcadia, California, and visits to rental housing communities owned by Highland in Temecula and El Cajon, California. The site visit delegation included:

- Chrystn Eads, Deputy Managing Director/Selection Committee Chair
- Nelson Koyanagi, Deputy Director of the Department of Budget and Fiscal Services/Selection Committee Member
- Christopher Terry, Property Management Branch Chief, Department of Facility Maintenance
- Catherine (Cat) Wong, Oahu Housing Network Oahu/Selection Committee Member
- Andrew Reenders, Senior Associate, CBRE Inc.

The City's site visit delegation was able to talk to management and staff of Highland as well as residents of the projects. The delegation was able to inspect Highland's renovation work at the projects they visited, and reported positively on the quality of the renovations being undertaken. Residents interviewed by the delegation also provided positive comments on the renovation work and on Highland's management practices. At the conclusion of the site visit, the team unanimously recommended that the designation of HAHP as the Successful Proposer be affirmed and HAHP be afforded an exclusive right to negotiate a Purchase and Sale Agreement and Leases for the HAHPI properties.

Honolulu Affordable Housing Partners, LLC

HAHP is a limited liability company that was registered with the State of Hawaii in March 2012. The Managing Member of HAHP is Highland. The other principals of HAHP are Richard W. Gushman, II and Stephen M. Gelber of Honolulu, Hawaii.

Highland is based in Arcadia, California. The Managing Member of Highland is Mr. William E. Rice. Highland was formed in 2002 for the purpose of acquiring, developing, rehabilitating and operating low-income and affordable housing projects. Highland currently has a portfolio of 41 rental housing communities in California and Texas with approximately 2,500 apartments. The majority of Highland's projects have involved the preservation and substantial rehabilitation of at-risk rental housing developments using a variety of financing methods including tax-exempt bonds, federal and state low-income housing tax credits (LIHTC)), and public and private loans.

Richard W. Gushman, II has over 40 years of experience in the real estate industry in Hawaii, the mainland United States and overseas. Mr. Gushman's projects include a total of more than 1.5 million square feet of commercial space, 2.3 million square feet of office space, residential condominiums and rental units. Mr. Gushman was also a trustee of the Estate of James Campbell from 2000 to 2007 and has served as a Director or Trustee of numerous corporations and nonprofit agencies.

Stephen M. Gelber is a real estate and tax attorney with the firm of Gelber, Gelber & Ingersoll of Honolulu, Hawaii. As part of his legal practice Mr. Gelber has represented investors, owners, syndicators, and operators of affordable rental housing projects in the Hawaii including Tropicana West, Beretania North, Maunakea Tower, Wilikina Park, and Lahaina Affordable Apartments.

Collectively, the principals of HAHP have extensive experience in the acquisition, rehabilitation, management and maintenance of residential and commercial real estate. We further note that Highland has not sold a project that it has acquired since its founding in 2002.

Purchase and Sale Agreement

We respectfully request the City Council's approval to execute the PSA between the City and HAHP, which is attached hereto in substantially final form. The PSA sets forth the terms, conditions, and process for the eventual closing of the leasehold sale of the 12 HAHPI projects to HAHP and is more fully described below:

Leasehold Premium

The PSA provides for the payment of a leasehold premium to the City in the amount of $142,000,000 in cash at closing.

Capital Improvements

HAHP will use its best efforts to expend $42,000,000 for initial capital improvements to the HAHPI properties within two years (but not less than $40,000,000 within three years) after the closing of the sale. At a minimum, $35,000,000 must be expended for hard renovation costs generally defined as actual construction expenses, and the balance for additional hard costs and soft costs such as architectural, engineering, financing, and legal fees and oversight costs. HAHP's capital improvement program will include a rehabilitation of the affordable and market rental units and major building systems based on an assessment, and may include new kitchens and baths using solid surface countertops and new wood cabinets, low-flow water fixtures, and energy-efficient light fixtures. The capital improvements will also include the installation of surveillance systems, and improvements to common areas and parking facilities.

Nonprofit Participation

HAHP is planning to assign three properties, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters, to one or more nonprofit agencies to be identified in the future. As part of the program of initial capital improvements, HAHP will be investing a minimum of $450,000 in the aggregate for the renovation of these properties. The nonprofit agency/ies will have the option to redevelop these properties in the future as allowed under the property leases and in accordance with the requirements and process outlined in Ordinance Ordinance 12-2 which includes a one-for-one replacement of existing affordable housing.

Increased Affordability

HAHP will be financing the purchase of the rental housing complexes in part with tax exempt multifamily bonds and LIHTC. HAHP will seek conventional financing for the purchase of the commercial spaces, market rate rental housing units and the parking structures. After the assignment of Pauahi Hale, Kanoa Apartments and Bachelors Quarters to nonprofit agency/ies, HAHP will control an inventory of 1,157 rental units in the remaining nine rental housing complexes. The present unit mix in these nine rental housing complexes is shown below in terms of affordable rental units rented to households earning less than 80 percent of median income, gap group rental units rented to households earning less than 120 percent of median income, and market rate rental units without any income restrictions. Please note that the units enumerated under the affordable housing definition includes a mix of units rented under different rent guidelines and authorities including the HOME program, Section 8 program, the Community Development Block Grant (CDBG) program and City-imposed rent guidelines.

Rental Housing Complex	Affordable (80% or less of MFI)	Gap Group (up to 120% of MFI)	Market Rate	Total
Chinatown Gateway Plaza	40	80	80	200
Chinatown Manor	90			90
Harbor Village	29	30	31	90
Kulana Nani	160			160
Manoa Gardens		8	33	41
Marin Tower	89	72	75	236
Westlake Apartments	96			96
West Loch Village	150			150
Winston Hale	94			94
Total	748	190	219	1,157

HAHP is proposing to restructure the unit mixes in these rental housing complexes to increase the number of affordable housing units and to provide a greater degree of affordability. Under the HAHP proposal, up to 971 rental units will be designated as rental units affordable to households earning less than 60 percent of median income. The remaining 186 rental units will be rented at market rates. HAHP's proposed unit mix is shown below:

Rental Housing Complex	Affordable (**60**% or less of MFI)	Gap Group (up to 120% of MFI)	Market Rate	Total
Chinatown Gateway Plaza	119		81	200
Chinatown Manor	90			90
Harbor Village	60		30	90
Kulana Nani	160			160
Manoa Gardens	41			41
Marin Tower	161		75	236
Westlake Apartments	96			96
West Loch Village	150			150
Winston Hale	94			94
Total	971		186	1,157

The PSA provides HAHP with some flexibility to manage vacancies over time so as to adjust the number of affordable units to meet the maximum income limits allowed under the multifamily bond program or the LIHTC program. At no time, however, will there be less than 939 affordable units, or more than 218 market rate units.

The proposed adjustments will increase the number of rental units for lower income families in our community. Presently, rental units for households earning 60 percent or less of median income are in short supply, particularly in the urban core. We recognize that the proposed adjustments to the rental mix will result in the elimination of the "gap group" rental units. We note, however, that based on gap group income limits and rent guidelines as shown below, gap group households possess the income necessary to find and secure rental units in the private market, and the rent guidelines for gap group rental units are actually reflective of existing market rents. As such, the proposed adjustments provide more affordable rental housing opportunities to lower-income applicants, but reduces such opportunities for applicants who have the resources to secure housing in the private market.

Income and Rent Limits for Gap Group Households			
Household Size	Income Limit	Unit Type	Rent Standard
1 Person	$69,968	Studio	$1,861
2 Persons	$79,392	1 Bedroom	$1,985
3 Persons	$89,316	2 Bedroom	$2,395
4 Persons	$99,240	3 Bedroom	$2,670
5 Persons	$107,149		
6 Persons	$115,118		

Condominium Property Regime

HAHP anticipates submitting the five mixed-use projects, Marin Tower, Chinatown Gateway Project, Chinatown Manor, Harbor Village and Winston Hale, to condominium property regimes (CPR), and forming separate ownership entities to own the affordable housing units, the market rate housing units, the commercial space, and parking garages. The CPRs are necessary, as each of these components will be the subject of different financial structures and ownership interests. Each mixed-use project will be submitted to a CPR whereby each component (affordable residential, market residential, commercial and parking, as applicable) will constitute a "separate parcel of real estate", and will be leased to different lessees) being pooled together for financing, management, and maintenance purposes. However, the different components of a project will be governed by a Declaration and other condominium documents (reviewed and approved by the City) to coordinate the various components of the project and to ensure that the project, as whole, is properly managed and maintained.

Due Diligence

Upon the execution of the PSA, the City will issue a Notice to Proceed for HAHP to begin its 60-day due diligence period relating to the long-term leasing of the properties. The due diligence work may include detailed physical inspections of the properties; review of title reports, financial and operating information, and management contracts and practices; review of matters relating to governmental affairs such as required permits or approvals, and any other matters as deemed appropriate by HAHP. At the conclusion of the due diligence period HAHP must notify the City that it has approved the condition of the properties and will move forward with closing. If HAHP disapproves of the condition of the properties, it must provide the City with a written description of the conditions forming the basis for the disapproval. The City will then have 90 days to cure the objectionable conditions, or the PSA may be cancelled by the City without penalty. HAHP then has the opportunity to waive its objections and accept the properties.

Closing

HAHP will be financing the purchase of the HAHPI properties through the use of tax exempt multifamily bonds and LIHTC issued by the Hawaii Housing Finance and Development Corporation ("HHFDC"), as well as financing obtained through commercial lenders. Other financing contemplated by HAHP includes interim financing through the State of Hawaii Rental Assistance Revolving Fund and assistance through the State Rental Housing Trust Fund. Assuming required financing is secured, closing of this transaction should occur by April 1, 2013. HAHP may extend the closing date to June 28, 2013 if needed to secure necessary financing, which date is further extendable to September 26, 2013. The City may further extend the closing date beyond this date, but by no means shall the closing date extend beyond March 31, 2014.

CDBG/HOME Program

With the exception of Harbor Village and Manoa Gardens, the HAHPI properties were planned, constructed, renovated, or acquired in whole or in part with federal Community Development Block Grant (CDBG) funds or HOME Investment Partnership Act funds and are currently subject to CDBG and HOME program requirements. The HOME program requirements will remain in place until such time as they expire, as provided for under HOME program rules. Upon the expiration of the HOME program requirements the Regulatory Agreements that will be attached to the property leases will continue to impose rent restrictions and income targeting guidelines comparable to the HOME program requirements throughout the terms of the leases. The effect of this structure is to continue the HOME program affordable rent guidelines, but without all of the attendant HOME program administrative requirements. A portion of the leasehold premium to be paid by HAHP will be allocable to HOME-assisted properties in the

portfolio, and will therefore generate HOME program income, in an amount to be determined.

Under the PSA, the City will pursue a buy-out of the CDBG program requirements from the U.S. Department of Housing and Urban Development (HUD). The buy-out is necessary because of the CDBG program's program income requirement that HAHP remit all surplus cash flow to the City and that the City deposit these remittances into the City's CDBG account. On a practical basis, this would mean that any project income remaining after the payment of operating expenses and debt service would not be received by HAHP, and as such HAHP would not be able to realize a return on its investment. Funding for the buy-out will come from the $142,000,000 purchase price received from HAHP. The buy-out amount will be deposited into the City's CDBG program as CDBG program income and may be utilized by the City to support eligible CDBG activities. At the present time, the City has not reached an agreement with HUD on the CDBG buy-out amount or on the full parameters of such a buyout. As provided for in Paragraph 5.5 of the PSA, if the buy-out price exceeds $50,000,000, the City has a right to terminate the PSA. Should the City exercise the option to terminate the PSA, the City will be required to reimburse HAHP for its reasonable actual out-of-pocket negotiation, due diligence, and closing preparation expenses, not to exceed $500,000. The $50,000,000 cap on the CDBG buyout is based on the need for the City to have approximately $90,000,000 in sales proceeds to defease the approximately $70,000,000 in bonds remaining in the Housing Development Special Fund.

Default and Termination

Under Paragraph 8.2 of the PSA, should HAHP default under its obligations under the PSA, the City would be entitled to retain HAHP's deposit of $5,000,000 as liquidated damages. Should the City default under the terms of the PSA, the City will be required to pay HAHP liquidated damages in the sum of $2,000,000. The City and HAHP have agreed that there will be no further remedies to either party for a default under the PSA. Most significant in this regard is that the City required HAHP to waive the remedy of specific performance.

Leases

We request the approval of the City Council to execute leases for the 12 HAHPI properties in accordance with the lease forms that are attached hereto in substantially final form. The leases, with the attached regulatory agreements and lease addenda, provide the framework for the ongoing use of the HAHPI properties during the 65-year lease term. Please note that there are two basic leases forms: one to accommodate the mixed-use properties that will be subject to CPRs, and the other to accommodate a second lease form for those properties that will not be subject to CPRs. Leases for

affordable housing projects and for the affordable housing component of a mixed-use project will be subject to an affordable housing Regulatory Agreement and Declaration of Restrictive Covenants. Appropriate addenda will also be attached to the lease to impose requirements specific to the uses covered by the particular lease. Some leases will have multiple addenda attached. In total, up to 26 individual leases, each covering a specific project or project component will be executed to accommodate this transaction. The table below shows the projects and project components to be subject to a lease, as well as the applicable addenda and regulatory agreement.

Rental Housing Complex	Ground Lease	Condominium Lease	Regulatory Agreement	Addendum – Affordable Housing Component	Addendum - Market Housing Component	Addendum - Commercial Component	Redevelopment Component	Addendum – Residential Parking Component	Addendum – Public Parking Component
Bachelors Quarters	x		x	x			x		
Chinatown Gateway Plaza									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Chinatown Manor									
Affordable Rental Housing Component		x	x	x					
Commercial Space Component		x				x			
Harbor Village									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Kanoa Apartments	x		x	x			x		
Kulana Nani	x		x	x					

Manoa Gardens	x		x	x					
Marin Tower									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Pauahi Hale	x		x	x			x		
Westlake Apartments	x		x	x					
West Loch Village	x		x	x					
Winston Hale									
Affordable Rental Component		x	x	x					
Commercial Space Component		x				x			

During the terms of the leases, the lessees will be responsible for the ongoing operations, repair, and maintenance of the properties, the payment of all taxes and assessments, the procurement and maintenance of all required insurance, and compliance with all regulatory agreements and lease addenda. The terms of the leases are outlined below:

Lease Term

All of the leases shall have lease terms of 65 years. Each of the Redevelopment Addenda attached to the leases for Pauahi Hale, Kanoa Apartments, and Bachelors Quarters will provide for an extension of the lease term to 75 years if the applicable lessee elects to exercise its right to redevelop these properties, subject to the terms of the applicable Redevelopment Addendum, within the first 10 years of the lease.

Lease Rent Payments

HAHP will make a lump-sum lease rent payment of $142,000,000 upon the execution of the leases. Thereafter, HAHP will pay annual lease rent of ONE DOLLAR per year.

Regulatory Agreement and Declaration of Restrictive Covenants

All affordable housing projects and affordable housing condominium components will be subject to a Regulatory Agreement that will run throughout the terms of the

leases. The conversion of affordable housing units to market rate rental housing or any other uses is not permitted. Among the provisions of the Regulatory Agreement are that all affordable rental units shall be affordable to households earning less than or equal to 60 percent of median income. The Regulatory Agreement will also specify additional affordable housing requirements imposed by the City to continue HOME program income-targeting and rent requirements for certain properties and to meet City Affordable Housing Fund requirements at Kulana Nani. It is anticipated that additional regulatory agreements to secure the housing affordability guidelines and program requirements of the LIHTC program and the tax exempt multifamily bond program will be recorded against the properties in the future.

Maintenance; Reserve Accounts

The lessees are required to maintain the properties in good condition and order throughout the terms of the leases. The lessees will be required to prepare reserve studies that will anticipate future capital improvement needs of the properties. The lessees will be required to make minimum deposits into the reserve accounts as stated in the applicable lease addenda. Funds shall be disbursed from the reserve accounts to make necessary capital improvements in accordance with the reserve studies.

Oversight

The City will continue to have oversight of the rental housing complexes. The lessees will be responsible for filing annual compliance reports with the City. The lessees will also have to file annual reports detailing their compliance with the reserve fund requirements of the leases and their compliance with the projects' reserve studies. Noncompliance with a lease may be a cause for a default under such lease. The City's preference is to allow lease violations to be cured rather than to declare defaults. The affordable rental housing projects and affordable rental housing components will also be subject to compliance monitoring under the LIHTC program.

Private Activity Bond Authority Transfer

We finally request authorization to transfer the City's current allocation of authority to issue private activity bonds to the State of Hawaii for re-allocation to HHFDC. The City is authorized to issue approximately $103,000,000 in private activity bonds (including multifamily housing bonds) in the current calendar year. The City does not have the resources to issue multifamily housing bonds at this time and has no need for the current-year allocation for other private activities. In the past the City has routinely allowed its allocation to lapse back to the State of Hawaii at year-end. HHFDC has been very active in the issuance of multifamily housing bonds, and has indicated a willingness to issue multifamily housing bonds on behalf of HAHP to support the acquisition of the City's rental housing complexes, provided that HAHP meets all

program requirements. Council approval is required for a mid-year transfer of the allocation back to the State.

Once the allocation is transferred, HAHP will work directly with HHFDC to issue the multifamily housing bonds and associated LIHTC. The City will not be required to guarantee or otherwise repay the multifamily housing bonds in the event of a default. The bonds will be secured by a mortgage and security agreement recorded against the rental housing complexes. The City's leases and regulatory agreements will remain in force in the event of default.

Summary

The City's 12 rental housing complexes represent a valuable resource for our community. The rental apartments currently provide decent, safe, and sanitary housing for many lower income families, senior citizens, and persons with disabilities. The City's rental housing portfolio is unique in that it includes mixed-use projects in the downtown/Chinatown area which provide market rate housing, commercial space, and public parking to support the downtown/Chinatown neighborhoods as a center of culture and the arts, while also providing employment and entrepreneurial opportunities.

At the present time, however, Honolulu's taxpayers are subsidizing the debt accumulated by these projects as well as other City housing projects, in the total amount of approximately $6,900,000 annually. In addition, if the City were to continue to own and manage the rental housing complexes, it would be responsible for financing future capital improvements.

Through the HAHPI RFP, we have found a qualified buyer who was the unanimous first choice of an evaluation committee that included representatives of the City administration and the City Council as well as a resident of a HAHPI property. A City delegation conducted a site visit to confirm what was represented in the HAHP proposal and found rental communities that appeared to be well-run, with quality renovations and approving tenants.

By approving these agreements, the City Council will begin the process that we believe will take our rental housing complexes to a better place. In HAHP, the City has identified a private-sector partner with the experience and capacity to manage the City's rental housing complexes into the future, and to make the immediate capital improvements that are needed to enhance the living environments for project residents. HAHP's proposal will increase the number of rental housing units affordable to lower income households earning less than or equal to 60 percent of median income. The increase in affordability represents a rare opportunity to increase the inventory of long-term affordable rental housing in the urban core.

The policy to transition ownership of the City's rental housing complexes has been articulated by many prior City administrations and City Council sessions as well. Approval of these agreements is necessary to allow the City and HAHP to enter into the PSA, thereby allowing HAHP to commence its due diligence investigation with the knowledge that it will be afforded the opportunity to close the sale upon the satisfactory completion of due diligence. Absent the City Council's approval of the PSA and leases, HAHP will not initiate due diligence work and the leasehold sale will not proceed. Upon the successful completion of due diligence, the City and HAHP will work closely with the State of Hawaii to expedite the issuance of multifamily bonds and other financing necessary to conclude this sale. We believe that time is of the essence, as the financial markets remain receptive of multifamily rental housing projects, and every month that the transaction is delayed means another month that Honolulu taxpayers will be subsidizing the debt incurred by the City's past housing program.

On behalf of the HAHPI Team, we greatly appreciate your consideration of these Resolutions. We look forward to discussing this matter with you in greater detail. Please call me at 768-7760 should you have any questions regarding this matter.

Sincerely,

Samuel E.H. Moku
Director

APPROVED:

Douglas S. Chin
Managing Director

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

AUTHORIZING EXECUTION OF A PURCHASE AND SALE AGREEMENT RELATING TO THE ACQUISITION OF LEASES OF TWELVE CITY-OWNED AFFORDABLE HOUSING PROJECTS BY HONOLULU AFFORDABLE HOUSING PARTNERS, LLC, AS PART OF THE HONOLULU AFFORDABLE HOUSING PRESERVATION INITIATIVE.

WHEREAS, on February 15, 2012, as part of its Honolulu Affordable Housing Preservation Initiative ("HAHPI") the City and County of Honolulu issued a request for proposals (the "RFP") for the lease of twelve City-owned affordable housing projects: Bachelors Quarters, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Manoa Gardens, Marin Tower, Pauahi Hale, Westlake Apartments, West Loch Village and Winston Hale (collectively, the "Projects"); and

WHEREAS, on May 9, 2012, the Honolulu City Council adopted Bill 23, CD1 (Ordinance 12-12), which clarified and confirmed that with respect to the HAHPI program, the RFP process pursued under Section 28-3.5, Revised Ordinances of Honolulu ("ROH"), could encompass the entirety of each rental complex, including affordable, gap group, and market-rate rental housing units, commercial space, parking facilities, and telecommunication facilities; and

WHEREAS, Ordinance 12-12 also provided for a redevelopment option to be included into the leases for Pauahi Hale, Winston Hale, Bachelors Quarters, and Kanoa Apartments; and

WHEREAS, on May 9, 2012, the Honolulu City Council also adopted Bill 24, CD1 (Ordinance 12-13), which facilitated the HAHPI program by providing for the transfer of public parking at Marin Tower, Chinatown Gateway Plaza, and Harbor Village via long-term leases, while reserving to the City the use of a specific number of parking spaces in these Projects for public parking, and reserving for the City Council the right to set time limits, parking fees, and other regulations for the public parking spaces;

WHEREAS, a total of seven initial proposals were received for the Projects by the April 20, 2012 deadline, and after follow-up discussions between the City and the proposers, seven "best and final offers" were received by the May 22, 2012 deadline; and

WHEREAS, an evaluation of the proposals was conducted by a five-member selection committee (one of whom was designated by the Council), with the committee members individually scoring each of the proposals; and

D 640

RESOLUTION

WHEREAS, upon conclusion of the RFP evaluation process, the City selected Honolulu Affordable Housing Partners, LLC ("HAHP") to be the lessee of the Projects; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on August 22, 2012, identifying HAHP and the other two top-rated proposals for the public record; and

WHEREAS, the City and HAHP have negotiated the terms of a Purchase and Sale Agreement ("PSA"), including payment of an up-front lump-sum acquisition lease rent payment or "lease premium" in the sum of One Hundred Forty Two Million And No/100 Dollars ($142,000,000); and

WHEREAS, the PSA requires HAHP to use its best efforts to expend $42,000,000 for initial capital improvements to the Projects within two years (but not less than $40,000,000 within three years) after the closing of the sale, of which a minimum amount of $35,000,000 must be for hard renovation costs generally defined as actual construction expenses; and

WHEREAS, under the PSA, HAHP may assign three Projects, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters, to one or more nonprofit(s) but in the meantime is required to invest a minimum of $450,000 in the aggregate for the renovation of these Projects; and

WHEREAS, under the PSA, the nonprofit(s) will have the option to redevelop these Projects in the future as allowed under the Project leases and in accordance with the requirements and process outlined in Ordinance 12-12, which includes a one-for-one replacement of existing affordable housing; and

WHEREAS, under the PSA, HAHP proposes to restructure the unit mixes in the retained rental housing complexes to increase up to 971 the number of affordable housing units designated for households earning less than 60 percent of median income; and

WHEREAS, HAHP will finance the purchase of the Projects through the use of tax-exempt multifamily bonds and low-income housing tax credits ("LIHTC") issued by the Hawaii Housing Finance and Development Corporation ("HHFDC"), as well as financing obtained through commercial lenders; and

WHEREAS, other financing contemplated by HAHP includes interim financing through the State of Hawaii Rental Assistance Revolving Fund and assistance through the State Rental Housing Trust Fund; and

RESOLUTION

WHEREAS, the PSA calls for the City to cooperate with HAHP regarding financing by submitting five mixed-use Projects, Marin Tower, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village and Winston Hale, to condominium property regimes ("CPRs"), and forming separate ownership entities to own the affordable housing units, the market-rate housing units, the commercial space, and parking garages; and

WHEREAS, upon approval and execution of the PSA, the City will issue a Notice to Proceed for HAHP to begin a 60-day due diligence period relating to the long-term leasing of the Projects, upon the conclusion of which HAHP must notify the City whether it will approve the condition of the Projects and will move forward with closing; and

WHEREAS, the PSA provides for closing of this transaction by April 1, 2013, assuming required financing is secured, with provisions for extensions to September 26, 2013, with a provision for the City to further extend the closing date beyond this date, but by no means beyond March 31, 2014; and

WHEREAS, for applicable Projects, the PSA contemplates continuation of federal HOME Investment Partnership Act HOME program requirements until such time as they expire, as provided for under HOME program rules, with continuation of City-imposed rent restrictions and income targeting guidelines comparable to the HOME program requirements thereafter throughout the terms of the leases; and

WHEREAS, the PSA contemplates that the City will pursue a buy-out of the Community Development Block Grant ("CDBG") program requirements from the U.S. Department of Housing and Urban Development ("HUD"), but in the event that the buy-out price exceeds $50,000,000, the City will have the right to terminate the PSA, with its sole obligation being to reimburse HAHP for its reasonable actual out-of-pocket negotiation, due diligence, and closing preparation expenses, such reimbursement not to exceed $500,000;

WHEREAS, the City and HAHP have agreed to limit the remedies available to either party, most significantly requiring HAHP to waive the remedy of specific performance and to accept liquidated damages for a City default under the PSA, capped at $2,000,000, whereas the City would be entitled to retain HAHP's deposit of $5,000,000 as liquidated damages in the event of a HAHP default; and

WHEREAS, the Council finds that the proposed transaction contemplated by the PSA is in the public interest in that it: (1) brings in a private-sector partner with the experience and capacity to manage the City's rental housing complexes into the future, (2) provides for capital improvements that are needed to enhance the living

environments for Project residents, (3) increases the number of rental housing units affordable to lower-income households earning less than or equal to 60 percent of median income, and (4) provides for a substantial payment to the City that will be used for defeasance of City bond debt and for deposit into the City's CDBG and HOME program accounts; and

WHEREAS, the Council further finds that the terms and conditions of the proposed PSA are reasonable and appropriate; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

1) The Purchase and Sale Agreement is approved substantially in the form attached hereto as Exhibit A;

2) The Director of Budget and Fiscal Services is authorized to execute the Purchase and Sale Agreement;

3) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transaction described above, as long as such documents do not increase either directly or indirectly the financial obligation of the City; and

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be, and is hereby directed to transmit copies of this Resolution to Michael R. Hansen, Director of Budget and Fiscal Services, and Samuel E. H. Moku, Director of Community Services. A copy of this Resolution shall also be transmitted to Honolulu Affordable Housing Partners, LLC, c/o Highland Property Development LLC, 250 W. Colorado Boulevard, Suite 210, Arcadia, California 91007.

INTRODUCED BY:

_____

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_____

_____

_____

DATE OF INTRODUCTION:

_____
Honolulu, Hawaii

_____
Councilmembers

Exhibit A

SI DRAFT 6: 8/6/2012

PURCHASE AND SALE AGREEMENT

between

CITY AND COUNTY OF HONOLULU

as City

and

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

as Buyer

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made as of _____, 2012 (the "**Effective Date**") by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i (the "**City**"), and **HONOLULU AFFORDABLE HOUSING PARTNERS, LLC**, a Hawai'i limited liability company ("**Buyer**"), in the following factual context:

A. The City owns the following 12 rental housing projects (together, the "**Projects**", and each, a "**Project**") located on the island of Oahu, State of Hawai'i:

Rental Housing Complex	**Location**
Bachelors Quarters	Ewa Villages
Chinatown Gateway Plaza	Chinatown
Chinatown Manor	Chinatown
Harbor Village	Chinatown
Kanoa Apartments	Palama
Kulana Nani Apartments	Kaneohe
Manoa Gardens	Manoa
Marin Tower	Chinatown
Pauahi Hale	Chinatown
Westlake Apartments	Salt Lake
West Loch Village	Ewa Beach
Winston Hale	Chinatown

B. The Projects are situated on the lands more particularly described in **Exhibit A** attached hereto (collectively, the "**Land**"). Any and all buildings, structures, systems, facilities, fixtures, fences and parking areas located on the Land, and any and all machinery, equipment, apparatus and appliances incorporated into the foregoing, except as may be owned by the City's tenants, are collectively called the "**Improvements**". The Land and Improvements are referred to collectively as the "**Property**".

C. The City's objective is to preserve the City's portfolio of rental housing complexes as an affordable housing resource for the community by transitioning leasehold ownership of the Projects to a private entity such as Buyer, with the experience, capacity, and resources to operate and maintain the Projects over the long term. Buyer desires to lease, improve, and operate the Property, as more specifically set forth in this Agreement.

D. Pursuant to the Proposal submitted by Buyer in response to the Request for Proposals relating to the Honolulu Affordable Housing Preservation Initiative, dated February 2012, as amended (the "**RFP**"), the City has agreed to enter into long-term Leases of the Projects (as defined below in Section 1.1) with Buyer subject to and in accordance with this Agreement.

E. All of the Projects include income-restricted rental housing units, but some Projects also include market-rate rental housing units, commercial tenant spaces, and parking facilities. In addition, the City has suggested that four of the Projects (namely, Bachelors Quarters, Kanoa Apartments, Pauahi Hale, and Winston Hale) may be suitable for redevelopment.

F. As analyzed by Buyer for purposes of the Proposal submitted by Buyer, the Projects variously and collectively consist of and include the following product types, components, or uses ("**Project Use Components**"): (i) the rental of income-restricted housing apartment units (the "**Affordable Rental Housing Component**"); (ii) the rental of market-rate apartment units (the "**Market Rental Housing Component**"); (iii) the rental of commercial space (the "**Commercial Rental Component**"); (iv) the management and rental of parking spaces to the public ("**Public Parking Component**"); (v) the management and rental of parking spaces to residents of the Projects (the "**Resident Parking Component**"); and (vi) three of the four projects (Bachelors Quarters, Kanoa Apartments, and Pauahi Hale) that the City has suggested are suitable for redevelopment (the "**Redevelopment Component**"). (The Public Parking Component and the Resident Parking Component involve parking spaces and facilities in the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects. Various of the other Projects also include parking spaces that are rented or reserved exclusively for residents of said Projects as integral parts of the operation of such Projects as income-restricted rental housing projects. The parking spaces associated with those Projects are treated as part of the Affordable Rental Housing Component.)

G. As used in this Agreement, the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, the Resident Parking Component, and the Redevelopment Component mean and refer, respectively, to the following Projects or the indicated number of units, commercial space, or parking spaces in each Project making up such Project Use Component therein:

Affordable Rental Housing Component	**Market Rental Housing Component**	**Commercial Rental Component**	**Public Parking Component**	**Resident Parking Component**	**Redevelopment Component**
Kulana Nani - Entire Project					
Manoa Garden - Entire Project*					
Westlake Apartments - Entire Project					
West Loch Village - Entire Project					
Chinatown Gateway Plaza – 119 Units	Chinatown Gateway Plaza – 81 Units	Chinatown Gateway Plaza – commercial space	Chinatown Gateway Plaza – 80 public parking spaces	Chinatown Gateway Plaza – 194 parking spaces	
Chinatown Manor – 90 Units		Chinatown Manor – commercial			

Affordable Rental Housing Component	Market Rental Housing Component	Commercial Rental Component	Public Parking Component	Resident Parking Component	Redevelopment Component
		space			
Harbor Village – 60 Units	Harbor Village – 30 Units	Harbor Village – commercial space	Harbor Village – 76 public parking spaces	Harbor Village – 58 parking spaces	
Marin Tower – 161 Units	Marin Tower – 75 Units	Marin Tower – commercial space	Marin Tower – 258 public parking spaces	Marin Tower – 156 parking spaces	
Winston Hale – 94 Units		Winston Hale – commercial space			
					Bachelors Quarters
					Kanoa Apartments
					Pauahi Hale

*41 of 80 units. See Section 5.17(e) below.

H. Buyer desires to lease, improve and operate the Property, as more specifically set forth in this Agreement. Subject to the terms and conditions of this Agreement, the City is willing to allow Buyer to undertake due diligence relating to the Projects and to enter into long-term Leases of the Projects and the Property with Buyer subject to and in accordance with this Agreement. The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (i) Buyer's undertaking due diligence, performing under the terms of the Leases and performing all other obligations set forth in this Agreement; (ii) Buyer's intended financing for the different Project Use Components as set forth in Section 5.14 and the City's reasonable cooperation in connection with certain of such financing; and (iii) the City's undertaking to lease the Property to Buyer as set forth in this Agreement, subject to the terms and conditions contained herein.

I. As set forth in Buyer's Proposal in response to the RFP, Buyer intends to acquire the long-term Leases for the Projects by obtaining different sources of financing for each of the respective Project Use Components. As more specifically provided in this Agreement, Buyer intends, for this purpose and to facilitate such financing, to form several different subsidiary entities, each of which, respectively, shall acquire from the City direct long-term Leases for the Projects based on and limited to one or more of the Project Use Components. Since certain of the Projects (namely, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale) consist of multiple and different Project Use Components, the City has agreed as set forth in this Agreement to cooperate with Buyer in "condominiumizing" these Projects: that is, joining with Buyer in filing a declaration and other documents reasonably acceptable to the City and in conformity with Chapter 514B of the Hawai'i Revised Statutes in order to submit each of these Projects to a condominium property regime so that the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, and the Resident Parking Component, as the case

may be in each such Project, can be separately leased by the City to one or the other of Buyer's subsidiary entities and separately financed accordingly.

J. This Agreement and the Leases shall be submitted to the Honolulu City Council for review and approval via the adoption of a resolution, thereby authorizing the City to sign this Agreement and the Leases.

NOW, THEREFORE, the parties agree as follows:

SECTION 1 PURCHASE OF LEASES

1.1 Subject to the terms and conditions of this Agreement, at the Closing (as defined in Section 7.1), the City shall lease the Property to Buyer, and Buyer shall lease the Property from the City pursuant to separate leases (a separate Lease for each Project Use Component of each Project). The form of the lease for the Project Use Components of the Projects that shall not be submitted to condominium property regime (i.e., condominiumized as provided in this Agreement) shall be in substantially the form attached hereto as **Exhibit B-1**. The form of the lease for the for the Project Use Components of the Projects that shall be submitted to a condominium property regime shall be in substantially the form attached hereto as **Exhibit B-2**. Each lease for each Project Use Component shall have attached thereto an addendum applicable to that Project Use Component, which shall be substantially in the form attached hereto, respectively, as follows: **Exhibit B-3** (Addendum for Affordable Rental Housing Component), **Exhibit B-4** (Addendum for Market Rental Housing Component), **Exhibit B-5** (Addendum for Commercial Rental Component), **Exhibit B-6** (Addendum for Public Parking Component), **Exhibit B-7** (Addendum for Resident Parking Component), and **Exhibit B-8** (Addendum for Redevelopment Component). Each such lease is herein called a "**Lease**", and all such leases together are herein referred to as the "**Leases**". The Leases provide for fixed lease rent payment of One Dollar ($1.00) per year per Lease to the City. This Agreement is for the acquisition by Buyer of the Leases, and the payment by Buyer of an up-front lump-sum acquisition lease rent payment, covering all of the Land and the all of the Improvements for all 12 Projects and, if Buyer accepts the Property pursuant to Section 3.7 below, and subject to the other terms and conditions of this Agreement, Buyer shall close on all 12 Projects. Buyer cannot accept or reject less than all 12 Projects and all Leases shall be entered into simultaneously.

1.2 The City shall assign certain leases, contracts, service agreements and other third-party agreements for each Project as listed in **Exhibit C-1** attached hereto (the **"Assigned Contracts**"). The assignment of the Assigned Contracts shall be in substantially the form attached hereto as **Exhibit C-2** (the **"Assignment of Leases and Contracts**"). Where there are different lessees in one Project due to separate Project Use Components, Buyer shall either: (a) designate one (1) lessee to be assignee under the Assignment of Leases and Contracts for such Project; or (b) provide the City prior to Closing with a designation of the specific leases, contracts, service agreements and other third-party agreements for such Project that shall be assigned, respectively, to the different lessees which shall acquire Leases of the different Project Use Components in such Project. Notwithstanding the foregoing, the residential rental agreements for all apartment units in the Affordable Rental Housing Component shall be assigned to the lessee of the Affordable Rental Housing Components of the Projects, the residential rental agreements for all apartment units in the Market Rental

Housing Component shall be assigned to the lessee of the Market Rental Housing Component of the Projects, the commercial leases of commercial space included in the Commercial Rental Component shall be assigned to the lessee of the Commercial Rental Components of the Projects, and any residential rental agreements for apartment units in the Redevelopment Component shall be assigned to the lessee of the Redevelopment Component of the Projects.

1.3 The City shall transfer to Buyer personal property and equipment owned by the City, located at each Project and used in connection with the operation of such Project as listed in **Exhibit D-1** attached hereto (the "**Personal Property**"), to the extent not designated as condominium common elements (in which event Buyer or its Affiliates or other nominees in accordance with Section 11.10(c) and Section 11.10(d) shall acquire all of the interests in such Personal Property as undivided interests in such common elements that are appurtenant to the condominium units for the Project Use Components in the Projects of which such common elements are a part). The transfer of the Personal Property shall be in substantially the form attached hereto as **Exhibit D-2** (the "**Bill of Sale**"). Where there are different lessees in one Project due to separate Project Use Components, Buyer shall either: (a) designate one (1) lessee to be buyer under the Bill of Sale; or (b) provide the City prior to Closing with a designation of the specific Personal Property at each such Project that shall be transferred, respectively, to the different lessees which shall acquire Leases of the different Project Use Components in such Project.

1.4 Notwithstanding any provisions to the contrary in this Agreement or in any Lease, the City reserves all right, title and interest as the fee owner in the Land, and as grantee, benefitted party or other party other than the fee owner of the Land under any grants of easement, covenants, restrictions, Land Court orders, and other recorded instruments or maps encumbering or affecting the Land (for example and not by way of limitation, rights of the City as grantee under sewer or drainage easements on, through or under the Land), together with the right to grant any easements or rights-of-way, or any other such rights to any third-party with Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that such grants do not substantially and materially (i) interfere with, or (ii) adversely affect the rights granted to Buyer herein or under the Leases.

SECTION 2 PAYMENT OF PURCHASE PRICE

2.1 **Purchase Price**. In consideration of the City entering into the Leases, and the Assignments of Leases and Contract and the Bills of Sale, but subject to the terms, conditions, and provisions of this Agreement, including the provisions and contingencies respecting Buyer's financing for the transactions contemplated by this Agreement, Buyer shall pay to the City an up-front lump-sum acquisition lease rent payment in the sum of One Hundred Forty-Two Million And No/100 Dollars (**$142,000,000.00**) (hereinafter the "**Purchase Price**") for the Leases, the Assignment of Leases and Contracts and the Bill of Sale. Upon Closing, the City shall also be entitled to the Reserve Accounts, as provided in Section 5.4(c) below.

2.2 **Method of Payment**. The Purchase Price shall be paid by Buyer to the City as follows:

(a) Initial Deposit. Within two (2) Business Days after the Effective Date, and as a condition precedent to the effectiveness of this Agreement, Buyer shall deposit with Title

Guaranty Escrow Services, Inc. ("**Escrow Agent**") by a confirmed wire transfer or other deposit of good and immediately available funds, the sum of One Million And No/100 Dollars ($1,000,000.00) ("**Initial Deposit**").

(b) Second Deposit. Buyer shall deposit with Escrow Agent a second deposit in the sum of Four Million And No/100 Dollars ($4,000,000.00) by a confirmed wire transfer or other deposit of good and immediately available funds ("**Second Deposit**") within two (2) Business Days after Buyer has approved or is deemed to have approved the results of Buyer's Due Diligence Investigation in conformity with Section 3.7. The Initial Deposit and the Second Deposit, together with interest earned, if any, on said sums, are herein collectively called the "**Deposit**". THIS AGREEMENT SHALL CONSTITUTE BUYER'S INSTRUCTION AND DIRECTION TO THE ESCROW AGENT THAT THE FUNDS COMPRISING THE DEPOSIT SHALL BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT BEARING THE HIGHEST AVAILABLE RATE OF INTEREST THAT WILL PERMIT IMMEDIATE WITHDRAWAL OF SUCH FUNDS FOR CLOSING AND BUYER SHALL PAY FOR THE COST, IF ANY, FOR SUCH INTEREST-BEARING ACCOUNT.

(c) Application of Deposit. If the leasing of the Property as contemplated hereunder is consummated, the Deposit shall be held by Escrow Agent and credited against the Purchase Price. If the leasing of the Property as contemplated hereunder is not consummated solely for any reason other than (i) the City's material breach of this Agreement, (ii) Buyer's disapproval of the results of its Due Diligence Investigation and lack of cure by the City pursuant to Section 3.7, or (iii) failure of any other express condition for the benefit of Buyer described in Section 6.1, including specifically the closing of the New Financing as defined in Section 5.14 for the transactions contemplated by this Agreement, the Deposit, plus any accrued interest thereon, shall be paid to and retained by the City as consideration for the City's commitment to sell the Property to Buyer during the pendency of this Agreement and/or as liquidated damages pursuant to Section 8.2(c). If the leasing of the Property as contemplated hereunder is not consummated and this Agreement is terminated due to the City's material breach of this Agreement, Buyer's disapproval of the results of its Due Diligence Investigation pursuant to Section 3.7, or failure of any other express condition precedent for the benefit of Buyer described in Section 6.1, including specifically the closing of the closing of the New Financing, the Deposit, plus any accrued interest thereon, if any, shall be returned to Buyer, less escrow fees, if any, as may be chargeable to Buyer.

(d) Cash at Closing. Provided that this Agreement has not been terminated and all closing conditions have been satisfied as provided hereunder, including the conditions set forth in Section 6.1, Buyer will pay to Escrow Agent (or cause to be deposited into escrow), in time for Closing on the Closing Date in conformity with the requirements of Hawai'i law and escrow practice, the full remaining balance of the Purchase Price, plus Buyer's share of closing costs and closing adjustments and prorations as estimated by Escrow Agent, subject to appropriate and final closing prorations and adjustments as provided under this Agreement. Escrow Agent is irrevocably instructed to pay the Purchase Price to the City at Closing, less the City's share of closing costs and closing adjustments and prorations as estimated by Escrow Agent, after all conditions to Closing have been satisfied. Buyer has disclosed to the City that the closing by Buyer of the transactions contemplated by this Agreement will be financed by, and are subject to and contingent upon, in addition to other conditions: (i) authorization and issuance by the State of Hawai'i, through the Hawai'i Housing Finance and Development Corporation ("**HHFDC**"), of not less than $95,000,000 in multi-family revenue bonds relating to

Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and, if Buyer elects and if permitted by applicable law, the Public Parking Component and the Resident Parking Component) of the Projects; (ii) the sale of such tax-exempt bonds; (iii) allocation by HHFDC of Federal low-income housing tax credits ("**Federal LIHTC**") of not less than $5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Internal Revenue Code of 1986 (26 U.S.C.), as amended (the "**Code**"); (iv) the allocation by HHFDC of not less than $2,945,571 annually for the 10-year credit period of State of Hawai'i low-income housing tax credits under the cognate provisions of Hawai'i State law ("**State LIHTC**"); (v) the sale or syndication of such low-income housing tax credits to investors; and (vi) Buyer's receipt of commercial loans from banks and other financial institutions.

(e) Form of Payments. All payments required to be made by Buyer under this Agreement shall be in U.S. Dollars in the form of cash, cashier's check or by federal wire transfer (same day funds).

SECTION 3 DUE DILIGENCE

3.1 Due Diligence Period; Due Diligence Investigation.

(a) **Due Diligence Period**. The "**Due Diligence Period**" shall mean the period beginning on the date of the issuance of a "**Notice to Proceed**" (as referenced in Section I, Paragraph 21 of the RFP) and continuing to and ending at 4:00 p.m. Hawai'i Time on the date that is sixty (60) days from and after the date on which the Notice to Proceed is issued. The Notice to Proceed will be issued by the City upon execution of this Agreement by the City and Buyer. The date the Notice to Proceed is issued is hereafter called the "**Due Diligence Commencement Date**".

(b) **Due Diligence Investigation**. Prior to the Due Diligence Commencement Date, Buyer acknowledges having had the opportunity to review various documents and information relating to the Property. Buyer may conduct further investigation of the Property during the Due Diligence Period. Prior to the expiration of the Due Diligence Period, subject in all events to and in accordance with the terms of this Agreement, Buyer shall complete at its sole cost and expense all such necessary due diligence with respect to the Property in order to determine whether Buyer has any objections to any conditions, circumstances, contingencies, facts, physical conditions, financial or operating results, or other matters relating to the Property. This investigation (the "**Due Diligence Investigation**") may include (but shall not be limited to):

(i) a physical inspection of the Property, including, but not limited to, inspection and examination of soils, environmental factors, hazardous substances, if any, and archeological information relating to the Property; geological and other tests; review and investigation of any permits; and review of engineering data (including, but not limited to, engineering evaluations of the Improvements);

(ii) review of all governmental matters affecting the Property and each Project;

(iii) review of title to the Property and each Project;

(iv) review of the financial and operating results for each of the Projects, specifically including rents and other revenue sources;

(v) review of the management practices for each of the Projects, including interviews with the property manager of each Project and the operator of any parking facilities at any of the Projects, all subject to Section 3.3 below, and inspection of such property manager's and operators' books and records relating to such Project or such parking facilities;

(vi) development of a strategy for timely satisfaction of all of the requirements of this Agreement, in the event that Buyer does not elect to terminate this Agreement pursuant to the terms of Section 3.7, below; and

(vii) Any matter whatsoever not referenced above that pertains to the Property or any of the Projects.

3.2 Delivery of Documents. In connection with the issuance of the Notice to Proceed, and on the Due Diligence Commencement Date, the City shall deliver to or make available for review by Buyer via the Internet or at the City's offices (during normal business hours and upon reasonable notice) copies of all material documents in the City's possession relating to the City's ownership and operations of the Property and each of the Projects, respectively, including (if any) site plans, surveys, title policies, existing entitlements, approvals, soils reports, engineering reports, operating statements, licenses, permits, environmental reports, engineering or architectural renderings, plans and specifications, tenant information, maintenance records, inspection and physical condition reports, documents and materials relating to legal proceedings, governmental notices, appraisals or valuation reports, tax returns and records, and other items reasonably relevant to Buyer's Due Diligence Investigation (collectively, the "**Due Diligence Documents**"). The City's obligation to provide Due Diligence Documents shall be limited to those documents that are in the City's possession as an owner and operator of the Property and not as a governing and regulatory body. Except as provided in Section 10.2 of this Agreement, the City makes no representation or warranty relating to the accuracy or validity of the Due Diligence Documents, and Buyer acknowledges and agrees that Buyer is responsible for verifying the accuracy of the Due Diligence Documents. All information supplied by the City to Buyer pursuant to this Agreement shall remain the property of the City. In the event Closing does not occur or this Agreement is terminated for any reason, Buyer shall promptly return to the City or confirm to the City that Buyer has destroyed all Due Diligence Documents obtained from the City. The City discloses to Buyer that some of the Property may contain asbestos, PCBs and lead paint, or may have been used for many years for agricultural purposes employing pesticides, herbicides, fertilizers, combustible fuels and other chemicals. Nevertheless, Buyer shall satisfy itself on issues related to the presence or absence of hazardous materials on or under the Property.

3.3 Access and Conditions.

(a) Access to Property. In order for Buyer to conduct its Due Diligence Investigation, the City hereby grants to Buyer and its representatives the right of access to the Property and each of the Projects during normal business hours and upon reasonable advance notice. Such access shall be coordinated through the City's authorized representative, Christopher Terry (Telephone Number: (808) 768-3887), and the City may require all such access to be supervised by persons appointed by the City's authorized representative. The City

shall use commercially reasonable efforts to provide Buyer with access to the Property and each of the Projects within two (2) Business Days of receiving a request for such access from Buyer.

(b) No Construction Activity. In no event shall Buyer be permitted to conduct any construction, demolition or similar work ("**Construction Activity**") during the term of this Agreement, it being the understanding of the parties that Construction Activity shall occur only after the Closing, and then in accordance with the terms and conditions of the respective Lease or Leases applicable to such Project and the Project Use Component thereof.

(c) Access Conditions. Buyer's right of entry shall be subject to the following conditions:

(i) The Due Diligence Investigation shall be conducted in full compliance with each applicable law, zoning restriction, ordinance, rule, regulation or requirement of any federal, state, county or other governmental or quasi-governmental agency with jurisdiction over the Property (collectively, "**Governmental Authorities**").

(ii) Buyer shall not interfere with any tenant's or other occupant's use and enjoyment of the Property and shall make every reasonable effort to accommodate the requests of the City and any tenants and occupants regarding conduct of the Due Diligence Investigation so as to minimize interference with operations at the Property including reasonable notice before conducting the Due Diligence Investigation. With the exception of incidental conversations that may occur during any on-site visits to any of the Projects by Buyer's directors, officers, partners, members, employees, contractors and agents, Buyer shall not conduct any interviews or discussions with the tenants or occupants of the Property without giving written notice (including by electronic mail) one (1) Business Day in advance of any such interview or discussions to the City's authorized representative, Christopher Terry (telephone number above) and offering the City the opportunity to have a representative of the City present. Interviews with the City's employees or contractors shall be limited to specifically designated senior personnel and the City shall provide to Buyer, along with the Due Diligence Documents on the Due Diligence Commencement Date, the names and contact information (telephone number, e-mail address, office address) of both the property manager for each Project and the specifically designated senior personnel of the City whom Buyer may contact concerning the Projects (and such contact information shall be supplemented as appropriate upon request of Buyer).

(iii) Prior to entering the Property to perform any of its Due Diligence Investigation, Buyer shall provide to the City a certificate of insurance showing that Buyer maintains in full force and effect a policy of commercial general liability insurance (A) covering the activities of Buyer (including Buyer's employees, contractors and agents) in connection with the Due Diligence Investigation, (B) in an amount of not less than Two Million And No/100 Dollars ($2,000,000) combined single limit per occurrence from a carrier reasonably acceptable to the City, (C) naming the City, its officers and directors as additional insureds, and (D) requiring at least thirty (30) days written notice to the City prior to cancellation or reduction in coverage.

(iv) Any investigation involving soil borings, subsoil, soil vapor, ground water, soil load-bearing tests or other tests involving physical invasion of the surface of the

Property or physical sampling are to be made by Buyer only after obtaining the express written consent of the City, which may be withheld in the City's reasonable discretion. The City's environmental consultant may attend any test or investigation at the Property and shall be entitled, without cost, to duplicates of any samples taken by Buyer (or, if duplicates are not reasonably attainable, Buyer may elect to deliver the actual samples after testing) and to copies of all written reports and data prepared by or on behalf of Buyer. Any request for consent must be delivered to the City and its environmental consultant, together with a reasonably detailed investigation plan sufficient for the City to determine the scope and logistics of the proposed investigation, at least five (5) Business Days before the desired test. Any invasive sampling or testing permitted by the City shall be performed in compliance with all environmental laws and other requirements of any Governmental Authorities. Depending on the nature of the invasive testing or sampling, the City may require a reasonable increase in the amount of insurance specified in Section 3.3(c)(iii) above consistent with the nature of such testing or sampling. Buyer bears sole liability for any damage that may occur during such tests; provided, however, that Buyer shall not be liable for any damages incurred by the City resulting from the mere discovery by Buyer of a pre-existing condition at or with regard to the Property or any part thereof or any Project, except if Buyer negligently aggravates such condition or causes a release of any hazardous materials. If in the course of its investigation, Buyer discovers any environmental condition that Buyer or its consultants or contractors believes should be reported to any Governmental Authorities, Buyer shall provide to the City full information regarding the discovery and the City shall assume any and all reporting obligations and shall indemnify and hold Buyer harmless with respect to any failure to properly report such information to any such Governmental Authorities, if such reporting is required under applicable laws.

(v) Promptly after any physical inspection of the Property, Buyer at its sole cost, shall restore the Property to the condition that existed immediately prior to such inspection.

(vi) Buyer shall give the City (A) copies of all of Buyer's written communications to or from Governmental Authorities (including City agencies and departments acting in their regulating or planning functions), and (B) at least two (2) Business Days prior notice of any meetings with Governmental Authorities regarding any physical inspections of the Property, so that the City may participate if it desires. Buyer shall not enter into any binding agreements with Governmental Authorities regarding the physical or environmental condition of the Property prior to the Closing.

(vii) Buyer shall not permit any mechanics' or other liens, charges, encumbrances, attachments or judgments (collectively, "**Liens**") to be filed against the Property as a result of Buyer's Due Diligence Investigation, and Buyer, within five (5) Business Days after receiving written notice from the City of the filing of any such Liens, shall, at Buyer's sole cost, cause any Liens so filed to be removed by payment, deposit, bond or other reasonably satisfactory alternative approved by the City. If Buyer fails to do so, the City may pay the amount necessary to remove such Lien, without being responsible for investigating the validity thereof. The amount so paid shall be reimbursed by Buyer to the City within ten (10) Business Days after receipt of written demand therefor, without limiting any other remedies available to the City under this Agreement arising from Buyer's breach of this subsection, and any such reimbursement shall not limit remedies available to Buyer regarding the validity of any such Lien.

3.4 **Title**. Within ten (10) days following the Due Diligence Commencement Date, the City shall obtain and deliver to Buyer updated preliminary title reports (the "**Updated Title Reports**") for all of the Projects issued by Title Guaranty of Hawaii, Inc. (the "**Title Company**"). Since the City has negotiated a preferred escrow and title policy rate with the Title Company and Escrow Agent for this transaction, the Title Company and Escrow Agent shall be used for title insurance and escrow services, respectively, for this transaction. Buyer acknowledges already having had the opportunity to review preliminary title reports for the Property. Buyer shall approve or disapprove of the Updated Title Reports during the thirty (30) day period after receipt of such Updated Title Reports. If Buyer disapproves any matters in the Updated Title Reports, Buyer shall either (a) terminate this Agreement by giving the City written notice of termination pursuant to Section 3.7, or (b) give the City a written notice (the "**Disapproval Notice**") identifying the disapproved title matters that Buyer requests be removed or cured at or prior to Closing (the "**Disapproved Title Matters**"). Failure by Buyer to give timely notice of any disapproval or termination shall be deemed approval. With respect to any Disapproved Title Matters, unless the City shall notify Buyer in writing within ten (10) days after the City's receipt of the Disapproval Notice that the City will cause the Disapproved Title Matters to be removed or cured at or prior to Closing, the City shall be deemed to have elected not to remove or cure all Disapproved Title Matters, in which case Buyer shall be deemed to have waived its disapproval of title in the event Buyer subsequently approves its Due Diligence Investigation pursuant to Section 3.7 below. Prior to and in connection with Closing, the City shall remove or cure the Disapproved Title Matters that the City notifies Buyer that City shall remove or cure in response to Buyer's Disapproval Notice. Exceptions approved or deemed approved or accepted by Buyer pursuant to this Section 3.4 or otherwise approved or accepted by Buyer in accordance with this Agreement, real estate taxes not yet due and payable, and the standard printed exceptions set forth in the Title Policies (as defined in Section 6.1) are referred to herein as "**Permitted Exceptions**".

3.5 **Confidentiality**. Buyer shall maintain the confidentiality of any information delivered to Buyer by the City and of any inspection of the Property conducted by Buyer. Buyer shall use all such information solely for the purpose of evaluating the Property. Buyer shall have the right to disclose any such information only to Buyer's employees, consultants, prospective or actual lenders and any other persons or entities having a reasonable need to know such information in connection with the transaction contemplated by this Agreement, and provided that Buyer has specifically advised all such parties to keep such information confidential. Buyer shall be responsible for any breaches of confidentiality by persons to whom Buyer discloses information. If Buyer is confronted with, or is otherwise subject to, government compulsion, regulatory requirement, or legal action to disclose information received under this Agreement, Buyer shall promptly notify the City and shall reasonably assist the City in obtaining a protective order requiring that any portion of the information required to be disclosed be used only for the purpose for which a court issues an order, or for such other purposes as required by law, and provide for redactions of any confidential material not deemed critical to the party seeking disclosure. If this Agreement is terminated prior to any Closing, Buyer shall promptly return to the City all such confidential information received from or on behalf of the City, and shall cause all parties to whom Buyer disclosed any such confidential information to return the same to Buyer, so that such confidential information can be returned by Buyer to the City; provided, however, that upon a successful Closing, Buyer shall have the right to retain any and all such confidential or other information and use the same in connection with the proper administration and operation of the Property and each of the Projects. Notwithstanding the foregoing provisions of this Section 3.5, any information delivered to Buyer by the City shall not

be deemed to be confidential if such information: (a) was known to Buyer prior to receipt of such information from the City, and such information was obtained on a non-confidential basis; (b) is or becomes generally known to the public through means other than the disclosure of such information by Buyer, or its employees, agents, or other representatives; or (c) becomes available to Buyer on a non-confidential basis from a person other than the City or its consultants and who, to Buyer's best knowledge, is not otherwise bound by a confidentiality agreement with the City or any of the City's attorneys or consultants with respect to the Property, or is not otherwise prohibited from transmitting the information to Buyer.

3.6 **Indemnity**. Buyer hereby agrees to indemnify, defend and hold the City, its officers, directors, employees, legal counsel, agents, contractors, successors and assigns (collectively, the "**City Parties**") harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), arising directly or indirectly, in whole or in part, out of Buyer's Due Diligence Investigation or Buyer's access to or activities on the Property during the term of this Agreement, including but not limited to: (a) any investigative or construction-related activity, storage of equipment or materials, any damage to the Property arising out of Buyer's activities in connection with this Agreement, any Liens caused or permitted by Buyer, or any other act or omission in connection with the Property by or on behalf of Buyer or its employees, agents or contractors (collectively, "**Buyer's Agents**"); (b) any contract, agreement or commitment entered into or made by Buyer or Buyer's Agents in connection with the Property; and (c) any act or omission of Buyer or Buyer's Agents that results in the discharge of any hazardous materials or substances on to the Property or on to any surrounding property, or the exacerbation of any pre-existing environmental condition on the Property in connection with Buyer's Due Diligence Investigation.

3.7 **Approval/Disapproval of Due Diligence Investigation; Opportunity to Cure Objections; Right to Terminate**. Buyer shall approve or disapprove the results of its Due Diligence Investigation by written notice delivered to the City no later than the expiration of the Due Diligence Period. Buyer's approval or disapproval of the results of Buyer's Due Diligence Investigation shall be in Buyer's sole and absolute discretion. In the event Buyer disapproves the results of its Due Diligence Investigation, Buyer shall include in its written notice a written description of the objectionable conditions which form the basis for Buyer's disapproval (the "**Objection Notice**"). Upon receipt of the Objection Notice, the City shall have ninety (90) days (the "**City Cure Period**") after receipt of the Objection Notice to cure the conditions described in the Objection Notice or the City may choose to cancel this Agreement without penalty or compensation to Buyer. If the City does not cure such conditions within the City Cure Period, then Buyer shall have until and including the fifth Business Day after the City Cure Period either: (a) to elect to terminate this Agreement by delivering to the City a written notice of termination describing the objectionable conditions that were not cured; or (b) to elect to waive the objectionable conditions by delivering to the City written notice of Buyer's intention to waive the objectionable conditions and proceed with Closing, in which event Buyer shall then be required in accordance with Section 2.2(b) to make the Second Deposit within two (2) Business Days after Buyer's approval of the Property. Wherever and whenever used in this Agreement, references to "Buyer's approval of the Property," or "Buyer's approval or deemed approval of the Property," or "Buyer's approval or deemed approval of Buyer's Due Diligence Investigations," or "Buyer's completion of Buyer's Due Diligence Investigations," and variants thereof and phrases

of the same import, shall mean and refer to the Buyer's approval or deemed approval of the Property after the expiration of the Due Diligence Period, the delivery to the City of any Objection Notice, the City Cure Period, and the five-Business Day period thereafter in which Buyer may elect to terminate this Agreement or waive any objectionable conditions and proceed with Closing in accordance with this Section 3.7. Upon termination of this Agreement by Buyer or the City pursuant to this Section 3.7, the parties shall instruct Escrow Agent to return the Initial Deposit (plus any interest earned thereon) to Buyer less Escrow Agent's charges and title cancellation charges, if any, chargeable to Buyer as soon as practicable and, except as otherwise provided herein, this Agreement shall be null and void and of no further force and effect, and the parties shall have no further rights, obligations or liabilities hereunder. Buyer shall not be entitled to any compensation or other payment whatsoever by the City on account of termination pursuant to this Section 3.7 or for any undertakings or due diligence costs made or incurred by Buyer under or in connection with this Agreement, or in connection with the preparation of Buyer's Initial Proposal dated April 27, 2012 ("**Buyer's Initial Proposal**") and Buyer's Best and Final Offer, dated May 22, 2012 ("**Buyer's Best and Final Offer**"). If Buyer fails to deliver to the City a notice of Buyer's approval or disapproval of the results of Buyer's Due Diligence Investigation by the end of the Due Diligence Period, Buyer shall be deemed to have approved the results of Buyer's Due Diligence Investigation and shall proceed with Closing. Since this Agreement is for the leasing of all 12 Projects, Buyer's approval of the Property or disapproval and, if applicable, termination of this Agreement shall be for all 12 Projects. Buyer cannot accept or reject less than all 12 Projects and all Leases shall be entered into simultaneously. In the event that Buyer approves or is deemed to have approved the Property as a result of Buyer's Due Diligence Investigation in accordance with this Section 3.7, the City shall not thereafter encumber the Property or any of the Projects in any respect or enter into, amend, or extend any agreements affecting title to or operation of the Property and each of the Projects (except in compliance with Section 10.2(f) or as otherwise provided in this Agreement). Notwithstanding the foregoing, Buyer understands that from the date of Buyer's approval or deemed approval of the Property until the date of Closing, the City will need to continue to operate the Property in its normal course of business and that, as provided in Section 10.2(f), the City shall be allowed to continue to operate the Property and the Projects. In addition, as disclosed in Section 5, the City is in the process of obtaining releases from the HUD Mortgages, granting an easement to an adjacent property owner, and obtaining an interest in an alleyway.

3.8 [Reserved.]

3.9 **Survival**. Buyer's obligations under Section 3.2, Section 3.3(b), Section 3.3(c), Section 3.5, and Section 3.6 shall survive the Closing or the termination of this Agreement prior to Closing.

SECTION 4 "AS-IS" CONDITION

4.1 **"AS IS" and "WHERE IS" Condition**. Prior to Closing, Buyer shall have made a thorough, independent examination of the Property and all matters relevant to Buyer's decision to enter into the Leases and make the capital improvements thereto contemplated by Section 5.1. This Agreement and the City's agreement to enter into the Leases are made "**AS IS**" with all faults, and Buyer expressly acknowledges and agrees that, except as provided in this Agreement, the CITY 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 PROPERTY OR ANY PORTION THEREOF, OR WITH RESPECT TO THE SUITABILITY OF ANY OF THE FOREGOING FOR THE CONDUCT OF BUYER'S BUSINESS OR THE PROFITABILITY OR INCOME STREAM FROM ANY OR ALL PROJECTS. Buyer acknowledges that as of Closing, Buyer will have carefully inspected the Property and by executing each Lease, will, except as otherwise provided in each Lease, accept the leased Property covered by such Lease 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 the City, or any person on behalf of the City, regarding the Property or matters affecting the Property, including, without limitation:

(a) Physical Condition. The physical condition of the Property, including the quality, nature, adequacy, and physical condition of (i) the Land, including any systems, facilities, access, and/or landscaping; (ii) the air, soils, geology, and groundwater, (iii) the suitability of the Land for construction of any improvements or any activities or uses that Buyer may elect to conduct on the Land, or (iv) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Land for building or any other purpose;

(b) Improvements. The quality, nature, adequacy, and physical condition of the existing Improvements, including but not limited to, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities;

(c) Title. The nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, or other title condition affecting the Property, including without limitation the existence of any easements, rights-of-ways or other rights across, to or in other properties that might burden or benefit the Property;

(d) Compliance. The development potential of the Property and/or the zoning, land use, or other legal status of the Land or Improvements, or compliance with any public or private restrictions on the use of the Land, as the same are in effect as of the Effective Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance with the Land or Improvements with any applicable laws;

(e) Hazardous Materials. The presence of hazardous materials on, in, under or about the Property or any adjoining or neighboring property;

(f) Economic Feasibility. Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of any Project and/or any business Buyer intends to conduct on the Property;

(g) Utilities. The availability, existence, quality, nature, adequacy and/or physical condition of utilities serving the Property;

(h) Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Property (including, without limitation, each Project) for any particular purpose;

(i) Boundaries. The boundaries of the Property, the location of any Improvements on the Land and/or the existence of any encroachments onto or from any adjacent lands;

(j) Access. Access as of the Closing Date to the Property, including from or through any particular route (provided, however, that the City agrees that the City shall take no action on or after the Closing Date that shall limit complete and total access on a permanent basis to the Property (and each of the Projects) to a public street or right-of-way for purposes of both pedestrian and vehicular ingress and egress and utilities and utility services;

(k) Parking and Parking Fees. The requirement to provide public parking at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, the number of stalls, hours of operation, the amount of parking fees that may be charged for such public parking at each such Project, and other rules and regulations governing such public parking, which may be determined by the Honolulu City Council; and

(l) Other Matters. Any matter whatsoever not referenced above that pertains to the Property.

The provisions of this Section 4.1 are not intended for the benefit of and shall not confer any rights or remedies on or release any person from any claims relating to any of the foregoing matters other than the City and persons acting on behalf of the City with regard to the Property or any of the Projects.

4.2 Buyer's Due Diligence. Buyer acknowledges: (a) Buyer is a sophisticated real estate investor with sufficient experience and expertise, and will hire or have the opportunity to hire consultants with sufficient experience and expertise, to evaluate the Property and the risks associated with acquiring a leasehold interest in the Property; (b) Buyer will enter into the Leases with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, archeological, economic and legal condition of the Property; and (c) in connection with its investigations and inspections of the Property, Buyer will have the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, and archeologists to conduct such environmental, geological, soil, hydrology, seismic, archeological, physical, structural, mechanical and other inspections of the Property as Buyer deems to be necessary, and that Buyer will have the opportunity to review the reports of such advisors and consultants, as well as all materials and other information given or made available to Buyer by the City and by any Governmental Authorities. Buyer further acknowledges that it has not and will not receive from or on behalf of the City any accounting, tax, legal, architectural, engineering, archeological, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, archeological, property management and other advisors to be retained by Buyer at its sole expense. Buyer will satisfy itself as to such suitability and other pertinent matters by Buyer's own inquiries and tests into all matters relevant in determining

whether to enter into the Leases. The City has the right to retain its own experts to dispute any findings made by those retained by Buyer.

4.3 **Release of the City**. Buyer, on behalf of itself, its directors, officers, partners, members and agents (the "**Buyer Parties**"), hereby waives, releases, acquits and forever discharges the City and the City Parties, of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer or any Buyer Parties now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic or condition of the Property, except as otherwise set forth in the Leases, and except such release shall not include the release of any such claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation for any violation by the City or any City Parties of this Agreement or any of the Leases or any acts or omissions of the City or City Parties after Closing except as may be provided in the Leases. The provisions of this Section 4.3 shall survive the Closing.

SECTION 5 SPECIAL PROVISIONS

5.1 **Capital Improvements**. Buyer shall make all capital improvements to each Project and shall create reserves as required under the Leases to ensure that each Project is properly maintained and in good condition and repair. Such improvements shall be at Buyer's sole cost and expense. Buyer agrees that Buyer will use best efforts to expend Forty-Two Million and No/100 Dollars ($42,000,000.00) (inclusive of hard costs, which hard costs shall not be less than Thirty-Five Million And No/100 Dollars ($35,000,000.00), and all non-direct soft costs for architectural, engineering, financing, and legal fees, administrative and oversight costs, and other pre- and post-construction expenses and contingencies) within the first twenty-four (24) months after Closing, but in no event shall Buyer expend less than Forty Million And No/100 Dollars ($40,000,000.00) (inclusive of hard costs, which hard costs shall not be less than Thirty-Five Million And No/100 Dollars ($35,000,000.00), and all non-direct soft costs for architectural, engineering, financing, and legal fees, administrative and oversight costs, and other pre- and post-construction expenses and contingencies) within the first thirty-six (36) months after Closing, for capital expenditures for the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component of the Property are located (the "**Capital Improvement Amount**"). The Capital Improvement Amount shall be expended and applied in the rehabilitation of the apartments units in the Affordable Rental Housing Component and the Market Rental Housing Component and the building systems of the Projects in which such Project Use Components are located based on a capital needs assessment conducted by Buyer. The capital needs assessment shall include both the condition and working order and state of repair of all major building systems (electrical, plumbing, HVAC, roof systems, hallways, and common areas) and the condition and state of repair of the various components or facilities in each apartment (e.g., kitchen appliances, cabinets, countertops; bathroom toilet, vanities, shower and bathtub fixtures; electrical outlets and lighting fixtures throughout the apartments; plumbing fixtures; floor coverings; wall painting; entry and closet doors; window coverings; and similar components and facilities). The Capital Improvement Amount shall be apportioned among the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component are located (namely, Kulani Nani, Manoa Gardens, Westlake Apartments, West Loch Village, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects) in a fair and

appropriate manner consistent with such capital needs assessment. Notwithstanding the foregoing, the City and Buyer agree that $450,000 of the Capital Improvement Amount shall be applied against capital improvements to the Projects in the Redevelopment Component (i.e., $25,000.00 for Bachelors Quarters, $400,000.00 for Pauahi Hale, and $25,000.00 for Kanoa Apartments Projects), but the lessee of those Projects shall have until thirty-six (36) months after Closing to complete any capital improvements to such Projects or to commence the process of redeveloping those Projects (unless the City agrees to extend such 36-month period for the completion of such capital improvements, provided any extension granted by the City shall be in the City's sole and absolute discretion with no obligation to grant such extension). Unless the lessees of the Redevelopment Component can establish, to the reasonable satisfaction of the City, that such lessees have the financial capability and a reasonable financial plan to fulfill the Capital Improvement Amount for each respective Redevelopment Component, Buyer shall remain liable for such obligations herein. Buyer will use union labor, where available and appropriate, for all on-site construction labor in connection with the capital improvements to the Projects in which the Affordable Rental Housing Component and the Market Rental Housing Component of the Property are located. The obligations of this Section 5.1 shall survive the Closing.

5.2 Relationship of This Agreement, Leases, and Regulatory Agreements. In the event of any conflict or inconsistency with the terms and conditions of this Agreement, the Leases, and/or the Regulatory Agreements, the following documents shall be controlling in the following descending order of precedence: (a) the Lease applicable to the subject Project Use Component, (b) the Regulatory Agreements, if any, applicable to the subject Project Use Component, and (c) this Agreement.

5.3 Extension of Closing Deadline. The City shall have the option of extending the Closing Deadline for entering into the Leases under any one or more of the following circumstances:

(a) Additional time is necessary to obtain HUD approval for the prepayment of the existing HUD Mortgage on Kulana Nani, as provided in Section 5.4; or

(b) Additional time is necessary to obtain HUD approval for the prepayment of the existing HUD Mortgage on Westlake Apartments, as provided in Section 5.4; or

(c) Additional time is necessary to redeem the CDBG investments in the Projects assisted with CDBG funds, as provided in Section 5.5 below; or

(d) [Reserved.]

(e) Additional time is necessary for Buyer to obtain the Bond Financing or to obtain an allocation of and/or syndicate or sell the Federal LIHTC and State LIHTC that Buyer shall require as part of its financing in connection with the acquisition of the Leases for certain Project Use Components of the Property.

The City may exercise such option multiple times with respect to the Leases provided that such extensions shall not result in an Extended Closing Deadline later than **March 31, 2014**, and provided further that any extension of the Closing Date shall require Buyer's written consent in the event that any such extension would result in (i) any increase in the applicable interest rates

at which Buyer is able to borrow funds in connection with Buyer's Bond Financing or commercial bank financing for Buyer's acquisition of the Leases for the Property, or (ii) any material change in the market price at which Buyer is able to sell or syndicate the Federal LIHTC and the State LIHTC allocated in connection with Buyer's acquisition of the Leases.

5.4 **Pay-Off of HUD Mortgages**. The Kulana Nani Project is encumbered with a mortgage under the United States Department of Housing and Urban Development ("**HUD**") Section 236 program for limited distribution mortgagors and the Westlake Apartments Project is encumbered with a mortgage under the HUD Section 221(d)(4) program for profit motivated mortgagors (both mortgages are collectively referred to as the "**Mortgages**"). The loan secured by the HUD Section 236 mortgage on the Kulana Nani Project is due and payable in April, 2013. The City has started the prepayment process for the Kulana Nani Mortgage by providing the 150-day notice to the Kulana Nani tenants. The loan secured by the HUD Section 221(d)(4) mortgage on the Westlake Apartments Project is due and payable in June, 2013. The City has started the prepayment process for the Westlake Apartments Mortgage by providing lender with the 30-day notice. The City and the Buyer shall make arrangements for payment or prepayment by the City of the Mortgages and release of the Mortgages and other related encumbrances from the holders thereof ("**HUD Lender(s)**") prior to or at Closing so that the Property will be free and clear and not encumbered by the Mortgages. Buyer agrees to contact and request releases of the Mortgages from the HUD Lender(s) and to deposit the fully executed and recordable releases of mortgages that are received with Escrow Agent for purposes of Closing. The City shall provide Buyer all information necessary to contact the HUD Lender(s) (both current holders of the mortgage and any loan servicers). The City shall also send any required notices to assist Buyer in obtaining payment or prepayment information for release of the Mortgages prior to or at Closing. Buyer shall provide the City with weekly status reports on its efforts to obtain the Mortgage releases. If the Closing is scheduled to occur on a Closing Date that requires prepayment of either of the Mortgages and the City and Buyer are unable to obtain any HUD Lender(s)' consent to any such prepayment, the Closing shall be extended to permit payment of the Mortgages in conformity with the terms thereof as of the dates specified above.

(a) Kulana Nani Project. In preparation for Closing, the City and Buyer shall use their best efforts to obtain HUD approval for prepayment of the Section 236 Mortgage encumbering the Kulana Nani Project and approval, if applicable, for any IRP (interest reduction payment) decoupling request that Buyer elects to make on the Kulana Nani Project. The City and Buyer shall undertake such prepayment and decoupling efforts in accordance with applicable requirements of HUD and in a manner that will cause HUD to issue Section 8 Enhanced Vouchers ("**EVs**") to the eligible residents of the Kulana Nani Project. Further, the City and Buyer shall work together and use their best efforts to assure that any EVs are exchanged by the eligible residents for Section 8 Project-Based Vouchers ("**PBVs**") in connection with the payment and release of the HUD Section 236 Mortgage on the Kulana Nani Project, but the City shall not be obligated to provide such PBVs out of the PBVs available to the City and under the City's control.

(b) Westlake Apartments Project. In preparation for Closing, the City and Buyer shall use their best efforts to obtain HUD approval of the request for prepayment of the Section 221(d)(4) Mortgage encumbering the Westlake Apartments Project and Buyer shall rely solely on its Title Policy providing that the mortgages for the New Financing (as defined below in Section 5.14) have first priority even though the Title Company may file a release of mortgage for the prior first mortgage after the prepayment proceeds are received and said release of

mortgage is filed after Closing. In connection with the prepayment of the Section 221(d)(4) Mortgage encumbering the Westlake Apartments Project, the City shall cooperate with Buyer in attempting to extend or procure from HUD or the State of Hawai'i a housing assistance payments contract ("**HAP Contract**") to provide tenant-based or project-based rental assistance for all of the apartments units in the Westlake Apartments Project under HUD's Section 8 program.

(c) Reserve Accounts. Buyer shall not receive any reserve account balances, including the Reserve for Replacement funds, and amounts, or Residual Receipts accounts, or any other cash account or escrow account held prior to Closing by the HUD Lenders or HUD Lender's designees and/or agents with respect to any of the Projects (collectively, the "**Reserve Accounts**"). The Reserve Accounts shall be the City's sole and separate property and the Reserve Accounts shall be released to the City prior to or at Closing. If, at any time after Closing, Buyer receives a cash distribution of the funds in any such Reserve Accounts, Buyer shall forthwith turn over such funds from such Reserve Accounts to the City. The obligations of this Section 5.4(c) shall survive the Closing.

5.5 Buy Out of CDBG Investments. The Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Marin Tower, Pauahi Hale, Westlake Apartments and Winston Hale Projects were developed in whole or in part with CDBG funding. The City shall "buy out" the CDBG investments in these Projects, resulting in the leasing of the Projects free from CDBG restrictions, provided that such "buy out" price does not exceed Fifty Million And No/100 Dollars ($50,000,000.00) (the "**Buy Out Cap**"). Buyer shall work cooperatively with the City to obtain HUD approval of CDBG "buy outs" on terms that are acceptable to the City. Buyer shall not be required to execute any subrecipient or other agreements with the City or HUD regarding any CDBG grant restrictions on or compliance with CDBG regulations regarding the Projects. "Buy outs" of CDBG investments in the Projects shall be subject to notice given to affected citizens and an opportunity afforded to such citizens to comment on the proposed transactions pursuant to the Citizen Participation requirements set forth in the City's Consolidated Plan. If the "buy out" price required from HUD exceeds the Buy Out Cap, the City shall have the right to cancel and terminate this Agreement upon written notice to Buyer. If the City decides to cancel and terminate this Agreement pursuant to this Section 5.5, the City shall reimburse Buyer for Buyer's reasonable out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation and Buyer's preparation for Closing, in an amount not to exceed Five Hundred Thousand And No/100 Dollars ($500,000.00) based on an itemized account of such third-party fees that Buyer shall provide to the City, and such reimbursement payment shall be Buyer's exclusive remedy for the City's termination of this Agreement pursuant to this Section 5.5.

5.6 HOME Requirements and Affordability Expiration Dates. Bachelors Quarters, Kanoa Apartments, and Kulana Nani Apartments (Buildings D, F and H) were developed in whole or in part with HOME funding, and West Loch Village was used by the City as a HOME match project. Each of these Projects will continue to remain subject to HOME program requirements as evidenced by a HOME Use Restriction Agreement in the form attached as **Exhibit E** to this Agreement, which shall be executed by the Buyer at Closing with respect to and recorded as an encumbrance against each HOME-funded Project. The dates for the expiration of the HOME program requirements and the Restrictive Covenant for each applicable Project are as follows:

Bachelors Quarters	August 30, 2014
Kanoa Apartments	March 2, 2013
Kulana Nani Apartments	July 10, 2021
West Loch Village	June 17, 2013

Buyer shall be responsible for complying with all applicable statutory and regulatory HOME Program requirements. The costs of compliance with any such HOME requirements shall be borne solely by Buyer.

5.7 Regulatory Agreements, Etc.

(a) Affordable Rental Housing Component; Redevelopment Component. In addition to the Leases for the Affordable Rental Housing Components and the Redevelopment Component of the Projects, each lessee under the Leases for such Project Use Components shall comply with the Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") applicable thereto, a copy of which shall be attached to each Lease for the Affordable Rental Housing Component and the Redevelopment Component of the Projects. The Regulatory Agreement for each such Project will include, without limitation, terms relating to the renting of the units in the Project, such as rental rates and increases thereto, tenant eligibility, record keeping, reporting, operations and management.

(b) Market Rental Housing Component. The Market Rental Housing Component of the Projects shall not be subject to a regulatory or other similar agreement, but the Leases for the Market Rental Housing Components shall contain provisions restricting the use of such Market Rental Housing Components to residential rental housing and limiting increases in rents to ten percent (10%) per year during first five (5) years of the terms of the Leases for the Market Rental Housing Components of the Projects, but imposing no restrictions on increases in rents thereafter.

(c) Commercial Rental Components. The Leases for the Commercial Rental Components shall not be subject to any regulatory or other similar agreement restricting the operation thereof or the rental rates or increases in rental rates pertaining to such Project Use Components.

(d) Public Parking Component. Buyer acknowledges that the rental rates applicable to the parking stalls in the Public Parking Component shall be regulated by the City pursuant to ordinance (currently, Ordinance 12-13, amending Section 15-23.2 of the Revised Ordinances of Honolulu).

(e) Resident Parking Component. The City may require that the Resident Parking Components of the Projects shall be subject to a regulatory or other similar agreement pursuant to which increases in the rental rates for the parking stalls in the Resident Parking Component shall be limited to ten percent (10%) per year during the first 10 years of the terms of the Leases for the Resident Parking Components of the Projects, but imposing no restrictions on increases in parking rental rates thereafter. In any event, the Leases for the Resident Parking Components shall contain provisions restricting the use of such Resident Parking Components to parking and limiting increases in the rental rates for the parking stalls in the Resident Parking Component to ten percent (10%) per year during the first 10 years of the

terms of the Leases for the Resident Parking Components of the Projects, but imposing no restrictions on increases in parking rental rates thereafter.

5.8 [Reserved.]

5.9 Real Property Tax Exemptions; General Excise Tax Exemptions.

(a) Real Property Tax Exemptions. The City is entering into Regulatory Agreements with Buyer for the Affordable Rental Housing Component and the Redevelopment Component, and based on the recordation of such Regulatory Agreements, Buyer may file an application or claim for exemption from the assessment and payment of real property taxes, including any claim for exemption subject to and pursuant to Section 8-10.20 and Section 8-10.21, Revised Ordinances of Honolulu, relating to low-income rental housing, and the City agrees to process such application in the ordinary course based upon and subject to the requirements of Section 8-10.20 and Section 8-10.21. Buyer understands that Buyer must file for such exemptions annually and that the City shall not be responsible or liable for Buyer's failure to timely file for such exemptions on an annual basis.

(b) General Excise Tax Exemption. Pursuant to Hawai'i Revised Statutes Section 46-15.1, Section 201H-36, and Section 237-29, the City may certify for exemption from general excise taxes any projects which meet the requirements of said statutes. The City will work with Buyer to issue such certifications provided that the requirements under said statutes and applicable laws are met. Buyer understands that Buyer is responsible for preparing and filing any exemption request and that the City shall not be responsible or liable for Buyer's failure to file for such exemptions. Buyer further understands that such exemptions are subject to all laws and rules applicable thereto and are subject to extinguishment if the Legislature of the State of Hawai'i amends the Hawai'i Revised Statutes to revoke such exemption.

(c) Other Exemptions. Nothing in this Agreement is intended to preclude Buyer from filing a claim or claims in accordance with applicable law for an exemption from real property tax and/or Hawai'i State General Excise Tax with respect to any of the other Project Use Components.

5.10 Applicant Waitlists. At or in connection with the Closing, the City or its property manager will provide applicant waiting lists for each Project. Buyer and its nominees shall preserve all wait list applicant's positions and shall process unit occupancies based on the applicable wait lists, subject in all instances to any income limitation qualifications and other restrictions, provisions, and terms contained in any document or instrument relating to the New Financing (as defined in Section 5.14) and applicable law. The obligations of this Section 5.10 shall survive the Closing.

5.11 Chinatown Manor Survey. The State has granted to the City a right-of-way for Chinatown Manor to use the alleyway shown on that certain ALTA/ACSM Land Title Survey "Chinatown Manor" dated May 21, 2012, prepared by R. M. Towill Corporation, for access purposes to and from King Street. Under the terms of the right-of-way granted by the State, it was anticipated that the City would ultimately obtain from the State a formal easement or deed to the alleyway. The City is pursuing an agreement with the State to acquire such easement or deed for the alleyway. The City hereby reserves the right and authority to continue to pursue such easement or deed both before and after Closing, provided that the City shall be

responsible and liable for all costs and fees in connection therewith, including, but not limited to, the payment of consideration for such acquisition, the City's attorneys' fees and costs, and recordation fees related thereto. If the City obtains the fee interest or an easement in the alleyway prior to Closing, such alleyway property shall be included as part of the Premises leased under the Leases applicable to the Chinatown Manor Project and all obligations of lessee under said Lease shall also apply to the alleyway. If the City does not obtain the fee interest or an easement in the alleyway prior to Closing, the City shall assign and transfer, as part of the Leases relating to the Chinatown Manor Project, all rights and interests of the City under the right-of-way agreement with the State for the term of the Leases and Buyer shall fully cooperate with the City thereafter in obtaining such easement or deed for the alleyway. In the event that the City acquires the fee interest or an easement in the alleyway after Closing, the City and Buyer agree (and Buyer shall cause any designee of Buyer as the lessees of the Chinatown Manor Project to agree) to amend said Leases of the Chinatown Manor Project to include such interest in the alleyway. The provisions of this Section 5.11 shall survive the Closing.

5.12 Marin Tower Easement. The City has agreed to grant to Pacific Gateway Center, a Hawai'i nonprofit corporation, an access easement over the Marin Tower Project for fire escape purposes. Pacific Gateway Center owns that certain adjacent property located at 83 North King Street, Honolulu, Hawai'i, and identified as TMK (1) 1-7-002-008. As part of the Due Diligence Documents that the City shall provide to Buyer pursuant to Section 3.2, the City shall provide to Buyer copies of all correspondence, plans, surveys, specifications, and other documents, if any, in the City's possession, relating to such contemplated access easement in favor of Pacific Gateway Center, and the same shall be subject to review and approval by Buyer as part of Buyer's Due Diligence Investigation. The grant of easement document contemplated herein shall be subject to Buyer's consent, which consent shall not be unreasonably withheld, delayed or conditioned. If Closing occurs prior to the City's grant of easement over the Marin Tower Project to Pacific Gateway Center, the City reserves the right and power to grant said easement pursuant to Section 1.4, in substantial conformity with the information concerning such easement provided to Buyer as part of the Due Diligence Documents, and subject to the terms thereof, and in such event, the City and Buyer agree (and Buyer shall cause any designee of Buyer as the lessees of the Marin Tower Project to agree) to amend said Leases of the Marin Tower Project to include and be subject to such easement. The provisions of this Section 5.12 shall survive the Closing.

5.13 West Loch. Currently, West Loch Village is not assessed for the cost of the non-potable irrigation water used to irrigate the landscaping at the West Loch Village Project. The Board of Water Supply delivers the non-potable water to the City's West Loch Golf Course and the cost of the non-potable water is paid for by the City department overseeing the City's golf courses. Various users, including the West Loch Golf Course and West Loch Village, use the non-potable water. The City is working on allocating the costs of such non-potable water and the costs for the installation, maintenance and repair of infrastructure and waterlines to all users in a fair and reasonable and proportionate manner. As part of the Due Diligence Documents that the City shall provide to Buyer pursuant to Section 3.2, the City shall provide to Buyer, if available, an estimate of all costs for such non-potable water that may be chargeable to Buyer after Closing relating to the West Loch Village Project and any costs for installation, maintenance and repair of infrastructure and waterlines that may be allocable to Buyer. In the event that Buyer approves the Property pursuant to Section 3.7 as a result of Buyer's Due Diligence Investigation, Buyer (or its designee) shall be responsible for the West Loch Village

Project's proportionate and allocated share of such costs based on a reasonable determination by the City, as the same may be reasonably adjusted from time to time. The provisions of this Section 5.13 shall survive the Closing.

5.14 Financing (Bond Financing and Tax Credits). Buyer's agreement to pay the Purchase Price and enter into the Leases is based, contingent, and conditioned upon closing of the following three (3) different sources of financing that Buyer intends to procure for the different Project Use Components (collectively, the "**New Financing**").

(a) Bond Financing; City's Agreement Respecting Transfer of "Bond Volume Cap". The New Financing shall include, in addition to possible sources of financing from banks and other financial institutions relating to the Market Rental Housing Component and the Commercial Rental Component, not less than $95,000,000 in the form of one or more loans, to be made on terms and conditions that shall be subject to Buyer's approval, funded through the sale of tax-exempt bonds that Buyer intends to request be allocated and issued by the HHFDC under its Hula Mae Multi-Family Revenue Bond Program in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Component of the Projects and the rehabilitation thereof as contemplated by Section 5.1 of this Agreement ("**Bond Financing**"). If permitted by applicable law, and if Buyer elects, it is Buyer's intention that the Bond Financing may also provide financing for Buyer's acquisition of the Leases for the Public Parking Components and the Resident Parking Components of the Projects. To facilitate such Bond Financing, the City agrees that the City shall take all appropriate action to return or transfer to the State and the HHFDC not less than $95,000,000 in current year (2012) bond authority (sometimes referred to as "bond volume cap") for purposes of the allocation thereof to Buyer in connection with Buyer's financing and acquisition of the Leases for the Affordable Rental Housing Component of the Projects and any other applicable Project Use Components and the rehabilitation thereof. For certain federal tax reasons, Buyer may, in Buyer's discretion, elect to segregate and denominate a certain amount of the Bond Financing to consist of taxable, as opposed to tax-exempt, bonds.

(b) Tax Credit Equity. In addition to the Bond Financing, Buyer intends to request that the HHFDC reserve and allocate to Buyer in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Components of the Projects (and the rehabilitation thereof) Federal LIHTC in an amount not less than $5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Code, and not less than $2,945,571 in State LIHTC under the cognate provisions of Hawaii State law. Buyer intends to raise substantial equity for the acquisition of the Leases for the Affordable Rental Housing Components of the Projects through the sale or syndication of the Federal LIHTC and the State LIHTC, provided that the Federal LIHTC and State LIHTC may be sold or syndicated on terms and conditions acceptable to Buyer. It is Buyer's intention that the sale or syndication of the Federal LIHTC and the State LIHTC may also, if Buyer elects and to the extent permitted by applicable law, provide equity financing for Buyer's acquisition of the Leases for the Public Parking Components and Resident Parking Components of the Projects.

(c) [INTENTIONALLY OMITTED]

(d) Commercial Bank Financing For Market Rental Housing Component and Commercial Rental Component; Etc. Buyer intends to finance acquisition of the Leases for the Market Rental Component and the Commercial Rental Component by means of commercial

loans from banks and other financial institutions. In the event that Buyer does not elect to finance the acquisition of the Leases for the Public Parking Component and/or the Residential Parking Component (or any part thereof) as part of and together with the Bond Financing and/or equity financing from the sale or syndication of the Federal LIHTC and the State LIHTC, or if such financing relating to the Public Parking Component or the Residential Parking Component (or any part thereof) is not permitted by applicable law as part of the Bond Financing and/or the Federal LIHTC or State LIHTC equity financing, Buyer intends to finance the acquisition of the Leases for these Project Use Components (or the applicable part thereof) by means of commercial loans or other financing facilities.

(e) References to "Buyer's Lenders". For purposes of this Agreement, references to "**Buyer's Lenders**" shall be understood to mean any and all governmental agencies, including the HHFDC, banks, financial institutions, HUD, and the Federal Housing Administration ("**FHA**") and other persons authorizing, issuing, or providing any part of Buyer's New Financing relating to the acquisition of the Leases, including without limitation any persons or entities involved in the sale or syndication or the purchase of the Federal LIHTC and State LIHTC that the HHFDC reserves and allocates to Buyer in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component if financed together with the Affordable Rental Housing Component).

(f) Financing Contingencies; Financing Contingency Date. Buyer's obligations under this Agreement shall be contingent upon Buyer obtaining written documentation in form and substance of commitments satisfactory to Buyer for all components of the New Financing (hereafter called, collectively, the "**Financing Contingencies**"), by April 1, 2013 (the "**Financing Contingency Date**"). Buyer agrees to use commercially reasonable efforts to obtain the New Financing by the Financing Contingency Date. In the event the Financing Contingencies are not satisfied by the Financing Contingency Date, Buyer shall be entitled to extend the Financing Contingency Date until June 28, 2013 ("**Extended Financing Contingency Date**"). If the Financing Contingencies are not satisfied by the Extended Financing Contingency Date, Buyer may request the City's consent to a further extension for Buyer to satisfy the Financing Contingencies; provided, however, the City shall have no obligation to approve such extension. In the event the City does approve such extension, which approval must be in writing, the City and Buyer shall execute an amendment evidencing such further extension of the Financing Contingency Date and the projected extension period. If the City does not approve such further extension and the Financing Contingencies have not been satisfied by the Extended Financing Contingency Date, then this Agreement shall terminate and be of no further force or effect, and Escrow Agent shall forthwith return the Deposit plus all earned interest, if any, to Buyer less escrow fees, if any, chargeable to Buyer. The New Financing and the Financing Contingencies shall consist of the three (3) sources of financing listed in Subsections 5.14(a), (b), and (d), and although Buyer may apply for and/or use the HHFDC's Rental Assistance Revolving Fund Program, the HHFDC's Rental Housing Trust Fund Program, and equity contributions from the owners, partners, and/or members of Buyer, such other sources of funding are not "New Financing" as defined in this Agreement and are not included as Financing Contingencies.

5.15 Tenant Services. As set forth in Buyer's Best and Final Offer, Buyer has represented that it will target appropriate services that will support the residential communities at the Projects. In furtherance thereof, Buyer agrees that at the commencement of each Lease

for the Affordable Rental Housing Component at the Projects, Buyer shall conduct an evaluation of appropriate services to be offered to support the residential community at each Project. Residential tenant services to be evaluated include, but are not limited to, those services listed in Schedule 2 of the Regulatory Agreements. The evaluation shall solicit feedback from onsite management and residents. Buyer shall provide or facilitate provision of tenant services appropriate to the needs of the Project's resident profile. Any fees for such services shall be reasonable. Buyer shall provide annual reports to the City on the services provided at each Project and the charges, if any, for such services, as set forth in the Regulatory Agreements applicable to the Affordable Rental Housing Components of the Projects. From and after the Closing, Buyer shall have extensive oversight and supervision of the Projects and shall remain actively involved with the residents of the Affordable Rental Housing Components of the Projects, including establishing an active schedule of site visits and inspections as well as remaining accessible and responsive to residents' concerns and questions. The provisions of this Section 5.15 shall survive the Closing.

5.16 Blind or Visually Handicapped Persons. If there is any judicial determination, a binding arbitration determination, or a determination made as part of a judicially-approved settlement that any of the Projects are subject to Hawai'i Revised Statutes §102-14, and Buyer is required as a result thereof to grant any concessions or rights to operate vending machines in any part of the Projects, the City shall indemnify and hold harmless Buyer from and against (i) the loss of any and all revenues (including revenues over the remaining terms of the Leases) that would have otherwise been realized by Buyer, and (ii) any liability, cost, damage, and expense (including, without limitation, attorneys' fees and costs) that Buyer incurs in connection with any claims made against Buyer or any proceedings under Hawai'i Revised Statutes §102-14 to which Buyer is made a party. The provisions of this Section 5.16 shall survive the Closing.

5.17 City's Agreement Respecting "Condominiumization" of Certain Projects.

(a) Certain Projects to Be Submitted to Condominium Property Regime. As set forth in this Agreement, Buyer intends to finance its acquisition of the Leases by obtaining different types and sources of financing (e.g., the Bond Financing described in this Agreement, equity from the sale or syndication of Federal LIHTC and State LIHTC, commercial loans from banks and other financial institutions, loans from the HHFDC, and grants) for each of the respective Project Use Components (although Buyer may finance its acquisition of the Leases for the Public Parking Component and the Resident Parking Component as part of Buyer's financing for Buyer's acquisition of the Leases for the Affordable Rental Housing Component). Buyer has advised the City in this regard that it is necessary for purposes of Buyer's contemplated financing that certain of the Projects (namely, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale), which contain more than one and different Project Use Components, must each be submitted to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes, so that each of the different Project Use Components thereof will constitute a "separate parcel of real estate" under Section 514B-4(a) of the Hawai'i Revised Statutes and may be both separately leased to one of the subsidiary entities that Buyer intends to form to acquire the Leases for the different Project Use Components of Projects and separately financed. Upon completion of Buyer's Due Diligence Investigation and approval of the Property in conformity with Section 3.7, the City agrees to join Buyer in filing a declaration of condominium property regime and such other documents as are necessary and appropriate, subject to the City's reasonable review and

approval of such documents (taking into account the importance of such condominiumization of the subject Projects to the various components of Buyer's New Financing), to submit each such Project to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes so that the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, the Resident Parking Component, and the Redevelopment Component thereof, as the case may be in the case of each such Project, will constitute a separate parcel of real estate and can be separately leased by the City to one or the other of Buyer's subsidiary entities and separately financed accordingly. After the completion of Buyer's Due Diligence Investigation, Buyer shall submit for the City's review and approval all condominium documents and maps, proposed State Public Reports and other required instruments in connection with the creation of the condominiums and submission of each of the subject Projects to a condominium property regime.

(b) Buyer's Responsibilities Regarding Preparation of Declaration and Other Condominium Documents; Costs of Condominium Filings. Buyer shall be solely responsible for all legal fees and other costs and expenses in connection with preparation of all declarations, maps, and reports required to submit of each the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects to separate condominium property regimes under Chapter 514B and Buyer shall pay for all of the City's legal and third-party fees in connection with the City's review, approval and execution of all of the documents in connection with the submittal of the applicable Projects to condominium property regimes, in an amount not to exceed Twenty-Five Thousand And No/100 Dollars ($25,000.00), based on an itemized account of such third-party fees that the City shall provide to Buyer. In connection with the creation of each such condominium property regime, Buyer shall act as and be deemed to be the "developer" for purposes of Chapter 514B. Subject to the City's reasonable consent and approval, Buyer shall determine the number, location, and configuration of the condominium units in each Project, the common elements and limited common elements of the condominium regimes, the interest in common elements and the limited common elements appurtenant to each unit, and all other matters relating to the creation of such condominium property regimes.

In connection with the condominiumization of the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, and because of the income limitation qualifications that will apply to residents of apartment units in the Affordable Rental Housing Component in those Projects as a result of Buyer's New Financing and the Regulatory Agreement between the City and Buyer relating to apartment units in the Affordable Rental Housing Component, the City acknowledges that Buyer will need the ability, and therefore, to the full extent permitted by the law and by the terms of a resident's rental agreement, shall have the right after Closing to relocate current residents in those Projects in accordance with such residents' household income and the applicable income limitation qualifications for apartment units in the Affordable Rental Housing Component. More specifically, Buyer shall have the right after Closing: (i) to relocate current residents who occupy apartment units that are included in the Affordable Rental Housing Component, but whose household income exceeds the applicable income limitation qualifications for apartment units in the Affordable Rental Housing Component, to comparable apartment units in the Market Rental Housing Component; and (ii) conversely, to relocate current residents of apartment units in the Market Rental Housing Component whose household income does not exceed the applicable income qualification limitations to comparable apartment units in the Affordable Rental Housing Components. Buyer shall defend, indemnify and hold the City Parties harmless from any and all demands, losses, claims, damages, liabilities, charges, administrative and judicial proceedings and orders, judgments and all costs and expenses

incurred in connection with Buyer's relocation of tenants pursuant to this Section 5.17(b).

(c) City's Cooperation. In addition to joining Buyer in executing and filing a declaration to submit each of the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects to a condominium property regime, the City agrees to make available to Buyer all building plans, diagrams, plat maps, and other documents and information, if any, in the City's possession that would assist Buyer in preparation and filing of the declaration of condominium property regime, condominium map, public report, and the other appropriate applications, declarations, reports, and documents applicable to the creation of a condominium property regime for each such Project. The City further agrees to review and execute the declaration of condominium property regime for each Project and all such other submissions that require the City's joinder in a timely manner in order that each such declaration may be filed and a public report may be issued by the Real Estate Commission of the State of Hawai'i for each such Project prior to and as a condition of the Closing of the transactions described in this Agreement.

(d) Possible Further Condominiumization of Resident Parking Component. In connection with Buyer's financing for acquisition of the Leases for the Resident Parking Component, it may be necessary or advantageous for Buyer to create two separate condominium units with regard to the Resident Parking Component: namely, a separate condominium unit consisting of the parking spaces in the Resident Parking Component in each of the Chinatown Gateway Plaza, Harbor Village, Marin Tower Projects set aside for apartment units in the Affordable Rental Housing Component (the "**Affordable Rental Parking Component**"), and a separate condominium unit consisting of the parking spaces in the Resident Parking Component in each of the Chinatown Gateway Plaza, Harbor Village, Marin Tower Projects set aside for apartment units in the Market Rental Housing Component (the "**Market Rental Parking Component**"), in each case as determined by Buyer. In the event that Buyer elects to create separate condominium units for the Affordable Rental Parking Component and the Market Rental Parking Component at the applicable Projects, the City and Buyer shall have the same respective rights, obligations, and responsibilities in this regard as set forth Sections 5.17(b) and Section 5.17(c) relating to the condominiumization of the other Project Use Components.

(e) Manoa Gardens. The Lease for the Manoa Gardens Project will cover and lease to Buyer the entire Manoa Gardens Project, but shall be subject to that certain Lease, dated December 14, 1992, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 92-206026, between the City and Pacific Housing Assistance Corporation ("**PHAC**"), a Hawaii corporation, pursuant to which the City has previously entered into a long-term lease of the 39 units in the Manoa Gardens Project in favor of PHAC, with the result that Buyer shall acquire the leasehold interest in the remaining 41 of the 80 units in the Manoa Gardens Project free and clear of any prior lease, except for residential tenant leases. In the event that Buyer requests as a result of Buyer's Due Diligence Investigation, the City agrees, subject to approval and consent from PHAC, that the City shall also join in submitting the Manoa Gardens Project to a condominium property regime in conformity with Chapter 514B of the Hawai'i Revised Statutes so that the 41 units of the Manoa Gardens Project that shall be leased by the City to Buyer will constitute a separate parcel of real estate and can be separately leased by the City and financed as part of Buyer's financing for the Affordable Rental Housing Components of the Projects. In the event that Buyer elects to have the City submit the Manoa Gardens Project to a condominium property regime, the City and Buyer shall have, in

connection with the condominiumization of the Manoa Gardens Project, the same respective rights, obligations, and responsibilities as set forth in Section 5.17(b) and Section 5.17(c) relating to the condominiumization of the other Projects named therein..

(f) Possible Adjustments to Affordable Rental Housing Component and Market Rental Housing Component. Based on certain preliminary information provided by the City in connection with the RFP, Buyer based Buyer's Initial Proposal and Buyer's Best and Final Offer on the assumption that there will be 971 apartment units in aggregate in the Affordable Rental Housing Component and 186 apartment units in aggregate in the Market Rental Housing Component. As part of the Buyer's Due Diligence Investigation, it is anticipated that the City will provide to Buyer additional and more complete and reliable information regarding the income qualifications of the current residents of the apartment units in the various Projects. The City and Buyer acknowledge that such additional information may indicate that, of the total 971 apartment units that Buyer anticipated would comprise the apartment units in the Affordable Rental Housing Component, certain of those apartment units may be occupied by families whose household income exceeds the income limitation qualifications that would permit such apartments units to be included in and financed as part of the Bond Financing and Federal LIHTC and State LIHTC components of Buyer's New Financing. In such event, Buyer shall have the right to reduce the number of apartment units in the Affordable Rental Housing Component and to include the apartment units in question in the Market Rental Housing Component; provided, however, that the number of apartment units included in the Affordable Rental Housing Component shall not be reduced to less than 939 units.

(g) Termination of Condominium Property Regime. If, by the Extended Closing Deadline, the Projects that were submitted to a condominium property regime do not close and leases are not issued to Buyer's separate subsidiary entities as contemplated in this Agreement, upon the request of the City, Buyer shall, at its sole cost and expense, terminate the condominium property regime, file and record all necessary documents to effect such termination and return title to the Property free and clear from any and all encumbrances pertaining to the condominium property regime, and file all documents to terminate the effectiveness of any public report filed with the Hawaii Real Estate Commission. Buyer's obligations under this Section 5.17(g) shall survive the cancellation or termination of this Agreement, but Buyer shall have no obligation under this Section 5.17(g) or to terminate any condominium property regime or file or record any documents hereunder unless the City provides a request to do so within six (6) months after the earlier of the termination of this Agreement or the Extended Closing Deadline.

5.18 City's Agreement Regarding Buyer's Lenders. The City acknowledges that, in connection with Buyer's New Financing, Buyer's Lenders may request or require that certain specific lender protections be incorporated into the Leases and Regulatory Agreements. To the extent such lender protections are generally applicable in financings provided by Buyer's Lenders that are similar in nature to the related component of Buyer's New Financing for Buyer's acquisition of the Leases for the Project Use Component in question, the City agrees to review and reasonably approve any such requests or requirements of Buyer's Lenders and timely amend the Leases and Regulatory Agreements as necessary and appropriate, provided, however, that such requests and requirements do not materially and adversely affect the City's rights or materially increase the City's obligations.

5.19 Manoa Gardens Access. Access to Manoa Gardens is over and through Manoa District Park from a public road. The City is working on obtaining documentation for a right-of-access over Manoa District Park or may pursue a subdivision application creating an extension of Kahaloa Drive, a public road.

5.20 City Assistance Respecting Rental Subsidies for Kulana Nani, West Loch Village, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters Projects. In connection with HUD's HOME program, the City's own Affordable Housing Fund program, and certain other City programs, certain apartment units in the Kulana Nani, West Loch Village, Pauahi Hale, Kanoa Apartments, and Bachelors Quarters Projects are currently set aside, respectively, for tenants whose household incomes do not exceed 50% of Area Median Income (as defined and determined by HUD). Buyer intends to request that HUD, the State of Hawai'i, and/or the City provide rental support by way of a HAP Contract with Buyer (or Buyer's Affiliate) that shall provide tenant-based or project-based rental assistance under HUD's Section 8 program for the tenants of the apartment units at such Projects set aside for tenants whose household incomes do not exceed 50% of Area Median Income. The City agrees to cooperate with and support Buyer's request or application for such rental support from HUD and/or the State of Hawaii, and the City agrees to reasonably review and fairly consider such application in connection with the City's Section 8 program, but this Section 5.20 is not intended to impose on the City a requirement or obligation to enter into a HAP Contract or to provide such tenant-based or project-based rental assistance in connection with the apartment units at the subject Projects set aside for tenants whose household incomes do not exceed 50% of Area Median Income.

5.21 Buyer Oversight. From and after the Closing, Buyer shall have oversight and supervision of the Projects and shall remain actively involved with the residents of the Market Rental Housing Components of the Projects, including establishing an active schedule of site visits and inspections as well as remaining accessible and responsive to such residents' concerns and questions. The provisions of this Section 5.21 shall survive the Closing.

SECTION 6 CONDITIONS PRECEDENT

6.1 Buyer's Conditions Precedent. Buyer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1. Except as otherwise noted, each condition is solely for the benefit of Buyer and may be waived in whole or in part by Buyer by written notice to the City.

(a) Due Diligence Investigation. Buyer shall have approved the results of its Due Diligence Investigation pursuant to Section 3.7.

(b) Title Policies. The Title Company shall deliver to Buyer at Closing leasehold title policies for each Lease of each Project Use Component leased by the City to Buyer or the subsidiary entities that Buyer intends to form to acquire such Leases (collectively, the "**Title Policies**"). The Title Policies shall be in such form (standard leasehold or American Land Title Association ("**ALTA**") extended coverage leasehold title policy) and shall include such coverage and endorsements as Buyer's Lenders shall reasonably require in connection with the New Financing provided by Buyer's Lenders. The Title Policies shall be issued by the Title

Company and underwritten by First American Title Insurance Company, as of the date and time of the recording of the Memorandum of Lease (as defined in Section 7.3(b) below) for each Lease of each Project Use Component, subject only to the Permitted Exceptions.

(c) The City's Performance. The City shall have performed all of its obligations that are to be performed by the City under this Agreement and in connection with Closing.

(d) No Litigation. Except for the matter described in Section 5.16 above, there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Buyer or the City that would materially and adversely affect the City's or Buyer's ability to perform its obligations under this Agreement; provided, however, that, in the event of the pendency or threat of any such matter, the Buyer and the City shall each be entitled to extend the Closing Date for the Closing, subject to Section 6.3, to resolve such matter.

(e) City Council Approval of Transfer of Bond Volume Cap to State. The Honolulu City Council shall approve the return or transfer to the State and the HHFDC of the City's private activity bond allocation for calendar year 2012 in an amount not less than Ninety-Five Million And No/100 Dollars ($95,000,000.00) for purposes of the allocation thereof to Buyer in connection with Buyer's financing and acquisition of the Leases for the Affordable Rental Housing Component of the Projects and any other allowable Project Use Components and the rehabilitation thereof.

(f) New Financing. In connection with Buyer's New Financing for acquisition of the Leases: (i) the State of Hawai'i, through the HHFDC, shall have allocated and set aside for purposes of Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component) not less than $95,000,000 in multi-family revenue bonds; (ii) such tax-exempt bonds may be and are sold to investors on terms and conditions that permit funding of loans for Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component) on terms and conditions acceptable to Buyer; (iii) the HHFDC shall have reserved and allocated to Buyer, for purposes of Buyer's acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component), Federal LIHTC of not less than $5,891,142 annually for the 10-year credit period contemplated by Section 42 of the Code; (iv) the HHFDC shall reserve and allocate to Buyer for purposes of Buyer acquisition of the Leases for the Affordable Rental Housing Component (and the Public Parking Component and the Resident Parking Component), State LIHTC of not less than $2,945,571 annually for the 10-year credit period; (v) such Federal LIHTC and State LIHTC can be sold or syndicated on terms and conditions acceptable to Buyer; and (vi) Buyer receives commercial bank financing as set forth in Section 5.14(d), for acquisition of the Leases for the various Project Use Components, including specifically without limitation the Market Rental Housing Component and the Commercial Rental Component.

(g) HUD Mortgages and CDBG Buy-Out. The pay-off of the HUD Mortgages and the City's buy-out of the CDBG investments, as provided in Section 5.4 and Section 5.5, resulting in the Property being free and clear from the HUD Mortgages and all CDBG

restrictions.

(h) No Change in Applicable Law Relating to New Financing. There shall be no material and adverse change in any federal or State of Hawai'i laws, regulations, or programs relating to the tax-exempt bond financing of the type involved in Buyer's anticipated Bond Financing or the allocation or treatment of Federal LIHTC or State LIHTC.

6.2 The City's Conditions Precedent. The City's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2. Except as otherwise noted, each condition is solely for the benefit of the City and may be waived in whole or in part by the City by written notice to Buyer.

(a) Representations and Warranties. Buyer's representations and warranties contained herein shall be true and correct as of the Closing Date.

(b) Buyer's Performance. Buyer shall have performed all of its obligations that are to be performed by Buyer under this Agreement and in connection with Closing.

(c) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against the City or Buyer that would materially and adversely affect the City's or Buyer's ability to perform its obligations under this Agreement, and there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, or proceedings against the City that would prohibit the City from consummating this Agreement, including, but not limited to, bid protests and disputes of awards under the RFP; provided, however, that, in the event of the pendency or threat of any such matter, the City and Buyer shall each be entitled to extend the Closing Date, subject to Section 6.3, to resolve such matter.

(d) City Council Approval. Approval from the Honolulu City Council of any material or substantial amendments to this Agreement, or material or substantial changes to the final form of the Leases.

(e) HUD Mortgages and CDBG Buy-Out. The pay-off of the HUD Mortgages and HUD's approval of and the City's buy-out of the CDBG investments, as provided in Section 5.5, resulting in the Property being free and clear from the HUD Mortgages and all CDBG restrictions.

6.3 Failure of Conditions. So long as a party is not in default hereunder, if any condition specified in either Section 6.1 or Section 6.2 to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date, or any other applicable date specified in this Agreement, such party may, in its sole discretion, but subject to the rights of the other party under Section 6.1(d) and Section 6.2(c), either (a) terminate this Agreement by delivering written notice to the other party, (b) extend the time available for the satisfaction of such condition by up to a total of ninety (90) days (but in no event later than the Extended Closing Deadline as defined in Section 7.1), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event that either party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of any such extension period,

then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) in this Section 6.3. In the event the failure of any condition precedent is also a breach of this Agreement by either party, the parties agree that such breach shall be governed pursuant to the terms of Section 8 below.

SECTION 7 CLOSING

7.1 Time. This transaction consists of the City and Buyer simultaneously entering into Leases for each of the 12 Projects constituting the Property. Provided that all conditions set forth in Section 6 have been either satisfied or waived by the appropriate party, the parties shall complete the execution and delivery of the Leases contemplated by this Agreement (the "**Closing**") on April 1, 2013, or such earlier or later date as determined by the City and Buyer (the "**Closing Date**"), but in no event later than June 28, 2013 ("**Closing Deadline**"), unless extended pursuant to Section 6.3; provided, however, that any extension of the Closing Date by the City beyond the Closing Deadline shall require Buyer's written confirmation that such extension of the Closing Date is acceptable to Buyer's Lenders and shall not impair or adversely affect any aspect of Buyer's New Financing or result in any increase in the applicable interest rates at which Buyer is able to borrow funds in connection with the tax-exempt bond and other financing for Buyer's acquisition of the Leases for the Property, or any material change in the market price at which Buyer is able to sell or syndicate the Federal LIHTC and the State LIHTC allocated in connection with Buyer's acquisition of the Leases. The Closing shall in no event occur and the Closing Deadline shall in no event be extended beyond March 31, 2014 (the "**Extended Closing Deadline**"). The City shall have the option to extend the Closing Deadline one or more times in accordance with and subject to the terms of Section 5.3.

7.2 Escrow. The Closing shall occur through an escrow handled by Escrow Agent. The terms of this Agreement, together with such additional instructions as Escrow Agent shall reasonably request and the parties shall agree to and such other instructions as the parties shall provide Escrow Agent, shall constitute the escrow instructions to Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in said additional escrow instructions.

7.3 The City's Deposit of Documents Into Escrow. The City shall deposit with Escrow Agent no later than two (2) Business Days before the Closing Date the following documents:

(a) Four (4) duly executed counterparts of each Lease to which the Closing applies;

(b) Four (4) duly executed counterparts of the Assignment of Leases and Contracts, if any are to be assigned, with respect to each Project;

(c) Four (4) duly executed and acknowledged counterparts of a Memorandum of Lease in the form of **Exhibit F** for each Lease (the "**Memorandum of Lease**");

(d) Four (4) duly executed counterparts of the Regulatory Agreement for each Project involving an Affordable Rental Housing Component (and/or, if applicable, any

regulatory agreements applicable to the Market Rental Housing Component and the Resident Parking Component);

(e) Four (4) duly executed counterparts of the HOME Use Restriction Agreement, with respect to each applicable HOME Project;

(f) Four (4) duly executed counterparts of the Bill of Sale, with respect to each Project;

(g) All documents required in connection with the release of the HUD Mortgages and the buy-out of the CDBG obligations relating to any of the Projects; and

(h) Such additional documents as may be reasonably necessary to consummate the leasing of the Property in accordance with this Agreement, including written escrow instructions consistent with this Agreement, and, to the extent applicable and acceptable to the City and requiring execution by the City, any agreements, instruments, certificates, and other documents relating to Buyer's New Financing for Buyer's acquisition of the Leases for the Projects.

7.4 **Buyer's Deposit of Documents and Funds**. Buyer shall deposit with Escrow Agent no later than two (2) Business Days before the Closing Date (except as noted below):

(a) The Purchase Price payments, which shall be wired or deposited with the Escrow Agent, in immediately available funds, in connection with and in time for Closing in conformity with the requirements and practices of Buyer's Lenders, Hawai'i escrow practices and the requirements of Hawai'i law;

(b) Four (4) duly executed counterparts of each Lease to which the Closing applies;

(c) Four (4) duly executed counterparts of the Assignment of Leases and Contracts, if applicable;

(d) Four (4) duly executed and acknowledged counterparts of the Memorandum of Lease for each Lease;

(e) Four (4) duly executed counterparts of the Regulatory Agreement for each Project involving an Affordable Rental Housing Component (and/or, if applicable, and any regulatory agreements applicable to the Market Rental Housing Component and the Resident Parking Component);

(f) Four (4) duly executed counterparts of the Bill of Sale, with respect to each Project;

(g) Tax clearance certificates from the State of Hawai'i Department of Taxation and the Internal Revenue Service with respect to Buyer and each party nominated by Buyer to be lessee under each Lease, issued within thirty (30) days prior to the applicable Closing Date;

(h) Resolutions of Buyer and each party nominated by Buyer to be lessee under each Lease, respectively, approving the terms and conditions of, and authorizing the execution and entry into, this Agreement, the applicable lease, and all documents necessary to consummate the transactions contemplated under this Agreement;

(i) Good standing certificate(s) issued within thirty (30) days prior to the applicable Closing Date by the State of Hawai'i Department of Commerce and Consumer Affairs evidencing Buyer and its nominees are in good standing under the laws of the State of Hawai'i;

(j) Certificate(s) of Vendor Compliance;

(k) Four (4) duly executed counterparts of the HOME Use Restriction Agreement, with respect to each applicable HOME Project, evidencing the continuation of HOME restrictions on such HOME Projects;

(l) All documents required in connection with the release of the HUD Mortgages and the buy-out of the CDBG-assisted Projects, if applicable; and

(m) Such additional documents, including written escrow instructions consistent with this Agreement, as may be reasonably necessary to consummate the leasing of the Property in accordance with this Agreement.

(n) To the extent available, all bond regulatory agreements, mortgages, and other documents and instruments necessary to be recorded in order to complete Buyer's New Financing, including the Bond Financing and the sale or syndication of the Federal LIHTC and State LIHTC allocated to Buyer's acquisition of the Leases for the applicable Project Use Components of the Projects.

7.5 **Closing**. When the Title Company has received all documents and funds identified in Section 7.3 and Section 7.4, has received written notification from Buyer and the City that all conditions to the Closing have been satisfied or waived, and is irrevocably committed to issue the Title Policies as described in Section 6.1(b), then, and only then, the Title Company and Escrow Agent, as applicable, shall:

(a) Record Memoranda. Record each Memorandum of Lease;

(b) Release of Purchase Price. Release the Purchase Price, the Reserve Accounts, if applicable, and all applicable prorations to the City;

(c) Issue Title Policies. Issue the Title Policies for the Leases to Buyer;

(d) Deliveries to Buyer: Deliver to Buyer (i) a conformed copy (showing all recording information thereon) of each of Memorandum of Lease; (ii) fully executed originals of the Leases; (iii) a fully executed original of the Regulatory Agreements and any other applicable regulatory agreements; (iv) fully executed originals of the Assignments of Leases and Contracts for each Project; and (v) fully executed originals of the Bills of Sale for each Project;

(e) Deliveries to the City: Deliver to City (i) a conformed copy (showing all recording information thereon) of each Memorandum of Lease, and (ii) fully executed originals

of the Leases; (iii) a fully executed original of the Regulatory Agreements and any other applicable regulatory agreements; and (iv) fully executed originals of the Assignments of Leases and Contracts for each Project; and (v) fully executed originals of the Bills of Sale for each Project; and

(f) Record and Make Other Deliveries Relating to New Financing. Record and/or deliver such other documents and instruments, including bond indentures, bond purchase agreements, declarations, loan agreements, regulatory agreements, disclosure agreements, promissory notes, mortgages, certificates, security agreements, financing statements, indentures, legal opinions, and other documents and instruments relating to Buyer's New Financing in accordance with separate escrow instructions that shall be provided to Escrow Agent by Buyer's Lenders and Buyer in connection with such New Financing.

The Title Company shall prepare and the parties shall sign closing statements showing all receipts and disbursements and deliver copies to Buyer and the City and, if applicable, shall file with the Internal Revenue Service (with copies to Buyer and the City) the reporting statement required under Section 6045(e) of the Code.

7.6 Prorations and Closing Costs. Subject to the other provisions of this Section 7.6, all receipts and disbursements of the applicable Project will be prorated as of 11:59 p.m. Hawai'i Standard Time on the day immediately preceding the Closing Date ("**Proration Date**"). Not less than three (3) Business Days prior to the Closing Date, Escrow Agent shall submit to Buyer and the City for their approval a tentative prorations schedule showing the categories and amounts of all prorations proposed. The parties shall agree on a final prorations schedule prior to the Closing. If following the Closing either party discovers an error in the prorations statement, it shall notify the other party and the parties shall promptly make any adjustment required.

(a) The City's Costs. Real property taxes and assessments levied, assessed or imposed, if applicable, and other taxes, levied, assessed or imposed with respect to the applicable Project(s), and/or any other costs associated with the applicable Project(s) for any period after the Closing Date that have been paid by the City prior to Closing shall be reimbursed by Buyer as of the Closing. Costs incurred by the City in conducting the City's site inspection of Buyer's offices and certain of Buyer's affordable housing developments on the Mainland United States pursuant to the RFP, if not previously reimbursed, shall be reimbursed by Buyer as of the Closing. As of the Closing Date, Buyer shall be responsible for costs, charges and expenses related to the ownership and operation of the Projects.

(b) Closing Costs. Except as provided herein, all closing costs and escrow fees customarily chargeable to a seller of real estate in Hawai'i shall be paid by the City. All closing costs and escrow and recording fees customarily chargeable to a buyer of real estate in Hawai'i, together with all documentary transfer taxes, including conveyance taxes, the cost of any updates to any ALTA surveys relating to the transactions contemplated by this Agreement, the recordation costs to record all of the Memoranda of Leases, all closing costs associated with Buyer's financing, and all title insurance premiums and the cost of any and all endorsements shall be paid by Buyer. Each party shall pay its own legal and consulting fees.

(c) Tenant Rents, Utility Charges. Rent for the current month paid by tenants, parking revenues, other revenues, income and receivables, utility charges, third-party

contracts that will be assigned to Buyer and all other items of costs and expenses with respect to the Property shall be prorated as of the Proration Date.

(d) Reserve Amounts and Security Deposits. As set forth in Section 5.4(c) above, the Reserve Accounts shall be the City's sole and separate property and the City shall receive the proceeds from the Reserve Accounts. The City shall transfer or cause its managing agents to transfer to Buyer at Closing security deposits held by the City or held by such managing agents on the City's behalf under residential tenant leases and commercial tenant leases, and Buyer shall indemnify and hold harmless the City for any claims by tenants or lessees for the return of security deposits.

(e) Survival. The obligations of this Section 7.6 shall survive the Closing.

7.7 Possession. Possession of the Projects shall transfer to Buyer at the Closing in accordance with the Leases.

7.8 Allocation of Purchase Price. Prior to and in connection with the Closing, Buyer and the City shall agree upon a reasonable allocation of the Purchase Price among the various Project Use Components and Projects.

SECTION 8 DEFAULT AND TERMINATION

8.1 In General. Occurrence of any or all of the following shall constitute a default under this Agreement by the non-performing party:

(a) Failure to Pay. Any failure by a party to pay any charge or other amount required to be paid under this Agreement, or any part thereof, when due unless such failure is cured within five (5) Business Days after written notice that the same was not paid when due; or

(b) Failure to Perform. Except as set forth in subsection (a) above, any failure by a party to observe or perform any other provision, covenant or condition of this Agreement to be observed or performed by such party or the breach of any representation or warranty by such party where such failure or breach continues for ten (10) Business Days after written notice thereof from the other party.

(c) Waiver of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies in connection therewith or of any other rights and remedies provided by this Agreement or by law, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

8.2 Remedies.

(a) Buyer's Remedies. Provided Buyer is not then in breach of this Agreement, Buyer shall have the option to terminate this Agreement (i) after Buyer has approved the Property in accordance with Section 3.7 only in the event any condition to Closing contained in Section 6.1 has not been satisfied or waived by Buyer in writing by the Closing

Date, or (ii) if the City is in breach of its obligations or its representations and warranties under this Agreement as of the Closing Date. If this Agreement is terminated by Buyer as a result of any such breach by the City, the City hereby authorizes Escrow Agent to immediately release and return the Deposit and all interest earned thereon to Buyer and the City shall pay Buyer liquidated damages in the sum of Two Million And No/100 Dollars ($2,000,000.00) ("**Buyer's Liquidated Damages**"). BUYER AND THE CITY ACKNOWLEDGE AND AGREE THAT FIXING BUYER'S ACTUAL DAMAGES IN THE EVENT OF THE CITY'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF THE CITY'S BREACH OF SUCH OBLIGATIONS (OTHER THAN A BREACH OF THE CITY'S INDEMNITY OBLIGATIONS), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT BUYER'S LIQUIDATED DAMAGES SHALL CONSTITUTE BUYER'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES, AND THAT THIS SUM REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES BUYER WOULD INCUR IN THE EVENT OF THE CITY'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT. BUYER WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES ARISING OUT OF THIS AGREEMENT OTHER THAN AS SET FORTH IN THIS SECTION 8.2(a) AND WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO FILE A NOTICE OF PENDING ACTION OR LIS PENDENS AGAINST THE PROPERTY OR ANY PORTION THEREOF. BY INITIALING IN THE SPACES WHICH FOLLOW, THE CITY AND BUYER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 8.2(a) GOVERNING BUYER'S LIQUIDATED DAMAGES. BUYER HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON BUYER'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT.

The City (_____) Buyer (_____)

(b) The City's Remedies. Provided the City is not then in breach of this Agreement, the City shall have the option to terminate this Agreement if (i) the conditions to Closing contained in Section 6.2 have not been satisfied or waived by the City in writing by the Closing Date, or (ii) if Buyer is in breach of its obligations or its representations and warranties under this Agreement as of the Closing Date. In the event of such termination, the Deposit shall be retained by the City as liquidated damages, as provided in Section 8.2(c) below; provided, however, the foregoing shall not limit any indemnity given by Buyer to the City under this Agreement nor any obligations which survive Closing, and the City shall have all remedies available at law or equity to enforce such indemnity in the event Buyer fails to perform any indemnity obligation set forth in this Agreement and/or if Buyer fails to perform any obligations under this Agreement which survive Closing.

(c) Liquidated Damages. IN THE EVENT THE CLOSING FOR THE LEASES TO BUYER IS NOT CONSUMMATED AS A RESULT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE CITY, BY WRITTEN NOTICE TO BUYER, MAY ELECT TO TERMINATE THIS AGREEMENT AND RECEIVE AS LIQUIDATED DAMAGES ALL OF THE DEPOSIT. BUYER HEREBY AUTHORIZES ESCROW AGENT TO IMMEDIATELY RELEASE THE DEPOSIT TO THE CITY UPON THE CITY'S ELECTION TO TERMINATE THIS AGREEMENT AS PROVIDED IN THIS SECTION 8.2(c), WITHOUT ANY FURTHER AUTHORIZATION FROM BUYER. BUYER AND THE CITY ACKNOWLEDGE AND

AGREE THAT FIXING THE CITY'S ACTUAL DAMAGES IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT OF BUYER'S BREACH OF SUCH OBLIGATIONS (OTHER THAN A BREACH OF BUYER'S INDEMNITY OBLIGATIONS OR OTHER OBLIGATIONS THAT SURVIVE CLOSING), THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT THE DEPOSIT SHALL CONSTITUTE THE CITY'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES, AND THAT THIS SUM REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES THE CITY WOULD INCUR IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO CLOSING. EXCEPT TO THE EXTENT BUYER BREACHES ANY INDEMNITY OBLIGATION HEREUNDER OR FAILS TO SATISFY SUCH OBLIGATIONS THAT SURVIVE CLOSING, THE CITY WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES ARISING OUT OF THIS AGREEMENT OTHER THAN AS SET FORTH IN THIS SECTION 8.2(c). BY INITIALING IN THE SPACES WHICH FOLLOW, THE CITY AND BUYER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 8.2(c) GOVERNING THE CITY'S LIQUIDATED DAMAGES. THE CITY HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON THE CITY'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL PROVISION HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT. THE CITY HEREBY ACKNOWLEDGES THAT THESE LIMITATIONS ON THE CITY'S REMEDIES HAVE BEEN THE SUBJECT OF SPECIFIC NEGOTIATIONS BETWEEN THE CITY AND BUYER, THAT THE SAME ARE IMPORTANT AND MATERIAL HEREOF, AND ARE SPECIFICALLY DECLARED TO BE OF THE ESSENCE OF THE PARTIES' AGREEMENT AS CONTAINED IN THIS AGREEMENT.

The City (_____) Buyer (_____)

8.3 City Officials Not Personally Liable. This Agreement has been executed by or on behalf of the City by one or more officials of the City in their capacities as officials of the City, and not in their individual capacities. No personal liability or obligation under this Agreement or under any Lease shall be imposed or assessed against any of said officials in their individual capacities.

8.4 Buyer Parties Not Personally Liable. This Agreement has been executed by or on behalf of Buyer by one or more Buyer Parties in their capacities as directors, officers, partners, members, or agents of Buyer, and not in their individual capacities. No personal liability or obligation under this Agreement or under any Lease shall be imposed or assessed against any of said Buyer Parties in their individual capacities.

SECTION 9 CASUALTY AND CONDEMNATION

9.1 Casualty. In the event any Project or any Project Use Component in any Project is damaged by any casualty prior to any Closing, the City shall give prompt notice thereof to Buyer, and the City shall have the following options: (a) provided that Buyer confirms and agrees that such insurance proceeds are sufficient to fully repair such damage and/or fully re-build such Project that has been damaged and provided also that Buyer agrees to undertake such repairs or re-building, the City shall have the option to assign to Buyer all insurance

proceeds, if any, payable for such damage (with the consent of the insurance company) or pay all such proceeds to Buyer when received (which obligation shall survive the Closing), but, together with such insurance proceeds, the City shall be required to remit and pay over to Buyer out of the City's own funds the amount of any deductible or self-insured retention under any such insurance, in which event the Closing shall occur and the Lease shall commence, without the City's repairing or being required to repair such damage; or (b) the City shall have the option to terminate this Agreement as to such Project or the Project Use Component, as the case may be, that has been damaged, provided, however, that the City shall not terminate this Agreement as to such Project if Buyer notifies the City, within thirty (30) days after receipt of notice from the City of any such casualty, that Buyer desires to enter into negotiations with the City regarding financing (through tax-exempt bond financing and Federal LIHTC and State LIHTC) the repair, re-building, or reconstruction of such Project, in which event the City agrees to enter into good-faith negotiations with Buyer for a period of sixty (60) days to determine if it might be in the City's interest to arrange for Buyer to repair, re-build, or reconstruct such Project. If, after such 60-day period, the parties have not agreed to the terms and conditions of the financing of the repair, re-building or reconstruction, the City may terminate this Agreement as to such Project or Project Use Component that has been damaged and the City shall have no further obligation to Buyer as to such damaged Project or Project Use Component.

9.2 **Condemnation**. In the event of a taking or threatened taking by condemnation or similar proceedings or actions of all or a substantial portion of any of the Projects or any Project Use Component of any Project prior to Closing by any Governmental Authorities, such that said Project or Project Use Component is no longer economically feasible for the intended use of the Project, this Agreement shall terminate as to such Project or Project Use Component upon written notice of such determination delivered to Buyer, and this Agreement shall have no further force or effect as to such Project or such Project Use Component, except with respect to obligations that by their terms survive such partial termination. Should this Agreement terminate as to such Project or such Project Use Component due to any such condemnation or similar proceedings by any Governmental Authorities other than the City, all condemnation proceeds or other payments as a result of such proceedings shall be paid to the City and Buyer shall have no right to such proceeds, except that the City shall reimburse Buyer for a proportionate amount of Buyer's out-of-pocket costs incurred in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing, in an amount not to exceed the condemnation proceeds received by the City for such condemnation. In the event of any condemnation or similar proceeding or action commenced by the City of any Project or part or all of any Project Use Component of any Project, Buyer shall have the additional right to terminate this Agreement as to such Project or part or all of such Project Use Component of such Project, in which event Escrow Agent shall immediately refund to Buyer a proportionate amount of the Deposit, plus any accrued interest thereon, if any, less escrow fees, if any, as may be chargeable to Buyer, and the City shall also reimburse Buyer for a proportionate amount of Buyer's out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing. In the event of any condemnation or similar proceedings or actions, whether commenced by the City or any other Governmental Authorities, involving all of the Projects or having the effect that all of the Projects or Project Use Components are no longer economically feasible for the intended uses thereof, this Agreement shall terminate, the Escrow Agent shall immediately refund to Buyer the Deposit, plus any accrued interest thereon, if any, less escrow

fees, if any, as may be chargeable to Buyer, and the City shall reimburse Buyer for Buyer's out-of-pocket expenses in connection with the negotiation of this Agreement, Buyer's Due Diligence Investigation during the Due Diligence Period, and Buyer's preparation for Closing, including costs and expenses relating to Buyer's contemplated New Financing, in an amount not to exceed the condemnation proceeds received by the City for such condemnation if such condemnation is prosecuted by Governmental Authorities other than the City.

9.3 Determination of Purchase Price Adjustment. In the event that this Agreement is terminated as to any but not all of the Projects and Project Use Components pursuant to Section 9.1 or Section 9.2, the Purchase Price shall be adjusted in the proportion that the fair market value of the Project or Project Use Component bears to the fair market value of all of the Projects subject to this Agreement, as determined by mutual agreement of the City and Buyer, and, failing such Agreement, by a single neutral arbitrator mutually selected by the City and Buyer. If the City and Buyer are unable to agree upon a single arbitrator, the City and Buyer shall each select an arbitrator, the two arbitrators so selected shall then select a third arbitrator, and the three arbitrators so selected shall make such determination by majority vote. In making such determination, the arbitrator or arbitrators shall determine the respective fair market values of the Projects, including any Project or Project Use Component with respect to which this Agreement is terminated under Section 9.1 or Section 9.2, based on the value thereof in light of: (a) Buyer's plans for the Project (and the Project Use Components of the Projects) as contemplated by Buyer's Initial Proposal, Buyer's Best and Final Offer, and this Agreement; and (b) the restrictions on such Project or Project Use Component related thereto, including all restrictions intended to be imposed upon such Project or Project Use Component under the terms of this Agreement. In the event that this Agreement is terminated as to any Project or Project Use Component pursuant to Section 9.1 or Section 9.2, the Closing Date in respect of such Project and the Leases for the Project Use Components of such Projects shall not be extended beyond the Extended Closing Deadline.

SECTION 10 REPRESENTATIONS AND WARRANTIES

10.1 Buyer's Representations and Warranties. As a material inducement to the City to execute this Agreement and consummate the transactions contemplated by this Agreement, Buyer makes the following representations and warranties, which representations and warranties are true and correct as of the date hereof. Prior to the Closing Date, Buyer shall notify the City of any modifications to such representations and warranties which are required, as of the result of additional information coming to the knowledge of Buyer between the Effective Date and the Closing, in order to make such representations and warranties true in all material respects.

(a) Authority. Buyer has been duly organized and is validly existing as a limited liability company under the laws of the State of Hawai'i, in good standing in the State of Hawai'i, and qualified to do business in the State of Hawai'i. Buyer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Buyer, enforceable in accordance with their terms.

(b) No Conflict. There is no agreement to which Buyer is a party or binding on Buyer which is in conflict with this Agreement or which prevents Buyer from executing or performing its obligations under this Agreement.

(c) Financial Condition. Subject to Buyer's New Financing, Buyer has or will as of the Closing Date have all funds necessary to consummate the transactions contemplated by this Agreement. Highland Property Development, LLC, a California limited liability company, one of Buyer's members, has furnished the City with true and correct copies of its current financial statement, which has been prepared in accordance with recognized and industry-accepted accounting principles consistently applied throughout the periods indicated (the "**Financial Statement**"). The Financial Statement fairly and accurately presents the financial condition of Highland Property Development, LLC, as of the date indicated. There have been no changes in the assets, liabilities, financial condition or affairs set forth or reflected in the Financial Statement since it was delivered to the City that in any one case or in the aggregate constitutes a material adverse change. Subject to Buyer's New Financing, Buyer and its nominees will have sufficient financial capacity to fully perform all obligations and requirements under the Leases and the Regulatory Agreements and to undertake all representations, promises and obligations set forth in the RFP and Buyer's Best and Final Offer.

(d) Tax Returns and Reports. All filings, reports and tax returns of Buyer that are required to be made or filed with any Governmental Authorities have been duly made and filed, and all taxes, assessments, fees and other governmental charges upon Buyer that are due and payable by Buyer have been paid, other than those which are presently payable without penalty or interest, or which Buyer is contesting in good faith.

(e) Litigation and Compliance. There are no suits, other proceedings or investigations pending or threatened against or affecting the business or the properties of Buyer that could materially impair Buyer's ability to perform its obligations under this Agreement, nor is Buyer in violation of any laws or ordinances that could materially impair Buyer's ability to perform its obligations under this Agreement.

(f) Buyer's Reliance. Except for the representations and warranties set forth in Section 10.2 of this Agreement, Buyer is relying solely upon its and its consultants' own due diligence, inspection, investigation and analysis in leasing the Property and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by the City or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(g) RFP Requirements. Buyer has fulfilled and met all of the obligations, responsibilities, minimum qualifications and requirements applicable to Proposers as set forth in the RFP. Buyer represents and warrants that it has the experience, background, personnel and expertise to fully perform under the Leases and the Regulatory Agreements.

(h) Survival. The provisions of Section 10.1 shall survive the Closing.

10.2 The City's Representations and Warranties. As a material inducement to Buyer to execute this Agreement and consummate the transactions contemplated by this Agreement, the City makes the following representations and warranties, which representations

and warranties are true and correct as of the date hereof. Prior to the Closing Date, the City shall notify Buyer of any modifications to such representations and warranties which are required, as the result of additional information coming to the knowledge of the City between the date hereof and the Closing, in order to make such representations and warranties true in all material respects.

(a) Title. The City is and shall be on the Closing Date the lawful owner of the Property. Upon the Closing Date the Property shall be free and clear from all liens and encumbrances except the Permitted Exceptions.

(b) Authority. The City has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, except as set forth in Section 6.2(d). This Agreement has been, and all of the documents to be delivered by the City at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of the City, enforceable in accordance with their terms.

(c) Due Diligence Documents. To the best of the City's actual knowledge, the Due Diligence Documents are not inaccurate or incomplete in any material respect, do not omit any information that materially and adversely affects the value of the Property or Buyer's intended use of the Projects, and fairly and accurately reflect the condition and operations of the Projects.

(d) No Conflict. To the best of the City's actual knowledge, without investigation, there is no agreement to which the City is a party or binding on the City which is in conflict with this Agreement or which prevents the City from executing or performing its obligations under this Agreement.

(e) General Maintenance Obligations. The City shall manage the Property from the date hereof until the Closing Date in its present condition, perform all reasonable maintenance work and ordinary repairs, and pay all reasonable costs and expenses related thereto in the ordinary course of business. The City shall comply in all material respects with all of its obligations imposed by law and by any other contract or agreement pertaining to the Property. Prior to the Closing Date, the City shall keep in place such Property insurance as is in effect as of the date hereof.

(f) Operation of Projects Pending Closing. From and after the Effective Date and until the Closing, the City will continue to operate each of the Projects in the normal course and perform the City's obligations under all commercial leases, residential rental agreements, contracts, service agreements, and other third-party agreements applicable to each Project, but the City agrees that, during the Due Diligence Period and thereafter if Buyer approves the Property pursuant to Section 3.7, the City shall not, without Buyer's consent (which consent shall not be unreasonably withheld, delayed, or conditioned): (i) enter into any new residential rental agreements for any residential units in any of the Projects with any prospective or existing tenants whose household income exceeds 60% of Area Median Income (as determined and published by HUD as adjusted for the number of bedrooms) or who is a full-time student; (ii) cancel, extend the term, modify, amend, or terminate, or permit the assignment of the lessee's interest under any existing commercial lease (if such lease provides that the City has a right to deny the assignment of such lessee's interest in its sole discretion), including specifically

without limitation the Marin Tower Lease Agreement dated August 10, 1994, as amended, and the Chinatown Manor Lease dated May 22, 1995, as amended, or enter into any new commercial lease for any Project; or (iii) extend the term of or amend any existing service agreement or other third-party agreement applicable to any Project or enter into any new service or other third-party agreement that extends beyond the Closing Date for the applicable Project or that is not cancelable without penalty upon thirty (30) days' notice. Buyer shall be reasonably entitled to withhold its consent if any such residential rental agreements, leases, service agreements or other third-party agreements, or the modification, amendment, or termination thereof, would adversely affect any part of Buyer's New Financing for Buyer's acquisition of the Leases. The City acknowledges that, upon and after Closing, Buyer shall be entitled to renew, extend, amend, or terminate any service agreements or other third-party agreements, including contracts for the management of the Projects, in accordance with the terms of such service agreements or other third-party agreements.

(g) City's Actual Knowledge. Where the phrase "to the best of the City's actual knowledge" is used in this Section 10.2, it means the actual knowledge of Keith Ishida, Executive Director of Office of Housing, and/or Christopher Terry, Branch Chief of Property & Parking Management.

10.3 Notice of Changed Circumstances. If either party becomes aware of any fact or circumstance that would render false or misleading a representation or warranty made by either party, then it shall immediately give written notice of such fact or circumstance to the other party, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty, except as provided in Section 10.3.

SECTION 11 GENERAL

11.1 Notices. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) upon receipt when personally delivered to the recipient at the recipient's address set forth below; (b) when received by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below, or when such receipt is rejected; or (c) two (2) Business Days after deposit with a recognized overnight courier or delivery service. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday observed by the City, then such date shall automatically be extended to the next Business Day immediately following such Saturday, Sunday or legal holiday observed by the City.

The addresses for notice are:

If to the City:

Department of Budget and Fiscal Services
Honolulu Hale
530 South King Street, Room 208
Honolulu, Hawai'i 96813
Attn: Director

With copies to:

Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawai'i 96813
Attn: Director

and

Department of Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawai'i 96813
Attn: Gordon Nelson, Esq.

and

Schlack Ito, LLLC
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, Hawai'i 96813
Attn: Carl J. Schlack, Jr., Esq.

and

CBRE, Inc.
Pauahi Tower, Suite 1800
1003 Bishop Street
Honolulu, Hawai'i 96813-3544
Attn: Scott B. Gomes

If to Buyer:

Honolulu Affordable Housing Partners, LLC
c/o Highland Property Development LLC
250 W. Colorado Boulevard, Suite 210
Arcadia, California 91007
Facsimile: (626) 294-9270

and

Richard W. Gushman, II
3300 Pacific Heights Road
Honolulu, Hawaii 96813
E-mail: dgush@dgmgrp.com

With a copy to:

Stephen M. Gelber, Esq.
Joseph A. Dane, Esq.
Gelber, Gelber & Ingersoll
745 Fort Street, Suite 1400
Honolulu, Hawaii 96813
E-mail: sgelber@gelberlawyers.com
jdane@gelberlawyers.com
Facsimile: (808) 531-6963

and

Gary P. Downs, Esq.
Tuan A. Pham, Esq.
Nixon Peabody LLP
One Embarcadero Center
18th Floor
San Francisco, CA 94111-3600
E-mail: gdowns@nixonpeabody.com]
tpham@nixonpeabody.com
www.nixonpeabody.com
Facsimile: (877) 502-9699

Either party may change its address or any address applicable to such party by written notice to the other given in the manner set forth above.

11.2 **Entire Agreement**. This Agreement and the exhibits hereto contain the entire agreement and understanding between Buyer and the City concerning the subject matter of this Agreement and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or the City concerning the Property or the other matters which are the subject of this Agreement. The parties acknowledge that each party and its counsel have reviewed this Agreement and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed nor applied in the interpretation of this Agreement.

11.3 **Amendments and Waivers**. No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party. Notwithstanding the foregoing, no communication from or on behalf of the City with respect to the subject matter of this Agreement shall be binding on the City as an amendment of this Agreement unless in writing specifically labeled as an "Amendment" to this Agreement, and signed by the Mayor or his designee. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. Any waiver granted shall apply solely to the specific instance expressly stated.

11.4 Severability. The provisions of this Agreement are intended to be severable and enforced to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of the Agreement in any other jurisdiction. The unaffected portion and provisions of the Agreement will be enforced to the maximum extent permitted by law.

11.5 References. Unless otherwise indicated, (a) all section and exhibit references are to the sections and exhibits of this Agreement, and (b) all references to days are to calendar days. The exhibits attached hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or legal holiday observed by the City, such time for performance shall be extended to the next Business Day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires. As used in this Agreement the terms "herein" and "hereunder" shall each mean "in this Agreement". As used in this Agreement, the term "including" shall mean "including but not limited to".

11.6 Governing Law. The interpretation, construction and enforcement of this Agreement, all matters relating hereto, shall be governed by the laws of the State of Hawai'i. Any judicial proceeding brought by either of the parties against the other party or any dispute arising out of this Agreement, the Closing, any Project or the Property, or any matter relating thereto, shall be brought in the First Circuit Court of the State of Hawai'i, or in the United States District Court for the District of Hawai'i. In that regard, each party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other party with respect to such choice of judicial forum.

11.7 Time. Time is of the essence in the performance of the parties' respective obligations under this Agreement, and no notice of a party's intent to require strict compliance with the deadlines set forth in this Agreement is required. The parties hereby acknowledge and agree that the times set forth in this Agreement, including, without limitation, the Extended Closing Deadline shall not be subject to delay as a result of events of a Force Majeure, as that term is defined, below. For purposes of this Agreement, a "**Force Majeure**" shall mean any delay due to war; insurrection; strikes; labor and supply shortages; lock-outs; riots; civil disturbances; floods; fires; casualties; earthquakes; tsunamis; acts of God; acts of the public enemy; epidemics; quarantine restrictions; delays due to the existence or remediation of any hazardous materials; governmental restrictions, including, without limitation delays in permitting or enjoining of the performance of the terms of this Agreement, imposed by any Governmental Authorities other than the City; and any actions by any Governmental Authorities other than the City.

11.8 Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party's actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post judgment motion, and any action to enforce or collect the judgment including contempt,

garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise. The City's obligation to pay any attorneys' fees pursuant to this Section 11.8 is subject to the City's normal budgetary appropriations process.

11.9 Acceptance of Service of Process. In the event that any legal action is commenced by the City against Buyer, service of process on Buyer shall be made by personal service upon Buyer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of Hawai'i. In the event that any legal action is commenced by Buyer against the City, service of process on the City shall be made in such manner as may be permitted and provided by law.

11.10 No Assignment.

(a) General Terms. Buyer recognizes the following: (i) the City's award of this Agreement to Buyer as the successful Proposer in response to the RFP, (ii) the City's reliance on the affordable housing management experience, property management experience, real estate expertise and financial wherewithal of Buyer to assure the quality of the management, operation and improvement of the Projects; (iii) that the use, operation and maintenance of the Projects as required under the Leases and the Regulatory Agreements is deemed critical by the City; (iv) that a change in ownership or control of Buyer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, could have a material adverse impact on the operation of the Property; and (v) that the qualifications and identity of Buyer are of particular concern to the City. Buyer further recognizes that it is because of such qualifications and identity that the City awarded this Agreement to Buyer and is entering into this Agreement with Buyer.

(b) No Transfers. Except as specified in Section 11.10(c) and Section 11.10(d) below, no voluntary or involuntary successor-in-interest of Buyer shall acquire any rights or powers under this Agreement. Except as specified in Section 11.10(c) and Section 11.10(d), Buyer acknowledges and agrees that, under no circumstances whatsoever shall Buyer be entitled to transfer, assign, or otherwise convey all or any portion of Buyer's interest in this Agreement to any person or entity, nor shall Buyer permit any change in "control" of Buyer. "**Control**," as used in this Section 11.10, shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity.

(c) Exception for Buyer's Subsidiary Entities. Buyer has advised the City, and the City acknowledges, that Buyer intends to form, and that Buyer's financing plan requires that Buyer form, the following subsidiary entities to acquire long-term Leases from the City for the different Project Use Components of the Projects: (i) a separate subsidiary entity ("**Affordable Rental Housing Subsidiary**") that shall acquire direct Leases from the City for the Affordable Housing Components of the Projects and that shall be owned in substantial part (up to 99.9%) by investors who acquire the Federal LIHTC and State LIHTC allocated in connection with Buyer's acquisition of the Leases for the Affordable Rental Housing Components of the Projects; (ii) a separate subsidiary entity ("**Market Rental Housing Subsidiary**") that shall

acquire direct Leases from the City covering the market rental units at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects; (iii) a separate subsidiary entity ("**Commercial Rental Subsidiary**") that shall acquire direct Leases from the City for the commercial space at the Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale Projects; and (iv) a separate subsidiary ("**Redevelopment Subsidiary**") that shall acquire the Leases for the Bachelors Quarters Pauahi Hale, and Kanoa Apartments Projects. Buyer anticipates that the Affordable Rental Housing Subsidiary will also acquire the direct Leases from the City for the Public Parking Components and Resident Parking Components at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, but Buyer has also advised the City that Buyer may, and reserves the right to, form a separate subsidiary entity ("**Public Parking Subsidiary**") to acquire the direct Leases from the City for the Public Parking Components at the Chinatown Gateway Plaza, Harbor Village, and Marin Tower Projects, and a separate subsidiary entity ("**Resident Parking Subsidiary**") to acquire the direct Leases from the City for the Resident Parking Components at these Projects. Notwithstanding anything contained in Section 11.10(b), the City hereby agrees that Buyer shall be entitled, upon notice but without further consent or approval by the City, to assign, transfer, and otherwise convey its rights under this Agreement to acquire the Leases for the different Project Use Components, respectively, to the Affordable Rental Housing Subsidiary, the Market Rental Housing Subsidiary, the Commercial Rental Subsidiary, the Redevelopment Subsidiary, and, if applicable, the Public Parking Subsidiary and the Resident Parking Subsidiary, that Buyer forms for purposes of consummating the transactions described in this Agreement. With respect to the Closing of the individual Leases for the different Project Use Components of the Projects, references to the "Buyer" herein shall mean and refer to Honolulu Affordable Housing Partners, LLC, a Hawai'i limited liability company, as well as the respective subsidiary entities created by Honolulu Affordable Housing Partners, LLC, to enter into the Leases for the different Project Use Components of the Projects, but, for purposes of this Agreement and such Leases, such subsidiary entities shall only be responsible and liable to the City under the Leases for the Project Use Components entered into by such subsidiaries and shall not be jointly or severally liable either with Buyer or any other subsidiary entities under this Agreement or under any Leases in respect of any other Project Use Components.

(d) Other Nominees. Notwithstanding anything contained in Section 11.10(b), and in addition to Buyer's rights under Section 11.10(c) immediately preceding, Buyer may designate nominees (other than the subsidiary entities specified in Section 11.10(c)) to take leasehold title of one or more Projects at Closing; provided, however, that unless the City approves such nominee as provided in this Section 11.10(d), Buyer shall remain fully responsible and liable for all terms and conditions, representations and warranties and all other obligations hereunder, including those that survive the Closing. The City reserves the right to review and approve of each such nominee and if the City does not reasonably believe that the nominee can fulfill the requirements of lessee under the respective Lease and/or the Regulatory Agreement, the City may disapprove of such nominee. Buyer shall provide to the City notice of the designation of any nominee no less than forty-five (45) days prior to the Closing Date for the applicable Project, together with such information and documents that the City may reasonably require in connection with such review, including, but not limited to, financial statements and financial capacity of the nominee, experience of the nominee in the successful management, operations and maintenance of rental housing communities, and specifically, affordable rental housing communities, key personnel that will manage and operate the Project, and any other information the City deems necessary or convenient to review such request. Any reference to Buyer hereunder, shall include the nominee for such Project.

11.11 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the City and Buyer and Buyer's subsidiary entities, and nominees, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

11.12 No Brokers, Indemnity. The City has retained CBRE, Inc. as its real estate broker pursuant to the terms and conditions of a written agreement between the City and CBRE, Inc. ("**CBRE Agreement**"). Except as provided in the CBRE Agreement, the City has not retained any other broker or agent in connection with this Agreement. The City shall indemnify, defend and hold harmless Buyer from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the City has agreed to pay to CBRE, Inc., or which is claimed to be due by CBRE, Inc., or any other person as a result of the actions of the City. Buyer warrants to the City that Buyer has not retained any real estate broker or agent in connection with the negotiation of this Agreement, and that Buyer knows of no real estate broker or agent who is entitled to a commission in connection with this Agreement except as otherwise provided in the CBRE Agreement. Buyer shall indemnify, defend and hold harmless the City from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which Buyer has agreed to pay or which is claimed to be due as a result of the actions of Buyer. This Section 11.12 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

11.13 Publicity. Except for those documents labeled confidential and proprietary information in Buyer's Initial Proposal and Buyer's Best and Final Offer, the parties agree that Buyer's Initial Proposal, Buyer's Best and Final Offer, the provisions of this Agreement, the Leases, the Regulatory Agreements and all other documents in connection therewith may be subject to public disclosure under Hawai'i Revised Statutes Chapter 92F and/or the Freedom of Information Act, unless exempted by law. In addition, the City and Buyer may publicize the terms of this transaction in press releases, publications and speeches, but shall confer with each other before doing so. The provisions of this Section 11.13 shall survive any termination of this Agreement.

11.14 Joint and Several Liability. Except as provided in Section 11.10(c), if Buyer consists of more than one entity or party, all obligations of Buyer hereunder shall be the joint and several responsibility of each entity and party.

11.15 Computation of Time. Except as otherwise provided in this Agreement, all references to days are calendar days, thereby including Saturdays, Sundays and legal holidays observed by the City. All references to "**Business Days**" shall be all days except for Saturdays, Sundays and legal holidays observed by the City. If a due date determined under this Agreement falls on a Saturday, Sunday or an official legal holiday observed by the City, such due date will be deemed to be the next Business Day.

11.16 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

APPROVAL RECOMMENDED:

_____
Department of Budget and Fiscal Services

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i

By _____
Peter B. Carlisle
Mayor

"**City**"

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC, a Hawaii limited liability company

By **Highland Property Development LLC**, a California limited liability company
Its Managing Member

By _____
William E. Rice
Its Authorized Managing Member

"**Buyer**"

EXHIBIT A

PROJECT SITE DESCRIPTIONS

1. BACHELOR'S QUARTERS

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

LOT 11890, area 45,027 square feet, more or less, as shown on Map 852, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees of the Estate of James Campbell, deceased.

Being the land(s) described in Transfer Certificate of Title No. 476,952 issued to the CITY AND COUNTY OF HONOLULU, a municipal corporation.

2. CHINATOWN GATEWAY PLAZA

All of that certain parcel of land situate, lying and being at Honolulu, Oahu, State of Hawaii, described as follows:

PARCEL A, being 38,902 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969, comprised of the following:

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 2474 to F. Spencer and Land Commission Award Number 5528 to E. Dennis) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 3 and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the west corner of Lot 1 (Map 2) of Land Court Application Number 963, and on the southeast side of Nuuanu Avenue, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	332°	44'	70.00	feet along Lot 1 (Map 2) of Land Court Application 963;
2.	59°	40'	42.50	feet along Lot 1 (Map 2) of Land Court Application 714;
3.	333°	07'	1.40	feet along same;
4.	63°	50'	3.10	feet along R. P. 74, L. C. Aw. 275 to H. Zupplein;
5.	149°	15'	18.60	feet along same;

6.	153°	55'	11.76	feet along R. P. 6, L. C. Aw. 37 to James Austin;
7.	155°	14'	40.15	feet along same;
8.	238°	40'	44.79	feet along the southeast side of Nuuanu Avenue to the point of beginning and containing an area of 3,197 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated April 11, 1969, filed on April 11, 1969 at the Circuit Court of the First Circuit, Civil No. 26578, recorded in Liber 6481 at Page 48.

-**PARCEL SECOND**:-

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 3810 to H. K. Dwight and portion(s) of Royal Patent Number 861, Land Commission Award Number 3204 to M. Beck and Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 11 and thus bounded and described:

Beginning at the south corner of this parcel of land, being also the east corner of Lot 1 (Map 2) of Land Court Application 714, and on the northwest side of Bethel Street, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	151°	00'	122.72	feet along Lot 1 (Map 2) of Land Court Application 714;
2.	241°	05'	61.50	feet along Lots 1, 2 and 3 (Map 2) of Land Court Application 963 and along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;
3.	331°	01'	120.30	feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 861, L. C. Aw. 3204 to M. Beck and along R. P. Grant 3809 to. W. Mutch;
4.	58°	49'	61.50	feet along the northwest side of Bethel Street to the point of beginning and containing an area of 7,471 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated May 8, 1970, filed on May 8, 1970 at the Circuit Court of the First Circuit, Civil No. 26576, recorded in Liber 7008 at Page 271.

-**PARCEL THIRD**:-

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Grant Number 3809 to W. Mutch and portion(s) of Royal Patent Number 655, Land Commission Award Number 877 to Kaana no Poomana; Royal Patent Number 83, Land Commission Award Number 719 to Z. Sampson; Royal Patent Number 861, Land Commission Award Number 3204 to M. Beck; Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth; Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle; and Royal Patent Number 578, Land Commission Award Number 130 to Kekuapanio) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 10 and thus bounded and described:

Beginning at the east corner of this parcel of land, being also the west corner of Hotel and Bethel Streets, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 618.98 feet south and 4,291.81 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	58°	49'	131.04	feet along the northwest side of Bethel Street;
2.	151°	01'	120.30	feet along R. P. Grant 3810 to H. K. Dwight and remainders of R. P. 861, L. C. Aw. 3204 to M. Beck and R. P. 301, L. C. Aw. 272 to Joseph Booth;
3.	238°	40'	44.93	feet along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;
4.	146°	22'	72.55	feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 577, L. C. Aw. 2937 to W. Harbottle;
5.	238°	40'	12.00	feet along the southeast side of Nuuanu Avenue;
6.	326°	22'	74.13	feet along remainders of R. P. 577, L. C. Aw. 2937 to W. Harbottle and R. P. 301, L. C. Aw. 272 to Joseph Booth;
7.	236°	28'	64.61	feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 578, L. C. Aw. 130 to Kekuapanio and along a jog on the southwest side of Hotel Street;
8.	326°	31'	121.53	feet along the southwest side of Hotel Street to the point of beginning and containing an area of 16,053 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, dated November 16, 1970, filed on November 16, 1970 at the Circuit Court of the First Circuit, Civil No. 26692, recorded in Liber 7277 at Page 382.

Excepting and excluding PARCEL C, being 136 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969.

-**PARCEL FOURTH**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 579, Land Commission Award Number 680 to Kekuanaoa; Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle; Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth; and Royal Patent Number 578, Land Commission Award Number 130 to Kekuapanio) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 9 and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the south corner of Nuuanu Avenue and Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 458.11 feet south and 4,398.78 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	326°	28'	71.66	feet along the southwest side of Hotel Street;
2.	56°	28'	64.21	feet along remainders of R. P. 578, L. C. Aw. 130 to Kekuapanio and R. P. 301, L. C. Aw. 272 to Joseph Booth;
3.	146°	22'	29.13	feet along remainders of R. P. 301, L. C. Aw. 272 to Joseph Booth and R. P. 577, L. C. Aw. 2937 to W. Harbottle;
4.	238°	40'	31.00	feet along remainder of R. P. 577, L. C. Aw. 2937 to W. Harbottle;
5.	146°	22'	45.00	feet along same;
6.	238°	40'	33.38	feet along the southeast side of Nuuanu Avenue to the point of beginning and containing an area of 3,291 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated November 20, 1970 at the Circuit Court of the First Circuit, Civil No. 26698, recorded in Liber 7285 at Page 206.

Excepting and excluding PARCEL B, being 79 square feet, as shown on map prepared by M. Yamashita, Land Surveyor, dated March 21, 1969, approved by the Planning Department, City and County of Honolulu, on May 15, 1969.

-**PARCEL FIFTH**:-

All of Deed: Minister of Interior to J. W. Austin dated August 13, 1890 and recorded in the Conveyances Division of the Department of Land and Natural Resources of the State of Hawaii in Liber 125, page 308; and portions of Royal Patent Number 301, Land Commission Award Number 272 to Joseph Booth and Royal Patent Number 2937 to W. Harbottle, situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 7 and thus bounded and described:

Beginning at the west corner of this parcel of land, and on the southwest side of Nuuanu Avenue, the true azimuth and distance from the north corner of Lot 2 and the west corner of Lot 3 (Map 2) of Land Court Application 963 being 238° 40' 3.91 feet, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	238°	40'	55.27	feet along the southeast side of Nuuanu Avenue;
2.	326°	22'	72.55	feet along remainders of R. P. 577, L. C. Aw. 2937 to W. Harbottle and R. P. 301, L. C. Aw. 272 to Joseph Booth;
3.	58°	40'	44.93	feet along remainder of R. P. 301, L. C. Aw. 272 to Joseph Booth;
4.	61°	05'	6.52	feet along same and along R. P. 861, L. C. Aw. 3204 to M. Beck;
5.	171°	16'	44.15	feet along Lot 3 (Map 2) of Land Court Application 963;
6.	155°	30'	25.00	feet along same;
7.	58°	40'	27.13	feet along same;
8.	332°	20'	6.66	feet along same to the point of beginning and containing an area of 2,865 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated March 25, 1971, filed on March 25, 1971 at the Circuit Court of the First Circuit, Civil No. 26575, recorded in Liber 7471 at Page 144.

-**PARCEL SIXTH**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 577, Land Commission Award Number 2937 to W. Harbottle) situate, lying and being at Honolulu, Oahu, State of Hawaii, being PARCEL 8 and thus bounded and described:

Beginning at the north corner of this parcel of land, and on the southeast side of Nuuanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 475.47 feet south and 4,427.29 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 16-11-5-38, thence running by azimuths measured clockwise from true South:

1.	326°	22'	45.00	feet along remainder of R. P. 577, L. C. Aw. 2937 to W. Harbottle;
2.	58°	40'	31.00	feet along same;
3.	146°	22'	45.00	feet along same;
4.	238°	40'	31.00	feet along the southeast side of Nuuanu Avenue to the point of beginning and containing and area of 1,395 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated March 25, 1971, filed on March 15, 1971 at the Circuit Court of the First Circuit, Civil No. 26575, recorded in Liber 7471 at Page 144.

-**PARCEL SEVENTH**:-

All of that certain parcel of land situate at Honolulu, Oahu, Hawaii, described as follows:

LOT 1, area 1,582 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 142,963 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

-**PARCEL EIGHTH**:-

All of that certain parcel of land situate at Honolulu, Oahu, State of Hawaii, described as follows:

LOT 2, area 1,559 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 140,947 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

-**PARCEL NINTH**:-

All of that certain parcel of land situate at Honolulu, Oahu, State of Hawaii, described as follows:

LOT 3, area 1,704 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 963 of Bishop Trust Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 140,946 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

3. **CHINATOWN MANOR**

-**PARCEL FIRST**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3436, Apana 2 to Alexander A. Cornoit, Royal Patent Grant Number 1755 to Kawahauwila and Royal Patent Number 1115, Land Commission Award Number 723 to Kawahauwila) situate, lying and being at City and County of Honolulu, Island of Oahu, State of Hawaii, being PARCEL 1 of "KEKAULIKE PARKING LOT REDEVELOPMENT PROJECT" and thus bounded and described:

Beginning at the east corner of this parcel of land, being also the north corner of Land Court Application 185 (Map 1) on the southwest side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 444.00 feet north and 4,968.55 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-47, thence running by azimuths measured clockwise from true South:

1.	54°	10'	25.50	feet along Land Court Application 185 (Map 1);
2.	156°	10'	28.00	feet along same;
3.	68°	10'	19.80	feet along same;
4.	150°	50'	27.45	feet along remainders of R. P. 1115, L.C. Aw. 723 to Kawahauwila and Grant 1755 to Kawahauwila;
5.	264°	50'	44.10	feet along south side of River Street;
6.	327°	38'	37.00	feet along the southwest side of Hotel Street to the point of beginning and containing an area of 1,441 square feet, more or less.

-**PARCEL SECOND**:-

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, Island of Oahu, State of Hawaii, containing an area of 16,485.0 square feet, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 185 of L. L. McCandless and others.

Excepting therefrom an alleyway, bounded and described as follows:

Beginning at the southeast corner on King Street, from said corner the Government Street Monument bears by true azimuth 178° 37' 50" 123.03 feet, and running as follows by true azimuths:

1.	248°	20'	31.00	feet, along L.C.A. 813 to Hooliliamana, owned by C.T. Wills;
2.	331°	35'	1.30	feet, along L.C.A. 813 to Hooliliamana, owned by C.T. Wills;
3.	244°	15°	24.50	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
4.	314°	12'	4.00	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
5.	242°	37'	50.64	feet, along L.C.A. 852 to Kawewela, owned by McCandless and Armstrong;
6.	157°	30'	5.25	feet, along L.C.A. 606 to Kaula no Kaou, owned by McCandless and Armstrong;
7.	67°	30'	50.50	feet, along Grant 69 D.P.W. owned by McCandless and Armstrong;
8.	67°	40'	27.50	feet, along L.C.A. 723 to Kawahauwila, owned by A. A. Cornoit, Schaefer, Agent;
9.	69°	20'	27.30	feet, along L.C.A. 723 to Kawahauwila, owned by J.P. Mendonca;
10.	357°	20'	6.90	feet, along King Street to the initial point, and containing an area of 710.00 square feet, more or less.

Being land(s) described in Transfer Certificate of Title No. 447,624 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

-**PARCEL THIRD**:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 5709, Land Commission Award 3 and 69, Apana 2 to Kaapuiki and Kaniau no Keomailani) situate, lying and being at City and County of Honolulu,

Island of Oahu, State of Hawaii, being PARCEL 3 of "KEKAULIKE PARKING LOT REDEVELOPMENT PROJECT" and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the northeast corner of Land Court Application 185 (Map 1), on the southwest side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 377.27 feet north and 4,926.26 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-47, thence running by azimuths measured clockwise from true South:

1.	327°	38'	80.48	feet along the southwest side of Hotel Street;
2.	72°	30'	44.09	feet along R. P. 7233, L. C. Aw. 3 and 69, Ap. 1 to Kaapuiki and Kaniau no Keomailani and Land Court Application 749 (Map 1);
3.	147°	45'	4.65	feet along Land Court Application 749 (Map 1);
4.	57°	45'	2.66	feet along same;
5.	166°	09'	73.95	feet along R. P. 7233, L. C. Aw. 3 and 69, Ap. 1 to Kaapuiki and Kaniau no Keomailani and Land Court Application 185 (Map 1);
6.	252°	05'	22.50	feet along Land Court Application 185 (Map 1) to the point of beginning and containing an area of 2,730 square feet, more or less.

BEING THE PREMISES ACQUIRED BY FINAL ORDER OF CONDEMNATION in favor of CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, dated October 24, 1994, filed on October 26, 1994 at the Circuit Court of the First Circuit, Civil No. 92-0177-01, filed as Land Court Document No. 2195504, recorded as Document No. 94-186562.

4. **HARBOR VILLAGE**

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

LOT C, being 28,388 square feet, as shown on map prepared by Ronald Batula, Land Surveyor, dated July 11, 1991, approved by Department of Land Utilization, City and County of Honolulu, on July 18, 1991, comprised of the following:

-**PARCEL FIRST:-**

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

LOT A-2, area 23,578 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited.

Being the land(s) described in Transfer Certificate of Title No. 5,339 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii.

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

-**PARCEL SECOND**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being on the westerly side of North King Street, at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL D, being an alley and thus bounded and described:

Beginning at the southeast corner of this parcel of land, and on the westerly side of North King Street, the true azimuth and distance from a Government Survey Street Monument set at an angle in North King Street and North of Kekaulike Street being 128° 30' 30" 66.12 feet, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

1.	61°	05'		73.86	feet along the northwest face of building erected on the land owned by George K. A. Lee and others;
2.	27°	30'		14.70	feet along same and along Lot 1 (Map 1) of Land Court Application 1132;
3.	61°	40'		6.43	feet along Lot 1 (Map 1) of Land Court Application No. 1132;
4.	134°	36'		3.50	feet along remainder of R. P. 1088, L. C. Aw. 170 to M. Kekuanaoa along Parcel A;
5.	263°	05'	30"	3.59	feet along remainder of R. P. 1088, L. C. Aw. 170 to M. Kekuanaoa along Parcel B;

6.	207°	20'	30"	16.90	feet along the southeast face of building erected on the land owned by James R. Winston along Parcel B;
7.	241°	27'		77.27	feet along the southeast face of building erected on the land owned by James R. Winston partly along Parcel B;
8.	352°	40'		3.05	feet along the westerly side of North King Street to the point of beginning and containing an area of 308 square feet, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR	:	JAMES R. WINSTON, husband of Delores J. Winston
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii
DATED	:	March 5, 1959
RECORDED	:	Liber 3665 Page 328

-**PARCEL THIRD**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL A, and thus bounded and described:

Beginning at the north corner of this parcel of land, being also the west corner of Parcel B, the true azimuth and distance from the end of course 5 of Land Court Application 708 (Map 1) being 226° 29' 30" 50.00 feet, and the coordinates of said point of beginning referred to a Government Survey Street Monument (H.T.S.) set at an angle in North King Street and North of Kekaulike Street being 25.38 feet north and 165.35 feet west, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

1.	314°	36'	51.28	feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa along Parcels B and D (Alley);
2.	47°	22'	46.65	feet along Lot 1 (Map 1) of Land Court Application No. 1132;
3.	132°	20'	3.05	feet along same;
4.	75°	50'	2.23	feet along same;
5.	132°	56'	46.50	feet along Lot A (Map 2) of Land Court Application No. 708;

6.	226°	29'	30"	50.00	feet along same to the point of beginning and containing an area of 2,499 square feet, more or less.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED

GRANTOR	:	JAMES R. WINSTON, husband of Delores J. Winston
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii
DATED	:	March 19, 1959
RECORDED	:	Liber 3704 Page 95

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

-**PARCEL FOURTH**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL B and thus bounded and described:

Beginning at the west corner of this parcel of land, being also the north corner of Parcel A, the true azimuth and distance from the end of course 5 of Land Court Application 708 (Map 1) being 226° 29' 30" 50.00 feet, and the coordinates of said point of beginning referred to a Government Survey Street Monument (H.T.S.) set at an angle in North King Street and North of Kekaulike Street being 25.38 feet north and 165.35 feet west, as shown on Land Division Parcel Map File No. 7-9-2-33, and running by azimuths measured clockwise from true South:

1.	226°	29'	30"	57.34	feet along Lot A (Map 2) of Land Court Application 708;
2.	352°	40'		56.18	feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa;
3.	61°	27'		3.89	feet along same along the northwest side of Alley (Parcel D);
4.	27°	20'	30"	16.90	feet along same;
5.	83°	05'	30"	3.59	feet along same;
6.	134°	36'		47.73	feet along remainder of R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa along Parcel A to the

point of beginning and containing an area of 1,851 square feet, more or less.

Together with an easement for ingress and egress purposes over, along across and upon Parcel D, being an alley leading from the end of Course 3 of the above described Parcel B, northeasterly to King Street between the E. C. Winston and Lee Let Building, as granted by DEED dated March 19, 1959, recorded in Liber 3704 at Page 95, more particularly described therein.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED

GRANTOR	:	JAMES R. WINSTON, husband of Delores J. Winston
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the Territory of Hawaii
DATED	:	March 19, 1959
RECORDED	:	Liber 3704 Page 95

Together with a perpetual, nonexclusive easement over, across, and upon the entire parcel of Lot A-1, area 1,369.0 square feet, more or less, as shown on Map 3, filed with Land Court Application No. 708 of Inter-Island Steam Navigation Company, Limited, as granted by EXCHANGE OF EASEMENTS AND CANCELLATION OF EASEMENT, dated July 22, 1991, filed as Land Court Document No. 1850617, recorded as Document No. 91-124964; and subject to the terms and provisions contained therein.

-**PARCEL FIFTH**:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 1088, Land Commission Award 170 to M. Kekuanaoa) situate, lying and being at Kapuukolo, Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 1 and thus bounded and described:

Beginning at the west corner of this parcel of land, being also the south corner of Lot A-1 (Map 3) of Land Court Application No. 708, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 283.86 feet north and 5,227.55 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 17-10-7-25, and running by azimuths measured clockwise from true South:

1.	226°	29'	30"	4.03	feet along Lot A-1 (Map 3) of Land Court Application No. 708;
2.	352°	40'		47.29	feet along remainder R.P. 1088, L.C. Aw. 170 to M. Kekuanaoa;
3.	61°	27'		3.49	feet along same;
4.	172°	40'		46.18	feet along River-Nimitz Housing Project to the point of beginning and containing an area of 152 square feet, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR	:	JAMES THEODORE WINSTON, husband of Linden Proden Winston, MARGARET PATRICIA WINSTON, unmarried, SUSAN RAE WINSTON NOBLE, wife of John Raymond Noble, LINDA KAY WINSTON ROBINSON, wife of David Kirk Robinson
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii
DATED	:	July 22, 1991
RECORDED	:	Document No. 91-124963

5. **KANOA APARTMENTS**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 401, Land Commission Award Number 8305, Apana 1 to P. Kanoa) situate, lying and being at Kainapuaa, Kapalama, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described:

Beginning at an iron pin at the west corner of this piece of land, and on the northeasterly side of Kanoa Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kalaepohaku" being 2,354.08 feet south and 1,844.20 feet west, and running by true azimuths measured clockwise from South:

1.	236°	24'	30"	137.07	feet to an iron pin;
2.	257°	51'		89.49	feet to an iron pin;
3.	325°	51'	30"	50.70	feet along R. P. 157, L. C. Aw. 8564 to Z. Kaauwai to an old pipe;
4.	320°	45'		14.25	feet along R. P. 157, L. C. Aw. 8564 to Z. Kaauwai to an iron pipe;
5.	52°	20'		59.07	feet to an iron pin;
6.	142°	05'		5.38	feet to an old pipe;
7.	57°	09'		53.74	feet to an "→"cut in tile wall;
8.	56°	33'		109.20	feet to an "→" cut in tile wall;
9.	146°	24'	30'	95.47	feet along the northeasterly side of Kanoa Street to the point of beginning, containing an area of 20,000 square feet, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR	:	RONALD Y. C. YEE, trustee for the creditors and members of HCHA MODEL CITIES HOUSING DEVELOPMENT CORPORATION, a Hawaii nonprofit corporation
GRANTEE	:	HONOLULU REDEVELOPMENT AGENCY, an agency of the City and County of Honolulu, State of Hawaii
DATED	:	June 26, 1972
RECORDED	:	Liber 8777 Page 465

REDESIGNATION OF HONOLULU REDEVELOPMENT AGENCY AS CITY AND COUNTY OF HONOLULU dated December 24, 1975, recorded in Liber 11175 at Page 325.

6. **KULANA NANI APARTMENTS**

All of that certain parcel of land situate Heeia, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1260-B, area 185,699 square feet, more or less, as shown on Map 105, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1100 of the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased.

Being the land(s) described in Transfer Certificate of Title No. 941,124 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i.

7. **MANOA GARDENS**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 643 to C. Kanaina and Land Commission Award 8559 Apanas 9 and 10 to C. Kanaina) situate, lying and being at Manoa Valley, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 2 and thus bounded and described:

Beginning at the south corner of this parcel of land, on the northwest corner of Kahaloa Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAKA" being 2,146.36 feet south and 1,767.11 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 18-3-1-54, and running by azimuths measured clockwise from true South:

1.	127°	52'	38.69	feet along the northeast side of Kahaloa Drive Extension;
2.	Thence along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being 172° 52' 28.28 feet;			
3.	127°	52'	44.00	feet along same;

4. Thence still along same, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being 82° 52' 28.28 feet;

5. 127° 52' 12.56 feet along same;

6. Thence along remainders of Grant 643 to C. Kanaina and Land Commission Award 8559 Apanas 9 and 10 to C. Kanaina, on a curve to the right with a radius of 10.00 feet, the chord azimuth and distance being 176° 56' 15.11 feet;

7. 226° 00' 121.45 feet along same;

8. 136° 00' 277.75 feet along same;

9. 226° 00' 146.00 feet along same;

10. 136° 00' 40.00 feet along same;

11. 226° 00' 271.51 feet along same;

12. 308° 17' 30" 395.76 feet along same;

Thence along Grant 40 to Napuaa along the middle of Manoa Stream for the next seven (7) courses, the direct azimuths and distance on said middle of stream being:

13. 84° 06' 50" 27.55 feet;

14. 92° 28' 88.98 feet;

15. 45° 25' 50" 23.20 feet;

16. 18° 30' 35.00 feet;

17. 318° 20' 26.00 feet;

18. 13° 57' 30.69 feet;

19. 29° 42' 115.35 feet;

Thence along Lots 7 and 6 (Map 3) of Land Court Application 887 and Lot 2 (Map 1) of Land Court Consolidation 163 along the middle of Manoa Stream, the direct azimuth and distance on said middle of stream being:

20. 31° 21' 157.20 feet;

Thence along Lot 2 (Map 1) of Land Court Consolidation 163 along the middle of Manoa Stream, the direct azimuth and distance on said middle of steam being:

21.	39°	15'	30"	64.05	feet;

Thence along Grant 44 to Elemakule along the middle of Manoa Stream, the direct azimuth and distance on said middle of steam being:

22.	37°	19'		93.18	feet to the point of beginning and containing an area of 4.168 acres.

Said above described parcel of land having been acquired by CITY AND COUNTY OF HONOLULU, by FINAL ORDER OF CONDEMNATION of the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE P. BISHOP, deceased, dated May 26, 1955, recorded in Liber 2978 at Page 192.

8. **MARIN TOWER**

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

LOT A, being 44,697 square feet, more or less, as shown on map dated November 26, 1991, approved by the Department of Land Utilization, City and County of Honolulu, on January 9, 1992, comprised of the following:

-PARCEL FIRST:-

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

LOT 1-C-2, area 504 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu.

Being land(s) described in Transfer Certificate of Title No. 67,666 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

-PARCEL SECOND:-

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1-D, area 982 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu; and

LOTS: A-1-B, area 187 square feet, more or less, and
B-2-B, area 11 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 66,423 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

-PARCEL THIRD:-

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: A-1-A-2, area 93 square feet, more or less, and
B-2-A-2, area 6 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 67,667 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

PARCEL FOURTH:-

All of those certain parcels of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 2, area 2,035 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 910 of The Liberty Bank of Honolulu; and

LOTS: A-2, area 434 square feet, more or less, and
B-3, area 2,220 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1077 of Lee Ong.

Being land(s) described in Transfer Certificate of Title No. 67,166 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

PARCEL FIFTH:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 47, Land Commission Award 90 to K. Montgomery) situate, lying and being on the Southeast side of Maunakea Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 7 and thus bounded and described:

Beginning at the west corner of this parcel of land, and on the southeast side of Maunakea Street, the true azimuth and distance from a Government Survey Street Monument near the north corner of King and Maunakea Streets being 43° 33' 40" 169.00 feet and coordinates of said Street Monument referred to Government Survey Triangulation Station "PUNCHBOWL" being 124.63 feet south and 4,924.84 feet west and running by azimuths measured clockwise from true South:

1.	237°	15'		44.01	feet along the southeast side of Maunakea Street;
2.	330°	52'		11.49	feet along remainder of R. P. 47, L. C. Aw. 90 to K. Montgomery;
3.	331°	57'	30"	30.82	feet along same;
4.	328°	19'	30"	9.69	feet along same;
5.	65°	06'		13.10	feet along Lot B-1 of Land Court Application 1077 (Map 2);
6.	56°	24'		17.10	feet along same;
7.	56°	24'		12.05	feet along Lot B-3 of Land Court Application 1077 (Map 2);
8.	149°	01'		50.54	feet along remainder of R. P. 47, L. C. Aw. 90 to K. Montgomery to the point of beginning and containing an area of 2,169 square feet, more or less.

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated April 15, 1957, filed in the Circuit Court of the First Judicial Circuit, on April 16, 1957, State of Hawaii, Civil No. 1181, recorded in Liber 3256 at Page 91.

PARCEL SIXTH:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant 1615, Land Commission Award 217, Apana 1 to F. Manini and a portion of Royal Patent Grant 47, Land Commission Award 90 to K. Montgomery) situate, lying and being on the northeast side of Maunakea Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 6 and thus bounded and described:

Beginning at the north corner of this parcel of land on the northeast side of Maunakea Street, the true azimuth and distance from a Government Survey Street Monument being the north corner of Maunakea and King Streets being 43° 33' 40" 169.00 feet, and the coordinates of said street monument referred to Government Survey Triangulation Station "PUNCHBOWL" being 124.63 feet south and 4,924.64 feet west and running by azimuths measured clockwise from true South:

1.	329°	01'		50.94	feet;
2.	58°	42'		25.70	feet along the northwest boundary of Lot B-3 of Ld. Ct. App. 1077;
3.	48°	26'		9.80	feet along same;

4.	148°	48'	0.69	feet along the northeast boundary of R.P. 1614, L. C. Aw. 217, Ap. 2 to A., J. and G. Manini;
5.	68°	04'	58.99	feet along same;
6.	148°	45'	45.73	feet along same;
7.	237°	15'	94.49	feet along the northeast side of Maunakea Street to the point of beginning and containing an area of 4,624 square feet.

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated September 17, 1956, filed in the Circuit Court of the First Judicial Circuit, on September 17, 1956, State of Hawaii, Civil No. 1112, recorded in Liber 3165 at Page 215.

PARCEL SEVENTH:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant 1080, Land Commission Award 810, Apana 2 to F. R. and J. Jones) situate, lying and being on the northwest side of Smith Street between Queen and King Streets, at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 3 and thus bounded and described:

Beginning at the east corner of this parcel of land on the northwest side of Smith Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 400.87 feet south and 4,986.54 feet west, and running by azimuths measured clockwise from true South:

1.	60°	14'	121.27	feet along the northwest side of Smith Street;
2.	150°	14'	73.41	feet;
3.	241°	20'	118.98	feet along the east boundary of R.P. 1614, L.C. Aw. 217, Ap. 2 to A.J. and G. Manini;
4.	328°	24'	20.43	feet along the south boundary of lots B-3 and A-2 of Ld. Ct. App. 1077;
5.	328°	22'	50.75	feet along the south boundary of Lot 2 of Ld. Ct. App. 910 to the point of beginning and containing an area of 8,680 square feet, more or less.

Said above described parcel of land having been acquired by THE CITY AND COUNTY OF HONOLULU, a municipal corporation, by FINAL ORDER OF CONDEMNATION dated November 30, 1957, filed in the Circuit Court of the First Judicial Circuit, on

November 30, 1957, State of Hawaii, Civil No. 1114, recorded in Liber 3354 at Page 243.

PARCEL EIGHTH:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by conveyed to the Hawaiian Government by Paulo F. Manini (Heirs of) by deed dated February 17, 1847 and recorded in Liber 102 at Page 401 (Land Office Deed 4)) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 1 and thus bounded and described:

Beginning at the northeast corner of this parcel of land, at the west corner of Central Business Off-Street Parking Lot and on the south side of Maunakea Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 357.10 feet south and 5,212.26 feet west, thence running by azimuths measured clockwise from true South:

1.	340°	44'		152.23	feet along Central Business Off-Street Parking Lot;
2.	Thence along the north side of Smith Street on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:				
	68°	40'	56"	16.03	feet;
3.	Thence along the north side of Smith Street on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:				
	99°	42'	10"	27.42	feet;
4.	160°	44'		126.45	feet along the northeast side of Nimitz Highway, Federal Aid Urban Project FU 44(5);
5.	Thence along the south side of Maunakea Street on a curve to the right with a radius of 110.00 feet, the chord azimuth and distance being:				
	230°	07'	12"	27.31	feet;
6.	237°	15'		14.85	feet along the south side of Maunakea Street to the point of beginning and containing an area of 5,793 square feet, more or less.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED AND AGREEMENT TO EXCHANGE

GRANTOR	:	STATE OF HAWAII, by its Board of Land and Natural Resources
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii
DATED	:	February 11, 1991
RECORDED	:	Document No. 91-019062

PARCEL NINTH:-

All of that certain parcel of land (being portion of the land conveyed to the Hawaiian Government by Paulo F. Manini (Heirs of) by deed dated February 17, 1847 and recorded in Liber 102 at Page 401 (Land office Deed 4), all of Grant 4868 to Mrs. A. E. Cunha, Grant 4867 to E. S. Cunha, land conveyed to E. S. Cunha by the Territory of Hawaii by deed dated June 10, 1901 and recorded in Liber 223 at Page 258 (Land Office Deed 4501), portions of Royal Patent 1613, Land Commission Award 217, Apana 3 to Cruz Manini and Royal Patent 1614, Land Commission Award 217, Apana 2 to Antoinette, John and George Manini conveyed to the Territory of Hawaii by Honolulu Iron Works Co. by deed dated April 29, 1908 and recorded in Liber 299 at Page 424 (Land Office Deed 1164), portion of Royal Patent 1080, Land Commission Award 810, Apana 2 to Francis, Rosalie and John Jones conveyed to the Territory of Hawaii by Constantina P. N. Gilliland, et al. by deed dated May 29, 1917 recorded in Liber 472 at Page 456 (Land Office Deed 1819)) situate, lying and being at Honolulu, City and County of Honolulu, State of Hawaii, being PARCEL 2 and thus bounded and described:

Beginning at the southeast corner of this parcel of land and on the north side of Smith Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 461.00 feet south and 5,091.73 feet west, thence running by azimuths measured clockwise from true South:

1.	60°	14'		71.12	feet along the north side of Smith Street;
2.	Thence along the north side of Smith Street on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:				
	62°	32'	33"	9.67	feet;
3.	160°	44'		152.23	feet along the remainder of Deed: Paulo F. Manini (Heirs of) to the Hawaiian Government dated February 17, 1847 and recorded in Liber 102 at Page 401;
4.	237°	15'		109.00	feet along the south side of Maunakea Street;
5.	328°	45'		45.60	feet along R.P. 1615, L.C. Aw. 217, Ap. 1 to

				Frank Manini;
6.	242°	04'	58.90	feet along R.P. 1615, L.C. Aw. 217, Ap. 1 to Frank Manini;
7.	328°	48'	39.98	feet along Lot B-3 as shown on Map 2 of Land Court Application 1077;
8.	61°	20'	116.81	feet along the remainder of R.P. 1080, L.C. Aw. 810, Ap. 2 to Francis Rosalie and John Jones;
9.	330°	14'	73.51	feet along the remainder of R.P. 1080, L.C. Aw. 810, Ap. 2 to Francis, Rosalie and John Jones to the point of beginning and containing an area of 16,939 square feet, more or less.

BEING THE PREMISES ACQUIRED BY EXCHANGE DEED AND AGREEMENT TO EXCHANGE

GRANTOR	:	STATE OF HAWAII, by its Board of Land and Natural Resources
GRANTEE	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii
DATED	:	February 11, 1991
RECORDED	:	Document No. 91-019062

9. **PAUAHI HALE**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 5597, Land Commission Award 70, Apana 1 to Waiaha) situate, lying and being at Honolulu, Oahu, State of Hawaii, being LOT 2, PAUAHI HALE and thus bounded and described as per survey dated April 13, 2012:

Beginning at the west corner of this parcel of land, the same being south corner of Lot A, Hale Pauahi and on the northerly side of Pauahi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 345.32 feet north and 4,490.09 feet west and thence running by azimuths measured clockwise from true South:

1.	244°	59'	93.08	feet along Lot A, along the remainder of R.P. 5597, L.C.Aw. 70, Ap. 1 to Waiaha;
2.	331°	37'	69.11	feet along Lot A, along the remainder of R.P. 5597, L.C. Aw. 70, Ap. 1 to Waiaha;
3.	61°	50'	87.75	feet along Lot A, along the remainder of

				R.P. 5597, L.C.Aw. 70, Ap. 1 to Waiaha;
4.	147°	38'	74.42	feet along the northerly side of Pauahi Street to the point of beginning and containing an area of 6,467 square feet, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR	:	Y. WA CHINN, husband of Shinn Kam Sun Chinn
GRANTEE	:	THE CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii
DATED	:	June 30, 1975
RECORDED	:	Liber 10841 Page 393

10. **WESTLAKE APARTMENTS**

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

LOT 3268, area 77,620 square feet, more or less, as shown on Map 415, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application Number 1074 of the Trustees under the Will and of the Estate of Samuel M. Damon, deceased;

Together with the right in the nature of an easement for the free flowage of surface waters over and across Easement "665", as shown on Map 371, as through, under, and across Easement "843" as shown on Map 469, of said Application;

Being the land(s) described in Transfer Certificate of Title No. 262,236 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, by and through its Department of Housing and Community Development.

11. **WEST LOCH VILLAGE**

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

LOT 13963, area 6.607 acres, more or less, as shown on Map 1059, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 to the Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the land(s) described in Transfer Certificate of Title No. 609,035 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation.

12. **WINSTON HALE**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 1303 to William L. Lee; Royal Patent Grant Number 3164 to J. Kakina and Royal Patent Numbers 7233 and 7261, Land Commission Awards 3 and 69, Apana 2 to Enoka and Mileka Keomailani) situate, lying and being at City and County of Honolulu, Island of Oahu, State of Hawaii, and thus bounded and described:

Beginning at the south corner of this parcel of land, on the northeast side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 335.53 feet north and 4,841.86 feet west as shown on Division of Land Survey and Acquisition Parcel Map File No. 17-10-6-18, thence running by azimuths measured clockwise from the true South:

1.	147°	38'		124.56	feet along the northeast side of Hotel Street;
2.	Thence along the east corner of Hotel and River Streets, of a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:				
	205°	03'	01"	50.56	feet;
3.	Thence along the south side of River Street, on a curve to the left with a radius of 1,226.00 feet, the chord azimuth and distance being;				
	260°	53'	59"	67.07	feet;
4.	348°	32'		49.80	feet along remainder of Grant 1303 to William L. Lee;
5.	274°	02'		55.10	feet along Grant 1303 to William L. Lee;
6.	318°	05'		1.45	feet along same;
7.	333°	59'		60.61	feet along Lot A-1 (Map) of Land Court Application 955;
8.	64°	39'		31.15	feet along same;
9.	64°	50'		94.16	feet along R.P. 1033, L.C. Aw. 100 to Hoomoeapule to the point of beginning and containing an area of 16,740 square feet, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR	:	JAMES REWICK WINSTON, Trustee under unrecorded Revocable Living Trust Agreement dated April 28, 1978, made by James Rewick Winston, Settlor
GRANTEE	:	CITY AND COUNTY OF HONOLULU
DATED	:	March 13, 1981

RECORDED : Liber 15408 Page 269

EXHIBITS B-1 THROUGH B-8

LEASES AND ADDENDA

[TO BE ATTACHED]

EXHIBIT C-1

LIST OF LEASES AND CONTRACTS TO BE ASSIGNED

[All leases, contracts, service agreements and other third-party agreements for each Project approved by Buyer pursuant to Section 3.7 of Purchase and Sale Agreement that are not terminated as of the Closing Date.]

EXHIBIT C-2

ASSIGNMENT OF LEASES AND CONTRACTS

THIS ASSIGNMENT OF LEASES AND CONTRACTS (this "**Assignment**") is made as of _____, 2012, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i (the "**City**"), and _____, a _____ ("**Assignee**").

R E C I T A L S:

A. Concurrently with the delivery of this Assignment, the City has leased to Assignee and Assignee has leased from the City that certain property more particularly described in **Exhibit A** attached hereto and incorporated herein, located at _____ (the "**Project**") pursuant to that certain Purchase and Sale Agreement dated _____, 2012 (the "**Purchase Agreement**").

B. The City had retained a property manager (the "**Property Manager**") for the operations, repair and maintenance of the Project. The City and/or the Property Manager (on behalf of the City) may have entered into certain leases, contracts, service agreements and other third-party agreements for the Project. For purposes of this Assignment, the City and Property Manager shall sometimes be collectively referred to as "**Assignor**".

C. Pursuant to the Purchase Agreement, Assignor is to assign to Assignee and Assignee is to assume certain rights and obligations under certain leases, contracts, service agreements and other third-party agreements for the Project as more fully described on **Exhibit B** attached hereto and incorporated herein (the "**Leases and Contracts**").

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

ARTICLE I

ASSIGNMENT OF LEASES AND CONTRACTS

1.1 **Assignment and Assumption of Leases and Contracts**. As of the Effective Date, as defined in Section 1.3 below, Assignor hereby assigns to Assignee all of Assignor's right, title and interest, if any, in and to the Leases and Contracts. Assignee hereby accepts the foregoing assignment of the Leases and Contracts. The City hereby covenants with Assignee that Assignor has good right to sell and convey said Leases and Contracts; that said Leases and Contracts are free and clear of and from any liens or encumbrances, except as set forth in Exhibit "A" hereto; and that the City will WARRANT AND DEFEND the same unto Assignee, and its successors and assigns, against the lawful claims and demands of all persons, except as aforesaid.

1.2 **Assumption of Leases and Contracts**. As of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes the Leases and Contracts and agrees to timely keep, perform and discharge all of the obligations of the Assignor under the Leases and Contracts that accrue from and after the Effective Date. Assignee is not assuming any contracts relating to the Project not identified on **Exhibit B**.

1.3 **Effective Date**. The "**Effective Date**" of this Assignment shall be the date that Assignee acquires the Lease for the project use component of the Project.

1.4 **Indemnification**. The City shall indemnify, protect, defend and hold Assignee harmless from all losses, demands, damages, claims, liabilities, demands, costs, expenses and offset rights, including, without limitation, reasonable attorneys' fees arising out of any failure of Assignor to so keep, perform and discharge all of the obligations of the lessor and/or owner under the Leases and Contracts that arose or were incurred or accrued prior to the Effective Date. Assignee shall indemnify, protect, defend and hold Assignor harmless from all losses, demands, damages, claims, liabilities, demands, costs, expenses and offset rights, including, without limitation, reasonable attorneys' fees arising out of any failure of Assignee to so keep, perform and discharge all of the obligations of the lessor and/or owner under the Leases and Contracts that accrue from and after the Effective Date.

ARTICLE II

MISCELLANEOUS

2.1 **Attorneys' Fees**. In the event of any action between Assignor and Assignee seeking enforcement of any of the terms and conditions to this Assignment, the prevailing party in such action, whether by fixed judgment or settlement, shall be entitled to recover, in addition to damages, injunctive or other relief, its actual costs and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expert witness fees.

2.2 **Inurement**. This Assignment shall inure to the benefit of Assignor and Assignee, and their respective heirs, assigns and successors in interest.

2.3 **Counterparts**. This Assignment may be signed by the parties in multiple counterparts, all of which taken together shall be deemed to constitute one and the same instrument which shall be binding on all parties.

2.4 **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of Hawai'i.

[SIGNATURES APPEAR ON NEXT PAGE]

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

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By _____
Name:
Title:

"**City**"

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

"**Assignee**"

EXHIBIT A
TO
EXHIBIT C-2

[PROJECT OR CONDOMINIUM UNIT LEGAL DESCRIPTION]

[TO BE ATTACHED]

EXHIBIT B
TO
EXHIBIT C-2

[LEASES AND CONTRACTS]

[TO BE ATTACHED]

EXHIBIT D-1

LIST OF PERSONAL PROPERTY AND EQUIPMENT TO BE TRANSFERED

[All personal property and equipment owned by the City, located at each Project and used in connection with the operation of such Project. Such items to be identified by the City during the Due Diligence Period specified in the Purchase and Sale Agreement, as may be amended prior to Closing, and may include computers, printers, janitorial equipment and supplies, maintenance equipment and supplies, and yard maintenance equipment and supplies.]

EXHIBIT D-2

BILL OF SALE

THIS BILL OF SALE (this "**Bill of Sale**") is made and entered into effective as of the _____ day of _____, 2012, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i (the "**City**"), and _____, a _____ ("**Buyer**").

W I T N E S S E T H :

WHEREAS, the City has agreed to convey to Buyer, and Buyer has agreed to accept from the City, all of the City's right, title and interest, if any, in and to the personal property described in **Exhibit A** attached hereto and made a part hereof (the "**Personal Property**"). Any items, accounts, reserves, or tangible or intangible property ***not*** listed on the attached **Exhibit A** shall ***not*** be included in the Personal Property transferred herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the City and Buyer agree as follows:

1. The City hereby sells, assigns and transfers to Buyer all of the Personal Property.

2. The City covenants with Buyer that the City is the lawful owner of such property and has good right to sell and convey the same; that said property is free and clear of and from all liens and encumbrances except as set forth in Exhibit "A" hereto; and that the City will WARRANT AND DEFEND the same unto Buyer, and its successors and assigns, against the lawful claims and demands of all persons, except as aforesaid.

3. Except as aforesaid, Buyer acknowledges that the City has made no representations or warranties regarding the Personal Property including, without limitation, the state of repair of the Personal Property, and Buyer hereby agrees to accept the Personal Property in "**AS IS**" condition.

4. This Bill of Sale shall be binding upon and inure to the benefit of the successors and assigns of Buyer and the City.

5. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Hawai'i.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Buyer have executed and delivered this Bill of Sale as of the date first set forth above.

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By _____
Name:
Title:

"**City**"

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

"**Buyer**"

EXHIBIT A
TO
EXHIBIT D-2

[LIST OF PERSONAL PROPERTY AND EQUIPMENT ATTACHED TO THE BILL OF SALE]

[TO BE ATTACHED]

EXHIBIT E

SECTION 5.6 HOME RESTRICTIONS

LAND COURT SYSTEM	)	REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (XX) PICK-UP ( )

Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813
Attention: Community-Based Development Division

TITLE OF DOCUMENT:

USE RESTRICTION AGREEMENT: [Project Name]

PARTIES TO DOCUMENT:

CITY AND COUNTY OF HONOLULU
_____, a Hawaii _____

PROPERTY DESCRIPTION:

See Exhibit A

TAX MAP KEY NO.: _____

USE RESTRICTION AGREEMENT
HOME PROGRAM

[PROJECT NAME]

THIS USE RESTRICTION AGREEMENT (this "**Agreement**") is between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("**City**"), and _____, a _____, with an office address of _____, Hawaii 96___ ("**Lessee**").

RECITALS:

The City and Lessee have agreed to provide for the operation of an affordable rental housing complex targeted to extremely low to lower income family households on certain property in _____, identified as Tax Map Key _____: ___ and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Project**").

The Project is leased by the City to Lessee pursuant to a Lease dated _____, made the City, as lessor and Lessee, as lessee (the "**Lease**"). Said Lease is recorded in _____ of the State of Hawaii as Document No. _____.

The parties intend that the Lessee will operate the Project as an affordable rental housing complex targeted in part to extremely low to lower income family households.

The City used HUD HOME Program funds in developing the Project. As a consequence, the Project is subject to certain HOME affordability requirements set forth in the Lease, the Cranston-Gonzalez National Affordable Housing Act, 42 USC 1270, et seq., and 24 Code of Federal Regulations ("**CFR**"), Part 92 (collectively, the "**HOME Requirements**").

Lessee's use of the Project must be in compliance with said HOME Requirements for the Term hereinafter set forth.

Now, therefore, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. **Term; Automatic Termination**. This Agreement shall be effective from the date this Agreement is executed until _____ (the "**Term**"). Upon the expiration of the Term, this Agreement shall automatically terminate and be of no further force and effect.

2. **Use Agreement**. For the Term of this Agreement, Lessee agrees to comply with the HOME Requirements. Without limiting the generality of the foregoing, Lessee shall designate and maintain _____ of the residential units in the Project as "HOME-Assisted Units", subject to HOME program income, rent restrictions and income affordability requirements. Of the HOME-assisted units, twenty percent (20%) of the units (_____ units) will be affordable to households with income at or below fifty percent (50%) of the area median income as defined

by HUD and adjusted for family size ("**AMI**"). Eighty percent (80%) of the units (_____ units) will be affordable to households at or below sixty percent (60%) of AMI. However, if the rents calculated based on AMI are greater than the Fair Market Rents ("**FMR**") as established by HUD, FMR is the maximum allowable rent. The HOME-Assisted Units shall be "Floating Units," as defined in the HOME regulations at 24 CFR §92.252(j).

In addition, a minimum of ____units in the Project shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR § 8.32 is considered accessible for this purpose. _____additional units in the Project shall be made accessible for persons with hearing or vision impairments.

3. **Submission of Records**. Lessee agrees to obtain and maintain records which evidence compliance with HOME program use and affordability requirements. Lessee shall promptly provide these records and/or other certifications, statements or records that the City may require to demonstrate compliance upon the City's request.

4. **Violations; City's Remedies**. If the City determines that Lessee is not in compliance with the terms of this Agreement, the City shall provide written notice to Lessee. Upon receipt of the City's notice, Lessee shall have thirty (30) days to cure the violation. The failure to cure any violation to the City's satisfaction within such thirty (30) day period shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. The parties further agree that upon any default by Lessee, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation under any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

5. **Covenants to Run with the Land; Successors and Assigns**. Lessee hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. Lessee hereby declares its express intention that the covenants, reservations and restrictions set forth herein (a) shall be deemed covenants running with the land to the extent permitted by law, (b) shall pass to and be binding upon the successors and assigns in title to the Project throughout the Term, and (c) shall be enforceable by actions at law or in equity by the City, its successors and assigns and/or one or more third-party beneficiaries. For the purpose of this Agreement, a third-party beneficiary shall be any member of a low-income family (as defined in 24 CFR §92.5).

The City hereby agrees that, upon request of Lessee or its successor or assignee in title, made on or after the end of the Term, the City shall execute a recordable instrument approved by the City for the purpose of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the requestor.

6. **Foreclosure; Transfer in Lieu of Foreclosure**. A property foreclosure initiated by a first mortgage holder, or a transfer in lieu of foreclosure, is the only occurrence which may prematurely end the period of affordability, as long as either action is not for the purpose of avoiding affordability restrictions.

7. **Counterparts**. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together

constitute one and the same Agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The City and Lessee have executed this Agreement on _____, 20__.

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By _____
Name:
Title:

"**City**"

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

"**Lessee**"

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

On this _____ day of _____, 20___, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of the City and County of Honolulu, Department of _____, and that the foregoing instrument is executed in the name and behalf of said City and County of Honolulu, by and through its Department of _____, by _____ as its _____, and said_____ acknowledged said instrument to be the free act and deed of said City and County of Honolulu, by and through its Department of _____ by authority of the City Council of the City and County of Honolulu.

Doc. Date: _____

# of Pages: _____

Doc. Description:
Use Restriction Agreement
[Project name]

_____
Print or Type Name:_____
Notary Public, State of Hawaii
First Judicial Circuit
My commission expires _____

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

On this _____ day of _____, 20___, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that _____ is the _____ of _____, a Hawaii _____; that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

_____
Print or Type Name: _____
Notary Public, State of Hawaii
First Judicial Circuit
My commission expires _____

EXHIBIT A

PROPERTY DESCRIPTION

[TO BE ATTACHED]

HUD RIDER TO USE RESTRICTION AGREEMENT

WHEREAS, _____, a _____ ("**Lessee**"), has obtained mortgage loan financing from _____(the "**Lender**") for the benefit of the Project which is an FHA insured mortgage, dated of even date herewith, FHA Project No. _____, and HUD is requiring that the lien and covenants of the Use Restriction Agreement (the "**Agreement**") be subordinated to the lien, covenants, and enforcement of the mortgage securing such HUD loan.

The City and County of Honolulu, a municipal corporation of the State of Hawaii (the "**City**"), has agreed to subordinate the Agreement to the lien of the HUD Mortgage in accordance with the terms of this Rider.

Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A new Section 8 shall be incorporated into the Agreement as follows:

8. **HUD Requirements**. Notwithstanding anything in this agreement to the contrary:

(a) In the event of any conflict between any provision contained elsewhere in this Agreement and any provision contained in this Section 8, the provision contained in this Section 8 shall govern and be controlling in all respects.

(b) The following terms shall have the following definitions:

"**HUD**" means the United States Department of Housing and Urban Development.

"**HUD Regulatory Agreement**" means the Regulatory Agreement between Lessee and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"**Lender**" means _____, its successors and assigns.

"**Mortgage**" means the Mortgage from Lessee in favor of the Lender, as the same may be supplemented, amended or modified.

"**Mortgage Loan**" means the deed of trust loan to be made by the Lender to Lessee pursuant to the Mortgage Loan Documents (defined below) with respect to the Project (defined below).

"**Mortgage Loan Documents**" means the Mortgage, the HUD Regulatory Agreement and all other documents required by HUD or the Lender in connection with the Mortgage Loan.

"**National Housing Act**" means the National Housing Act of 1934, as amended.

"**surplus cash**" has the meaning specified in the HUD Regulatory Agreement.

"**residual receipts**" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, except the requirements in 26 U.S.C. § 42(h)(6)(E)(ii), the provisions hereof are expressly subordinate to (i) the Mortgage, (ii) the HUD Regulatory Agreement and (iii) the National Housing Act, all applicable HUD mortgage insurance (and Section 8, if applicable) regulations and related administrative requirements. In the event of any conflict between the provisions of this Agreement and the provision of the Mortgage, HUD Regulatory Agreement, or the National Housing Act, any applicable HUD regulations or related administrative requirements, the Mortgage Loan Documents, the National Housing Act, the HUD regulations, related administrative requirements and the Mortgage Loan Documents shall control and supersede the enforcement of this Agreement.

(d) In the event of foreclosure or the transfer of title by deed in lieu of foreclosure, this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. § 42(h)(6)(E)(ii) above.

(e) Lessee and the City acknowledge that Lessee's failure to comply with the land-use covenants provided in this Agreement does not and shall not serve as a basis for default under the terms of the Mortgage, the HUD Regulatory Agreement, or any other document relating to the Mortgage Loan to Lessee for the Project, but to the extent required by applicable law shall be reported by the City to the Internal Revenue Service.

(f) Except for the City's reporting requirement, in enforcing this Agreement the City will not file any claim against the Project or any reserve or deposit required by HUD in connection with the Mortgage or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

i. Available surplus cash, if Lessee is a for-profit entity;

ii. Available distributions and residual receipts authorized for release by HUD, if Lessee is a limited distribution entity; or

iii. Available residual receipts authorized by HUD, if Lessee is a non-profit entity.

(g) Other than for the purpose of including a good-cause-only eviction covenant, during the period that any balance of the HUD indebtedness or obligations remain outstanding, Lessee and the City shall not further amend this Agreement without the prior written consent of HUD.

(h) Except as contemplated by this Agreement, the City shall take no action to preserve the low-income housing tax credits awarded to the Project, or to prohibit Lessee from taking any action that might jeopardize the low-income housing tax credits, except in strict accord with the National Housing Act, applicable mortgage insurance regulations, the HUD loan documents for the Project, or if applicable to the Project, Section 8 of the U.S. Housing Act of 1937 and the regulations thereunder.

(i) Subject to the HUD Regulatory Agreement, Lessee shall indemnify and hold the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the City relating to the subordination and covenants set forth in this Agreement; provided, however, that Lessee's obligation to indemnify and hold the City harmless shall be limited to available surplus cash and/or residual receipts of Lessee.

(j) Lessee and the City further agree that if at any time any covenant or restriction of this Agreement shall be determined by the Internal Revenue Service to be an event invalidating or terminating the award of low-income housing tax credits awarded to the Project, then in such event such covenant or restriction provided herein shall immediately and automatically terminate.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT F

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail ☒ Pickup ☐ To:	
_____	
_____	
_____	
Attn: _____	
	Total Pages: _____
Tax Map Key No.: _____	

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into as of _____, 20___, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, whose address is 530 South King Street, Honolulu, Hawai'i 96813 ("**Lessor**"), and _____, a _____, whose place of business and post office address is _____ ("**Lessee**").

A. Lessor is the owner of that certain property located at _____, Hawai'i 96___, containing approximately _____ square feet, and more particularly described in the attached **Exhibit A** (the "**Land**"). Lessor and Lessee have entered into a Lease of the Land and the improvements on such Land (the "**Improvements**") as set forth below.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Premises**. Lessor hereby leases the Land and the Improvements to Lessee and Lessee hereby hires the Land and such Improvements from Lessor, upon the terms and conditions of that certain unrecorded lease dated of even date herewith (the "**Lease**"), the terms and conditions of which are incorporated herein by this reference.

2. **Term**. The term of the Lease commences on _____, _____, and expires, if not sooner terminated pursuant thereto, on _____, _____.

3. **No Options; No Right of First Refusal**. Lessee has no renewal or extension options. Lessee has no option to purchase the Land, but Lessor has agreed to give Lessee notice of any intended sale by Lessor of the Land and Improvements.

4. **Controlling Document**. This Memorandum of Lease is subject to all the terms and conditions of the Lease. Should there be any inconsistency between the terms of this instrument and the Lease, the terms of the Lease shall prevail.

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

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Lease as of the date first above written.

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai'i

By Department of Budget and Fiscal Services

By _____
Name:
Title:

"City"

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

"Lessee"

[ATTACH ACKNOWLEDGEMENTS]

EXHIBIT A
TO
EXHIBIT F

[LAND DESCRIPTION]

[TO BE ATTACHED]

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

AUTHORIZING LEASES OF CITY PROPERTY TO HONOLULU AFFORDABLE HOUSING PARTNERS, LLC, UNDER SECTION 28-3.5, REVISED ORDINANCES OF HONOLULU, AS PART OF THE HONOLULU AFFORDABLE HOUSING PRESERVATION INITIATIVE.

WHEREAS, on February 15, 2012 and February 22, 2012 the City and County of Honolulu published in the Honolulu Star-Advertiser a Public Notice announcing the availability of the request for proposals (RFP related to leasing of twelve City-owned affordable housing projects: Bachelors Quarters, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Manoa Gardens, Marin Tower, Pauahi Hale, Westlake Apartments, West Loch Village and Winston Hale (collectively, the "Projects") through the Honolulu Affordable Housing Preservation Initiative (HAHPI); and

WHEREAS, on May 9, 2012, the Honolulu City Council adopted Bill 23, CD1 (Ordinance 12-12), which clarified and confirmed that with respect to the HAHPI program, the RFP process pursued under Section 28-3.5 could encompass the entirety of each rental complex, including affordable, gap group, and market-rate rental housing units, commercial space, parking facilities, and telecommunication facilities; and

WHEREAS, Ordinance 12-12 also provided for a redevelopment option to be included into the leases for Pauahi Hale, Winston Hale, Bachelor's Quarters, and Kanoa Apartments; and

WHEREAS, on May 9, 2012, the Honolulu City Council also adopted Bill 24, CD1 (Ordinance 12-13), which facilitated the HAHPI program by providing for the transfer of public parking at Marin Tower, Chinatown Gateway Plaza, and Harbor Village via long-term leases, while reserving to the City the use of a specific number of parking spaces in these Projects for public parking, and reserving for the City Council the right to set time limits, parking fees, and other regulations for the public parking spaces; and

WHEREAS, a total of seven initial proposals were received for the Projects by the April 20, 2012 deadline, and after follow-up discussions between the City and the proposers, seven "best and final offers" were received by the May 22, 2012 deadline; and

WHEREAS, an evaluation of the proposals was conducted by a five-member selection committee (one of whom was designated by the Council), with the committee members individually scoring each of the proposals; and

D 640

RESOLUTION

WHEREAS, upon conclusion of the RFP evaluation process, the City selected Honolulu Affordable Housing Partners, LLC ("HAHP") to be the lessee of the Projects; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on August 22, 2012, identifying HAHP and the other two top-rated proposals for the public record; and

WHEREAS, the City and HAHP have negotiated the terms of a Purchase and Sale Agreement (which is subject to Council approval by a separate resolution), including payment of an up-front lump-sum acquisition lease rent payment or "lease premium" in the sum of One Hundred Forty Two Million And No/100 Dollars ($142,000,000); and

WHEREAS, to assist HAHP with financing of the lease acquisitions, the City has agreed, subject to City Council approval of the overall transaction and approval and execution of the transaction documents, to cooperate in the large-scale "condominiumization" of five (5) Projects – specifically, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Marin Tower, and Winston Hale (collectively, the "Condominium Projects") – whereby HAHP will submit each such Project to a condominium property regime and enable the Affordable Rental Housing Component, the Market Rental Housing Component, the Commercial Rental Component, the Public Parking Component, and the Resident Parking Component, as defined in the Purchase and Sale Agreement (collectively, the "Project Use Components"), as the case may be in each such Project, to be separately leased by the City to one or the other of HAHP's subsidiary entities and separately financed accordingly; and

WHEREAS, to effect such "condominiumization," a total of twenty-six (26) Leases are contemplated in connection with this transaction: nineteen (19) for the applicable Project Use Components within the five Condominium Projects (collectively, the "Condominium Leases") and seven (7) for the remaining Projects -- Bachelors Quarters, Kanoa Apartments, Kulana Nani Apartments, Manoa Gardens, Pauahi Hale, Westlake Apartments, and West Loch Village (collectively, the "Ground Leases"; together with the Condominium Leases, collectively, the "Leases");

WHEREAS, a schematic summary of the Leases and Lease-related documents that are contemplated for the closing of this transaction is set forth in Exhibit A attached hereto (the "Project Document Table"); and

WHEREAS, the City and HAHP agreed upon the forms of the following Lease and Lease-related documents:

(1) the Ground Lease, attached hereto as Exhibit B;

(2) the Condominium Lease, attached hereto as Exhibit C;

(3) the Addendum to Lease (Affordable Housing Rental Component), attached hereto as Exhibit D, to be used with the Ground Leases and Condominium Leases as indicated in the Project Document Table;

(4) the Addendum to Lease (Market Rental Housing Component), attached hereto as Exhibit E, to be used with the Condominium Leases as indicated in the Project Document Table;

(5) the Addendum to Lease (Commercial Rental Component), attached hereto as Exhibit F, to be used with the Condominium Leases as indicated in the Project Document Table;

(6) the Addendum to Lease (Redevelopment Component), attached hereto as Exhibit G, to be used with the Ground Leases as indicated in the Project Document Table;

(7) the Addendum to Lease (Resident Parking Component), attached hereto as Exhibit H, to be used with the Condominium Leases as indicated in the Project Document Table;

(8) the Addendum to Lease (Public Parking Component), attached hereto as Exhibit I, to be used with the Condominium Leases as indicated in the Project Document Table;

(9) the Property Specific Lease Terms, attached hereto as Exhibit J, to be used with the Ground Leases and Condominium Leases as indicated therein; and

(10) the Regulatory Agreement, attached hereto as Exhibit K, to be attached to and incorporated in the Ground Leases and Condominium Leases as indicated in the Project Document Table; and

WHEREAS, the Council finds that: (1) notwithstanding the $1 per year rent provided for in the Leases, the Lease rents charged are not "nominal" within the meaning of Section 28-3.5(g), ROH, because the City and HAHP have negotiated a $142,000,000 lease premium payment by HAHP; and (2) under the circumstances, the certification contemplated by that section for nominal-rent leases is not required; and

RESOLUTION

WHEREAS, in accordance with Section 28-3.5(f), ROH, the Ground Leases and Condominium Leases, and the Regulatory Agreements incorporated therein by reference, require Council approval by resolution; and

WHEREAS, the Council finds that it is in the public interest to lease the Projects to HAHP in accordance with Section 28-3.5, ROH, and thus supports the City administration's decision to do so; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

1) The Ground Leases, the Condominium Leases, the Addenda, the Project-specific terms and the Regulatory Agreements are approved substantially in the form attached hereto;

2) Upon satisfaction by the City and HAHP of all preconditions to closing set forth in the Purchase and Sale Agreement, the Director of Budget and Fiscal Services is authorized to execute

   (a) the Ground Leases, substantially in the form attached hereto as Exhibit B, with appropriate Addenda attached thereto and Project-specific terms included, as indicated therein and in the Project Document Table;

   (b) the Condominium Leases, substantially in the form attached hereto as Exhibit C, with appropriate Addenda attached thereto and Project-specific terms included, as indicated therein and in the Project Document Table; and

   (c) the Regulatory Agreements, substantially in the form attached hereto as Exhibit D, each such Regulatory Agreement running concurrently with the applicable Lease(s) for a period of sixty-five (65) years, as indicated in the Project Document Table;

2) The Director of Budget and Fiscal Services is authorized to execute the Ground Leases, the Condominium Leases and/or the Regulatory Agreements with HAHP, or with one or more subsidiary entities or nominees as may be designated by HAHP to take leasehold title to one or more Projects at closing of the transaction;

RESOLUTION

4) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transactions described above, as long as such documents do not increase either directly or indirectly the financial obligation of the City; and

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be, and is hereby directed to transmit copies of this Resolution to Michael R. Hansen, Director of Budget and Fiscal Services, and Samuel E. H. Moku, Director of Community Services. A copy of this Resolution shall also be transmitted to Honolulu Affordable Housing Partners, LLC, c/o Highland Property Development LLC, 250 W. Colorado Boulevard, Suite 210, Arcadia, California 91007.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION:

_____

Honolulu, Hawaii

_____

Councilmembers

Exhibit A

Rental Housing Complex	Ground Lease	Condominium Lease	Regulatory Agreement	Addendum – Affordable Housing Component	Addendum - Market Housing Component	Addendum - Commercial Component	Addendum - Redevelopment Component	Addendum – Residential Parking Component	Addendum – Public Parking Component
Bachelors Quarters	x		x	x			x		
Chinatown Gateway Plaza									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Chinatown Manor									
Affordable Rental Component		x	x	x					
Commercial Space Component		x				x			
Harbor Village									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Kanoa Apartments	x		x	x			x		
Kulana Nani	x		x	x					
Manoa Gardens	x		x	x					
Marin Tower									
Affordable Rental Component		x	x	x					
Market Rental Component		x			x				
Commercial Space Component		x				x			
Public Parking Component		x							x
Resident Parking Component		x						x	
Pauahi Hale	x		x	x			x		
Westlake Apartments	x		x	x					
West Loch Village	x		x	x					
Winston Hale									
Affordable Rental Component		x	x	x					
Commercial Space Component		x				x			

Exhibit B

LEASE

between

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai`i

"Lessor"

and

_____,
a _____

"Lessee"

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS 1

ARTICLE 2: PREMISES 9
2.1 Premises 9
2.2 Acceptance in Existing Condition 9
2.3 Release of Lessor 10

ARTICLE 3: TERM 10
3.1 Term 10
3.2 Delivery of Possession 11
3.3 No Option to Extend; No Renewal 11

ARTICLE 4: RENT 11
4.1 Fixed Rent 11
4.2 Additional Rent 11
4.3 No Offsets 11

ARTICLE 5: ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES 11
5.1 Net Lease 11
5.2 Real Estate Taxes 12
5.3 Assessments in Installments 12
5.4 BID Decisions 12
5.5 Direct Payment by Lessor 12
5.6 Utilities 12
5.7 Excise Tax 12
5.8 Conveyance Tax 13
5.9 Taxes on Lessee's Business and Personal Property 13
5.10 Tax Exemptions 13
5.11 Lessor Expenses 13

ARTICLE 6: USE 13
6.1 Permitted Use 13
6.2 Prohibited Uses 13
6.3 Exclusive Control 13
6.4 Compliance with Laws 14
6.5 Copies of Notices 14
6.6 Entitlements 14
6.7 Illegal Activities 14
6.8 Public Accommodations Laws 14

ARTICLE 7: MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS 15
7.1 Obligation to Maintain 15
7.2 Capital Improvement Obligations 15
7.3 Enhanced Improvements 15

ARTICLE 8: CONSTRUCTION 15
8.1 General 15
8.2 Manner of Construction 16
8.3 Permits. 16
8.4 Applications 16
8.5 Completion 16
8.6 Construction Insurance 16

TABLE OF CONTENTS
(Continued)

8.7 Ownership 17
8.8 Inspection 17
8.9 Lessee's Covenant 17
8.10 Title Encumbrances 17
8.11 Lease Termination 18

ARTICLE 9: HAZARDOUS SUBSTANCES 18
9.1 Restrictions 18
9.2 Compliance; Clean-Up 18
9.3 Surrender Obligations 18
9.4 Copies of Environmental Reports 18
9.5 Survival 18
9.6 Discharges before Commencement 18

ARTICLE 10: INDEMNIFICATION; LIABILITY OF LESSOR 19
10.1 Obligations 19
10.2 Liability of Lessor 19
10.3 Indemnification Procedures 19

ARTICLE 11: RIGHT OF CONTEST 20
11.1 Lessee's Right; Contest Conditions 20
11.2 Lessor Obligations and Protections 20
11.3 Miscellaneous 21
11.4 Contest Security 21

ARTICLE 12: INSURANCE 21
12.1 Lessee's Insurance 21
12.2 Nature of Insurance Program 22
12.3 Policy Requirements and Endorsements 22
12.4 Deliveries to Lessor 22
12.5 Waiver of Certain Claims 22
12.6 Additional Insurance 23
12.7 No Representation 23

ARTICLE 13: LOSSES AND LOSS PROCEEDS 23
13.1 Notice 23
13.2 Effect of Casualty 23
13.3 Adjustment of Claims; Use of Property Insurance Proceeds 23
13.4 Substantial Condemnation 24
13.5 Insubstantial Condemnation 24
13.6 Temporary Condemnation 24
13.7 Immaterial Loss 24
13.8 Surrender 24

ARTICLE 14: LESSOR'S RESERVED RIGHTS 24
14.1 Inspections 24
14.2 Other Entries by Lessor 25
14.3 Water, Oil, Gas and Mineral Rights 25
14.4 Easements. 25
14.5 Development 25
14.6 Entitlement Rights 25
14.7 No Light or Air Easement 26
14.8 Provision Respecting Certain Concessions 26
14.9 Project Name 26

TABLE OF CONTENTS
(Continued)

14.10 General 26

ARTICLE 15: LESSOR'S TRANSFERS 26
15.1 Transfer of Lessor's Interest 26
15.2 Release of Lessor 26
15.3 No Right of First Refusal/No Option to Purchase 26

ARTICLE 16: REGULATORY AGREEMENT 27

ARTICLE 17: LESSEE'S TRANSFERS 27
17.1 Lessee's Transfer Right 27
17.2 No Partial Transfers 27
17.3 Notice of Transfer 28
17.4 Expenses 28

ARTICLE 18: SUBLEASES 28

ARTICLE 19: LEASEHOLD MORTGAGES 28
19.1 Leasehold Mortgage 28
19.2 Protection of Leasehold Mortgagee 28

ARTICLE 20: EQUIPMENT LIENS 30
20.1 Lessee's Rights 30
20.2 Required Provisions for Equipment Liens 30

ARTICLE 21: QUIET ENJOYMENT 30

ARTICLE 22: EVENTS OF DEFAULT; REMEDIES 31
22.1 Definition of "Event of Default" 31
22.2 Remedies 31
22.3 Proceeds of Reletting 33
22.4 Lessee's Late Payments; Late Charges 33
22.5 Lessor's Right to Cure 33
22.6 Holding Over 33
22.7 Waivers: Jury Trial, Redemption 34
22.8 Accord and Satisfaction; Partial Payments 34
22.9 Lessor's Default 34
22.10 Miscellaneous 34

ARTICLE 23: END OF TERM 34

ARTICLE 24: NOTICES 35

ARTICLE 25: NONRECOURSE 35

ARTICLE 26: ADDITIONAL DELIVERIES; THIRD PARTIES 35
26.1 Estoppel Certificates 35
26.2 Further Assurances 36
26.3 Memorandum of Lease 36
26.4 Modification 36
26.5 Successors and Assigns 36

TABLE OF CONTENTS
(Continued)

ARTICLE 27: CULTURAL AND ARCHEOLOGICAL 36
27.1 Native Hawaiian Rights 36
27.2 Human Remains; Artifacts; Historical Items 36

ARTICLE 28: MISCELLANEOUS 37
28.1 Confidentiality 37
28.2 Due Authorization and Execution 37
28.3 Costs and Expenses; Legal Costs 37
28.4 No Consequential Damages 38
28.5 No Waiver by Silence 38
28.6 [Reserved.] 38
28.7 Performance Under Protest 38
28.8 Survival 38
28.9 Unavoidable Delay 38
28.10 Broker 38
28.11 Service of Process 38
28.12 Sexual Harassment Policy 39
28.13 Non-Discrimination Policy 39

ARTICLE 29: INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE 39
29.1 Captions 39
29.2 Counterparts 39
29.3 Delivery of Drafts 39
29.4 Entire Agreement 39
29.5 Governing Law and Venue 39
29.6 Partial Invalidity 39
29.7 Principles of Interpretation 40
29.8 [Reserved.] 40
29.9 Time of the Essence 40
29.10 Computation of Deadlines 40
29.11 Joint and Several 40

ARTICLE 30: ADDENDUM 40
30.1 Addendum 40

LIST OF ATTACHED EXHIBITS:

Exhibit A Legal Description
Exhibit B Additional Permitted Exceptions
Exhibit C Notice Addresses (Including Required Copy Recipients)
Exhibit D Service of Process

LEASE

This **LEASE** (this "**Lease**") is made and entered into as of _____, 2012 (the "**Commencement Date**"), between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai`i ("**Lessor**"), and _____, a _____ ("**Lessee**").

For good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, upon the terms and conditions set forth in this Lease and all Exhibits attached hereto, the "**Premises**" defined in Section 2.1 below.

ARTICLE 1:
DEFINITIONS

The following definitions apply in this Lease:

"**Affiliate**" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. "**Affiliated**" shall have the correlative meaning.

"**Application**" means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction this Lease allows, including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Lessee may from time to time reasonably request for such Construction; (b) to allow Lessee to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes; (c) to enable Lessee from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or (d) otherwise reasonably necessary and appropriate to permit Lessee to realize the benefits of the Premises under this Lease.

"**Approvals**" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, use, occupancy, maintenance, or operation of the Premises.

"**Bankruptcy Law**" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"**Bankruptcy Proceeding**" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"**BID**" means any business improvement district or similar district or program, proposed or actual, that includes, may include, or affects any Premises.

"**Broker**" means CBRE, Inc.

"**Building Equipment**" means all fixtures incorporated in the Premises owned by Lessor or Lessee and used, useful, or necessary to operate the Improvements (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; utility systems; machinery; and pipes) as opposed to operating any business in the Improvements.

"**Business Day**" means all days except for Saturdays, Sundays and legal holidays observed by the County. If a due date determined under this Agreement falls on a Saturday, Sunday or an official County holiday, such due date will be deemed to be the next Business Day.

"**Casualty**" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

"**Casualty Termination**" means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination.

"**Condemnation**" means any temporary or permanent taking of (or of the right to use or occupy) all or any portion of the Premises by condemnation, eminent domain or any similar proceeding.

"**Condemnation Award**" means any award(s) paid or payable (whether or not in a separate award) to either party or its mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation, (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation, (c) any interest on such award, and (d) any other sums payable on account of such Condemnation, including for any prepayment premium under any mortgage.

"**Condemnation Effective Date**" means, for any Condemnation, the first date when the condemning authority has acquired title to, or possession of, any portion of the Premises subject to the Condemnation.

"**Construction**" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including new construction and replacements. Construction consists of Minor Construction and Major Construction.

"**Consumer Price Index**" means the index published by the United States Department of Labor, Bureau of Labor Statistics, and now known as the Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City average, All Items (or such comparable index as may be utilized in substitution for or as the successor to the stated index). If such index is not published by the United States Bureau of Labor Statistics, or successor agency thereof, at any time during the Term, then the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority and selected by Lessor shall be utilized in lieu of such index.

"**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

"**County**" means the City and County of Honolulu.

"**Default**" means any Monetary Default or Nonmonetary Default.

"**Default Interest**" means interest at an annual rate equal to the lesser of: (a) the Prime Rate plus four percent (4%) per annum; or (b) the Usury Limit.

"**Depository**" means a bank or trust company mutually designated by Lessor and Lessee, which is qualified under the Laws of the State of Hawai`i and having its principal office in Honolulu, Hawai`i.

"**Environmental Law(s)**" means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, Control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"**Equipment Lien**" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or any similar arrangement (including any related financing statement) for Lessee's acquisition or leasing of any Financed FF&E used in the Premises that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates only to the Financed FF&E for which such secured party provides *bona fide* purchase-money financing or a *bona fide* equipment lease, after the Commencement Date. A Leasehold Mortgage is not an Equipment Lien.

"**Equity Interest**" means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in a Person.

"**Expiration Date**" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Lessor's exercise of remedies for an Event of Default, or otherwise.

"**Fee Estate**" means Lessor's fee estate in the Premises, including Lessor's reversionary interest in the Premises after the Expiration Date.

"**FF&E**" means all movable furniture, furnishings, equipment, and personal property of Lessee or anyone claiming through Lessee (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

"**Financed FF&E**" means any FF&E subject to an Equipment Lien in favor of a lessor or lender that: (a) is not an Affiliate of Lessee, and (b) actually provides *bona fide* financing or a *bona fide* equipment lease after the Commencement Date for Lessee's acquisition or use of such FF&E.

"**Government**" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and divisions thereof.

"**Hazardous Substances**" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, *et seq.*, as amended; (c) defined as a "hazardous substance" or "hazardous waste"

under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.* or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source. The term "Hazardous Substances" for purposes of this Lease shall also include any mold, fungus or spores, whether or not the same is defined, listed, or otherwise classified as a "hazardous substance" under any Environmental Laws, if such mold, fungus or spores may pose a risk to human health or the environment or negatively impact the value of the Premises.

"**Hazardous Substances Discharge**" means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

"**Immaterial Loss**" means a Casualty or Condemnation where the Loss Proceeds or the Condemnation Award, respectively, is less than $500,000.

"**Indemnify**" means, where this Lease states that any Indemnitor shall "**Indemnify**" any Indemnitee from, against, or for a particular matter (the "**Indemnified Risk**"), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's insurance carrier shall be automatically deemed satisfactory.

"**Indemnitee**" means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

"**Indemnitor**" means a party that agrees to Indemnify any other Person.

"**Institutional Lender**" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the Laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; any entity the liabilities of which are insured by a governmental agency, or any combination of Institutional Lenders; provided that each of the entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

"**Insubstantial Condemnation**" means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

"**Law**" **or** "**Laws**" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, and as may be amended from time to time.

"**Leasehold Estate**" means Lessee's leasehold estate, and all of Lessee's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

"**Leasehold Mortgage**" means any mortgage, deed of trust or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which (whether recorded or unrecorded) is promptly after execution delivered to Lessor, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee's name and Notice address; and (c) that is held by a Leasehold Mortgagee that is an Institutional Lender, subject to the jurisdiction of the courts of the State of Hawai`i.

"**Leasehold Mortgagee**" means the holder of any Leasehold Mortgage and its successors and assigns.

"**Legal Costs**" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

"**Lessor**" initially means the Lessor named in the opening paragraph of this Lease. After every transfer of the Fee Estate, "Lessor" means only the owner(s) of the Fee Estate at the time in question. If any former Lessor no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be and hereby is entirely freed and relieved of all obligations of Lessor under this Lease accruing from and after the date of such Transfer, except for any claims or liabilities of such transferor as Lessor hereunder arising or accruing prior to such Transfer and all Legal Costs of any proceeding relating thereto commenced before such Transfer for which the transferor is liable hereunder. It shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Premises, including the transferee on any such Transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants, and obligations of Lessor under this Lease accruing from and after the date of such Transfer.

"**Liability Insurance**" means commercial general liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises or adjoining sidewalks, providing coverage limits (and subject to increases) as provided in Article 12.

"**Loss**" means any Casualty or Condemnation.

"**Loss Proceeds**" means Property Insurance Proceeds and/or Condemnation Award(s).

"**Major Construction**" means any Construction that is reasonably anticipated to cost in excess of $5,000,000 (which amount shall be increased in proportion to the percentage increase, if any, in the Consumer Price Index since the Commencement Date).

"**Market Value**" of the Fee Estate or the Leasehold Estate means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date, considered: (a) as if no Loss had occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate had not been terminated; (d) taking into account the benefits and burdens of this Lease (including, without limitation, all cash flows and revenues, including developer fees, accruing to or reasonably anticipated to accrue to the holder of the Leasehold Estate), the remaining Term, all Permitted Exceptions, and all other matters affecting such estate and its valuation; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Lessor's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date, and shall be determined independently of, and without regard to, any valuation established in a Condemnation.

"**Minor Construction**" means any Construction that Lessee elects in its discretion, or this Lease requires Lessee, to undertake from time to time, except Major Construction.

"**Modification**" means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

"**Modify**" means agree to, cause, make, or permit any Modification.

"**Monetary Default**" means Lessee's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

"**Nonmonetary Default**" means Lessee's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"**Notice**" means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "**Notices**" Article of this Lease.

"**Notice of Default**" means any Notice claiming or giving Notice of a Default or alleged Default.

"**Notify**" means give a Notice.

"**Permitted Exceptions**" means: (a) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date, listed as exceptions in Lessee's leasehold policy of title insurance for this Lease; (b) any Subleases existing as of the Commencement Date; (c) any title exceptions (including new Subleases) caused by Lessee's acts or omissions, consented to or requested by Lessee, or resulting from Lessee's Default; (d) any Application made at Lessee's request; (e) any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease; and (f) the additional matters, if any, listed in **Exhibit B** attached hereto.

"**Person**" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

"**Prime Rate**" means the prime rate or equivalent "base" or "reference" rate for corporate loans that is published in the Wall Street Journal as of the applicable date or, if such rate is no longer published, then a reasonably equivalent rate published by an authoritative third party mutually designated by Lessor

and Lessee. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

"**Prohibited Lien**" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Lessee (or anyone claiming through Lessee), if such lien attaches to the Leasehold Estate or attaches (or may attach upon termination of this Lease) to the Fee Estate. An Equipment Lien is not a Prohibited Lien.

"**Property Insurance**" means the property insurance described in Section 12.1.2 of this Lease.

"**Property Insurance Proceeds**" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Lessor, Lessee, Depository, or any mortgagee, excluding proceeds of Lessee's business interruption insurance in excess of Rent.

"**Public Accommodations Laws**" means all applicable Laws, including, without limitation, Title II and Title III of the Americans with Disabilities Act of 1990 (the "**ADA**"), 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 1968, 42 USC § 4151 *et seq.*, as amended, Title V of the Rehabilitation Act of 1973, the Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190, and the Uniform Federal Accessibility Standards, and any similar Laws now or hereafter adopted, published or promulgated, as the same are now in effect or may be hereafter modified, amended or supplemented.

"**Real Estate Taxes**" means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), BID payments, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or any FF&E, Building Equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof. "Real Estate Taxes" shall not, however, include any of the following, all of which Lessor shall pay before delinquent or payable only with a penalty: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee, of Lessor; (b) any item listed in this paragraph that is levied, assessed, or imposed against the Premises during the Term based on the recapture or reversal of any previous tax abatement or tax subsidy, or compensating for any previous tax deferral or reduced assessment or valuation, or correcting a miscalculation or misdetermination, relating to any period(s) before the Commencement Date; and (c) interest, penalties, and other charges for subparts (a) and (b) aforesaid. If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and imposed upon Lessor, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes".

"**Restoration**" means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Lessee shall perform in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

"**Restoration Funds**" means any Loss Proceeds (and deposits by Lessee) to be applied to Restoration.

"**Restore**" means accomplish a Restoration.

"**State**" means the State of Hawai`i.

"**Sublease**" means, for any portion of the Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of clause (a) through clause (c) above.

"**Sublessee**" means any Person entitled to occupy, use, or possess any premises under a Sublease.

"**Subrent**" means all money due and payable by Sublessees under Subleases.

"**Substantial Casualty**" means a Casualty that (a) occurs less than twenty (20) years before the end of the Term and renders the Premises, in Lessee's reasonable judgment (with Leasehold Mortgagee's consent), not capable of being economically Restored, or (b) pursuant to Law, prevents the Premises from being Restored to substantially the same condition, and for the same use, as before the Casualty.

"**Substantial Condemnation**" means any Condemnation that takes the entire Premises or so much thereof that the remainder, in Lessee's reasonable judgment (with Leasehold Mortgagee's consent), is not capable of being Restored to an economically viable whole for the conduct of the Permitted Use specified in Section 6.1.

"**Supplementary Agreement**" means any agreement, guaranty, letter of credit, security agreement, or other document (except this Lease) by which any Person provides assurances, credit enhancement, or security for any party's performance under this Lease.

"**Temporary Condemnation**" means a Condemnation of the right to use or occupy all or part of the Premises for a temporary period of time.

"**Transfer**" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, Modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s); or (c) any transaction described in clause (b) above affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever. A transaction affecting Equity Interests, as referred to in clause (b) through clause (c) above, shall be deemed a Transfer by Lessee even though Lessee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law; (ii) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred. In addition to the foregoing, the trading of an Equity Interest in any entity whose capital stock is listed on a nationally recognized stock exchange shall not constitute a Transfer.

"**Unavoidable Delay**" means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor) including, without limitation, injunctive or similar relief in connection with any litigation, Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within ten (10) Business Days after such obligor knows of any such Unavoidable Delay; and (b) within five (5) Business Days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

"**Usury Limit**" means the highest rate of interest, if any, that Law allows under the circumstances.

ARTICLE 2:
PREMISES

2.1 **Premises**. At the Commencement Date, Lessor owns the following real property (collectively, the "**Premises**"): (a) the land described in **Exhibit A** attached hereto (the "**Land**"); (b) all buildings, structures, and other improvements and appurtenances located on the Land (the "**Improvements**"); (c) the appurtenances and all the estate and rights of Lessor in and to the Land; and (d) all Building Equipment attached or appurtenant to any of the foregoing. This Lease is subject to the encumbrances described in **Exhibit A**, the Permitted Exceptions, and any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease.

2.2 **Acceptance in Existing Condition**. Except as otherwise provided in this Lease, Lessee expressly acknowledges and agrees that Lessor has made no representations or warranties whatsoever, whether express, implied or statutory, with respect to the Premises or any portion thereof, and that Lessor shall not be obligated to provide or pay for any work or services related to the Premises or the operation thereof. Lessee acknowledges that Lessee has inspected the Premises carefully, or has had the opportunity to inspect the Premises carefully, and accepts the Premises in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Lessor, or any Person on behalf of Lessor, regarding the Premises or matters affecting the Premises, including the following:

2.2.1 Physical Condition. The physical condition of the Premises, including the quality, nature, adequacy and physical condition of (a) the Land, including any systems, facilities, access, and/or landscaping; (b) the air, soils, geology, and groundwater, (c) the suitability of the Land for construction of any future Improvements or any activities or uses that Lessee may elect to conduct on the Land; or (d) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Land for building or any other purpose;

2.2.2 Improvements. The quality, nature, adequacy and physical condition of any existing Improvements including, without limitation, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities;

2.2.3 Title. The nature and extent of any recorded right of way, lease, possession, lien, encumbrance, license, reservation or other title condition of record as of the Commencement Date affecting the Premises including, without limitation, the existence of any easements, rights of ways or other rights across, to or in other properties that might burden and/or benefit the Premises;

2.2.4 Compliance. The development potential of the Premises and/or the zoning, land use, or other legal status of the Land or Improvements or compliance with any public or private restrictions on the use of the Land, as the same are in effect as of the Commencement Date or may be hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Land or Improvements with any applicable Laws;

2.2.5 Hazardous Substances. The presence or removal of Hazardous Substances on, in, under or about the Premises or any adjoining or neighboring property;

2.2.6 Economic Feasibility. Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of the Premises and/or the business Lessee intends to conduct on the Premises;

2.2.7 Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Premises;

2.2.8 Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Premises for any particular purpose (including, without limitation, the Permitted Use specified in Section 6.1);

2.2.9 Boundaries. The boundaries of the Premises, the location of any Improvements on the Land and/or the existence of any encroachments onto or from any adjacent lands;

2.2.10 Access. Access to the Premises, including from or through any particular route; and

2.2.11 Other Matters. Any matter whatsoever not referenced above that pertains to the Premises.

2.3 Release of Lessor. Lessee, on behalf of itself, its agents, directors, employees, Equity Interest holders, mortgagees, and officers, hereby waives, releases and forever discharges Lessor and its agents, directors, employees and officers of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any its agents, directors, employees, Equity Interest holders, mortgagees or officers now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic or condition of the Premises of the nature and type specified in Section 2.2.1 through Section 2.2.10; provided, however, that this release shall not cover, pertain to, or deem to release any claim of Lessee against Lessor for breach of this Lease.

ARTICLE 3:
TERM

3.1 Term. The terms and provisions of this Lease shall be effective as of the Commencement Date. The term of this Lease (the "**Term**") shall be approximately sixty-five (65) years commencing on the Commencement Date and terminating at 11:59 p.m. on _____, 20__ (the "**Scheduled Expiration Date**"), unless terminated sooner.

3.2 **Delivery of Possession**. Lessor shall deliver the Premises to Lessee on the Commencement Date.

3.3 **No Option to Extend; No Renewal**. Lessee shall have no right to extend or renew the Term. Upon expiration or earlier termination of this Lease, Lessor shall have no obligation to extend or renew this Lease, or to enter into a new lease with Lessee.

ARTICLE 4:
RENT

4.1 **Fixed Rent**. In addition to the up-front lump sum acquisition lease rent payment made by Lessee to Lessor, Lessee shall pay Lessor, without notice or demand, in lawful money of the United States of America, a net annual rental (the "**Fixed Rent**") of One and No/100 Dollars ($1.00). Fixed Rent shall be payable to Lessor in advance on each anniversary of the Commencement Date throughout the Term by good and sufficient check or by wire transfer, at such address as Lessor shall designate from time to time; except that Lessee shall have the option to pre-pay the Fixed Rent of $1.00 per year at any time during the Term.

4.2 **Additional Rent**. In addition to Fixed Rent, Lessee shall pay Lessor (or the appropriate third party, as applicable), as additional rent under this Lease: (a) all taxes (including Real Estate Taxes); (b) any and all charges and assessments of every description to which the Premises are now or may during the Term be subjected, whether assessed to or payable by Lessor or Lessee; and (c) any and all amounts payable by Lessee to Lessor pursuant to the terms of this Lease, except Fixed Rent (collectively, "**Additional Rent**"). Fixed Rent and Additional Rent are collectively referred to as "**Rent**" under this Lease. Except where this Lease provides otherwise, Lessee shall pay all Additional Rent within thirty (30) days after receipt of an invoice and reasonable backup documentation.

4.3 **No Offsets**. Lessee shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

ARTICLE 5:
ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES

5.1 **Net Lease**. This Lease shall constitute an absolutely "net" lease. Lessee shall pay as Additional Rent and discharge, before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or permitted Construction affecting, the Premises. Notwithstanding anything to the contrary in this Lease, Lessee need not pay, Lessee may offset against Rent any sums paid by Lessee on account of, and Lessor shall Indemnify Lessee against payment of, the following items payable, accrued, or incurred by Lessor: (a) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate; (b) consulting, overhead, accounting, tax preparation, other professional fees, legal and staff costs, and other costs incidental to Lessor's ownership of the Fee Estate and administration and monitoring of this Lease, including such costs Lessor incurs in reviewing anything Lessee delivers under this Lease or determining whether Lessee is in compliance with this Lease, except where this Lease expressly provides otherwise; (c) any costs or expenses that Lessor incurs in or for any litigation, except to the extent that this Lease requires Lessee to pay such costs or expenses; (d) any insurance premiums, utilities, operating expenses, or other costs related to the Premises that accrued before the Commencement Date; (e) any sums payable by Lessor under this Lease or expressly excluded from the definition of Real Estate Taxes; and (f) all other costs or expenses that, by their nature, are personal to Lessor or Lessor's ownership of the Fee Estate.

5.2 **Real Estate Taxes**. Lessee shall pay and discharge all Real Estate Taxes, if any, payable or accruing for all periods within the Term, before failure to pay creates a material risk to Lessor of forfeiture or penalty, subject however to Lessee's right of Contest as this Lease expressly provides. Lessee shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes. Lessee shall within a reasonable time after Notice from Lessor give Lessor reasonable proof that Lessee has paid any Real Estate Taxes that this Lease requires Lessee to pay. Lessee shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions. Lessee shall also have the right to apply for any applicable exemption from Real Estate Taxes applicable to the Premises.

5.3 **Assessments in Installments**. To the extent allowed by Law, Lessee may apply to have any assessment payable in installments. Upon approval of such application, Lessee shall pay and discharge only such installments as become due and payable during the Term.

5.4 **BID Decisions**. If any proposal is made to include the Premises in any BID (or to Modify the terms of any BID, including the amount or calculation of any required payments or assessments) and the owner of the Premises is entitled to vote in favor of or against such proposal, then Lessee shall decide how to vote, the parties shall cooperate to effectuate such decision, and Lessee shall have full power to represent the Premises in all matters regarding the BID, provided both that (a) at the time of determination no uncured Event of Default exists, and (b) the unexpired portion of the Term is no less than ten (10) years.

5.5 **Direct Payment by Lessor**. If any Additional Rent must be paid directly by Lessor, then: (a) Lessor shall Notify Lessee of such Additional Rent and the payee entitled thereto, such Notification constituting Lessee's authorization to make such payment, insofar as applicable, on behalf of Lessor, and (b) if the payee nevertheless refuses to accept payment from Lessee, then Lessee shall Notify Lessor and shall pay such amount to Lessor in a timely manner with reasonable instructions on remittance of such payment. Lessor shall with reasonable promptness comply with Lessee's reasonable instructions.

5.6 **Utilities**. Lessee shall arrange and pay directly, before the same become delinquent, for all fuel, gas, electricity, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Lessor shall have absolutely no liability or responsibility for the foregoing, provided that Lessor performs its obligations regarding any related Application.

5.7 **Excise Tax**. Lessee shall pay to Lessor, as Additional Rent, the State of Hawai`i general excise or surcharge tax on gross income, as the same may be amended, and all other similar taxes, surcharges, rates and/or charges imposed upon Lessor with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax, surcharge or the like, ***excluding*** federal, state or county net income taxes, imposed by any Government (collectively, the "**Excise Tax**"), such Excise Tax to be paid at the time and together with each payment of Fixed Rent and Additional Rent (which includes any and all charges required under this Lease to be made by Lessee to Lessor) to the extent they are subject to the Excise Tax. The Excise Tax due from Lessee shall be the amount which, when added to the applicable Rent due or other payment (whether actually or constructively received by Lessor), shall yield to Lessor (after deduction of all such tax payable by Lessor with respect to all such payments) a net amount which Lessor would have realized from such payment had no such tax been imposed. It is the intent of this Section 5.7 that Rent will be received by Lessor without diminution by any tax, assessment, charge, or levy of any nature whatsoever, except net income taxes imposed by any Government, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Notwithstanding the foregoing, Lessor confirms that the County is a political subdivision of the State, and, with respect to rental payments received on its rental properties, the County is not subject to any tax imposed by the State or the United States, including any gross receipts tax, sales tax, privilege tax, surcharge, or the like, and including specifically the State of Hawaii general excise tax.

5.8 **Conveyance Tax**. 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 resulting from any increase in Rent under this Lease and/or any renewal or extension of the Term), and for preparing, executing and/or filing when due such documentation as may be necessary or proper in connection therewith. If Lessor chooses, in its sole discretion, to collect said conveyance tax from Lessee and pay it to the tax authority on behalf of Lessee, Lessee shall promptly pay said conveyance tax to Lessor. At Lessor's request, Lessee shall promptly execute such affidavits and other documents as may be necessary or proper in connection with said conveyance tax. Lessee's obligations as aforesaid shall survive the expiration or earlier termination of this Lease.

5.9 **Taxes on Lessee's Business and Personal Property**. Lessee shall be responsible for and shall pay before delinquency all taxes assessed by any Government against Lessee by reason of the conduct of its business in the Premises or with respect to personal property of any kind owned by or placed in, upon or about the Premises by or at the expense of Lessee.

5.10 **Tax Exemptions**. Nothing contained herein shall prevent Lessee from applying for any exemptions which may be available to Lessee for its Real Estate Tax, Excise Tax, conveyance tax or other tax obligations; provided however, that it shall be Lessee's sole responsibility to apply for and maintain any such exemptions as and when required by Law. Any such exemptions are subject to all Laws applicable thereto.

5.11 **Lessor Expenses**. Lessee shall pay to Lessor, within ten (10) days after the date of mailing or personal delivery of statements, all reasonable costs and expenses, including attorneys' fees, paid or incurred by Lessor: (i) required to be paid by Lessee under any covenant in this Lease (including without limitation any indemnity provision), (ii) in enforcing any of Lessee's covenants or obligations in this Lease, (iii) in remedying any breach of this Lease by Lessee, (iv) in recovering possession of the Premises or any part of the Premises, (v) in collecting or causing to be paid any delinquent rent, taxes or other charges payable by Lessee under this Lease, (vi) in connection with any estoppel certificate requested by Lessee, or (vii) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All such costs, expenses and fees shall constitute Additional Rent, and Lessee's obligations under this Section 5.11 shall survive the expiration or earlier termination of the Term.

ARTICLE 6:
USE

6.1 **Permitted Use**. [See Addendum.]

6.2 **Prohibited Uses**. Lessee shall not cause, maintain or permit any waste or nuisance to exist on, in or about the Premises. Lessee shall not do or permit anything to be done in or about the Premises which will in any way damage the Premises, or use or allow the Premises to be used for any improper, offensive or unlawful purpose.

6.3 **Exclusive Control**. Except as otherwise expressly provided in this Lease, Lessee shall have exclusive control, use, and management of the Premises. Subject to any applicable Laws, Lessee may enter into, terminate, or Modify any existing or future contract for management or operation of the Premises or provision of services to the Premises (provided that as to contracts existing as of the Commencement Date, any such termination or Modification is done in conformity with the terms of such contracts). Lessee shall Indemnify Lessor for any such cancellation or termination. All such contracts shall expire automatically on or before the Scheduled Expiration Date, except for contracts entered into in the ordinary course of maintenance and operation of the Premises, which shall expire no later than one (1) year after the Scheduled Expiration Date.

6.4 Compliance with Laws. Lessee shall not use the Premises, or do anything or suffer anything to be done in or about the Premises that will in any way conflict with any Laws applicable to the use, condition or occupancy of the Premises. At its sole cost and expense, Lessee shall, in all material respects and subject to Lessee's right of Contest, promptly comply with all such applicable Laws. 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 Commencement Date or thereafter. Lessee's obligations under this Section 6.4 shall include the obligation that Lessee, at its sole cost and 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 Lessee's or its Lessees' use of the Premises or any part of the Premises, whether located on the Premises or on other property.

6.5 Copies of Notices. Lessor shall promptly give Lessee and Lessee shall promptly give Lessor a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Lessor receives from any Government, utility company or insurance carrier affecting the Premises.

6.6 Entitlements. Lessee shall maintain in full force and effect all entitlements and permits necessary for the Permitted Use specified in Section 6.1.

6.7 Illegal Activities. Upon Lessor's receipt of actual notice or if Lessor, in its reasonable business judgment, believes or suspects 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 Government, Lessor may Notify Lessee, and Lessor may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. In such circumstances, Lessor shall have the right to conduct an investigation, including, without limitation, the right of entry to the Premises and a review of Lessee's records. For any entry onto the Premises, Lessor shall (a) provide Lessee oral or written notice prior to such entry, unless it is an emergency, (b) meet with Lessee's property manager and/or designated representative, or if neither is present, the individual who is physically present at the Premises on the day of the entry and claims to be Lessee's representative, and (c) have such property manager or representative accompany Lessor during its entry. If such investigation yields any evidence of any illegal activity on the Premises, Lessor may immediately Notify Lessee and Lessor may immediately take all reasonable and appropriate action as may be necessary to stop such illegal activity. If Lessee unreasonably refuses to commence any action to stop such illegal activity within forty-eight (48) hours of receipt of such notice from Lessor, such failure or refusal shall constitute an Event of Default. By having the right to take certain actions in this Section 6.7, Lessor is neither obligated nor required to take any such action, and shall not be liable to Lessee, any Person or any Government if Lessor does not exercise such right.

6.8 Public Accommodations Laws. 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, and to take such actions and make such alterations or reasonable accommodations as are necessary for such compliance. If Lessee concludes that the Premises are not in compliance with Public Accommodations Laws as of the Commencement Date, or that the Premises thereafter fail to comply with Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within one hundred twenty (120) days of the Commencement Date or the date of such subsequent noncompliance. 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, and to the terms and conditions of Article 7 and Article 8 as applicable.

ARTICLE 7:
MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS

7.1 **Obligation to Maintain**. Lessee, at its sole cost and expense, shall keep and maintain the Premises in good order, condition and repair at all times during the Term (which obligation shall include all structural and non-structural, and capital and non-capital, repairs and replacements including, without limitation, plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises). 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 projects. Lessee shall cause the Improvements to be inspected periodically by qualified Persons to be certain the repair, maintenance and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied (including for purposes of ascertaining and curing infestation of the Improvements by termites, rodents and other pests). Lessee shall thereafter take all measures that may be reasonably required to prevent or cure any discovered repair, maintenance and/or replacement item.

7.2 **Capital Improvement Obligations**. [See Addendum.]

7.3 **Enhanced Improvements**. Notwithstanding the standard of care set forth and required of Lessee pursuant to the terms of this Lease, Lessee acknowledges and agrees that Lessor, as the owner of the Fee Estate, has a reasonable basis for determining that the Premises should be maintained or improved at a level in excess of that required under this Lease. As an example, Lessor may deem it prudent to replace an improvement that can be repaired, but which is nearing the end of its useful life, because the replacement item will have a useful life that extends beyond the Term. Therefore, to the extent Lessor shall elect, at Lessor's sole option, to cause the Premises, or any portion thereof, to be maintained or to cause replacements to occur at a level in excess of that required under this Lease (such improvements required by Lessor, but not otherwise required of Lessee hereunder, to be referred to herein as "**Enhanced Improvements**"), then (a) Lessee shall permit Lessor to enter upon the Premises to perform such Enhanced Improvements, at a time and in a manner that will not unreasonably disrupt Lessee's operation and use of the Premises, and (b) Lessor shall undertake such Enhanced Improvements, and Lessee shall pay to Lessor the cost of the improvements required of Lessee under this Lease and Lessor shall be responsible for the incremental additional costs of the Enhanced Improvements in excess of that which would otherwise have been required under this Lease but for this Section 7.3. Notwithstanding the foregoing, Lessor shall not be entitled or authorized to make any Enhanced Improvements if the same would constitute or trigger a violation of any Leasehold Mortgage or regulatory agreement with any Leasehold Mortgagee or Government or otherwise cause the invalidation, recapture, or diminution of any tax benefits available to Lessee with respect to the Premises.

ARTICLE 8:
CONSTRUCTION

8.1 **General**. Lessee shall comply with all of the terms of this Article 8 in connection with all Construction affecting the Premises (including, without limitation, any existing and new Improvements, alterations, any capital improvements to the Premises, restoration after a casualty or condemnation, and those required to comply with applicable Laws or otherwise required under this Lease).

8.1.1 Notice to Lessor. Lessor's consent shall not be required in connection with any Major Construction (except for any consents, approvals and/or permits as applicable Law may require from Lessor in its governmental capacity), but Lessee shall Notify Lessor (with a copy to the Director of the Department of Budget and Fiscal Services) in writing not less than sixty (60) days prior to the commencement thereof. Such Notice shall include a written estimate of the total cost of the Major

Construction to be undertaken, and a written list of the name and address of each architect, consultant, general contractor, subcontractor and materialman that Lessee has retained or will retain, along with each such entity's applicable business license number. Upon written request by Lessor, Lessee shall provide to Lessor copies of any design, consulting or construction contract entered into by Lessee in connection with such Major Construction.

8.1.2 Bonding. Lessee shall deposit with Lessor certificates or other satisfactory evidence that the general contractor has procured one or more bonds for a total amount not less than one hundred percent (100%) of the total construction cost of any Major Construction, naming Lessor and Lessee as co-obligees, in form and content and with a surety or sureties satisfactory to Lessor, guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen.

8.1.3 Minor Construction. Lessor's consent shall not be required for Minor Construction (except for any consents, approval and/or permits as applicable Law may require from Lessor in its governmental capacity); provided, however, that all contractors and subcontractors performing Minor Construction shall be licensed.

8.2 Manner of Construction. All Construction shall be diligently and continuously pursued from the commencement thereof through completion, and shall be performed in a good and workmanlike manner, strictly in conformance with any and all Laws, and in accordance with any approved plans and specifications.

8.3 Permits. Lessee shall be responsible for obtaining, at its sole cost and expense, all Approvals required for any Construction, and for any issuance or re-issuance of all certificates of occupancy or equivalent permits required by Law for the use and occupancy of the Premises. Notwithstanding the foregoing, Lessee shall apply for and prosecute any required Government review process for a general plan amendment or rezoning only through and in the name of Lessor, or otherwise with the approval of Lessor.

8.4 Applications. Upon Lessee's request, Lessor shall, without cost to Lessor, promptly join in and execute any Application as Lessee reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Lessor; and (b) no uncured Event of Default exists;. Promptly upon Lessee's request and without charge (except reimbursement of Lessor's reasonable out-of-pocket third party costs and expenses), Lessor shall furnish all information in its possession that Lessee reasonably requests for any Application.

8.5 Completion. Upon substantial completion of any Construction: (a) Lessee shall properly publish and file a "Notice of Completion" in the Office of the Clerk of the Circuit Court of the State of Hawai`i in the circuit where the Premises are located, a certified "filed" stamped copy of which shall be provided by Lessee to Lessor, (b) Lessee shall comply with any other applicable requirements of Law with respect to the completion of works of improvement, and (c) Lessee's architect shall deliver to Lessor a certificate setting forth the total cost of such construction and, if the Construction is Major Construction, certifying that the Construction has been completed in compliance with the approved plans and specifications for such work. In addition, Lessee shall deliver to Lessor a reproducible copy of the "as built" drawings of all Construction as well as all Approvals and other Government documents, if any, issued in connection with such Construction.

8.6 Construction Insurance. In addition to the requirements of Article 12, prior to commencing any Major Construction, Lessee shall provide Lessor with evidence that Lessee carries "Builder's All Risk" insurance covering the construction, including vandalism and malicious mischief, covering all Improvements in place on the Premises, all materials and equipment stored at the Premises and furnished under contract, and all materials and equipment that are in the process of fabrication at the

premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Construction. All Construction shall be insured by Lessee pursuant to Article 12 immediately upon completion thereof.

8.7 **Ownership**. All improvements from Construction that may be installed or placed in or about the Premises shall be deemed to become an integral part of the Premises and shall not be removed from the Premises except as otherwise permitted by this Lease. Upon the expiration or earlier termination of this Lease, all the then existing improvements shall revert to Lessor without compensation or payment of any kind to, or requirement of consent or other act of Lessee, without the necessity of executing a deed, bill of sale, conveyance or other act or agreement of Lessee. If requested by Lessor, Lessee shall, without charge to Lessor, execute, acknowledge and deliver to Lessor appropriate documentation (in form and content satisfactory to Lessor) which acknowledges and confirms that Lessor retains all of right, title and interest in and to the then existing Improvements as of the expiration or earlier termination of this Lease.

8.8 **Inspection**. During and upon completion of any Construction, Lessor and its agents may inspect the Improvements and all work and materials as rendered and installed. Lessee shall keep copies of all plans, shop drawings and specifications relating to any Construction and permit Lessor and its representatives to examine the Construction at all reasonable times or, in the alternative, Lessee shall furnish Lessor with copies of such plans, drawings and specifications.

8.9 **Lessee's Covenant**. Lessee covenants to keep the Premises free from all Prohibited Liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Lessee shall remove any Prohibited Liens by bond or otherwise within twenty (20) days after Lessee is informed of the existence of such lien or encumbrance, and if Lessee shall fail to do so, Lessor may pay the amount necessary to remove such Prohibited Liens, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Lessor under this Lease. **Nothing contained in this Lease shall be deemed or construed in an way to constitute Lessor's consent or request, express or implied, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any Construction, nor as giving Lessee any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Fee Estate, and Lessee shall Indemnify Lessor harmless from and against any and all liabilities arising out of same or in connection therewith.**

8.10 **Title Encumbrances**. Lessee shall keep the Fee Estate free from any encumbrances against title, and shall not record or permit the recordation of any lien, encumbrance, easement, memorandum of Sublease or other document that affects the record title to the Fee Estate without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessee shall cause any recorded title encumbrances arising during the Term (other than those caused to be recorded by Lessor), which are consented to in writing by Lessor, to be released as of the ***earlier*** of (a) the date each individual encumbrance ceases to be valid (e.g., as of the expiration of a Sublease for which there is a recorded memorandum), and (b) the date this Lease expires or earlier terminates. Lessee shall cause any recorded title encumbrances on the Fee Estate arising during the Term (other than those caused to be recorded by Lessor), which are not consented to in writing by Lessor, to be cleared immediately, and in any event, within thirty (30) days of a written demand by Lessor, except as otherwise provided in Section 8.9. During the Term, Lessor shall not encumber the Premises or Lessee's leasehold interest therein.

8.11 **Lease Termination**. If this Lease expires or is terminated prior to the completion of any Construction, Lessee shall, at Lessor's option and at Lessee's sole expense, either (a) promptly complete such construction, or (b) remove all such partially completed improvements, construction materials, equipment and other items from the Premises and restore the Premises to their pre-Construction condition.

ARTICLE 9:
HAZARDOUS SUBSTANCES

9.1 **Restrictions**. Lessee shall not cause and shall use Lessee's best efforts not to permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Laws; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the Premises in accordance with customary standards in such business, or to operate and maintain the Premises for uses this Lease permits and (ii) in compliance with all Environmental Laws.

9.2 **Compliance; Clean-Up**. Lessee shall, at Lessee's sole expense: (a) comply with Environmental Laws and, to the extent Environmental Laws require, clean up any Hazardous Substances Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify Lessor against any Hazardous Substances Discharge or violation of Environmental Law. Any party's obligations under this Section 9.2 shall not limit such party's rights against third parties.

9.3 **Surrender Obligations**. At the expiration or earlier termination of the Term, Lessee, at Lessee's sole expense, shall cause all Hazardous Substances to be removed from the Premises and disposed of in accordance with all Environmental Laws and as necessary to allow the Premises to be used for the uses permitted under this Lease in accordance with Section 6.1, and cause to be repaired any damage to the Premises caused by such removal.

9.4 **Copies of Environmental Reports**. Within thirty (30) days of receipt thereof, Lessee shall provide Lessor with a copy of any and all environmental assessments, audits, studies and reports regarding Lessee's activities with respect to the Premises, or ground water beneath the Land, or the environmental condition or any clean-up thereof. Lessee shall be obligated to provide Lessor with a copy of such materials without regard to whether such materials are generated by Lessee or prepared for Lessee, or how Lessee comes into possession of such materials.

9.5 **Survival**. Each covenant, agreement, representation, warranty and indemnification made by Lessee set forth in this Article 9 shall survive the expiration or earlier termination of this Lease and shall remain effective until all of Lessee's obligations under this Article 9 have been performed and satisfied.

9.6 **Discharges before Commencement**. Lessee agrees to accept the Premises in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition as described in Section 2.2, but Lessee shall have no responsibility to clean up or remediate any Hazardous Substances Discharge occurring prior to the Commencement Date and, as between Lessor and Lessee, the same shall continue to be Lessor's sole responsibility.

ARTICLE 10:
INDEMNIFICATION; LIABILITY OF LESSOR

10.1 **Obligations**. Lessee shall Indemnify Lessor against any: (a) wrongful act, wrongful omission, or negligence of Lessee (and anyone claiming by or through Lessee) or its or their partners, members, directors, officers, or employees; (b) breach or default by Lessee under this Lease; or (c) breach of any representation or warranty Lessee makes in this Lease. In addition, Lessee shall Indemnify Lessor against the following during the Term and so long as Lessee remains in possession after the Expiration Date: (i) any Contest Lessee initiates; (ii) any Application made at Lessee's request; (iii) the use, occupancy, control, management, operation, and possession of the Premises; (iv) any Construction and any agreements that Lessee (or anyone claiming through Lessee) makes for any Construction; (v) the condition of the Premises; and (vi) any accident, injury or damage whatsoever caused to any person in or on the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall not be required to Indemnify Lessor regarding Lessor's intentional acts or omissions or negligence.

10.2 **Liability of Lessor**. During the Term: (a) Lessee is and shall be in exclusive control and possession of the Premises; and (b) Lessor shall not be liable for any injury or damage to any property (of Lessee or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Lessor's willful misconduct or gross negligence. Lessor's right to enter and inspect the Premises is intended solely to allow Lessor to ascertain whether Lessee is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Lessor any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Lessor from or against any liability of Lessor: (i) to third parties existing at or before the Commencement Date; or (ii) arising from Lessor's willful misconduct or gross negligence.

10.3 **Indemnification Procedures**. Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

10.3.1 Prompt Notice. Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

10.3.2 Selection of Counsel. Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

10.3.3 Cooperation. At Indemnitor's request, Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

10.3.4 Settlement. Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (b) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) Indemnitee's interest in the Premises is not jeopardized in any way.

10.3.5 Insurance Proceeds. Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

ARTICLE 11:
RIGHT OF CONTEST

11.1 **Lessee's Right; Contest Conditions**. Notwithstanding anything to the contrary in this Lease, Lessee shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Lessee to Indemnify Lessor (any of the foregoing, a "**Contest**"). Lessee may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Lessee causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

11.1.1 No Criminal Act. Such deferral or noncompliance shall not constitute a criminal act by Lessor or subject Lessor to a material risk of any fine or penalty, except civil penalties for which Lessee has given Lessor a bond, letter of credit, or other security reasonably satisfactory to Lessor (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties.

11.1.2 No Liability. Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Lessee has given Lessor Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability, and such Contest Security otherwise is acceptable to Lessor.

11.1.3 [Reserved.]

11.1.4 No Forfeiture. Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

11.1.5 No Cost to Lessor. Such Contest shall be without cost, liability, or expense to Lessor.

11.1.6 Diligence. Lessee shall prosecute such Contest with reasonable diligence and in good faith.

11.1.7 Payment. If required for such Contest, Lessee shall have paid the Real Estate Taxes or other matter subject to the Contest.

11.1.8 Collection of Real Estate Taxes. If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Lessor and the Fee Estate.

11.1.9 No Event of Default. No uncured Event of Default shall exist under this Lease at the time of such Contest.

11.1.10 Named Parties. If Lessor has been named as a party in any action, then Lessee shall cause Lessor to be removed as such party and Lessee substituted in Lessor's place, if practicable and permissible under the circumstances.

11.2 **Lessor Obligations and Protections**. Lessor need not join in any Contest unless Lessee has complied with the Contest Conditions, and such Contest must be initiated or prosecuted in Lessor's name. In such case, Lessor shall cooperate, as Lessee reasonably requests, to permit the Contest to be prosecuted in Lessor's name. Lessor shall give Lessee any documents, deliveries, and information in Lessor's control and reasonably necessary for Lessee to prosecute its Contest. Lessor shall otherwise assist Lessee in such Contest as Lessee reasonably requires. Lessee shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Lessee shall, at Lessor's request, advance (when

Lessor incurs them) such reasonable costs and expenses as Lessor incurs or reasonably anticipates incurring, for Lessee's Contest and Lessor's assistance with such Contest.

11.3 **Miscellaneous**. Lessee shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Lessee), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Lessee concludes Lessee's Contest of any Real Estate Taxes, Lessee shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Lessee's Contest of a Law, Lessee shall comply with such final determination. So long as the Contest Conditions remain satisfied, Lessor (in its role as owner, and not in its role as Government authority) shall enter no objection to any Contest. Lessor may contest any matter for which Lessee is entitled to (but does not) prosecute a Contest, but only if: (a) Lessor Notifies Lessee of Lessor's intention to do so; (b) Lessee fails to commence such Contest within ten (10) days after receipt of such Notice; and (c) Lessor's contest complies with all conditions and covenants that would apply to a Contest by Lessee, including Section 11.4, transposing references to the parties and their interests as appropriate.

11.4 **Contest Security**. Lessor shall promptly release any Contest Security to Lessee after the Contest has been resolved and Lessee has performed its obligations, if any, as determined by such resolution. Lessor shall hold any Contest Security in the same manner as the Security.

ARTICLE 12:
INSURANCE

12.1 **Lessee's Insurance**. At all times during the Term, Lessee shall procure and maintain, at Lessee's sole expense, any and all insurance that may be required by any Laws as they may pertain to Lessee's operations at the Premises, as well as the following policies of insurance in the following amounts:

12.1.1 Liability Insurance. Liability Insurance with limits of liability not less than $2,000,000 per occurrence, with a $4,000,000 per location aggregate.

12.1.2 Property Insurance. Property Insurance covering (a) all Improvements (including, without limitation, all alterations), (b) all Building Equipment, and (c) all other items of Lessee's property on the Premises installed by, for, or at the expense of Lessee. If available at commercially reasonable premium amounts, Property Insurance shall also include rental or business interruption insurance in an amount at least equal to annual Rent. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance, and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, flood, hurricane, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, explosion, and such other hazards or risks which a prudent business person would insure against (including property coverage for damage caused by war or military action, if available). The deductible/self-insured retention shall not exceed $250,000 per occurrence without Lessor's written consent except for wind or hurricane which may contain a greater deductible consistent with insurance contracts and products generally available in the market and used by owners of similarly situated properties.

12.1.3 Boiler and Machinery Insurance. Boiler and Machinery insurance, including mechanical breakdown, covering rooftop HVAC units and any separate heating units or boilers which serve the Premises. Such coverage shall be for the full replacement value without deduction for depreciation.

12.2 Nature of Insurance Program. All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A-, VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State of Hawai`i. Lessee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

12.3 Policy Requirements and Endorsements. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

12.3.1 Insureds. Liability Insurance policies shall identify Lessor as an "additional insured". Property Insurance policies shall name Lessor and Lessee as loss payees as their respective interests may appear, and each mortgagee this Lease allows under a standard noncontributing mortgagee clause. Notwithstanding anything to the contrary, all Property Insurance Proceeds shall be paid and applied as this Lease provides. On all insurance policies where Lessor is named as an additional insured, Lessor shall be an additional insured to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required under this Lease.

12.3.2 Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that Lessor may carry.

12.3.3 Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for Lessee's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Lessee's failure to obtain such contractual liability coverage shall not relieve Lessee from any indemnity obligation under this Lease.

12.3.4 Severability of Interest. Liability Insurance policies shall contain a clause clarifying that, except with respect to coverage limits, the insurance applies separately to each insured and that the policy covers claims or suits by one insured against other, to the extent customarily covered by liability insurance policies.

12.3.5 Notice to Lessor. All policies required hereunder shall be written to provide not less than sixty (60) days prior Notice of cancellation to Lessee, except for non-payment of premium, and Lessee shall then notify Lessor within ten (10) calendar days of receipt of such Notice of cancellation.

12.4 Deliveries to Lessor. On the Commencement Date, Lessee shall deliver to Lessor certificates of insurance evidencing Lessee's maintenance of all Liability Insurance and Property Insurance this Lease requires.

12.5 Waiver of Certain Claims. Notwithstanding anything to the contrary contained in this Lease, Lessee and Lessor each waive any right of recovery against the other party and against any other party maintaining a policy of Property Insurance with respect to this Lease or the Premises, for any loss or damage sustained by Lessee or Lessor, as the case may be, that is covered by any policy of Property Insurance maintained (or required to be maintained under this Lease) with respect to the Premises, or the contents of the same or any operation in the Premises, whether or not such loss is caused by the fault or negligence of Lessor or its agents, directors, employees or officers, or is caused by the fault or negligence of Lessee or its agents, directors, employees or officers. If Lessee's policy of insurance relating to this Lease or to the Premises does not permit the foregoing waiver or if the coverage under such policy would be invalidated as a result of such waiver, Lessee shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against Lessor in connection with any claim, loss or damage covered by such policy.

12.6 **Additional Insurance**. Lessee shall periodically, but not less frequently than once every three (3) years, reevaluate the scope of risks covered and the limits of its insurance and, if commercially reasonable, increase such coverage or limits in order to provide coverage for Lessee's and Lessor's protection for risks and limits that a prudent business person would provide for property being put to uses similar to those of the Premises. Notwithstanding the foregoing, every ten (10) years during the Term, Lessee shall automatically be required to increase the Liability Insurance coverages carried by Lessee under this Lease by the percentage increase in the Consumer Price Index over the same period of time.

12.7 **No Representation**. Lessor makes no representation that the limits of liability required to be carried by Lessee pursuant to this Article 12 are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee shall obtain such additional insurance coverage as Lessee deems adequate, at Lessee's sole expense. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

ARTICLE 13:
LOSSES AND LOSS PROCEEDS

13.1 **Notice**. If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

13.2 **Effect of Casualty**. If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Lessee shall Restore with reasonable promptness regardless of cost or the amount of Property Insurance Proceeds (Lessee shall make up any deficiency in Property Insurance Proceeds with its own funds). If, however, the Casualty is a Substantial Casualty, then Lessee may, by Notice to Lessor, given within thirty (30) days after the Casualty occurs, terminate this Lease effective thirty (30) days after such Notice. In the event that Lessee elects to terminate the Lease pursuant to this Section 13.2, the Property Insurance Proceeds shall be disbursed in the following order of priority (a) first, to Lessee (subject to the rights of any Leasehold Mortgagees) up to the Market Value of the Leasehold Estate as of the date of the Casualty, (b) second, to the extent, if any, of any remaining Property Insurance Proceeds, to Lessor up to the Market Value of the Fee Estate as of the date of the Casualty, and (c) finally, to the extent, if any, of any remaining Property Insurance Proceeds, to Lessee (subject to the rights of any Leasehold Mortgagees) and Lessor, respectively, in the proportion that the duration of the Term remaining at the date of the Casualty (determined as if the Term were to continue until the Scheduled Expiration Date) bears to the duration of the full initial Term.

13.3 **Adjustment of Claims; Use of Property Insurance Proceeds**. Unless Lessee has validly elected a Casualty Termination, Lessee shall have the sole right and authority to adjust any insurance claim, subject to rights of any Leasehold Mortgagee. The Property Insurance Proceeds shall be disbursed: (a) in the case of an Immaterial Loss, to Lessee, to be held in trust to be applied first for Restoration; and (b) in the case of any other Casualty, to Depository, to be released in installments for Restoration. To obtain each such disbursement, Lessee shall deliver to Depository:

13.3.1 Architect's Certificate. A certificate of Lessee's licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons for Restoration; (b) Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise satisfactorily; (c) the sum being requested does not exceed the amount then due and payable; (d) except in the case of the final disbursement of Restoration Funds, the remaining Restoration Funds after disbursement are reasonably anticipated to suffice to pay for the remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Lessee has substantially completed Restoration and obtained a

temporary certificate of occupancy for the Restoration to the extent required by Law, and delivered (or simultaneously delivers in exchange for payment) final lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration;

13.3.2 Lien Waivers. Progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement; and

13.3.3 Other. Such other documents, deliveries, certificates and information as Depository reasonably requires.

13.4 Substantial Condemnation. If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be paid in the following order of priority: (a) first, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive such portion of the Condemnation Award up to the Market Value of the Leasehold Estate at the Condemnation Effective Date, (b) second, Lessor shall receive such portion of the remaining Condemnation Award up to the Market Value of the Fee Estate at the Condemnation Effective Date, and (c) third, to the extent of any remaining Condemnation Award, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive the remaining balance of the Condemnation Award.

13.5 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to Depository to be applied first for Restoration in the same manner as Property Insurance Proceeds. Whether or not the Condemnation Award is adequate, Lessee shall, at its expense, Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be distributed in the same manner as if it arose from a Substantial Condemnation that affected only the part of the Premises taken.

13.6 Temporary Condemnation. A Temporary Condemnation shall not terminate this Lease or excuse Lessee from full performance of its covenants or any other obligations hereunder capable of performance by Lessee during the period of such Temporary Condemnation, but in such case Lessee shall receive any Condemnation Award for the Temporary Condemnation (to the extent applicable to periods within the Term).

13.7 Immaterial Loss. If an Immaterial Loss occurs, then Lessee shall receive any Condemnation Award in trust to be applied first to Restoration. Lessee shall Restore in accordance with this Lease. After Restoration, Lessor shall receive any remaining Condemnation Award.

13.8 Surrender. If Lessee has the right to terminate this Lease as a result of a Condemnation, Lessee shall do so by delivering written notice of such termination to Lessor within sixty (60) days after the Condemnation Effective Date. Lessee shall surrender the Premises in accordance with the applicable surrender provisions of Article 23, and Lessor and Lessee shall thereafter be relieved of any further obligation under this Lease.

ARTICLE 14:
LESSOR'S RESERVED RIGHTS

14.1 Inspections. Notwithstanding anything to the contrary in this Lease, Lessor and its agents, representatives, and designees may enter the Premises upon reasonable Notice (except in the case of an emergency) during regular business hours, to: (a) ascertain whether Lessee is complying with this Lease (including the review of Lessee's records, contracts and/or Subleases pertaining to the Premises); (b) cure Lessee's Defaults, in accordance with this Lease; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Lessor determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge;

(e) post notices of non-responsibility; or (f) as reasonably required in connection with any sale, financing, survey, re-entitlements, equity placements, or for other reasonable purposes determined by Lessor. In entering the Premises, Lessor and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Lessee's reasonable instructions.

14.2 **Other Entries by Lessor**. In addition to Lessor's rights under Section 14.1, Lessor may enter the Premises at any time (a) to take possession due to any breach of this Lease in the manner provided herein; and (b) to perform any covenants of Lessee that Lessee fails to perform (subject to any applicable notice and cure periods). Lessor may make any such entries hereunder without abatement of Rent, and may take such reasonable steps as required to accomplish the stated purposes. In an emergency, Lessor shall have the right to use any means that Lessor reasonably deems proper to open the doors to the Improvements. Any entry into the Premises by Lessor in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Lessee from any portion of the Premises. No provision of this Lease shall be construed as obligating Lessor to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Lessor herein.

14.3 **Water, Oil, Gas and Mineral Rights**. Subject to applicable Laws, Lessor reserves to itself the sole and exclusive right to all water, oil, gas, or other hydrocarbon or mineral substances and accompanying fluids, including all geothermal resources, from the Land; but Lessor shall not undertake any extraction of such resources during the Term.

14.4 **Easements**.

14.4.1 Lessor's Right to Grant Licenses, Permits, Encroachments and Easements. Lessor shall have the right, without payment to or charge from Lessee, to reserve to itself and to grant licenses, permits, encroachments or easements (collectively, "**Easements**") to any Person or Government on, over, under, across and through the Premises, to the extent such Easements are deemed by Lessor to be necessary or convenient for the construction, installation, operation, maintenance, repair and replacement of (a) improvements, (b) underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, (c) rights of way, curbs, pavements and other roadway improvements, and (d) landscaping, whether serving the Premises or other properties of Lessor or any other Person or Government. The terms and conditions of the grants of such Easements shall be subject to the approval of Lessee, which approval shall not be unreasonably withheld.

14.4.2 Limitations on Lessor's Rights. Notwithstanding anything contained in above, Lessor may only grant or relocate Easements if taking such action will not have a material adverse effect on the design or use of Improvements planned for or existing on the Premises. Further, Lessor shall (or shall cause the grantee of such Easements to): (a) be responsible for payment of all costs in connection with the granting of such Easements and the construction, installation and restoration work in connection therewith; (b) carry out and coordinate such work with Lessee so as to minimize disruption with Lessee's use of the Premises; and (c) following any work in the area of any Easement, restore the Premises to substantially the same condition as existed prior to such work.

14.5 **Development**. Lessee agrees that it will reasonably cooperate with Lessor in the event Lessor desires to develop other properties owned by Lessor in the vicinity of the Premises; provided that such cooperation has no material adverse effect on the Premises or Lessee's use of the Premises.

14.6 **Entitlement Rights**. If the Improvements do not reach or utilize the maximum entitlement rights permitted by Law (including, without limitation, rights with respect to height, air rights or density), whether as of the Commencement Date or thereafter, then Lessee shall have the exclusive right to claim any such rights or credits, which rights or credits may be utilized only in the development of the Premises or other

lands or property leased to Lessee or its Affiliate by Lessor and in a manner that is consistent with the uses of the lands or property to which such rights or credits are transferred.

14.7 **No Light or Air Easement**. Any diminution or shutting off of light or air by any structure now existing or hereafter erected by or on behalf of Lessor or Lessor's Affiliate on lands adjacent to the Premises shall in no way affect this Lease, shall not constitute a constructive eviction or grounds for reduction or abatement of Rent, or otherwise impose any liability on Lessor.

14.8 **Provision Respecting Certain Concessions**. If there is any judicial determination, a binding arbitration determination, or a determination made as part of a judicially-approved settlement that the Premises are subject to Hawai'i Revised Statutes §102-14, and Lessee is required as a result thereof to grant any concessions or rights to operate vending machines in any part of the Premises, Lessor shall indemnify and hold harmless Lessee from and against (i) all revenues lost over the remaining Term of the Lease that would, but for Lessee's granting of the aforesaid concessions or rights, otherwise have been realized by Lessee; and (ii) any liability, cost, damage, and expense (including, without limitation, attorneys' fees and costs) that Lessee incurs in connection with any claims made against Lessee or any proceedings under Hawai`i Revised Statutes § 102-14 to which Lessee is made a party as a result of its operation of the Premises.

14.9 **Project Name**. Lessee agrees that it will not change the name by which the project is known or identified without the prior written approval of Lessor.

14.10 **General**. In addition to Lessor's right, title and interest as the fee owner in the Land, Lessor also shall have such rights as it may have as grantee, benefitted party or other party other than the fee owner of the Land under any grants of easement, covenants, restrictions, Land Court orders, and other recorded instruments or maps encumbering or affecting the Land (for example and not by way of limitation, rights of Lessor as grantee under sewer or drainage easements on, through or under the Land).

ARTICLE 15:
LESSOR'S TRANSFERS

15.1 **Transfer of Lessor's Interest**. Lessee acknowledges that Lessor has the right to Transfer the Fee Estate in accordance with Section 15.3. Lessee agrees that in the event of any such Transfer, (a) Lessee shall look solely to such transferee for the performance of Lessor's obligations under this Lease after the date of Transfer, and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Lessor after the date of Transfer; and (b) Lessee shall attorn to such transferee. Lessee hereby agrees to cooperate, at no cost to Lessee, with Lessor in connection with any Transfer.

15.2 **Release of Lessor**. Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor automatically shall be freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Lessor after the Transfer, provided that such successor Lessor assumes Lessor's present and future obligations under this Lease. This Lease shall bind Lessor only while Lessor owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

15.3 **No Right of First Refusal/No Option to Purchase**. If Lessor desires to Transfer the Fee Estate during the Term, it shall do so in full compliance with all Laws governing the County's sale of real property including, if applicable, an RFP or other public bidding process. Lessor shall give Lessee written notice of Lessor's intent to Transfer the Fee Estate at least thirty (30) days prior to issuing such RFP or commencing such public bidding process. Lessee understands and agrees that nothing in this Lease grants Lessee an option or right of first refusal to purchase the Fee Estate from Lessor.

ARTICLE 16:
REGULATORY AGREEMENT

[See Addendum]

ARTICLE 17:
LESSEE'S TRANSFERS

17.1 **Lessee's Transfer Right**. Except as provided in Article 18, (see Addendum) and Article 19, Lessee shall not Transfer this Lease or the Leasehold Estate, whether or not to an Affiliate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees, however, that it shall be conclusively presumed to be reasonable for Lessor to withhold its consent unless the following have occurred: (A) Lessor's receipt of reasonably satisfactory evidence that: (a) Lessee is not in Default under this Lease or, if Lessee is in Default, that the transferee undertakes to cure any such Default to the reasonable satisfaction of Lessor; (b) the continued operation of the Premises after the Transfer shall comply with the provisions of this Lease; (c) the transferee has the financial capability and resources to operate and maintain the Premises as required by this Lease; (d) either (i) the transferee or its property manager has the experience, reputation, managerial and operational skills to operate and maintain the Premises, (ii) the transferee agrees to retain a property manager with the skills, experience and record described in clause (i) above, effective as of the date of the Transfer, or (iii) the transferor Lessee or its or its property manager will continue to manage the Premises, or another property management company reasonably acceptable to Lessor will manage the Premises, for at least one year following the Transfer; and (e) the transferee is not delinquent in any tax payments and does not have pending against it any charges of, and does not have a record of, material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any applicable local, state or federal regulatory agencies; (B) the execution by the transferee and delivery to Lessor of an assignment document specifically stating that the Transfer is made subject to all terms, covenants and conditions of this Lease, and all such terms, covenants, and conditions in such documents shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer, and delivery to Lessor of an opinion of the transferee's counsel to the effect that each such document and this Lease are valid, binding and enforceable obligations of the transferee, subject only to Bankruptcy Law and other standard limitations affecting creditor's rights; and (C) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee in connection with this Lease. It is hereby expressly stipulated and agreed that any Transfer in violation of this Section 17.1 shall be null, void and without effect, shall cause a reversion of title to Lessee, and shall be ineffective to relieve Lessee of its obligations under this Lease. The written consent of Lessor to any Transfer of this Lease or the Leasehold Estate shall constitute conclusive evidence that the Transfer is not in violation of this Section 17.1. Upon any Transfer by Lessee that complies with this Lease, Lessee shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee except for: (x) any obligation to hold and apply Restoration Funds held by Lessee at the date of the Transfer (unless transferred to the transferee); (y) any unperformed obligations that arose or accrued prior to such Transfer and all Legal Costs of any proceeding relating thereto commenced before such Transfer for which the transferor is liable hereunder (unless specifically assumed in writing by the transferee); and (z) any indemnity obligation under this Lease (unless specifically assumed in writing by the transferee). Lessee shall pay all transfer and other taxes, if any, payable on account of any Transfer by Lessee or any holder of any Equity Interest in Lessee.

17.2 **No Partial Transfers**. Except in the case of a Sublease permitted pursuant to Article 18 (see Addendum) or a Leasehold Mortgage permitted pursuant to Article 19, in no event shall Lessee be permitted to Transfer less than its entire interest in this Lease or the Leasehold Estate, and Lessor may elect in its sole discretion to deny consent to any such partial Transfer; provided, however, that a

Sublease entered into pursuant to and in accordance with this Lease shall not be deemed a Transfer and shall not require Lessor's consent.

17.3 **Notice of Transfer**. If Lessee desires Lessor's consent to any Transfer, Lessee shall Notify Lessor in writing, which notice shall include (a) the proposed effective date of the Transfer; (b) the material terms of the proposed Transfer; (c) a copy of the signed purchase and sale agreement between Lessee and the proposed transferee; (d) current financial statements of the proposed transferee certified, compiled or reviewed by an independent certified public accountant for the fiscal year most recently ended, and business credit, personal references and business history of the proposed transferee; and (e) such other reasonable information in connection with the proposed Transfer as Lessor shall reasonably request.

17.4 **Expenses**. Within ten (10) days following demand, Lessee shall reimburse Lessor for Lessor's reasonable costs (including attorneys' fees) incurred in reviewing and approving or disapproving, or otherwise consulting with respect to, any Transfer.

ARTICLE 18:
SUBLEASES

[See Addendum]

ARTICLE 19:
LEASEHOLD MORTGAGES

19.1 **Leasehold Mortgage**. Notwithstanding anything in this Lease to the contrary, Lessee shall have the absolute and unconditional right, without Lessor's consent, to execute and deliver Leasehold Mortgage(s) at any time and from time to time during the Term. Lessor shall not be required to join in, or "subordinate the Fee Estate to," any Leasehold Mortgage, but shall execute and deliver such estoppel certificates and other certifications as any Leasehold Mortgagee shall reasonably require.

19.2 **Protection of Leasehold Mortgagee**. In the event Lessee subjects this Lease to a Leasehold Mortgage, the provisions of this Article 19 shall apply with respect to such Leasehold Mortgage:

19.2.1 No Cancellation. There shall be no cancellation, termination, surrender or modification of this Lease by Lessee or by joint action of Lessor and Lessee without the prior consent in writing of Leasehold Mortgagee.

19.2.2 Concurrent Notices. Lessor shall, upon serving Lessee with any notice pursuant to the provisions of this Lease, concurrently serve a copy of the notice upon Leasehold Mortgagee.

19.2.3 Right to Cure. Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all Rent due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under this Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of this Lease. Any of the foregoing done by Leasehold Mortgagee shall be effective to prevent a termination of the Lease as the same would have been done by Lessee.

19.2.4 Cure Period. Notwithstanding anything in this Lease to the contrary, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles or purportedly entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless (a) Lessor shall have given written notice to the Leasehold Mortgagee of Lessee's Default and stating Lessor's intent to terminate this

Lease; and (b) either (i) in the event of a Monetary Default, the Leasehold Mortgagee shall not have cured such Monetary Default within thirty (30) days after the service of such written notice, or (ii) in the event of any other Default under this Lease susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee fails to commence, within sixty (60) days after the service upon the Leasehold Mortgagee of such written notice, the cure of such Default, and diligently pursue to completion the cure of such Default; provided, however, that in the Event of a Default under this Lease which consists of the existence or nonpayment of a lien, such Default shall be deemed to be cured if, within such 60-day period, the Leasehold Mortgagee shall have commenced foreclosure and shall thereafter diligently pursue such proceedings to completion, or shall have commenced and shall thereafter diligently pursue steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. If any such Default susceptible of being cured by the Leasehold Mortgagee cannot be cured by the Leasehold Mortgagee without the Leasehold Mortgagee first obtaining possession of the Premises or title to the Leasehold Estate or if the Default is not susceptible of being cured by the Leasehold Mortgagee, such Default shall be deemed to be cured if: (A) within sixty (60) days after the receipt by the Leasehold Mortgagee of such written notice, the Leasehold Mortgagee shall have commenced foreclosure and thereafter diligently pursue such proceedings to completion, or (B) the Leasehold Mortgagee commences, within such 60-day period, and thereafter diligently pursues, steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. During the course of any such proceedings, such Leasehold Mortgagee shall pay or cause to be paid all Rent as and when the same becomes due and payable under this Lease.

19.2.5 Time Extensions. If the Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, the times specified in Section 19.2.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Leasehold Mortgagee shall have fully cured any Monetary Default and shall continue to pay Rent as and when the same becomes due.

19.2.6 New Lease. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, any Default by Lessee), Lessor, if requested by the Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the Term, at the Rent and upon the same terms, covenants and conditions herein contained, provided that: (a) such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that the Lease has been terminated; (b) such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums, including Rent, which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination; (c) such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and (d) the lessee under the new lease shall have the same right, title and interest in and to the Premises as Lessee had under the terminated Lease immediately prior to its termination. Notwithstanding the foregoing, nothing herein contained shall require any authorized Leasehold Mortgagee to enter into a new lease pursuant to this Section 19.2.6, nor to cure any Default of Lessee referred to above.

19.2.7 Lessor's Consent. Lessor's written consent, which shall not be unreasonably withheld, is required for any transfer of the Leasehold Estate to any third party (other than Leasehold Mortgagee or its Affiliate) pursuant to a foreclosure (whether by judicial proceedings or by virtue of any power of sale contained in any Leasehold Mortgage), or assignment in lieu of foreclosure. Lessor shall execute a written consent to such transfer, or provide a written denial of consent (which will include specific reasons

for Lessor's denying consent), within forty-five (45) calendar days of receipt of Leasehold Mortgagee's written request for such consent. If, in connection with Lessee's financing of its interest under this Lease, a prospective lender requests that additional or modified protections be incorporated into this Lease, Lessor shall review and reasonably approve such requests and timely amend this Lease as necessary and appropriate; provided, however, that such additions or modifications requested are generally applicable and utilized in financings of leasehold estates similar to the Leasehold Estate under this Lease, and that such requests do not materially and adversely affect Lessor's rights or materially increase Lessor's obligations.

19.2.8 Liability Limits. In the event any third party or Leasehold Mortgagee acquires the Leasehold Estate upon foreclosure (whether judicial or non-judicial in nature) or by assignment in lieu of foreclosure, or acquires a leasehold estate in the Premises pursuant to the terms of a new lease, such party, as the new lessee, shall be personally liable only for the obligations of the Lessee under this Lease (or, if applicable, the new lease) arising during the period of time that such party holds title to the Leasehold Estate created hereby (or, if applicable, the new lease).

ARTICLE 20:
EQUIPMENT LIENS

20.1 Lessee's Rights. If at any time or from time to time Lessee desires to enter into or grant any Equipment Lien that otherwise complies with this Lease, and provided that no uncured Event of Default exists, then upon Lessee's request Lessor shall enter into such customary documentation regarding the Financed FF&E as Lessee reasonably requests, providing for matters such as: (a) waiver or subordination of any right to take possession of such Financed FF&E upon an Event of Default; (b) waiver or subordination of any other right, title, or interest in the Financed FF&E; and (c) agreements to enable the holder of such Equipment Lien to repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien.

20.2 Required Provisions for Equipment Liens. If Lessee enters into any Equipment Lien, then Lessee shall: (i) not file (or cause or permit to be filed) such Equipment Lien as a lien against the Fee Estate or any part of the Fee Estate, but Lessee shall be permitted to file or cause to be filed a fixture filing attaching to Lessee's interest in the Premises relating to any Financed FF&E; and (ii) cause to be inserted in the documents for such Equipment Lien a provision to the following effect:

Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sales agreement, title retention agreement, or security agreement shall not create or be filed as a lien against the Fee Estate.

ARTICLE 21:
QUIET ENJOYMENT

So long as this Lease has not been terminated, Lessor covenants that Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms, covenants, conditions, provisions and agreements set forth in this Lease, without hindrance or disturbance by or from Lessor or anyone lawfully claiming by or through Lessor, and free of any encumbrance created or suffered by Lessor, except Permitted Exceptions.

ARTICLE 22:
EVENTS OF DEFAULT; REMEDIES

22.1 **Definition of "Event of Default"**. An "**Event of Default**" means the occurrence of any one or more of the following:

22.1.1 Monetary Default. If a Monetary Default occurs and continues for ten (10) days after Notice from Lessor, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

22.1.2 Prohibited Liens If Lessee fails to comply with any obligation regarding Prohibited Liens and does not begin to remedy such failure within fifteen (15) days after Notice from Lessor and, thereafter, diligently pursue such remedy to completion.

22.1.3 Bankruptcy or Insolvency. If Lessee ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Lessee's assets or Lessee's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within ninety (90) days).

22.1.4 Nonmonetary Default. If any other Nonmonetary Default occurs and Lessee does not cure it within thirty (30) days after Notice from Lessor describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessee shall not (a) within thirty (30) days from Lessor's Notice advise Lessor of Lessee's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.1.5 Other Events. The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease.

22.2 **Remedies**. If an Event of Default occurs, then Lessor shall, at Lessor's option (unless prohibited by Law), have any or all of the following remedies, all cumulative (i.e., the exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Lessor's remedies include:

22.2.1 Termination of Lessee's Rights. Lessor may terminate Lessee's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Lessee shall immediately surrender possession to Lessor. Notwithstanding the foregoing, no re-entry or taking of possession of the Premises by Lessor under Section 22.2.2 shall be construed as an election on Lessor's part to terminate this Lease unless a written Notice that this Lease is terminated is given by Lessor, or an order is secured stating that this Lease is terminated. The effective date of termination of this Lease shall be as of the date set forth or provided in the Notice or order, as the case may be.

22.2.2 Taking Possession. Lessor may re-enter and take possession of the Premises with process of law, whether by summary proceedings (unless prohibited by Law) or otherwise, and remove Lessee (and all property of Lessee), with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Lessor. Except as expressly provided in this Lease or prohibited by Law, Lessee, for and on behalf of itself and all persons claiming by, through or under Lessee, expressly waives any and all right of

redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Lessee is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Lessor or any expiration or termination of this Lease. No re-entry by Lessor, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Lessee from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

22.2.3 Suits Before Expiration Date. Lessor may sue for damages and/or to recover Rent from time to time at Lessor's election; nothing in this Lease requires Lessor to wait until the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

22.2.4 Receipt of Moneys. No receipt of money by Lessor from Lessee after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Lessee, or waive Lessor's right to enforce payment of any Rent payable or later falling due, or Lessor's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of Notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Lessor may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of Lessee's liability.

22.2.5 No Waiver. No failure by Lessor to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no Default, shall be Modified except by a written instrument executed by Lessor. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

22.2.6 Receiver. Lessor shall be entitled as a matter of right, by *ex parte* order or otherwise, to the appointment without bond of a receiver of the Premises, and of the rents, revenues, income and profits generated from the Premises, without regard to the value of the Premises or the solvency of any Person liable for the payment of any monetary obligation under this Lease, and regardless of whether Lessor has an adequate remedy available to Lessor under this Lease or under applicable Laws.

22.2.7 Damages. Lessor may recover from Lessee all damages Lessor incurs by reason of Lessee's Default, including reasonable costs of recovering possession, re-letting the Premises, and any and all other damages legally recoverable by Lessor, and reimbursement of Lessor's reasonable out-of-pocket costs, including Legal Costs. Lessor may recover such damages at any time after Lessee's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, Lessor need not commence separate actions to enforce Lessee's obligations for each month's accrual of damages for Lessee's Default, but may bring and prosecute a single combined action for all such Rent and damages.

22.2.8 Injunction of Breaches. Whether or not an Event of Default has occurred, Lessor may obtain a court order enjoining Lessee from continuing any Default or from committing any threatened Default. Lessee specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

22.2.9 Continue Lease. Lessor may at Lessor's option maintain Lessee's right to possession. In such case, this Lease shall continue and Lessor may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

22.2.10 Restoration Funds. Upon any termination of this Lease resulting from an Event of Default, to the extent that Lessor or Depository then holds any Restoration Funds, such Funds shall be applied first toward the applicable Restoration with any Funds remaining after completion of Restoration being applied in the manner set forth in Section 13.2 for the disposition of Property Insurance Proceeds upon a Casualty Termination, subject to any claims for damages resulting from such Event of Default.

22.3 Proceeds of Reletting. Lessor shall apply any proceeds of any re-letting as follows, without duplication, but including Default Interest on all such sums:

22.3.1 Lessor's Costs. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

22.3.2 Preparation for Reletting. Second, to pay to itself the cost and expense reasonably sustained in securing any new lessees and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for re-letting;

22.3.3 Costs of Maintenance and Operation. Third, to the extent that Lessor shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

22.3.4 Residue. Fourth, after payment to itself of any balance remaining on account of Lessee's liability to Lessor, to Lessee or any Leasehold Mortgagee, as applicable.

22.4 Lessee's Late Payments; Late Charges. If Lessee fails to make any payment to Lessor required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Lessor, and without reducing or adversely affecting any of Lessor's other rights and remedies, Lessee shall pay Lessor within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Lessee actually makes such payment. In addition, and without limiting any other rights or remedies of Lessor, Lessee shall pay Lessor, as Additional Rent, an administrative charge equal to five percent (5%) of any payment that Lessee fails to pay within thirty (30) days after such payment is first due and payable. Such administrative charge is intended to compensate Lessor for the inconvenience and staff time incurred by Lessor to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Lessee under this Lease.

22.5 Lessor's Right to Cure. If Lessee at any time fails to make any payment or take any action this Lease requires, then Lessor, after twenty (20) Business Days' Notice to Lessee, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Lessee from any obligation or Default and without waiving Lessor's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Lessee shall reimburse Lessor, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Lessor in exercising its cure rights under this Section 22.5; and (b) Default Interest on the amounts in clause (a) above.

22.6 Holding Over. If for any reason or no reason Lessee remains in the Premises after the Expiration Date, then Lessor will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Lessee remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Lessor, Lessee shall pay to Lessor, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Lessee holds over after the Expiration Date, a sum equal to twice the then market rental rate for the Premises, plus all Additional Rent otherwise payable under this Lease during the holdover period. Nothing contained in this Section 22.6 shall be construed as consent by Lessor to any holding over by

Lessee,. and Lessor expressly reserves the right to require Lessee to surrender possession of the Premises to Lessor as provided in this Lease upon the expiration or earlier termination of this Lease.

22.7 Waivers: Jury Trial, Redemption. Lessor and Lessee irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Lessor and Lessee regarding the Premises, enforcement of this Lease, Lessee's use or occupancy of the Premises, any claim of injury or damage arising between Lessor and Lessee, or any actions of Lessor in connection with or relating to the enforcement of this Lease. Lessee waives any right of redemption provided for by Law.

22.8 Accord and Satisfaction; Partial Payments. No payment by Lessee or receipt by Lessor of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Lessee. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Lessor may accept any such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy.

22.9 Lessor's Default. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after Notice from Lessee describing such breach in reasonable detail, or, in the case of a breach that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessor shall not (a) within thirty (30) days from Lessee's Notice advise Lessee of Lessor's intention to take all reasonable steps to cure such default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.10 Miscellaneous. Lessor and Lessee further agree as follows with respect to any Defaults and Lessor's rights and remedies:

22.10.1 Survival. No termination of this Lease and no taking possession of or re-letting the Premises shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or re-letting, but subject to any limitations on personal liability or recourse in this Lease.

22.10.2 No Double Recovery. In no event shall Lessor be entitled, directly or indirectly, to recover twice for the same element of Lessor's damages.

ARTICLE 23:
END OF TERM

Upon any Expiration Date: (a) all Improvements, FF&E, and Building Equipment shall become Lessor's property; (b) Lessee shall deliver to Lessor possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Lessee to Restore; (c) Lessee shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Lessor reasonably requires; (d) Lessee shall deliver the Premises free and clear of all: Subleases, and liens except (1) Permitted Exceptions existing as of the Commencement Date or consented to by Lessor, (2) Subleases executed pursuant to this Lease or consented to by Lessor, and (3) liens that Lessor or any of its agents caused; (e) Lessee shall assign to Lessor, and give Lessor copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises, along with copies of all operating manuals and similar documentation relating to all Improvements, FF&E, and Building Equipment, and the current year's operating budget for the Premises (including applicable back-up information); (f) the parties shall cooperate to achieve an orderly transition of operations from Lessee to Lessor without interruption, including delivery of such information, books and records (or copies thereof) as Lessor reasonably requires; (g) if such plans are available,

Lessee shall provide Lessor with a complete set of as-built plans and specifications for all Improvements, if any, added to the Premises since the Commencement Date; (h) the parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Lessee shall first be applied to cure any Default); (i) the parties shall terminate any recorded or filed memorandum of this Lease; and (j) Lessee shall assign to Lessor, and Lessor shall reimburse Lessee for, all utility and other service provider deposits for the Premises.

ARTICLE 24:
NOTICES

All Notices shall be in writing and addressed to Lessor and Lessee (and their designated copy recipients), as applicable, as set forth in **Exhibit C** attached hereto. Notices (including any required copies as set forth in **Exhibit C**) shall be delivered by (a) United States certified or registered mail, postage prepaid, return receipt requested, or (b) a nationally recognized overnight courier service, to the addresses set forth in **Exhibit C**. Notices shall be deemed delivered (a) three (3) Business Days after the date it is posted if sent by U.S. Mail (provided no postal strike or other disruption of postal service is then in effect), or (b) the date the overnight courier delivery is made (or when delivery has been attempted, as evidenced by the written report of the courier service) to such address(es). Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

ARTICLE 25:
NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Lessor and Lessee and each of their parent(s), subsidiary(ies), or Affiliated corporations or other entities, and any of their constituent partners or joint venturers, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including insurance and all other proceeds thereof). No property or assets whatsoever, except Lessor's or Lessee's (as applicable) interest in the Premises (including insurance and all other proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this Article 25 shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under a Supplementary Agreement, if any. No shareholder, officer, member, manager, director, agent, or employee of Lessee or Lessor shall have any liability under this Lease, but this shall not limit any liability arising under the express terms of a Supplementary Agreement, if any.

ARTICLE 26:
ADDITIONAL DELIVERIES; THIRD PARTIES

26.1 **Estoppel Certificates**. As often as may be necessary, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four (4) original counterparts of an estoppel certificate in such form as may be reasonably required by the Requesting Party, indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by the Requesting Party. The Certifying Party shall sign, acknowledge, and return such estoppel certificate within fifteen (15) days after request, even if the Requesting Party is in Default. Any

estoppel certificate may be relied upon by the Requesting Party (and any Person on behalf of whom the Requesting Party requested such estoppel certificate) and shall bind the Certifying Party. Failure of the Certifying Party to timely execute, acknowledge and deliver such estoppel certificate shall constitute an acknowledgment by the Certifying Party that statements included in the estoppel certificate are true and correct, without exception.

26.2 **Further Assurances**. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

26.3 **Memorandum of Lease**. This Lease shall not be recorded; provided, however, that either Lessor or Lessee may elect to have a memorandum of this Lease recorded in the Bureau of Conveyances of the State of Hawai`i or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i, as appropriate. Such memorandum shall be sufficient to give constructive notice of the tenancy hereby created and setting forth a description of the Premises, the term of this Lease and any other provisions agreed to by the parties hereto (or required by a Leasehold Mortgagee), and shall be executed by the parties hereto. If the parties amend this Lease, then the parties shall record a memorandum of such amendment. Notwithstanding the foregoing, this Lease shall be recorded if such recordation is required by a Leasehold Mortgagee or a prospective Leasehold Mortgagee.

26.4 **Modification**. Any Modification of this Lease must be in writing signed by the party to be bound.

26.5 **Successors and Assigns**. This Lease shall bind and benefit Lessor and Lessee and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Lessor, Lessee, and any Leasehold Mortgagees) any right to insist upon, or to enforce against Lessor or Lessee, the performance or observance by either party of its obligations under this Lease.

ARTICLE 27:
CULTURAL AND ARCHEOLOGICAL

27.1 **Native Hawaiian Rights**. Lessee shall respect and recognize any and all rights of native Hawaiians to exercise traditional rights, customs, practices, prerogatives, privileges and usufructs on the Premises, if any, in accordance with applicable Laws.

27.2 **Human Remains; Artifacts; Historical Items**.

27.2.1 Discovery. In the event any human remains, traditional cultural items, artifacts or historical items (collectively "**Historic Items**") are discovered on the Premises, Lessee shall immediately report such discovery to Lessor. Upon such discovery and subject to Lessor's approval, Lessee shall, at Lessee's sole expense: (a) cause all excavation or other activity in the immediate area that may damage the Historic Items or the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Historic Items against damage, theft, or both; and (c) cause the Historic Items to be left untouched so that their cultural, archaeological or historical context may be accurately documented and to honor cultural sensitivities related to the Historic Items; provided, however, that if artifacts or historical items are found without human remains, and if leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, Lessee shall cause such Historic Items to be removed and safeguarded elsewhere.

27.2.2 Human Remains. In the event Lessee discovers human remains, Lessee shall, at Lessee's sole expense and in addition to the duties set forth in Section 27.2.1, (a) report the discovery as soon as possible to Lessor, the Historic Preservation Division of the Department of Land and Natural Resources of the State of Hawai`i ("**SHPD**"), the appropriate medical examiner or coroner, and the

appropriate police department, and (b) cause to be prepared, by an archeologist reasonably acceptable to Lessor, a mitigation and/or burial treatment plan reasonably acceptable to Lessor and to SHPD or the burial council having jurisdiction over such matters. Lessor and Lessee shall comply with all Laws applicable to the handling of such human remains, and shall work together to formulate and carry out such mitigation or burial treatment plan.

27.2.3 Lessor's Reservation. If any Historic Items are discovered, then Lessor shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Historic Items for preservation as permitted by Law.

27.2.4 Studies by Lessee. In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Lessee or anyone acting by or through Lessee, Lessee shall provide a complete copy of the results of such studies to Lessor promptly upon completion thereof.

27.2.5 Lessor's Right to Historic Items; No Liability. Lessee shall have no right, title or interest whatsoever with respect to any Historic Items discovered on or about the Premises. As between Lessor and Lessee, Lessor shall retain ownership of any Historic Items discovered on or about the Premises to the extent private ownership of the Historic Items by Lessor is permitted under applicable Laws, and in any event, Lessor shall retain the exclusive right to act as, and to exercise all rights of, the landowner under applicable Laws. Lessor shall not be responsible for any damages or other liabilities that may result from cessation of excavation or construction, or from Lessee's compliance with provisions of this Section 27.2.5 and applicable Laws.

ARTICLE 28:
MISCELLANEOUS

28.1 Confidentiality. Lessor and Lessee acknowledge that the content of this Lease and any related documents are confidential information, and each agrees, except as otherwise required by Law (including any public disclosure requirements under Hawaii Revised Statutes Chapter 92F and/or the Freedom of Information Act), to keep such confidential information strictly confidential and not disclose such confidential information to any Person, other than Lessor's or Lessee's consultants, attorneys, property managers, and employees who have a need to know such information.

28.2 Due Authorization and Execution. Lessor has full right, title, authority and capacity to execute and perform this Lease and any other agreements and documents to which Lessor is a party and referred to or required by this Lease (collectively, the "**Lease-Related Documents**"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Lessor; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Lessor; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Lessor's organizational documents), contract, or other restriction to which Lessor is a party or is bound. Lessee makes to Lessor representations and warranties reciprocal to those in the preceding sentence and, in addition, represents and warrants that Lessee is qualified to do business in the State of Hawai`i. Both parties' representations and warranties in this Section 28.2 shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

28.3 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the Lessor-Lessee relationship under this Lease, or Lessor's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the

prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

28.4 **No Consequential Damages**. Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Lessor nor Lessee shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise, except as otherwise expressly permitted by this Lease. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

28.5 **No Waiver by Silence**. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

28.6 [Reserved.]

28.7 **Performance Under Protest**. If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation.

28.8 **Survival**. All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

28.9 **Unavoidable Delay**. Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

28.10 **Broker**. Each party: (a) represents and warrants that it did not engage or deal with any broker or finder, except Broker, in connection with this Lease and no person except Broker is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation. Lessor shall compensate Broker under a separate agreement and Indemnify Lessee against any claims by Broker.

28.11 **Service of Process**. Lessee and every assignee shall either be domiciled in the State of Hawai`i or shall, effective upon the date of this Lease (for the original Lessee) or upon the date of said assignment (for an assignee), designate in writing an agent who is domiciled in the State of Hawai`i upon whom service of notice or process may be made at all times (if applicable, Lessee's first such agent for service of process is designated in **Exhibit D**. Service of summons or other legal process upon said agent shall be conclusively deemed to be complete upon Lessee and shall authorize the court from which such summons or legal process has issued to proceed in all respects as in the case of service personally made upon an individual. In the event Lessee fails to designate said agent for the service of process, or upon the death or absence of said agent, unless a successor shall be promptly named, the Director of Commerce and Consumer Affairs of the State of Hawaii shall be deemed Lessee's or assignee's agent for service of notice and process, and any notice or process served upon said designee or said Director of Commerce and Consumer Affairs shall have the force and effect of personal service upon Lessee or said assignee in all matters respecting this Lease and the enforcement thereof. Lessee and every assignee shall be duly qualified by the Director of Commerce and Consumer Affairs to do business in the State of Hawaii.

28.12 Sexual Harassment Policy. At all times during the Term, Lessee shall have and enforce a policy prohibiting sexual harassment in accordance with Article 18 of Chapter 1 of the Revised Ordinances of Honolulu 1990. Lessee may obtain a copy of said Article at the Office of the City Clerk, Honolulu Hale, 530 South King Street, Honolulu, Hawaii.

28.13 Non-Discrimination Policy. Lessee shall not discriminate against any employee or applicant for employment based on race, color, national origin, religion, sex, sexual orientation, familial status, or disability, and Lessee shall comply with the provisions included in any agreement with the County pertaining to discrimination.

ARTICLE 29:
INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

29.1 Captions. The captions of Articles, Sections, items and paragraphs are for convenience and reference only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles, Sections, items and paragraphs.

29.2 Counterparts. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease document.

29.3 Delivery of Drafts. Neither party shall be bound by this Lease unless and until such party shall have executed and delivered this Lease. The submission of draft(s) or comment(s) on drafts shall not bind the parties, nor shall such draft(s) and comment(s) be considered in interpreting this Lease.

29.4 Entire Agreement. This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Lessee's use or occupancy of, or any interest of Lessee in, the Premises except for any agreements referenced in this Lease, and except for any provisions from the Purchase and Sale Agreement between Lessor and _____ dated _____, 2012, that by their terms are applicable to the Premises and intended to survive the closing of said Purchase and Sale Agreement (in which case such provision shall not be deemed legally merged into this Lease but, instead, shall be deemed incorporated into this Lease to the extent applicable).

29.5 Governing Law and Venue. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Hawai`i, without regard to principles of conflict of laws. Any legal action hereunder shall be filed in the Hawai`i judicial system only, and Lessor and Lessee hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawai`i in the circuit where the Premises are located, and the United States District Court for the District of Hawai`i, and waive the right to assert that such courts are in an inconvenient forum.

29.6 Partial Invalidity. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

29.7 **Principles of Interpretation**. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Lessor's option, any Modification that violates this Lease), and includes all exhibits, schedules and riders to such document. The word "or" includes the word "and."

29.8 [Reserved.]

29.9 **Time of the Essence**. Except as otherwise expressly provided in this Lease, time is of the essence with respect to all provisions of this Lease.

29.10 **Computation of Deadlines**. If a due date determined under this Lease falls on a Saturday, Sunday or official County holiday, such due date will be deemed to be the next Business Day.

29.11 **Joint and Several**. If there is more than one Person comprising Lessee, the obligations imposed upon such Persons under this Lease shall be joint and several.

ARTICLE 30:
ADDENDUM

30.1 **Addendum**. This Lease is subject to the terms and provisions of the Addendum attached hereto and incorporated herein by this reference. In case of any conflict between any term, provision, definition, and the like, as set forth directly herein and as set forth in the Addendum, the Addendum shall control.

[SIGNATURES APPEAR ON NEXT PAGE]

IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be signed as of the day and year first above written.

LESSOR:

Date of execution by Lessor:
_____, 20__

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

By Department of Budget and Fiscal Services

By _____
Name:
Title:

LESSEE:

Date of execution by Lessee:
_____, 20__

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION AND ENCUMBRANCES

[TO BE ATTACHED: LEGAL DESCRIPTION AND LIST OF ALL ENCUMBRANCES OF RECORD]

EXHIBIT B

ADDITIONAL PERMITTED EXCEPTIONS

Permitted Exceptions shall include all of the following, as they existed on the Commencement Date:

1. All leases, Subleases, tenancies and rights of occupancy affecting the Premises caused or permitted by Lessee or by anyone claiming by, through, or under Lessee;

2. All rights, if any, for electricity, gas, telephone, water, cable television, and any other utilities to maintain and operate lines, cables, poles, and distribution boxes in, over, and upon the Premises;

3. Possible projections or encroachments of retaining walls, foundations, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, casings, ledges, water tables, lintels, porticos, keystones, windows, hedges, copings, sidewalk elevators, fences, fire escapes, and the like, or similar projections or objects upon, under, or above any adjoining buildings or streets or avenues or those belonging to adjoining premises which encroach upon the Premises or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges, and the like;

4. Variations between the tax map and the record description of the Land;

5. Zoning, environmental, municipal, building, and all other laws, regulations or similar matters imposed by any federal, state, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises or any portion thereof;

6. All notes or notices of any violation of law or municipal ordinances, orders, or requirements noted in or issued by any Government having or asserting jurisdiction, now or hereafter affecting the Premises; and

7. The lien for all taxes, charges, rents, assessments, and any other governmental charges which are not yet due and payable.

8. [**Project Specific**] [List all exceptions (including encroachments identified on applicable ALTA Survey) accepted or deemed accepted by Buyer/Lessee as a result of the Due Diligence Investigation.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT C

NOTICE ADDRESSEES
(INCUDING REQUIRED COPY RECIPIENTS

LESSOR: _____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

With a copy to:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

LESSEE: _____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

With a copy to:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

EXHIBIT D

SERVICE OF PROCESS

[TO BE INSERTED]

Exhibit C

LEASE

between

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawai`i

"Lessor"

and

_____,
a _____

"Lessee"

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS 1

ARTICLE 2: PREMISES 9
2.1 Premises 9
2.2 Acceptance in Existing Condition 10
2.3 Release of Lessor 11

ARTICLE 3: TERM 11
3.1 Term 11
3.2 Delivery of Possession 11
3.3 No Option to Extend; No Renewal 11

ARTICLE 4: RENT 12
4.1 Fixed Rent 12
4.2 Additional Rent 12
4.3 No Offsets 12

ARTICLE 5: ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES 12
5.1 Net Lease 12
5.2 Real Estate Taxes 12
5.3 Assessments in Installments 13
5.4 BID Decisions 13
5.5 Direct Payment by Lessor 13
5.6 Utilities 13
5.7 Excise Tax 13
5.8 Conveyance Tax 13
5.9 Taxes on Lessee's Business and Personal Property 14
5.10 Tax Exemptions 14
5.11 Lessor Expenses 14

ARTICLE 6: USE 14
6.1 Permitted Use 14
6.2 Prohibited Uses 14
6.3 Exclusive Control 14
6.4 Compliance with Laws 14
6.5 Copies of Notices 15
6.6 Entitlements 15
6.7 Illegal Activities 15
6.8 Public Accommodations Laws 15

ARTICLE 7: MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS 15
7.1 Obligation to Maintain 16
7.2 Capital Improvement Obligations 16
7.3 Enhanced Improvements 16

ARTICLE 8: CONSTRUCTION 16
8.1 General 16
8.2 Manner of Construction 17
8.3 Permits 17
8.4 Applications 17
8.5 Completion 17
8.6 Construction Insurance 17

TABLE OF CONTENTS
(Continued)

8.7 Ownership 18
8.8 Inspection 18
8.9 Lessee's Covenant 18
8.10 Title Encumbrances 18
8.11 Lease Termination 18

ARTICLE 9: HAZARDOUS SUBSTANCES 19
9.1 Restrictions 19
9.2 Compliance; Clean-Up 19
9.3 Surrender Obligations 19
9.4 Copies of Environmental Reports 19
9.5 Survival 19
9.6 Discharges before Commencement 19

ARTICLE 10: INDEMNIFICATION; LIABILITY OF LESSOR 19
10.1 Obligations 19
10.2 Liability of Lessor 20
10.3 Indemnification Procedures 20

ARTICLE 11: RIGHT OF CONTEST 20
11.1 Lessee's Right; Contest Conditions 20
11.2 Lessor Obligations and Protections 21
11.3 Miscellaneous 21
11.4 Contest Security 22

ARTICLE 12: INSURANCE 22
12.1 Lessee's Insurance 22
12.2 Nature of Insurance Program 22
12.3 Policy Requirements and Endorsements 23
12.4 Deliveries to Lessor 23
12.5 Waiver of Certain Claims 23
12.6 Additional Insurance 24
12.7 No Representation 24

ARTICLE 13: LOSSES AND LOSS PROCEEDS 24
13.1 Notice 24
13.2 Effect of Casualty 24
13.3 Adjustment of Claims; Use of Property Insurance Proceeds 24
13.4 Substantial Condemnation 25
13.5 Insubstantial Condemnation 25
13.6 Temporary Condemnation 25
13.7 Immaterial Loss 25
13.8 Surrender 25

ARTICLE 14: LESSOR'S RESERVED RIGHTS 25
14.1 Inspections 25
14.2 Other Entries by Lessor 26
14.3 Water, Oil, Gas and Mineral Rights 26
14.4 Easements 26
14.5 Development 26
14.6 Entitlement Rights 26
14.7 No Light or Air Easement 27
14.8 Provision Respecting Certain Concessions 27
14.9 Project Name 27

TABLE OF CONTENTS
(Continued)

14.10 General 27

ARTICLE 15: LESSOR'S TRANSFERS 27
15.1 Transfer of Lessor's Interest 27
15.2 Release of Lessor 27
15.3 No Right of First Refusal/No Option to Purchase 27

ARTICLE 16: REGULATORY AGREEMENT 28

ARTICLE 17: LESSEE'S TRANSFERS 28
17.1 Lessee's Transfer Right 28
17.2 No Partial Transfers 29
17.3 Notice of Transfer 29
17.4 Expenses 29

ARTICLE 18: SUBLEASES 29

ARTICLE 19: LEASEHOLD MORTGAGES 29
19.1 Leasehold Mortgage 29
19.2 Protection of Leasehold Mortgagee 29

ARTICLE 20: EQUIPMENT LIENS 31
20.1 Lessee's Rights 31
20.2 Required Provisions for Equipment Liens 31

ARTICLE 21: QUIET ENJOYMENT 31

ARTICLE 22: EVENTS OF DEFAULT; REMEDIES 32
22.1 Definition of "Event of Default" 32
22.2 Remedies 32
22.3 Proceeds of Reletting 34
22.4 Lessee's Late Payments; Late Charges 34
22.5 Lessor's Right to Cure 34
22.6 Holding Over 34
22.7 Waivers: Jury Trial, Redemption 35
22.8 Accord and Satisfaction; Partial Payments 35
22.9 Lessor's Default 35
22.10 Miscellaneous 35

ARTICLE 23: END OF TERM 35

ARTICLE 24: NOTICES 36

ARTICLE 25: NONRECOURSE 36

ARTICLE 26: ADDITIONAL DELIVERIES; THIRD PARTIES 36
26.1 Estoppel Certificates 36
26.2 Further Assurances 37
26.3 Memorandum of Lease 37
26.4 Modification 37
26.5 Successors and Assigns 37

ARTICLE 27: CULTURAL AND ARCHEOLOGICAL 37

TABLE OF CONTENTS
(Continued)

27.1 Native Hawaiian Rights 37
27.2 Human Remains; Artifacts; Historical Items. 37

ARTICLE 28: MISCELLANEOUS 38
28.1 Confidentiality 38
28.2 Due Authorization and Execution 38
28.3 Costs and Expenses; Legal Costs 38
28.4 No Consequential Damages 39
28.5 No Waiver by Silence 39
28.6 [Reserved] 39
28.7 Performance Under Protest 39
28.8 Survival 39
28.9 Unavoidable Delay 39
28.10 Broker 39
28.11 Service of Process 39
28.12 Sexual Harassment Policy 40
28.13 Non-Discrimination Policy 40

ARTICLE 29: INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE 40
29.1 Captions 40
29.2 Counterparts 40
29.3 Delivery of Drafts 40
29.4 Entire Agreement 40
29.5 Governing Law and Venue 40
29.6 Partial Invalidity 40
29.7 Principles of Interpretation 40
29.8 [Reserved] 41
29.9 Time of the Essence 41
29.10 Computation of Deadlines 41
29.11 Joint and Several 41

ARTICLE 30: ADDENDUM 41
30.1 Addendum 41

LIST OF ATTACHED EXHIBITS:

Exhibit A Legal Description
Exhibit B Additional Permitted Exceptions
Exhibit C Notice Addresses (Including Required Copy Recipients)
Exhibit D Service of Process

LEASE

This **LEASE** (this "**Lease**") is made and entered into as of _____, 2012 (the "**Commencement Date**"), between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai`i ("**Lessor**"), and _____, a _____ ("**Lessee**").

For good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, upon the terms and conditions set forth in this Lease and all Exhibits attached hereto, the "**Premises**" defined in Section 2.1 below.

ARTICLE 1: DEFINITIONS

The following definitions apply in this Lease:

"**Affiliate**" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. "**Affiliated**" shall have the correlative meaning.

"**Application**" means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction this Lease allows, including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or such other instrument as Lessee may from time to time reasonably request for such Construction; (b) to allow Lessee to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes; (c) to enable Lessee from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or (d) otherwise reasonably necessary and appropriate to permit Lessee to realize the benefits of the Premises under this Lease.

"**Approvals**" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, use, occupancy, maintenance, or operation of the Premises.

"**Bankruptcy Law**" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"**Bankruptcy Proceeding**" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"**BID**" means any business improvement district or similar district or program, proposed or actual, that includes, may include, or affects any Premises.

"**Broker**" means CBRE, Inc.

"**Building Equipment**" means all fixtures incorporated in the Premises owned by Lessor or Lessee and used, useful, or necessary to operate the Improvements (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and

air conditioning systems; utility systems; machinery; and pipes) as opposed to operating any business in the Improvements.

"**Business Day**" means all days except for Saturdays, Sundays and legal holidays observed by the County. If a due date determined under this Agreement falls on a Saturday, Sunday or an official County holiday, such due date will be deemed to be the next Business Day.

"**Casualty**" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

"**Casualty Termination**" means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination.

"**Condemnation**" means any temporary or permanent taking of (or of the right to use or occupy) all or any portion of the Premises by condemnation, eminent domain or any similar proceeding.

"**Condemnation Award**" means any award(s) paid or payable (whether or not in a separate award) to either party or its mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation, (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation, (c) any interest on such award, and (d) any other sums payable on account of such Condemnation, including for any prepayment premium under any mortgage.

"**Condemnation Effective Date**" means, for any Condemnation, the first date when the condemning authority has acquired title to, or possession of, any portion of the Premises subject to the Condemnation.

"**Condominium Association**" means an association formed pursuant to § 514B-102, Hawaii Revised Statutes.

"**Construction**" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including new construction and replacements. Construction consists of Minor Construction and Major Construction.

"**Consumer Price Index**" means the index published by the United States Department of Labor, Bureau of Labor Statistics, and now known as the Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City average, All Items (or such comparable index as may be utilized in substitution for or as the successor to the stated index). If such index is not published by the United States Bureau of Labor Statistics, or successor agency thereof, at any time during the Term, then the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority and selected by Lessor shall be utilized in lieu of such index.

"**Control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

"**County**" means the City and County of Honolulu.

"**Default**" means any Monetary Default or Nonmonetary Default.

"**Default Interest**" means interest at an annual rate equal to the lesser of: (a) the Prime Rate plus four percent (4%) per annum; or (b) the Usury Limit.

"**Depository**" means a bank or trust company mutually designated by Lessor and Lessee, which is qualified under the Laws of the State of Hawai`i and having its principal office in Honolulu, Hawai`i.

"**Environmental Law(s)**" means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, Control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"**Equipment Lien**" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or any similar arrangement (including any related financing statement) for Lessee's acquisition or leasing of any Financed FF&E used in the Premises that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates only to the Financed FF&E for which such secured party provides *bona fide* purchase-money financing or a *bona fide* equipment lease, after the Commencement Date. A Leasehold Mortgage is not an Equipment Lien.

"**Equity Interest**" means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in a Person.

"**Expiration Date**" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Lessor's exercise of remedies for an Event of Default, or otherwise.

"**Fee Estate**" means Lessor's fee estate in the Premises, including Lessor's reversionary interest in the Premises after the Expiration Date.

"**FF&E**" means all movable furniture, furnishings, equipment, and personal property of Lessee or anyone claiming through Lessee (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

"**Financed FF&E**" means any FF&E subject to an Equipment Lien in favor of a lessor or lender that: (a) is not an Affiliate of Lessee, and (b) actually provides *bona fide* financing or a *bona fide* equipment lease after the Commencement Date for Lessee's acquisition or use of such FF&E.

"**Government**" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and divisions thereof.

"**Hazardous Substances**" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under

Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, *et seq.*, as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.* or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source. The term "Hazardous Substances" for purposes of this Lease shall also include any mold, fungus or spores, whether or not the same is defined, listed, or otherwise classified as a "hazardous substance" under any Environmental Laws, if such mold, fungus or spores may pose a risk to human health or the environment or negatively impact the value of the Premises.

"**Hazardous Substances Discharge**" means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

"**Immaterial Loss**" means a Casualty or Condemnation where the Loss Proceeds or the Condemnation Award, respectively, is less than $500,000.

"**Indemnify**" means, where this Lease states that any Indemnitor shall "**Indemnify**" any Indemnitee from, against, or for a particular matter (the "**Indemnified Risk**"), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's insurance carrier shall be automatically deemed satisfactory.

"**Indemnitee**" means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

"**Indemnitor**" means a party that agrees to Indemnify any other Person.

"**Institutional Lender**" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the Laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; any entity the liabilities of which are insured by a governmental agency, or any combination of Institutional Lenders; provided that each of the entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

"**Insubstantial Condemnation**" means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

"**Law**" **or** "**Laws**" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, and as may be amended from time to time.

"**Leasehold Estate**" means Lessee's leasehold estate, and all of Lessee's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

"**Leasehold Mortgage**" means any mortgage, deed of trust or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which (whether recorded or unrecorded) is promptly after execution delivered to Lessor, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee's name and Notice address; and (c) that is held by a Leasehold Mortgagee that is an Institutional Lender, subject to the jurisdiction of the courts of the State of Hawai`i.

"**Leasehold Mortgagee**" means the holder of any Leasehold Mortgage and its successors and assigns.

"**Legal Costs**" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

"**Lessor**" initially means the Lessor named in the opening paragraph of this Lease. After every transfer of the Fee Estate, "Lessor" means only the owner(s) of the Fee Estate at the time in question. If any former Lessor no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be and hereby is entirely freed and relieved of all obligations of Lessor under this Lease accruing from and after the date of such Transfer, except for any claims or liabilities of such transferor as Lessor hereunder arising or accruing prior to such Transfer and all Legal Costs of any proceeding relating thereto commenced before such Transfer for which the transferor is liable hereunder. It shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Premises, including the transferee on any such Transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants, and obligations of Lessor under this Lease accruing from and after the date of such Transfer.

"**Liability Insurance**" means commercial general liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises or adjoining sidewalks, providing coverage limits (and subject to increases) as provided in Article 12.

"**Loss**" means any Casualty or Condemnation.

"**Loss Proceeds**" means Property Insurance Proceeds and/or Condemnation Award(s).

"**Major Construction**" means any Construction that is reasonably anticipated to cost in excess of $5,000,000 (which amount shall be increased in proportion to the percentage increase, if any, in the Consumer Price Index since the Commencement Date).

"**Market Value**" of the Fee Estate or the Leasehold Estate means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date, considered: (a) as if no Loss had occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate had not been terminated; (d) taking into account the benefits and burdens of this Lease (including, without limitation, all cash flows and revenues, including developer fees, accruing to or reasonably anticipated to accrue to the holder of the Leasehold Estate), the remaining Term, all Permitted Exceptions, and all other matters affecting such estate and its valuation; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Lessor's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date, and shall be determined independently of, and without regard to, any valuation established in a Condemnation.

"**Minor Construction**" means any Construction that Lessee elects in its discretion, or this Lease requires Lessee, to undertake from time to time, except Major Construction.

"**Modification**" means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

"**Modify**" means agree to, cause, make, or permit any Modification.

"**Monetary Default**" means Lessee's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

"**Nonmonetary Default**" means Lessee's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"**Notice**" means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "**Notices**" Article of this Lease.

"**Notice of Default**" means any Notice claiming or giving Notice of a Default or alleged Default.

"**Notify**" means give a Notice.

"**Permitted Exceptions**" means: (a) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date, listed as exceptions in Lessee's leasehold policy of title insurance for this Lease; (b) any Subleases existing as of the Commencement Date; (c) any title exceptions (including new Subleases) caused by Lessee's acts or omissions, consented to or requested by Lessee, or resulting from Lessee's Default; (d) any Application made at Lessee's request; (e) any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease; and (f) the additional matters, if any, listed in **Exhibit B** attached hereto.

"**Person**" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

"**Prime Rate**" means the prime rate or equivalent "base" or "reference" rate for corporate loans that is published in the Wall Street Journal as of the applicable date or, if such rate is no longer published, then a reasonably equivalent rate published by an authoritative third party mutually designated by Lessor

and Lessee. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

"**Prohibited Lien**" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Lessee (or anyone claiming through Lessee), if such lien attaches to the Leasehold Estate or attaches (or may attach upon termination of this Lease) to the Fee Estate. An Equipment Lien is not a Prohibited Lien.

"**Property Insurance**" means the property insurance described in Section 12.1.2 of this Lease.

"**Property Insurance Proceeds**" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Lessor, Lessee, Depository, or any mortgagee, excluding proceeds of Lessee's business interruption insurance in excess of Rent.

"**Public Accommodations Laws**" means all applicable Laws, including, without limitation, Title II and Title III of the Americans with Disabilities Act of 1990 (the "**ADA**"), 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 1968, 42 USC § 4151 *et seq.*, as amended, Title V of the Rehabilitation Act of 1973, the Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190, and the Uniform Federal Accessibility Standards, and any similar Laws now or hereafter adopted, published or promulgated, as the same are now in effect or may be hereafter modified, amended or supplemented.

"**Real Estate Taxes**" means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), BID payments, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or any FF&E, Building Equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof. "Real Estate Taxes" shall not, however, include any of the following, all of which Lessor shall pay before delinquent or payable only with a penalty: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee, of Lessor; (b) any item listed in this paragraph that is levied, assessed, or imposed against the Premises during the Term based on the recapture or reversal of any previous tax abatement or tax subsidy, or compensating for any previous tax deferral or reduced assessment or valuation, or correcting a miscalculation or misdetermination, relating to any period(s) before the Commencement Date; and (c) interest, penalties, and other charges for subparts (a) and (b) aforesaid. If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and imposed upon Lessor, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes".

"**Restoration**" means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Lessee shall perform in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

"**Restoration Funds**" means any Loss Proceeds (and deposits by Lessee) to be applied to Restoration.

"**Restore**" means accomplish a Restoration.

"**State**" means the State of Hawai`i.

"**Sublease**" means, for any portion of the Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of clause (a) through clause (c) above.

"**Sublessee**" means any Person entitled to occupy, use, or possess any premises under a Sublease.

"**Subrent**" means all money due and payable by Sublessees under Subleases.

"**Substantial Casualty**" means a Casualty that (a) occurs less than twenty (20) years before the end of the Term and renders the Premises, in Lessee's reasonable judgment (with Leasehold Mortgagee's consent), not capable of being economically Restored, or (b) pursuant to Law, prevents the Premises from being Restored to substantially the same condition, and for the same use, as before the Casualty.

"**Substantial Condemnation**" means any Condemnation that takes the entire Premises or so much thereof that the remainder, in Lessee's reasonable judgment (with Leasehold Mortgagee's consent), is not capable of being Restored to an economically viable whole for the conduct of the Permitted Use specified in Section 6.1.

"**Supplementary Agreement**" means any agreement, guaranty, letter of credit, security agreement, or other document (except this Lease) by which any Person provides assurances, credit enhancement, or security for any party's performance under this Lease.

"**Temporary Condemnation**" means a Condemnation of the right to use or occupy all or part of the Premises for a temporary period of time.

"**Transfer**" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, Modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s); or (c) any transaction described in clause (b) above affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever. A transaction affecting Equity Interests, as referred to in clause (b) through clause (c) above, shall be deemed a Transfer by Lessee even though Lessee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law; (ii) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred. In addition to the foregoing, the trading of an Equity Interest in any entity whose capital stock is listed on a nationally recognized stock exchange shall not constitute a Transfer.

"**Unavoidable Delay**" means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor) including, without limitation, injunctive or similar relief in connection with any litigation, Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within ten (10) Business Days after such obligor knows of any such Unavoidable Delay; and (b) within five (5) Business Days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

"**Usury Limit**" means the highest rate of interest, if any, that Law allows under the circumstances.

ARTICLE 2:
PREMISES

2.1 **Premises**. At the Commencement Date, Lessor owns the following real property (collectively, the "**Premises**"): (a) the land described in **Exhibit A** attached hereto (the "**Land**"); (b) all buildings, structures, and other improvements and appurtenances located on the Land (the "**Improvements**"); (c) the appurtenances and all the estate and rights of Lessor in and to the Land; and (d) all Building Equipment attached or appurtenant to any of the foregoing. The Lessor and the Lessee, as the developer and converter of the Land and Improvements to a condominium property regime project (the "**Project**"), have submitted the Premises to a condominium property regime, all as described in the Declaration of Condominium Property Regime for the Project, recorded in the Bureau of Conveyances of the State (the "**Bureau**") as Document No. _____ and/or filed in the Office of the Assistant Registrar of the Land Court of the State (the "**Land Court**") as Document No. _____, and as the same may be further amended from time to time (the "**Declaration**") and shown on the plans for the Project filed in the Bureau and/or the Land Court as Condominium Map No. _____, as amended from time to time (the "**Condominium Map**"), all in accordance with Chapter 514B, Hawaii Revised Statutes, as amended (the "**Act**").

Lessor, upon the terms and conditions hereinafter set forth, hereby demises to Lessee, and Lessee hereby leases from Lessor, the property described below (hereafter called the "**Premises**"):

FIRST: Condominium Unit No. _____ (the "**Unit**") in the project as shown on the Condominium Map;

TOGETHER with appurtenant easements as follows:

1. Exclusive easements in common with others in any other limited common elements appurtenant to the Unit, in accordance with the provisions of the Declaration; and

2. Nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and in support of the Unit; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as provided in the Declaration; and in all other Units of the building for support.

SUBJECT to easements for the encroachment of any part of the common elements of the Project now or hereafter existing thereon and for entry as may be necessary for the operation of the Project or for making repairs therein or the installation, repair or replacement of any common elements as provided in the Declaration.

SECOND: An undivided interest, equal to _____%, in and to the common elements of the Project, as established for the Unit by the Declaration, or such other fractional or percentage interest as hereafter established for the Unit by any amendment of the Declaration, or if the property is removed from the Condominium Property Regime, then as set forth in the Declaration immediately preceding such removal, as tenant in common with the other owners and tenants thereof, subject to all easements appurtenant to any Units of the Project, to the Declaration and By-Laws as amended from time to time and to any encumbrances noted in **Exhibit A**, and reserving and subject to all easements now or hereafter required for drainage, sewers and any utilities serving the Project.

SUBJECT, also, to the terms, provisions, covenants and conditions contained in the Act, and the Declaration and the By-Laws recorded concurrently therewith, as the same may be amended from time to time.

TO HAVE AND TO HOLD the same unto the Lessee in accordance with the tenancy set forth above for the Term defined below.

This Lease is subject to the encumbrances described in **Exhibit A**, the Permitted Exceptions, and any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease.

2.2 Acceptance in Existing Condition. Except as otherwise provided in this Lease, Lessee expressly acknowledges and agrees that Lessor has made no representations or warranties whatsoever, whether express, implied or statutory, with respect to the Premises or any portion thereof, and that Lessor shall not be obligated to provide or pay for any work or services related to the Premises or the operation thereof. Lessee acknowledges that Lessee has inspected the Premises carefully, or has had the opportunity to inspect the Premises carefully, and accepts the Premises in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of Lessor, or any Person on behalf of Lessor, regarding the Premises or matters affecting the Premises, including the following:

2.2.1 Physical Condition. The physical condition of the Premises, including the quality, nature, adequacy and physical condition of (a) the Land, including any systems, facilities, access, and/or landscaping; (b) the air, soils, geology, and groundwater, (c) the suitability of the Land for construction of any future Improvements or any activities or uses that Lessee may elect to conduct on the Land; or (d) the compaction, stability or composition, erosion or other condition of the soil or any fill or embankment on the Land for building or any other purpose;

2.2.2 Improvements. The quality, nature, adequacy and physical condition of any existing Improvements including, without limitation, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities;

2.2.3 Title. The nature and extent of any recorded right of way, lease, possession, lien, encumbrance, license, reservation or other title condition of record as of the Commencement Date affecting the Premises including, without limitation, the existence of any easements, rights of ways or other rights across, to or in other properties that might burden and/or benefit the Premises;

2.2.4 Compliance. The development potential of the Premises and/or the zoning, land use, or other legal status of the Land or Improvements or compliance with the Act, any public or private restrictions on the use of the Land, as the same are in effect as of the Commencement Date or may be

hereafter modified, amended, adopted, published, promulgated or supplemented, or the compliance of the Land or Improvements with any applicable Laws;

2.2.5 Hazardous Substances. The presence or removal of Hazardous Substances on, in, under or about the Premises or any adjoining or neighboring property;

2.2.6 Economic Feasibility. Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of the Premises and/or the business Lessee intends to conduct on the Premises;

2.2.7 Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Premises;

2.2.8 Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Premises for any particular purpose (including, without limitation, the Permitted Use specified in Section 6.1);

2.2.9 Boundaries. The boundaries of the Premises, the location of any Improvements on the Land and/or the existence of any encroachments onto or from any adjacent lands;

2.2.10 Access. Access to the Premises, including from or through any particular route; and

2.2.11 Other Matters. Any matter whatsoever not referenced above that pertains to the Premises.

2.3 Release of Lessor. Lessee, on behalf of itself, its agents, directors, employees, Equity Interest holders, mortgagees, and officers, hereby waives, releases and forever discharges Lessor and its agents, directors, employees and officers of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any its agents, directors, employees, Equity Interest holders, mortgagees or officers now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic or condition of the Premises of the nature and type specified in Section 2.2.1 through Section 2.2.10; provided, however, that this release shall not cover, pertain to, or deem to release any claim of Lessee against Lessor for breach of this Lease.

ARTICLE 3:
TERM

3.1 Term. The terms and provisions of this Lease shall be effective as of the Commencement Date. The term of this Lease (the "**Term**") shall be approximately sixty-five (65) years commencing on the Commencement Date and terminating at 11:59 p.m. on _____, 20__ (the "**Scheduled Expiration Date**"), unless terminated sooner.

3.2 Delivery of Possession. Lessor shall deliver the Premises to Lessee on the Commencement Date.

3.3 No Option to Extend; No Renewal. Lessee shall have no right to extend or renew the Term. Upon expiration or earlier termination of this Lease, Lessor shall have no obligation to extend or renew this Lease, or to enter into a new lease with Lessee.

ARTICLE 4:
RENT

4.1 **Fixed Rent**. In addition to the up-front lump sum acquisition lease rent payment made by Lessee to Lessor, Lessee shall pay Lessor, without notice or demand, in lawful money of the United States of America, a net annual rental (the "**Fixed Rent**") of One and No/100 Dollars ($1.00). Fixed Rent shall be payable to Lessor in advance on each anniversary of the Commencement Date throughout the Term by good and sufficient check or by wire transfer, at such address as Lessor shall designate from time to time; except that Lessee shall have the option to pre-pay the Fixed Rent of $1.00 per year at any time during the Term.

4.2 **Additional Rent**. In addition to Fixed Rent, Lessee shall pay Lessor (or the appropriate third party, as applicable), as additional rent under this Lease: (a) all taxes (including Real Estate Taxes); (b) common expense charges, and any and all charges and assessments of every description to which the Unit and the undivided interest in the common elements appurtenant thereto are now or may during the Term be subjected, whether assessed to or payable by Lessor or Lessee; and (c) any and all amounts payable by Lessee to Lessor pursuant to the terms of this Lease, except Fixed Rent (collectively, "**Additional Rent**"). Fixed Rent and Additional Rent are collectively referred to as "**Rent**" under this Lease. Except where this Lease provides otherwise, Lessee shall pay all Additional Rent within thirty (30) days after receipt of an invoice and reasonable backup documentation.

4.3 **No Offsets**. Lessee shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

ARTICLE 5:
ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES

5.1 **Net Lease**. This Lease shall constitute an absolutely "net" lease. Lessee shall pay as Additional Rent and discharge, before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or permitted Construction affecting, the Premises. Notwithstanding anything to the contrary in this Lease, Lessee need not pay, Lessee may offset against Rent any sums paid by Lessee on account of, and Lessor shall Indemnify Lessee against payment of, the following items payable, accrued, or incurred by Lessor: (a) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate; (b) consulting, overhead, accounting, tax preparation, other professional fees, legal and staff costs, and other costs incidental to Lessor's ownership of the Fee Estate and administration and monitoring of this Lease, including such costs Lessor incurs in reviewing anything Lessee delivers under this Lease or determining whether Lessee is in compliance with this Lease, except where this Lease expressly provides otherwise; (c) any costs or expenses that Lessor incurs in or for any litigation, except to the extent that this Lease requires Lessee to pay such costs or expenses; (d) any insurance premiums, utilities, operating expenses, or other costs related to the Premises that accrued before the Commencement Date; (e) any sums payable by Lessor under this Lease or expressly excluded from the definition of Real Estate Taxes; and (f) all other costs or expenses that, by their nature, are personal to Lessor or Lessor's ownership of the Fee Estate.

5.2 **Real Estate Taxes**. Lessee shall pay and discharge all Real Estate Taxes, if any, payable or accruing for all periods within the Term, before failure to pay creates a material risk to Lessor of forfeiture or penalty, subject however to Lessee's right of Contest as this Lease expressly provides. Lessee shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes. Lessee shall within a reasonable time after Notice from Lessor give Lessor reasonable proof that Lessee has paid any Real Estate Taxes that this Lease requires Lessee to pay. Lessee shall have the sole right

and authority to contest Real Estate Taxes, in compliance with the Contest Conditions. Lessee shall also have the right to apply for any applicable exemption from Real Estate Taxes applicable to the Premises.

5.3 **Assessments in Installments**. To the extent allowed by Law, Lessee may apply to have any assessment payable in installments. Upon approval of such application, Lessee shall pay and discharge only such installments as become due and payable during the Term.

5.4 **BID Decisions**. If any proposal is made to include the Premises in any BID (or to Modify the terms of any BID, including the amount or calculation of any required payments or assessments) and the owner of the Premises is entitled to vote in favor of or against such proposal, then Lessee shall decide how to vote, the parties shall cooperate to effectuate such decision, and Lessee shall have full power to represent the Premises in all matters regarding the BID, provided both that (a) at the time of determination no uncured Event of Default exists, and (b) the unexpired portion of the Term is no less than ten (10) years.

5.5 **Direct Payment by Lessor**. If any Additional Rent must be paid directly by Lessor, then: (a) Lessor shall Notify Lessee of such Additional Rent and the payee entitled thereto, such Notification constituting Lessee's authorization to make such payment, insofar as applicable, on behalf of Lessor, and (b) if the payee nevertheless refuses to accept payment from Lessee, then Lessee shall Notify Lessor and shall pay such amount to Lessor in a timely manner with reasonable instructions on remittance of such payment. Lessor shall with reasonable promptness comply with Lessee's reasonable instructions.

5.6 **Utilities**. Lessee shall arrange and pay directly, before the same become delinquent, for all fuel, gas, electricity, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Lessor shall have absolutely no liability or responsibility for the foregoing, provided that Lessor performs its obligations regarding any related Application.

5.7 **Excise Tax**. Lessee shall pay to Lessor, as Additional Rent, the State of Hawai`i general excise or surcharge tax on gross income, as the same may be amended, and all other similar taxes, surcharges, rates and/or charges imposed upon Lessor with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax, surcharge or the like, ***excluding*** federal, state or county net income taxes, imposed by any Government (collectively, the "**Excise Tax**"), such Excise Tax to be paid at the time and together with each payment of Fixed Rent and Additional Rent (which includes any and all charges required under this Lease to be made by Lessee to Lessor) to the extent they are subject to the Excise Tax. The Excise Tax due from Lessee shall be the amount which, when added to the applicable Rent due or other payment (whether actually or constructively received by Lessor), shall yield to Lessor (after deduction of all such tax payable by Lessor with respect to all such payments) a net amount which Lessor would have realized from such payment had no such tax been imposed. It is the intent of this Section 5.7 that Rent will be received by Lessor without diminution by any tax, assessment, charge, or levy of any nature whatsoever, except net income taxes imposed by any Government, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Notwithstanding the foregoing, Lessor confirms that the County is a political subdivision of the State, and, with respect to rental payments received on its rental properties, the County is not subject to any tax imposed by the State or the United States, including any gross receipts tax, sales tax, privilege tax, surcharge, or the like, and including specifically the State of Hawaii general excise tax.

5.8 **Conveyance Tax**. 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 resulting from any increase in Rent under this Lease and/or any renewal or extension of the Term), and for preparing, executing and/or filing when due such documentation as may be necessary or proper in connection therewith. If Lessor chooses, in its sole discretion, to collect said conveyance tax from Lessee and pay it to the tax authority on behalf of Lessee, Lessee shall promptly pay said conveyance tax to Lessor. At Lessor's request, Lessee shall promptly execute such affidavits and other

documents as may be necessary or proper in connection with said conveyance tax. Lessee's obligations as aforesaid shall survive the expiration or earlier termination of this Lease.

5.9 **Taxes on Lessee's Business and Personal Property**. Lessee shall be responsible for and shall pay before delinquency all taxes assessed by any Government against Lessee by reason of the conduct of its business in the Premises or with respect to personal property of any kind owned by or placed in, upon or about the Premises by or at the expense of Lessee.

5.10 **Tax Exemptions**. Nothing contained herein shall prevent Lessee from applying for any exemptions which may be available to Lessee for its Real Estate Tax, Excise Tax, conveyance tax or other tax obligations; provided however, that it shall be Lessee's sole responsibility to apply for and maintain any such exemptions as and when required by Law. Any such exemptions are subject to all Laws applicable thereto.

5.11 **Lessor Expenses**. Lessee shall pay to Lessor, within ten (10) days after the date of mailing or personal delivery of statements, all reasonable costs and expenses, including attorneys' fees, paid or incurred by Lessor: (i) required to be paid by Lessee under any covenant in this Lease (including without limitation any indemnity provision), (ii) in enforcing any of Lessee's covenants or obligations in this Lease, (iii) in remedying any breach of this Lease by Lessee, (iv) in recovering possession of the Premises or any part of the Premises, (v) in collecting or causing to be paid any delinquent rent, taxes or other charges payable by Lessee under this Lease, (vi) in connection with any estoppel certificate requested by Lessee, or (vii) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All such costs, expenses and fees shall constitute Additional Rent, and Lessee's obligations under this Section 5.11 shall survive the expiration or earlier termination of the Term.

ARTICLE 6:
USE

6.1 **Permitted Use**. [See Addendum.]

6.2 **Prohibited Uses**. Lessee shall not cause, maintain or permit any waste or nuisance to exist on, in or about the Premises. Lessee shall not do or permit anything to be done in or about the Premises which will in any way damage the Premises, or use or allow the Premises to be used for any improper, offensive or unlawful purpose.

6.3 **Exclusive Control**. Except as otherwise expressly provided in this Lease, Lessee shall have exclusive control, use, and management of the Premises. Subject to any applicable Laws, Lessee may enter into, terminate, or Modify any existing or future contract for management or operation of the Premises or provision of services to the Premises (provided that as to contracts existing as of the Commencement Date, any such termination or Modification is done in conformity with the terms of such contracts). Lessee shall Indemnify Lessor for any such cancellation or termination. All such contracts shall expire automatically on or before the Scheduled Expiration Date, except for contracts entered into in the ordinary course of maintenance and operation of the Premises, which shall expire no later than one (1) year after the Scheduled Expiration Date.

6.4 **Compliance with Laws**. Lessee shall not use the Premises, or do anything or suffer anything to be done in or about the Premises that will in any way conflict with any Laws and the Declaration and Bylaws for the Project (the "**Restrictions**") applicable to the use, condition or occupancy of the Premises. At its sole cost and expense, Lessee shall, in all material respects and subject to Lessee's right of Contest, promptly comply with all such applicable Laws and the Restrictions. 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

Commencement Date or thereafter. Lessee's obligations under this Section 6.4 shall include the obligation that Lessee, at its sole cost and expense, in accordance with the terms of this Lease, make, build, maintain and repair (or vote in favor of causing the Condominium Association to make, build, maintain, and repair) all fences, sewers, drains, roads, curbs, sidewalks, parking areas and other improvements that may be required by Laws or the Restrictions to be made, built, maintained and repaired in connection with Lessee's or its Lessees' use of the Premises or any part of the Premises, whether located on the Premises or on other property.

6.5 Copies of Notices. Lessor shall promptly give Lessee and Lessee shall promptly give Lessor a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Lessor receives from any Government, utility company or insurance carrier affecting the Premises.

6.6 Entitlements. Lessee shall maintain in full force and effect all entitlements and permits necessary for the Permitted Use specified in Section 6.1.

6.7 Illegal Activities. Upon Lessor's receipt of actual notice or if Lessor, in its reasonable business judgment, believes or suspects 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 Government, Lessor may Notify Lessee, and Lessor may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. In such circumstances, Lessor shall have the right to conduct an investigation, including, without limitation, the right of entry to the Premises and a review of Lessee's records. For any entry onto the Premises, Lessor shall (a) provide Lessee oral or written notice prior to such entry, unless it is an emergency, (b) meet with Lessee's property manager and/or designated representative, or if neither is present, the individual who is physically present at the Premises on the day of the entry and claims to be Lessee's representative, and (c) have such property manager or representative accompany Lessor during its entry. If such investigation yields any evidence of any illegal activity on the Premises, Lessor may immediately Notify Lessee and Lessor may immediately take all reasonable and appropriate action as may be necessary to stop such illegal activity. If Lessee unreasonably refuses to commence any action to stop such illegal activity within forty-eight (48) hours of receipt of such notice from Lessor, such failure or refusal shall constitute an Event of Default. By having the right to take certain actions in this Section 6.7, Lessor is neither obligated nor required to take any such action, and shall not be liable to Lessee, any Person or any Government if Lessor does not exercise such right.

6.8 Public Accommodations Laws. 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, and to take such actions and make such alterations or reasonable accommodations as are necessary for such compliance. If Lessee concludes that the Premises are not in compliance with Public Accommodations Laws as of the Commencement Date, or that the Premises thereafter fail to comply with Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within one hundred twenty (120) days of the Commencement Date or the date of such subsequent noncompliance. 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, and to the terms and conditions of Article 7 and Article 8 as applicable.

ARTICLE 7:
MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS

7.1 **Obligation to Maintain**. Lessee, at its sole cost and expense, shall keep and maintain, or vote in favor of the Condominium Association keeping and maintaining, the Premises in good order, condition and repair at all times during the Term (which obligation shall include all structural and non-structural, and capital and non-capital, repairs and replacements including, without limitation, plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises). 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 projects. Lessee shall cause the Improvements to be inspected periodically by qualified Persons to be certain the repair, maintenance and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied (including for purposes of ascertaining and curing infestation of the Improvements by termites, rodents and other pests). Lessee shall thereafter take all measures that may be reasonably required to prevent or cure any discovered repair, maintenance and/or replacement item.

7.2 **Capital Improvement Obligations**. [See Addendum.]

7.3 **Enhanced Improvements**. Notwithstanding the standard of care set forth and required of Lessee pursuant to the terms of this Lease, Lessee acknowledges and agrees that Lessor, as the owner of the Fee Estate, has a reasonable basis for determining that the Premises should be maintained or improved at a level in excess of that required under this Lease. As an example, Lessor may deem it prudent to replace an improvement that can be repaired, but which is nearing the end of its useful life, because the replacement item will have a useful life that extends beyond the Term. Therefore, to the extent Lessor shall elect, at Lessor's sole option, to cause the Premises, or any portion thereof, to be maintained or to cause replacements to occur at a level in excess of that required under this Lease (such improvements required by Lessor, but not otherwise required of Lessee hereunder, to be referred to herein as "**Enhanced Improvements**"), then (a) Lessee shall permit Lessor to enter upon the Premises to perform such Enhanced Improvements, at a time and in a manner that will not unreasonably disrupt Lessee's operation and use of the Premises, and (b) Lessor shall undertake such Enhanced Improvements, and Lessee shall pay to Lessor the cost of the improvements required of Lessee under this Lease and Lessor shall be responsible for the incremental additional costs of the Enhanced Improvements in excess of that which would otherwise have been required under this Lease but for this Section 7.3. Notwithstanding the foregoing, Lessor shall not be entitled or authorized to make any Enhanced Improvements if the same would constitute or trigger a violation of any Leasehold Mortgage or regulatory agreement with any Leasehold Mortgagee or Government or otherwise cause the invalidation, recapture, or diminution of any tax benefits available to Lessee with respect to the Premises. To the extent any Enhanced Improvements affect the common elements, Lessee will cooperate and assist the Lessor in obtaining all required consents and approvals from the Condominium Association.

ARTICLE 8:
CONSTRUCTION

8.1 **General**. Lessee shall comply with all of the terms of this Article 8 in connection with all Construction affecting the Premises (including, without limitation, any existing and new Improvements, alterations, any capital improvements to the Premises, restoration after a casualty or condemnation, and those required to comply with applicable Laws or otherwise required under this Lease).

8.1.1 Notice to Lessor. Lessor's consent shall not be required in connection with any Major Construction (except for any consents, approvals and/or permits as applicable Law may require from Lessor in its governmental capacity), but Lessee shall Notify Lessor (with a copy to the Director of the Department of Budget and Fiscal Services) in writing not less than sixty (60) days prior to the commencement thereof. Such Notice shall include a written estimate of the total cost of the Major Construction to be undertaken, and a written list of the name and address of each architect, consultant,

general contractor, subcontractor and materialman that Lessee has retained or will retain, along with each such entity's applicable business license number. Upon written request by Lessor, Lessee shall provide to Lessor copies of any design, consulting or construction contract entered into by Lessee in connection with such Major Construction.

8.1.2 Bonding. Lessee shall deposit with Lessor certificates or other satisfactory evidence that the general contractor has procured one or more bonds for a total amount not less than one hundred percent (100%) of the total construction cost of any Major Construction, naming Lessor and Lessee as co-obligees, in form and content and with a surety or sureties satisfactory to Lessor, guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen.

8.1.3 Minor Construction. Lessor's consent shall not be required for Minor Construction (except for any consents, approvals and/or permits as applicable Law may require from Lessor in its governmental capacity); provided, however, that all contractors and subcontractors performing Minor Construction shall be licensed.

8.2 Manner of Construction. All Construction shall be diligently and continuously pursued from the commencement thereof through completion, and shall be performed in a good and workmanlike manner, strictly in conformance with any and all Laws, and in accordance with any approved plans and specifications.

8.3 Permits. Lessee shall be responsible for obtaining, at its sole cost and expense, all Approvals required for any Construction, and for any issuance or re-issuance of all certificates of occupancy or equivalent permits required by Law for the use and occupancy of the Premises. Notwithstanding the foregoing, Lessee shall apply for and prosecute any required Government review process for a general plan amendment or rezoning only through and in the name of Lessor, or otherwise with the approval of Lessor.

8.4 Applications. Upon Lessee's request, Lessor shall, without cost to Lessor, promptly join in and execute any Application as Lessee reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Lessor; and (b) no uncured Event of Default exists. Promptly upon Lessee's request and without charge (except reimbursement of Lessor's reasonable out-of-pocket third party costs and expenses), Lessor shall furnish all information in its possession that Lessee reasonably requests for any Application.

8.5 Completion. Upon substantial completion of any Construction: (a) Lessee shall properly publish and file a "Notice of Completion" in the Office of the Clerk of the Circuit Court of the State of Hawai'i in the circuit where the Premises are located, a certified "filed" stamped copy of which shall be provided by Lessee to Lessor, (b) Lessee shall comply with any other applicable requirements of Law with respect to the completion of works of improvement, and (c) Lessee's architect shall deliver to Lessor a certificate setting forth the total cost of such construction and, if the Construction is Major Construction, certifying that the Construction has been completed in compliance with the approved plans and specifications for such work. In addition, Lessee shall deliver to Lessor a reproducible copy of the "as built" drawings of all Construction as well as all Approvals and other Government documents, if any, issued in connection with such Construction.

8.6 Construction Insurance. In addition to the requirements of Article 12, prior to commencing any Major Construction, Lessee shall provide Lessor with evidence that Lessee carries "Builder's All Risk" insurance covering the construction, including vandalism and malicious mischief, covering all Improvements in place on the Premises, all materials and equipment stored at the Premises and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such

fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Construction. All Construction shall be insured by Lessee pursuant to Article 12 immediately upon completion thereof.

8.7 **Ownership**. All improvements from Construction that may be installed or placed in or about the Premises shall be deemed to become an integral part of the Premises and shall not be removed from the Premises except as otherwise permitted by this Lease. Upon the expiration or earlier termination of this Lease, all the then existing improvements shall revert to Lessor without compensation or payment of any kind to, or requirement of consent or other act of Lessee, without the necessity of executing a deed, bill of sale, conveyance or other act or agreement of Lessee. If requested by Lessor, Lessee shall, without charge to Lessor, execute, acknowledge and deliver to Lessor appropriate documentation (in form and content satisfactory to Lessor) which acknowledges and confirms that Lessor retains all of right, title and interest in and to the then existing Improvements as of the expiration or earlier termination of this Lease.

8.8 **Inspection**. During and upon completion of any Construction, Lessor and its agents may inspect the Improvements and all work and materials as rendered and installed. Lessee shall keep copies of all plans, shop drawings and specifications relating to any Construction and permit Lessor and its representatives to examine the Construction at all reasonable times or, in the alternative, Lessee shall furnish Lessor with copies of such plans, drawings and specifications.

8.9 **Lessee's Covenant**. Lessee covenants to keep the Premises free from all Prohibited Liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Lessee shall remove any Prohibited Liens by bond or otherwise within twenty (20) days after Lessee is informed of the existence of such lien or encumbrance, and if Lessee shall fail to do so, Lessor may pay the amount necessary to remove such Prohibited Liens, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Lessor under this Lease. **Nothing contained in this Lease shall be deemed or construed in an way to constitute Lessor's consent or request, express or implied, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any Construction, nor as giving Lessee any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Fee Estate, and Lessee shall Indemnify Lessor harmless from and against any and all liabilities arising out of same or in connection therewith.**

8.10 **Title Encumbrances**. Lessee shall keep the Fee Estate free from any encumbrances against title, and shall not record or permit the recordation of any lien, encumbrance, easement, memorandum of Sublease or other document that affects the record title to the Fee Estate without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessee shall cause any recorded title encumbrances arising during the Term (other than those caused to be recorded by Lessor), which are consented to in writing by Lessor, to be released as of the ***earlier*** of (a) the date each individual encumbrance ceases to be valid (e.g., as of the expiration of a Sublease for which there is a recorded memorandum), and (b) the date this Lease expires or earlier terminates. Lessee shall cause any recorded title encumbrances on the Fee Estate arising during the Term (other than those caused to be recorded by Lessor), which are not consented to in writing by Lessor, to be cleared immediately, and in any event, within thirty (30) days of a written demand by Lessor, except as otherwise provided in Section 8.9. During the Term, Lessor shall not encumber the Premises or Lessee's leasehold interest therein.

8.11 **Lease Termination**. If this Lease expires or is terminated prior to the completion of any Construction, Lessee shall, at Lessor's option and at Lessee's sole expense, either (a) promptly complete such construction, or (b) remove all such partially completed improvements, construction materials,

equipment and other items from the Premises and restore the Premises to their pre-Construction condition.

ARTICLE 9:
HAZARDOUS SUBSTANCES

9.1 **Restrictions**. Lessee shall not cause and shall use Lessee's best efforts not to permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Laws; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the Premises in accordance with customary standards in such business, or to operate and maintain the Premises for uses this Lease permits and (ii) in compliance with all Environmental Laws.

9.2 **Compliance; Clean-Up**. Lessee shall, at Lessee's sole expense: (a) comply with Environmental Laws and, to the extent Environmental Laws require, clean up any Hazardous Substances Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify Lessor against any Hazardous Substances Discharge or violation of Environmental Law. Any party's obligations under this Section 9.2 shall not limit such party's rights against third parties.

9.3 **Surrender Obligations**. At the expiration or earlier termination of the Term, Lessee, at Lessee's sole expense, shall cause all Hazardous Substances to be removed from the Premises and disposed of in accordance with all Environmental Laws and as necessary to allow the Premises to be used for the uses permitted under this Lease in accordance with Section 6.1, and cause to be repaired any damage to the Premises caused by such removal.

9.4 **Copies of Environmental Reports**. Within thirty (30) days of receipt thereof, Lessee shall provide Lessor with a copy of any and all environmental assessments, audits, studies and reports regarding Lessee's activities with respect to the Premises, or ground water beneath the Land, or the environmental condition or any clean-up thereof. Lessee shall be obligated to provide Lessor with a copy of such materials without regard to whether such materials are generated by Lessee or prepared for Lessee, or how Lessee comes into possession of such materials.

9.5 **Survival**. Each covenant, agreement, representation, warranty and indemnification made by Lessee set forth in this Article 9 shall survive the expiration or earlier termination of this Lease and shall remain effective until all of Lessee's obligations under this Article 9 have been performed and satisfied.

9.6 **Discharges before Commencement**. Lessee agrees to accept the Premises in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition as described in Section 2.2, but Lessee shall have no responsibility to clean up or remediate any Hazardous Substances Discharge occurring prior to the Commencement Date and, as between Lessor and Lessee, the same shall continue to be Lessor's sole responsibility.

ARTICLE 10:
INDEMNIFICATION; LIABILITY OF LESSOR

10.1 **Obligations**. Lessee shall Indemnify Lessor against any: (a) wrongful act, wrongful omission, or negligence of Lessee (and anyone claiming by or through Lessee) or its or their partners, members,

directors, officers, or employees; (b) breach or default by Lessee under this Lease; or (c) breach of any representation or warranty Lessee makes in this Lease. In addition, Lessee shall Indemnify Lessor against the following during the Term and so long as Lessee remains in possession after the Expiration Date: (i) any Contest Lessee initiates; (ii) any Application made at Lessee's request; (iii) the use, occupancy, control, management, operation, and possession of the Premises; (iv) any Construction and any agreements that Lessee (or anyone claiming through Lessee) makes for any Construction; (v) the condition of the Premises; and (vi) any accident, injury or damage whatsoever caused to any person in or on the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall not be required to Indemnify Lessor regarding Lessor's intentional acts or omissions or negligence.

10.2 **Liability of Lessor**. During the Term: (a) Lessee is and shall be in exclusive control and possession of the Premises; and (b) Lessor shall not be liable for any injury or damage to any property (of Lessee or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Lessor's willful misconduct or gross negligence. Lessor's right to enter and inspect the Premises is intended solely to allow Lessor to ascertain whether Lessee is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Lessor any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Lessor from or against any liability of Lessor: (i) to third parties existing at or before the Commencement Date; or (ii) arising from Lessor's willful misconduct or gross negligence.

10.3 **Indemnification Procedures**. Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

10.3.1 Prompt Notice. Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

10.3.2 Selection of Counsel. Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

10.3.3 Cooperation. At Indemnitor's request, Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

10.3.4 Settlement. Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (b) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) Indemnitee's interest in the Premises is not jeopardized in any way.

10.3.5 Insurance Proceeds. Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

ARTICLE 11:
RIGHT OF CONTEST

11.1 **Lessee's Right; Contest Conditions**. Notwithstanding anything to the contrary in this Lease, Lessee shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings

diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Lessee to Indemnify Lessor (any of the foregoing, a "**Contest**"). Lessee may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Lessee causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

11.1.1 No Criminal Act. Such deferral or noncompliance shall not constitute a criminal act by Lessor or subject Lessor to a material risk of any fine or penalty, except civil penalties for which Lessee has given Lessor a bond, letter of credit, or other security reasonably satisfactory to Lessor (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties.

11.1.2 No Liability. Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Lessee has given Lessor Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability, and such Contest Security otherwise is acceptable to Lessor.

11.1.3 [Reserved.]

11.1.4 No Forfeiture. Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

11.1.5 No Cost to Lessor. Such Contest shall be without cost, liability, or expense to Lessor.

11.1.6 Diligence. Lessee shall prosecute such Contest with reasonable diligence and in good faith.

11.1.7 Payment. If required for such Contest, Lessee shall have paid the Real Estate Taxes or other matter subject to the Contest.

11.1.8 Collection of Real Estate Taxes. If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Lessor and the Fee Estate.

11.1.9 No Event of Default. No uncured Event of Default shall exist under this Lease at the time of such Contest.

11.1.10 Named Parties. If Lessor has been named as a party in any action, then Lessee shall cause Lessor to be removed as such party and Lessee substituted in Lessor's place, if practicable and permissible under the circumstances.

11.2 Lessor Obligations and Protections. Lessor need not join in any Contest unless Lessee has complied with the Contest Conditions, and such Contest must be initiated or prosecuted in Lessor's name. In such case, Lessor shall cooperate, as Lessee reasonably requests, to permit the Contest to be prosecuted in Lessor's name. Lessor shall give Lessee any documents, deliveries, and information in Lessor's control and reasonably necessary for Lessee to prosecute its Contest. Lessor shall otherwise assist Lessee in such Contest as Lessee reasonably requires. Lessee shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Lessee shall, at Lessor's request, advance (when Lessor incurs them) such reasonable costs and expenses as Lessor incurs or reasonably anticipates incurring, for Lessee's Contest and Lessor's assistance with such Contest.

11.3 Miscellaneous. Lessee shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Lessee), to the extent attributable to periods within the Term, whether such refund is

made during or after the Term. When Lessee concludes Lessee's Contest of any Real Estate Taxes, Lessee shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Lessee's Contest of a Law, Lessee shall comply with such final determination. So long as the Contest Conditions remain satisfied, Lessor (in its role as owner, and not in its role as Government authority) shall enter no objection to any Contest. Lessor may contest any matter for which Lessee is entitled to (but does not) prosecute a Contest, but only if: (a) Lessor Notifies Lessee of Lessor's intention to do so; (b) Lessee fails to commence such Contest within ten (10) days after receipt of such Notice; and (c) Lessor's contest complies with all conditions and covenants that would apply to a Contest by Lessee, including Section 11.4, transposing references to the parties and their interests as appropriate.

11.4 Contest Security. Lessor shall promptly release any Contest Security to Lessee after the Contest has been resolved and Lessee has performed its obligations, if any, as determined by such resolution. Lessor shall hold any Contest Security in the same manner as the Security.

ARTICLE 12:
INSURANCE

12.1 Lessee's Insurance. At all times during the Term, Lessee shall procure and maintain, at Lessee's sole expense, or vote in favor of causing the Condominium Association to procure and maintain, any and all insurance that may be required by any Laws or the Restrictions as they may pertain to the Project or Lessee's operations at the Premises, as well as the following policies of insurance in the following amounts:

12.1.1 Liability Insurance. Liability Insurance with limits of liability not less than $2,000,000 per occurrence, with a $4,000,000 per location aggregate.

12.1.2 Property Insurance. Property Insurance covering the common elements of the Project and Lessee's property, including, without limitation (a) all Improvements (including, without limitation, all alterations), (b) all Building Equipment, and (c) all other items of Lessee's property on the Premises installed by, for, or at the expense of Lessee. If available at commercially reasonable premium amounts, Property Insurance shall also include rental or business interruption insurance in an amount at least equal to annual Rent. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance, and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, flood, hurricane, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, explosion, and such other hazards or risks which a prudent business person would insure against (including property coverage for damage caused by war or military action, if available). The deductible/self-insured retention shall not exceed $250,000 per occurrence without Lessor's written consent except for wind or hurricane which may contain a greater deductible consistent with insurance contracts and products generally available in the market and used by owners of similarly situated properties.

12.1.3 Boiler and Machinery Insurance. Boiler and Machinery insurance, including mechanical breakdown, covering rooftop HVAC units and any separate heating units or boilers which serve the Premises. Such coverage shall be for the full replacement value without deduction for depreciation.

12.2 Nature of Insurance Program. All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A-, VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State of Hawai`i. So long as not prohibited by

Law, the Act or the Declaration, Lessee may carry any insurance required by the Lease directly in its own name, or through an Affiliate, or through the Condominium Association, or through any combination thereof. Lessee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

12.3 Policy Requirements and Endorsements. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

12.3.1 Insureds. Liability Insurance policies shall identify Lessor as an "additional insured". Property Insurance policies shall name Lessor and Lessee as loss payees as their respective interests may appear, and each mortgagee this Lease allows under a standard noncontributing mortgagee clause, subject to any applicable provisions of the Act and the Restrictions. Notwithstanding anything to the contrary, all Property Insurance Proceeds shall be paid and applied as this Lease provides in compliance with any Leasehold Mortgage, the Act, and the Restrictions. On all insurance policies where Lessor is named as an additional insured, Lessor shall be an additional insured to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required under this Lease.

12.3.2 Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that Lessor may carry.

12.3.3 Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for Lessee's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Lessee's failure to obtain such contractual liability coverage shall not relieve Lessee from any indemnity obligation under this Lease.

12.3.4 Severability of Interest. Liability Insurance policies shall contain a clause clarifying that, except with respect to coverage limits, the insurance applies separately to each insured and that the policy covers claims or suits by one insured against other, to the extent customarily covered by liability insurance policies.

12.3.5 Notice to Lessor. All policies required hereunder shall be written to provide not less than sixty (60) days prior Notice of cancellation to Lessee, except for non-payment of premium, and Lessee shall then notify Lessor within ten (10) calendar days of receipt of such Notice of cancellation.

12.4 Deliveries to Lessor. On the Commencement Date, Lessee shall deliver to Lessor certificates of insurance evidencing Lessee's maintenance of all Liability Insurance and Property Insurance this Lease requires.

12.5 Waiver of Certain Claims. Notwithstanding anything to the contrary contained in this Lease, Lessee and Lessor each waive any right of recovery against the other party and against any other party maintaining a policy of Property Insurance with respect to this Lease or the Premises, for any loss or damage sustained by Lessee or Lessor, as the case may be, that is covered by any policy of Property Insurance maintained (or required to be maintained under this Lease) with respect to the Premises, or the contents of the same or any operation in the Premises, whether or not such loss is caused by the fault or negligence of Lessor or its agents, directors, employees or officers, or is caused by the fault or negligence of Lessee or its agents, directors, employees or officers. If Lessee's policy of insurance relating to this Lease or to the Premises does not permit the foregoing waiver or if the coverage under such policy would be invalidated as a result of such waiver, Lessee shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against Lessor in connection with any claim, loss or damage covered by such policy.

12.6 **Additional Insurance**. Lessee shall periodically, but not less frequently than once every three (3) years, reevaluate the scope of risks covered and the limits of its insurance and, if commercially reasonable, increase such coverage or limits in order to provide coverage for Lessee's and Lessor's protection for risks and limits that a prudent business person would provide for property being put to uses similar to those of the Premises. Notwithstanding the foregoing, every ten (10) years during the Term, Lessee shall automatically be required to increase the Liability Insurance coverages carried by Lessee under this Lease by the percentage increase in the Consumer Price Index over the same period of time.

12.7 **No Representation**. Lessor makes no representation that the limits of liability required to be carried by Lessee pursuant to this Article 12 are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee shall obtain such additional insurance coverage as Lessee deems adequate, at Lessee's sole expense. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

ARTICLE 13:
LOSSES AND LOSS PROCEEDS

13.1 **Notice**. If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

13.2 **Effect of Casualty**. If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Lessee shall Restore (or vote in favor of causing the Condominium Association to Restore) with reasonable promptness regardless of cost or the amount of Property Insurance Proceeds (Lessee shall make up any deficiency in Property Insurance Proceeds with its own funds). If, however, the Casualty is a Substantial Casualty, then Lessee may, by Notice to Lessor, given within thirty (30) days after the Casualty occurs, terminate this Lease effective thirty (30) days after such Notice. In the event that Lessee elects to terminate the Lease pursuant to this Section 13.2, the Property Insurance Proceeds shall be disbursed in the following order of priority (a) first, to Lessee (subject to the rights of any Leasehold Mortgagees) up to the Market Value of the Leasehold Estate as of the date of the Casualty, (b) second, to the extent, if any, of any remaining Property Insurance Proceeds, to Lessor up to the Market Value of the Fee Estate as of the date of the Casualty, and (c) finally, to the extent, if any, of any remaining Property Insurance Proceeds, to Lessee (subject to the rights of any Leasehold Mortgagees) and Lessor, respectively, in the proportion that the duration of the Term remaining at the date of the Casualty (determined as if the Term were to continue until the Scheduled Expiration Date) bears to the duration of the full initial Term.

13.3 **Adjustment of Claims; Use of Property Insurance Proceeds**. Unless Lessee has validly elected a Casualty Termination, Lessee shall have the sole right and authority to adjust any insurance claim, subject to rights of any Leasehold Mortgagee, and subject to any applicable requirements of the Act. Subject to any applicable requirements of the Act as to payment of the proceeds, the Property Insurance Proceeds shall be disbursed: (a) in the case of an Immaterial Loss, to Lessee, to be held in trust to be applied first for Restoration; and (b) in the case of any other Casualty, to Depository, to be released in installments for Restoration. To obtain each such disbursement, Lessee shall deliver to Depository:

13.3.1 Architect's Certificate. A certificate of Lessee's licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons for Restoration; (b) Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise satisfactorily; (c) the sum being requested does not exceed the amount then due and payable; (d) except in the case of the final

disbursement of Restoration Funds, the remaining Restoration Funds after disbursement are reasonably anticipated to suffice to pay for the remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Lessee has substantially completed Restoration and obtained a temporary certificate of occupancy for the Restoration to the extent required by Law, and delivered (or simultaneously delivers in exchange for payment) final lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration;

13.3.2 Lien Waivers. Progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement; and

13.3.3 Other. Such other documents, deliveries, certificates and information as Depository reasonably requires.

13.4 Substantial Condemnation. If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. Subject to the Restrictions, the Condemnation Award shall be paid in the following order of priority: (a) first, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive such portion of the Condemnation Award up to the Market Value of the Leasehold Estate at the Condemnation Effective Date, (b) second, Lessor shall receive such portion of the remaining Condemnation Award up to the Market Value of the Fee Estate at the Condemnation Effective Date, and (c) third, to the extent of any remaining Condemnation Award, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive the remaining balance of the Condemnation Award.

13.5 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to Depository to be applied first for Restoration in the same manner as Property Insurance Proceeds. Whether or not the Condemnation Award is adequate, Lessee shall, at its expense, Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be distributed in the same manner as if it arose from a Substantial Condemnation that affected only the part of the Premises taken.

13.6 Temporary Condemnation. A Temporary Condemnation shall not terminate this Lease or excuse Lessee from full performance of its covenants or any other obligations hereunder capable of performance by Lessee during the period of such Temporary Condemnation, but in such case Lessee shall receive any Condemnation Award for the Temporary Condemnation (to the extent applicable to periods within the Term).

13.7 Immaterial Loss. If an Immaterial Loss occurs, then Lessee shall receive any Condemnation Award in trust to be applied first to Restoration. Lessee shall Restore in accordance with this Lease. After Restoration, Lessor shall receive any remaining Condemnation Award.

13.8 Surrender. If Lessee has the right to terminate this Lease as a result of a Condemnation, Lessee shall do so by delivering written notice of such termination to Lessor within sixty (60) days after the Condemnation Effective Date. Lessee shall surrender the Premises in accordance with the applicable surrender provisions of Article 23, and Lessor and Lessee shall thereafter be relieved of any further obligation under this Lease.

ARTICLE 14:
LESSOR'S RESERVED RIGHTS

14.1 Inspections. Notwithstanding anything to the contrary in this Lease, Lessor and its agents, representatives, and designees may enter the Premises upon reasonable Notice (except in the case of an emergency) during regular business hours, to: (a) ascertain whether Lessee is complying with this Lease (including the review of Lessee's records, contracts and/or Subleases pertaining to the Premises);

(b) cure Lessee's Defaults, in accordance with this Lease; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Lessor determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; (e) post notices of non-responsibility; or (f) as reasonably required in connection with any sale, financing, survey, re-entitlements, equity placements, or for other reasonable purposes determined by Lessor. In entering the Premises, Lessor and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Lessee's reasonable instructions.

14.2 **Other Entries by Lessor**. In addition to Lessor's rights under Section 14.1, Lessor may enter the Premises at any time (a) to take possession due to any breach of this Lease in the manner provided herein; and (b) to perform any covenants of Lessee that Lessee fails to perform (subject to any applicable notice and cure periods). Lessor may make any such entries hereunder without abatement of Rent, and may take such reasonable steps as required to accomplish the stated purposes. In an emergency, Lessor shall have the right to use any means that Lessor reasonably deems proper to open the doors to the Improvements. Any entry into the Premises by Lessor in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Lessee from any portion of the Premises. No provision of this Lease shall be construed as obligating Lessor to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Lessor herein.

14.3 **Water, Oil, Gas and Mineral Rights**. Subject to applicable Laws, Lessor reserves to itself the sole and exclusive right to all water, oil, gas, or other hydrocarbon or mineral substances and accompanying fluids, including all geothermal resources, from the Land; but Lessor shall not undertake any extraction of such resources during the Term.

14.4 **Easements**.

14.4.1 Lessor's Right to Grant Licenses, Permits, Encroachments and Easements. Lessor shall have the right, without payment to or charge from Lessee, to reserve to itself and to grant licenses, permits, encroachments or easements (collectively, "**Easements**") to any Person or Government on, over, under, across and through the Premises, to the extent such Easements are deemed by Lessor to be necessary or convenient for the construction, installation, operation, maintenance, repair and replacement of (a) improvements, (b) underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, (c) rights of way, curbs, pavements and other roadway improvements, and (d) landscaping, whether serving the Premises or other properties of Lessor or any other Person or Government. The terms and conditions of the grants of such Easements shall be subject to the approval of Lessee, which approval shall not be unreasonably withheld.

14.4.2 Limitations on Lessor's Rights. Notwithstanding anything contained in above, Lessor may only grant or relocate Easements if taking such action will not have a material adverse effect on the design or use of Improvements planned for or existing on the Premises. Further, Lessor shall (or shall cause the grantee of such Easements to): (a) be responsible for payment of all costs in connection with the granting of such Easements and the construction, installation and restoration work in connection therewith; (b) carry out and coordinate such work with Lessee so as to minimize disruption with Lessee's use of the Premises; and (c) following any work in the area of any Easement, restore the Premises to substantially the same condition as existed prior to such work.

14.5 **Development**. Lessee agrees that it will reasonably cooperate with Lessor in the event Lessor desires to develop other properties owned by Lessor in the vicinity of the Premises; provided that such cooperation has no material adverse effect on the Premises or Lessee's use of the Premises.

14.6 **Entitlement Rights**. If the Improvements do not reach or utilize the maximum entitlement rights permitted by Law (including, without limitation, rights with respect to height, air rights or density), whether

as of the Commencement Date or thereafter, then Lessee shall have the exclusive right to claim any such rights or credits, which rights or credits may be utilized only in the development of the Premises or other lands or property leased to Lessee or its Affiliate by Lessor and in a manner that is consistent with the uses of the lands or property to which such rights or credits are transferred.

14.7 **No Light or Air Easement**. Any diminution or shutting off of light or air by any structure now existing or hereafter erected by or on behalf of Lessor or Lessor's Affiliate on lands adjacent to the Premises shall in no way affect this Lease, shall not constitute a constructive eviction or grounds for reduction or abatement of Rent, or otherwise impose any liability on Lessor.

14.8 **Provision Respecting Certain Concessions**. If there is any judicial determination, a binding arbitration determination, or a determination made as part of a judicially-approved settlement that the Premises are subject to Hawai'i Revised Statutes §102-14, and Lessee is required as a result thereof to grant any concessions or rights to operate vending machines in any part of the Premises, Lessor shall indemnify and hold harmless Lessee from and against (i) all revenues lost over the remaining Term of the Lease that would, but for Lessee's granting of the aforesaid concessions or rights, otherwise have been realized by Lessee; and (ii) any liability, cost, damage, and expense (including, without limitation, attorneys' fees and costs) that Lessee incurs in connection with any claims made against Lessee or any proceedings under Hawai`i Revised Statutes § 102-14 to which Lessee is made a party as a result of its operation of the Premises.

14.9 **Project Name**. Lessee agrees that it will not change the name by which the project is known or identified without the prior written approval of Lessor.

14.10 **General**. In addition to Lessor's right, title and interest as the fee owner in the Land, Lessor also shall have such rights as it may have as grantee, benefitted party or other party other than the fee owner of the Land under any grants of easement, covenants, restrictions, Land Court orders, and other recorded instruments or maps encumbering or affecting the Land (for example and not by way of limitation, rights of Lessor as grantee under sewer or drainage easements on, through or under the Land).

ARTICLE 15:
LESSOR'S TRANSFERS

15.1 **Transfer of Lessor's Interest**. Lessee acknowledges that Lessor has the right to Transfer the Fee Estate (which term shall include the fee interest in the Unit) in accordance with Section 15.3. Lessee agrees that in the event of any such Transfer, (a) Lessee shall look solely to such transferee for the performance of Lessor's obligations under this Lease after the date of Transfer, and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Lessor after the date of Transfer; and (b) Lessee shall attorn to such transferee. Lessee hereby agrees to cooperate, at no cost to Lessee, with Lessor in connection with any Transfer.

15.2 **Release of Lessor**. Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor automatically shall be freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Lessor after the Transfer, provided that such successor Lessor assumes Lessor's present and future obligations under this Lease. This Lease shall bind Lessor only while Lessor owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

15.3 **No Right of First Refusal/No Option to Purchase**. If Lessor desires to Transfer the Fee Estate during the Term, it shall do so in full compliance with all Laws governing the County's sale of real property including, if applicable, an RFP or other public bidding process. Lessor shall give Lessee written notice of Lessor's intent to Transfer the Fee Estate at least thirty (30) days prior to issuing such RFP or

commencing such public bidding process. Lessee understands and agrees that nothing in this Lease grants Lessee an option or right of first refusal to purchase the Fee Estate from Lessor.

ARTICLE 16:
REGULATORY AGREEMENT

[See Addendum]

ARTICLE 17:
LESSEE'S TRANSFERS

17.1 Lessee's Transfer Right. Except as provided in Article 18 (see Addendum) and Article 19, Lessee shall not Transfer this Lease or the Leasehold Estate, whether or not to an Affiliate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees, however, that it shall be conclusively presumed to be reasonable for Lessor to withhold its consent unless the following have occurred: (A) Lessor's receipt of reasonably satisfactory evidence that: (a) Lessee is not in Default under this Lease or, if Lessee is in Default, that the transferee undertakes to cure any such Default to the reasonable satisfaction of Lessor; (b) the continued operation of the Premises after the Transfer shall comply with the provisions of this Lease; (c) the transferee has the financial capability and resources to operate and maintain the Premises as required by this Lease; (d) either (i) the transferee or its property manager has the experience, reputation, managerial and operational skills to operate and maintain the Premises, (ii) the transferee agrees to retain a property manager with the skills, experience and record described in clause (i) above, effective as of the date of the Transfer, or (iii) the transferor Lessee or its or its property manager will continue to manage the Premises, or another property management company reasonably acceptable to Lessor will manage the Premises, for at least one year following the Transfer; and (e) the transferee is not delinquent in any tax payments and does not have pending against it any charges of, and does not have a record of, material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any applicable local, state or federal regulatory agencies; (B) the execution by the transferee and delivery to Lessor of an assignment document specifically stating that the Transfer is made subject to all terms, covenants and conditions of this Lease, and all such terms, covenants, and conditions in such documents shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer, and delivery to Lessor of an opinion of the transferee's counsel to the effect that each such document and this Lease are valid, binding and enforceable obligations of the transferee, subject only to Bankruptcy Law and other standard limitations affecting creditor's rights; and (C) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee in connection with this Lease. It is hereby expressly stipulated and agreed that any Transfer in violation of this Section 17.1 shall be null, void and without effect, shall cause a reversion of title to Lessee, and shall be ineffective to relieve Lessee of its obligations under this Lease. The written consent of Lessor to any Transfer of this Lease or the Leasehold Estate shall constitute conclusive evidence that the Transfer is not in violation of this Section 17.1. Upon any Transfer by Lessee that complies with this Lease, Lessee shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee except for: (x) any obligation to hold and apply Restoration Funds held by Lessee at the date of the Transfer (unless transferred to the transferee); (y) any unperformed obligations that arose or accrued prior to such Transfer and all Legal Costs of any proceeding relating thereto commenced before such Transfer for which the transferor is liable hereunder (unless specifically assumed in writing by the transferee); and (z) any indemnity obligation under this Lease (unless specifically assumed in writing by the transferee). Lessee shall pay all transfer and other taxes, if any, payable on account of any Transfer by Lessee or any holder of any Equity Interest in Lessee.

17.2 **No Partial Transfers**. Except in the case of a Sublease permitted pursuant to Article 18 (see Addendum) or a Leasehold Mortgage permitted pursuant to Article 19, in no event shall Lessee be permitted to Transfer less than its entire interest in this Lease or the Leasehold Estate, and Lessor may elect in its sole discretion to deny consent to any such partial Transfer; provided, however, that a Sublease entered into pursuant to and in accordance with this Lease shall not be deemed a Transfer and shall not require Lessor's consent.

17.3 **Notice of Transfer**. If Lessee desires Lessor's consent to any Transfer, Lessee shall Notify Lessor in writing, which notice shall include (a) the proposed effective date of the Transfer; (b) the material terms of the proposed Transfer; (c) a copy of the signed purchase and sale agreement between Lessee and the proposed transferee; (d) current financial statements of the proposed transferee certified, compiled or reviewed by an independent certified public accountant for the fiscal year most recently ended, and business credit, personal references and business history of the proposed transferee; and (e) such other reasonable information in connection with the proposed Transfer as Lessor shall reasonably request.

17.4 **Expenses**. Within ten (10) days following demand, Lessee shall reimburse Lessor for Lessor's reasonable costs (including attorneys' fees) incurred in reviewing and approving or disapproving, or otherwise consulting with respect to, any Transfer.

ARTICLE 18:
SUBLEASES

[See Addendum]

ARTICLE 19:
LEASEHOLD MORTGAGES

19.1 **Leasehold Mortgage**. Notwithstanding anything in this Lease to the contrary, Lessee shall have the absolute and unconditional right, without Lessor's consent, to execute and deliver Leasehold Mortgage(s) at any time and from time to time during the Term. Lessor shall not be required to join in, or "subordinate the Fee Estate to," any Leasehold Mortgage, but shall execute and deliver such estoppel certificates and other certifications as any Leasehold Mortgagee shall reasonably require.

19.2 **Protection of Leasehold Mortgagee**. In the event Lessee subjects this Lease to a Leasehold Mortgage, the provisions of this Article 19 shall apply with respect to such Leasehold Mortgage:

19.2.1 No Cancellation. There shall be no cancellation, termination, surrender or modification of this Lease by Lessee or by joint action of Lessor and Lessee without the prior consent in writing of Leasehold Mortgagee.

19.2.2 Concurrent Notices. Lessor shall, upon serving Lessee with any notice pursuant to the provisions of this Lease, concurrently serve a copy of the notice upon Leasehold Mortgagee.

19.2.3 Right to Cure. Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all Rent due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under this Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of this Lease. Any of the foregoing done by Leasehold Mortgagee shall be effective to prevent a termination of the Lease as the same would have been done by Lessee.

19.2.4 Cure Period. Notwithstanding anything in this Lease to the contrary, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles or purportedly entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless (a) Lessor shall have given written notice to the Leasehold Mortgagee of Lessee's Default and stating Lessor's intent to terminate this Lease; and (b) either (i) in the event of a Monetary Default, the Leasehold Mortgagee shall not have cured such Monetary Default within thirty (30) days after the service of such written notice, or (ii) in the event of any other Default under this Lease susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee fails to commence, within sixty (60) days after the service upon the Leasehold Mortgagee of such written notice, the cure of such Default, and diligently pursue to completion the cure of such Default; provided, however, that in the Event of a Default under this Lease which consists of the existence or nonpayment of a lien, such Default shall be deemed to be cured if, within such 60-day period, the Leasehold Mortgagee shall have commenced foreclosure and shall thereafter diligently pursue such proceedings to completion, or shall have commenced and shall thereafter diligently pursue steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. If any such Default susceptible of being cured by the Leasehold Mortgagee cannot be cured by the Leasehold Mortgagee without the Leasehold Mortgagee first obtaining possession of the Premises or title to the Leasehold Estate or if the Default is not susceptible of being cured by the Leasehold Mortgagee, such Default shall be deemed to be cured if: (A) within sixty (60) days after the receipt by the Leasehold Mortgagee of such written notice, the Leasehold Mortgagee shall have commenced foreclosure and thereafter diligently pursue such proceedings to completion, or (B) the Leasehold Mortgagee commences, within such 60-day period, and thereafter diligently pursues, steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. During the course of any such proceedings, such Leasehold Mortgagee shall pay or cause to be paid all Rent as and when the same becomes due and payable under this Lease.

19.2.5 Time Extensions. If the Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, the times specified in Section 19.2.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Leasehold Mortgagee shall have fully cured any Monetary Default and shall continue to pay Rent as and when the same becomes due.

19.2.6 New Lease. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, any Default by Lessee), Lessor, if requested by the Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the Term, at the Rent and upon the same terms, covenants and conditions herein contained, provided that: (a) such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that the Lease has been terminated; (b) such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums, including Rent, which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination; (c) such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and (d) the lessee under the new lease shall have the same right, title and interest in and to the Premises as Lessee had under the terminated Lease immediately prior to its termination. Notwithstanding the foregoing, nothing herein contained shall require any authorized Leasehold Mortgagee to enter into a new lease pursuant to this Section 19.2.6, nor to cure any Default of Lessee referred to above.

19.2.7 Lessor's Consent. Lessor's written consent, which shall not be unreasonably withheld, is required for any transfer of the Leasehold Estate to any third party (other than Leasehold Mortgagee or its Affiliate) pursuant to a foreclosure (whether by judicial proceedings or by virtue of any power of sale contained in any Leasehold Mortgage), or assignment in lieu of foreclosure. Lessor shall execute a written consent to such transfer, or provide a written denial of consent (which will include specific reasons for Lessor's denying consent), within forty-five (45) calendar days of receipt of Leasehold Mortgagee's written request for such consent. If, in connection with Lessee's financing of its interest under this Lease, a prospective lender requests that additional or modified protections be incorporated into this Lease, Lessor shall review and reasonably approve such requests and timely amend this Lease as necessary and appropriate; provided, however, that such additions or modifications requested are generally applicable and utilized in financings of leasehold estates similar to the Leasehold Estate under this Lease, and that such requests do not materially and adversely affect Lessor's rights or materially increase Lessor's obligations.

19.2.8 Liability Limits. In the event any third party or Leasehold Mortgagee acquires the Leasehold Estate upon foreclosure (whether judicial or non-judicial in nature) or by assignment in lieu of foreclosure, or acquires a leasehold estate in the Premises pursuant to the terms of a new lease, such party, as the new lessee, shall be personally liable only for the obligations of the Lessee under this Lease (or, if applicable, the new lease) arising during the period of time that such party holds title to the Leasehold Estate created hereby (or, if applicable, the new lease).

ARTICLE 20:
EQUIPMENT LIENS

20.1 Lessee's Rights. If at any time or from time to time Lessee desires to enter into or grant any Equipment Lien that otherwise complies with this Lease, and provided that no uncured Event of Default exists, then upon Lessee's request Lessor shall enter into such customary documentation regarding the Financed FF&E as Lessee reasonably requests, providing for matters such as: (a) waiver or subordination of any right to take possession of such Financed FF&E upon an Event of Default; (b) waiver or subordination of any other right, title, or interest in the Financed FF&E; and (c) agreements to enable the holder of such Equipment Lien to repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien.

20.2 Required Provisions for Equipment Liens. If Lessee enters into any Equipment Lien, then Lessee shall: (i) not file (or cause or permit to be filed) such Equipment Lien as a lien against the Fee Estate or any part of the Fee Estate, but Lessee shall be permitted to file or cause to be filed a fixture filing attaching to Lessee's interest in the Premises relating to any Financed FF&E; and (ii) cause to be inserted in the documents for such Equipment Lien a provision to the following effect:

Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sales agreement, title retention agreement, or security agreement shall not create or be filed as a lien against the Fee Estate.

ARTICLE 21:
QUIET ENJOYMENT

So long as this Lease has not been terminated, Lessor covenants that Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms, covenants, conditions, provisions and agreements set forth in this Lease, without hindrance or disturbance by or from Lessor or anyone lawfully claiming by or through Lessor, and free of any encumbrance created or suffered by Lessor, except Permitted Exceptions.

ARTICLE 22:
EVENTS OF DEFAULT; REMEDIES

22.1 **Definition of "Event of Default"**. An "**Event of Default**" means the occurrence of any one or more of the following:

22.1.1 Monetary Default. If a Monetary Default occurs and continues for ten (10) days after Notice from Lessor, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

22.1.2 Prohibited Liens If Lessee fails to comply with any obligation regarding Prohibited Liens and does not begin to remedy such failure within fifteen (15) days after Notice from Lessor and, thereafter, diligently pursue such remedy to completion.

22.1.3 Bankruptcy or Insolvency. If Lessee ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Lessee's assets or Lessee's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within ninety (90) days).

22.1.4 Nonmonetary Default. If any other Nonmonetary Default occurs and Lessee does not cure it within thirty (30) days after Notice from Lessor describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessee shall not (a) within thirty (30) days from Lessor's Notice advise Lessor of Lessee's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.1.5 Other Events. The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease.

22.2 **Remedies**. If an Event of Default occurs, then Lessor shall, at Lessor's option (unless prohibited by Law), have any or all of the following remedies, all cumulative (i.e., the exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Lessor's remedies include:

22.2.1 Termination of Lessee's Rights. Lessor may terminate Lessee's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Lessee shall immediately surrender possession to Lessor. Notwithstanding the foregoing, no re-entry or taking of possession of the Premises by Lessor under Section 22.2.2 shall be construed as an election on Lessor's part to terminate this Lease unless a written Notice that this Lease is terminated is given by Lessor, or an order is secured stating that this Lease is terminated. The effective date of termination of this Lease shall be as of the date set forth or provided in the Notice or order, as the case may be.

22.2.2 Taking Possession. Lessor may re-enter and take possession of the Premises with process of law, whether by summary proceedings (unless prohibited by Law) or otherwise, and remove Lessee (and all property of Lessee), with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Lessor. Except as expressly provided in this Lease or prohibited by Law, Lessee, for and on behalf of itself and all persons claiming by, through or under Lessee, expressly waives any and all right of

redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Lessee is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Lessor or any expiration or termination of this Lease. No re-entry by Lessor, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Lessee from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

22.2.3 Suits Before Expiration Date. Lessor may sue for damages and/or to recover Rent from time to time at Lessor's election; nothing in this Lease requires Lessor to wait until the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

22.2.4 Receipt of Moneys. No receipt of money by Lessor from Lessee after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Lessee, or waive Lessor's right to enforce payment of any Rent payable or later falling due, or Lessor's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of Notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Lessor may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of Lessee's liability.

22.2.5 No Waiver. No failure by Lessor to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no Default, shall be Modified except by a written instrument executed by Lessor. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

22.2.6 Receiver. Lessor shall be entitled as a matter of right, by *ex parte* order or otherwise, to the appointment without bond of a receiver of the Premises, and of the rents, revenues, income and profits generated from the Premises, without regard to the value of the Premises or the solvency of any Person liable for the payment of any monetary obligation under this Lease, and regardless of whether Lessor has an adequate remedy available to Lessor under this Lease or under applicable Laws.

22.2.7 Damages. Lessor may recover from Lessee all damages Lessor incurs by reason of Lessee's Default, including reasonable costs of recovering possession, re-letting the Premises, and any and all other damages legally recoverable by Lessor, and reimbursement of Lessor's reasonable out-of-pocket costs, including Legal Costs. Lessor may recover such damages at any time after Lessee's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, Lessor need not commence separate actions to enforce Lessee's obligations for each month's accrual of damages for Lessee's Default, but may bring and prosecute a single combined action for all such Rent and damages.

22.2.8 Injunction of Breaches. Whether or not an Event of Default has occurred, Lessor may obtain a court order enjoining Lessee from continuing any Default or from committing any threatened Default. Lessee specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

22.2.9 Continue Lease. Lessor may at Lessor's option maintain Lessee's right to possession. In such case, this Lease shall continue and Lessor may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

22.2.10 Restoration Funds. Upon any termination of this Lease resulting from an Event of Default, to the extent that Lessor or Depository then holds any Restoration Funds, such Funds shall be applied first toward the applicable Restoration with any Funds remaining after completion of Restoration being applied in the manner set forth in Section 13.2 for the disposition of Property Insurance Proceeds upon a Casualty Termination, subject to any claims for damages resulting from such Event of Default.

22.3 Proceeds of Reletting. Lessor shall apply any proceeds of any re-letting as follows, without duplication, but including Default Interest on all such sums:

22.3.1 Lessor's Costs. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

22.3.2 Preparation for Reletting. Second, to pay to itself the cost and expense reasonably sustained in securing any new lessees and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for re-letting;

22.3.3 Costs of Maintenance and Operation. Third, to the extent that Lessor shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

22.3.4 Residue. Fourth, after payment to itself of any balance remaining on account of Lessee's liability to Lessor, to Lessee or any Leasehold Mortgagee, as applicable.

22.4 Lessee's Late Payments; Late Charges. If Lessee fails to make any payment to Lessor required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Lessor, and without reducing or adversely affecting any of Lessor's other rights and remedies, Lessee shall pay Lessor within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Lessee actually makes such payment. In addition, and without limiting any other rights or remedies of Lessor, Lessee shall pay Lessor, as Additional Rent, an administrative charge equal to five percent (5%) of any payment that Lessee fails to pay within thirty (30) days after such payment is first due and payable. Such administrative charge is intended to compensate Lessor for the inconvenience and staff time incurred by Lessor to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Lessee under this Lease.

22.5 Lessor's Right to Cure. If Lessee at any time fails to make any payment or take any action this Lease requires, then Lessor, after twenty (20) Business Days' Notice to Lessee, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Lessee from any obligation or Default and without waiving Lessor's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Lessee shall reimburse Lessor, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Lessor in exercising its cure rights under this Section 22.5; and (b) Default Interest on the amounts in clause (a) above.

22.6 Holding Over. If for any reason or no reason Lessee remains in the Premises after the Expiration Date, then Lessor will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Lessee remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Lessor, Lessee shall pay to Lessor, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Lessee holds over after the Expiration Date, a sum equal to twice the then market rental rate for the Premises, plus all Additional Rent otherwise payable under this Lease during the holdover period. Nothing contained in this Section 22.6 shall be construed as consent by Lessor to any holding over by

Lessee, and Lessor expressly reserves the right to require Lessee to surrender possession of the Premises to Lessor as provided in this Lease upon the expiration or earlier termination of this Lease.

22.7 Waivers: Jury Trial, Redemption. Lessor and Lessee irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Lessor and Lessee regarding the Premises, enforcement of this Lease, Lessee's use or occupancy of the Premises, any claim of injury or damage arising between Lessor and Lessee, or any actions of Lessor in connection with or relating to the enforcement of this Lease. Lessee waives any right of redemption provided for by Law.

22.8 Accord and Satisfaction; Partial Payments. No payment by Lessee or receipt by Lessor of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Lessee. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Lessor may accept any such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy.

22.9 Lessor's Default. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after Notice from Lessee describing such breach in reasonable detail, or, in the case of a breach that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessor shall not (a) within thirty (30) days from Lessee's Notice advise Lessee of Lessor's intention to take all reasonable steps to cure such default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.10 Miscellaneous. Lessor and Lessee further agree as follows with respect to any Defaults and Lessor's rights and remedies:

22.10.1 Survival. No termination of this Lease and no taking possession of or re-letting the Premises shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or re-letting, but subject to any limitations on personal liability or recourse in this Lease.

22.10.2 No Double Recovery. In no event shall Lessor be entitled, directly or indirectly, to recover twice for the same element of Lessor's damages.

ARTICLE 23:
END OF TERM

Upon any Expiration Date: (a) all Improvements, FF&E, and Building Equipment shall become Lessor's property; (b) Lessee shall deliver to Lessor possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Lessee to Restore; (c) Lessee shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Lessor reasonably requires; (d) Lessee shall deliver the Premises free and clear of all: Subleases, and liens except (1) Permitted Exceptions existing as of the Commencement Date or consented to by Lessor, (2) Subleases executed pursuant to this Lease or consented to by Lessor, and (3) liens that Lessor or any of its agents caused; (e) Lessee shall assign to Lessor, and give Lessor copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises, along with copies of all operating manuals and similar documentation relating to all Improvements, FF&E, and Building Equipment, and the current year's operating budget for the Premises (including applicable back-up information); (f) the parties shall cooperate to achieve an orderly transition of operations from Lessee to Lessor without interruption, including delivery of such information, books and records (or copies thereof) as Lessor reasonably requires; (g) if such plans are available,

Lessee shall provide Lessor with a complete set of as-built plans and specifications for all Improvements, if any, added to the Premises since the Commencement Date; (h) the parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Lessee shall first be applied to cure any Default); (i) the parties shall terminate any recorded or filed memorandum of this Lease; and (j) Lessee shall assign to Lessor, and Lessor shall reimburse Lessee for, all utility and other service provider deposits for the Premises.

ARTICLE 24:
NOTICES

All Notices shall be in writing and addressed to Lessor and Lessee (and their designated copy recipients), as applicable, as set forth in **Exhibit C** attached hereto. Notices (including any required copies as set forth in **Exhibit C**) shall be delivered by (a) United States certified or registered mail, postage prepaid, return receipt requested, or (b) a nationally recognized overnight courier service, to the addresses set forth in **Exhibit C**. Notices shall be deemed delivered (a) three (3) Business Days after the date it is posted if sent by U.S. Mail (provided no postal strike or other disruption of postal service is then in effect), or (b) the date the overnight courier delivery is made (or when delivery has been attempted, as evidenced by the written report of the courier service) to such address(es). Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

ARTICLE 25:
NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Lessor and Lessee and each of their parent(s), subsidiary(ies), or Affiliated corporations or other entities, and any of their constituent partners or joint venturers, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including insurance and all other proceeds thereof). No property or assets whatsoever, except Lessor's or Lessee's (as applicable) interest in the Premises (including insurance and all other proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this Article 25 shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under a Supplementary Agreement, if any. No shareholder, officer, member, manager, director, agent, or employee of Lessee or Lessor shall have any liability under this Lease, but this shall not limit any liability arising under the express terms of a Supplementary Agreement, if any.

ARTICLE 26:
ADDITIONAL DELIVERIES; THIRD PARTIES

26.1 **Estoppel Certificates**. As often as may be necessary, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four (4) original counterparts of an estoppel certificate in such form as may be reasonably required by the Requesting Party, indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by the Requesting Party. The Certifying Party shall sign, acknowledge, and return such estoppel certificate within fifteen (15) days after request, even if the Requesting Party is in Default. Any

estoppel certificate may be relied upon by the Requesting Party (and any Person on behalf of whom the Requesting Party requested such estoppel certificate) and shall bind the Certifying Party. Failure of the Certifying Party to timely execute, acknowledge and deliver such estoppel certificate shall constitute an acknowledgment by the Certifying Party that statements included in the estoppel certificate are true and correct, without exception.

26.2 **Further Assurances**. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

26.3 **Memorandum of Lease**. This Lease shall not be recorded; provided, however, that either Lessor or Lessee may elect to have a memorandum of this Lease recorded in the Bureau or filed in the Land Court, as appropriate. Such memorandum shall be sufficient to give constructive notice of the tenancy hereby created and setting forth a description of the Premises, the term of this Lease and any other provisions agreed to by the parties hereto (or required by a Leasehold Mortgagee), and shall be executed by the parties hereto. If the parties amend this Lease, then the parties shall record a memorandum of such amendment. Notwithstanding the foregoing, this Lease shall be recorded if such recordation is required by a Leasehold Mortgagee or a prospective Leasehold Mortgagee.

26.4 **Modification**. Any Modification of this Lease must be in writing signed by the party to be bound.

26.5 **Successors and Assigns**. This Lease shall bind and benefit Lessor and Lessee and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Lessor, Lessee, and any Leasehold Mortgagees) any right to insist upon, or to enforce against Lessor or Lessee, the performance or observance by either party of its obligations under this Lease.

ARTICLE 27:
CULTURAL AND ARCHEOLOGICAL

27.1 **Native Hawaiian Rights**. Lessee shall respect and recognize any and all rights of native Hawaiians to exercise traditional rights, customs, practices, prerogatives, privileges and usufructs on the Premises, if any, in accordance with applicable Laws.

27.2 **Human Remains; Artifacts; Historical Items**.

27.2.1 Discovery. In the event any human remains, traditional cultural items, artifacts or historical items (collectively "**Historic Items**") are discovered on the Premises, Lessee shall immediately report such discovery to Lessor. Upon such discovery and subject to Lessor's approval, Lessee shall, at Lessee's sole expense: (a) cause all excavation or other activity in the immediate area that may damage the Historic Items or the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Historic Items against damage, theft, or both; and (c) cause the Historic Items to be left untouched so that their cultural, archaeological or historical context may be accurately documented and to honor cultural sensitivities related to the Historic Items; provided, however, that if artifacts or historical items are found without human remains, and if leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, Lessee shall cause such Historic Items to be removed and safeguarded elsewhere.

27.2.2 Human Remains. In the event Lessee discovers human remains, Lessee shall, at Lessee's sole expense and in addition to the duties set forth in Section 27.2.1, (a) report the discovery as soon as possible to Lessor, the Historic Preservation Division of the Department of Land and Natural Resources of the State of Hawai`i ("**SHPD**"), the appropriate medical examiner or coroner, and the appropriate police department, and (b) cause to be prepared, by an archeologist reasonably acceptable

to Lessor, a mitigation and/or burial treatment plan reasonably acceptable to Lessor and to SHPD or the burial council having jurisdiction over such matters. Lessor and Lessee shall comply with all Laws applicable to the handling of such human remains, and shall work together to formulate and carry out such mitigation or burial treatment plan.

27.2.3 Lessor's Reservation. If any Historic Items are discovered, then Lessor shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Historic Items for preservation as permitted by Law.

27.2.4 Studies by Lessee. In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Lessee or anyone acting by or through Lessee, Lessee shall provide a complete copy of the results of such studies to Lessor promptly upon completion thereof.

27.2.5 Lessor's Right to Historic Items; No Liability. Lessee shall have no right, title or interest whatsoever with respect to any Historic Items discovered on or about the Premises. As between Lessor and Lessee, Lessor shall retain ownership of any Historic Items discovered on or about the Premises to the extent private ownership of the Historic Items by Lessor is permitted under applicable Laws, and in any event, Lessor shall retain the exclusive right to act as, and to exercise all rights of, the landowner under applicable Laws. Lessor shall not be responsible for any damages or other liabilities that may result from cessation of excavation or construction, or from Lessee's compliance with provisions of this Section 27.2.5 and applicable Laws.

ARTICLE 28:
MISCELLANEOUS

28.1 Confidentiality. Lessor and Lessee acknowledge that the content of this Lease and any related documents are confidential information, and each agrees, except as otherwise required by Law (including any public disclosure requirements under Hawaii Revised Statutes Chapter 92F and/or the Freedom of Information Act), to keep such confidential information strictly confidential and not disclose such confidential information to any Person, other than Lessor's or Lessee's consultants, attorneys, property managers, and employees who have a need to know such information.

28.2 Due Authorization and Execution. Lessor has full right, title, authority and capacity to execute and perform this Lease and any other agreements and documents to which Lessor is a party and referred to or required by this Lease (collectively, the "**Lease-Related Documents**"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Lessor; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Lessor; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Lessor's organizational documents), contract, or other restriction to which Lessor is a party or is bound. Lessee makes to Lessor representations and warranties reciprocal to those in the preceding sentence and, in addition, represents and warrants that Lessee is qualified to do business in the State of Hawai'i. Both parties' representations and warranties in this Section 28.2 shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

28.3 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the Lessor-Lessee relationship under this Lease, or Lessor's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the

prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

28.4 **No Consequential Damages**. Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Lessor nor Lessee shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise, except as otherwise expressly permitted by this Lease. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

28.5 **No Waiver by Silence**. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

28.6 [Reserved.]

28.7 **Performance Under Protest**. If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation.

28.8 **Survival**. All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

28.9 **Unavoidable Delay**. Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

28.10 **Broker**. Each party: (a) represents and warrants that it did not engage or deal with any broker or finder, except Broker, in connection with this Lease and no person except Broker is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation. Lessor shall compensate Broker under a separate agreement and Indemnify Lessee against any claims by Broker.

28.11 **Service of Process**. Lessee and every assignee shall either be domiciled in the State of Hawai`i or shall, effective upon the date of this Lease (for the original Lessee) or upon the date of said assignment (for an assignee), designate in writing an agent who is domiciled in the State of Hawai`i upon whom service of notice or process may be made at all times (if applicable, Lessee's first such agent for service of process is designated in **Exhibit D**. Service of summons or other legal process upon said agent shall be conclusively deemed to be complete upon Lessee and shall authorize the court from which such summons or legal process has issued to proceed in all respects as in the case of service personally made upon an individual. In the event Lessee fails to designate said agent for the service of process, or upon the death or absence of said agent, unless a successor shall be promptly named, the Director of Commerce and Consumer Affairs of the State of Hawaii shall be deemed Lessee's or assignee's agent for service of notice and process, and any notice or process served upon said designee or said Director of Commerce and Consumer Affairs shall have the force and effect of personal service upon Lessee or said assignee in all matters respecting this Lease and the enforcement thereof. Lessee and every assignee shall be duly qualified by the Director of Commerce and Consumer Affairs to do business in the State of Hawaii.

28.12 Sexual Harassment Policy. At all times during the Term, Lessee shall have and enforce a policy prohibiting sexual harassment in accordance with Article 18 of Chapter 1 of the Revised Ordinances of Honolulu 1990. Lessee may obtain a copy of said Article at the Office of the City Clerk, Honolulu Hale, 530 South King Street, Honolulu, Hawaii.

28.13 Non-Discrimination Policy. Lessee shall not discriminate against any employee or applicant for employment based on race, color, national origin, religion, sex, sexual orientation, familial status, or disability, and Lessee shall comply with the provisions included in any agreement with the County pertaining to discrimination.

ARTICLE 29:
INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

29.1 Captions. The captions of Articles, Sections, items and paragraphs are for convenience and reference only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles, Sections, items and paragraphs.

29.2 Counterparts. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease document.

29.3 Delivery of Drafts. Neither party shall be bound by this Lease unless and until such party shall have executed and delivered this Lease. The submission of draft(s) or comment(s) on drafts shall not bind the parties, nor shall such draft(s) and comment(s) be considered in interpreting this Lease.

29.4 Entire Agreement. This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Lessee's use or occupancy of, or any interest of Lessee in, the Premises except for any agreements referenced in this Lease, and except for any provisions from the Purchase and Sale Agreement between Lessor and _____ dated _____, 2012, that by their terms are applicable to the Premises and intended to survive the closing of said Purchase and Sale Agreement (in which case such provision shall not be deemed legally merged into this Lease but, instead, shall be deemed incorporated into this Lease to the extent applicable).

29.5 Governing Law and Venue. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Hawai`i, without regard to principles of conflict of laws. Any legal action hereunder shall be filed in the Hawai`i judicial system only, and Lessor and Lessee hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawai`i in the circuit where the Premises are located, and the United States District Court for the District of Hawai`i, and waive the right to assert that such courts are in an inconvenient forum.

29.6 Partial Invalidity. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

29.7 Principles of Interpretation. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and

"including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Lessor's option, any Modification that violates this Lease), and includes all exhibits, schedules and riders to such document. The word "or" includes the word "and."

29.8 [Reserved.]

29.9 **Time of the Essence**. Except as otherwise expressly provided in this Lease, time is of the essence with respect to all provisions of this Lease.

29.10 **Computation of Deadlines**. If a due date determined under this Lease falls on a Saturday, Sunday or official County holiday, such due date will be deemed to be the next Business Day.

29.11 **Joint and Several**. If there is more than one Person comprising Lessee, the obligations imposed upon such Persons under this Lease shall be joint and several.

ARTICLE 30:
ADDENDUM

30.1 **Addendum**. This Lease is subject to the terms and provisions of the Addendum attached hereto and incorporated herein by this reference. In case of any conflict between any term, provision, definition, and the like, as set forth directly herein and as set forth in the Addendum, the Addendum shall control.

IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be signed as of the day and year first above written.

LESSOR:

Date of execution by Lessor:
_____, 20__

APPROVAL RECOMMENDED:

_____
Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

By Department of Budget and Fiscal Services

By _____
Name:
Title:

LESSEE:

Date of execution by Lessee:
_____, 20__

_____
a _____

By _____
Name:
Title:

By _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION AND ENCUMBRANCES

[TO BE ATTACHED: LEGAL DESCRIPTION AND LIST OF ALL ENCUMBRANCES OF RECORD]

EXHIBIT B

ADDITIONAL PERMITTED EXCEPTIONS

Permitted Exceptions shall include all of the following, as they existed on the Commencement Date:

1. All leases, Subleases, tenancies and rights of occupancy affecting the Premises caused or permitted by Lessee or by anyone claiming by, through, or under Lessee;

2. All rights, if any, for electricity, gas, telephone, water, cable television, and any other utilities to maintain and operate lines, cables, poles, and distribution boxes in, over, and upon the Premises;

3. Possible projections or encroachments of retaining walls, foundations, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, casings, ledges, water tables, lintels, porticos, keystones, windows, hedges, copings, sidewalk elevators, fences, fire escapes, and the like, or similar projections or objects upon, under, or above any adjoining buildings or streets or avenues or those belonging to adjoining premises which encroach upon the Premises or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges, and the like;

4. Variations between the tax map and the record description of the Land;

5. Zoning, environmental, municipal, building, and all other laws, regulations or similar matters imposed by any federal, state, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises or any portion thereof;

6. All notes or notices of any violation of law or municipal ordinances, orders, or requirements noted in or issued by any Government having or asserting jurisdiction, now or hereafter affecting the Premises; and

7. The lien for all taxes, charges, rents, assessments, and any other governmental charges which are not yet due and payable.

8. [**Project Specific**] [List all exceptions (including encroachments identified on applicable ALTA Survey) accepted or deemed accepted by Buyer/Lessee as a result of the Due Diligence Investigation.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT C

NOTICE ADDRESSEES
(INCUDING REQUIRED COPY RECIPIENTS

LESSOR: _____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

With a copy to:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

LESSEE: _____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

With a copy to:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

EXHIBIT D

SERVICE OF PROCESS

[TO BE INSERTED]

ADDENDUM TO LEASE

Exhibit D

(Affordable Rental Housing Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 1 (Definitions)

"**Capital Improvements**" mean (a) improvements that extend the useful life or increase the value of the asset (building, structure, infrastructure, etc.) or adapt it to new uses, (b) equipment with an anticipated service life of three (3) years or more, and (c) improvements approved, requested or required by Lessee's Lenders. Capital improvements are not annually recurring costs or routine maintenance and repairs.

"**Lessee's Lenders**" means any and all governmental agencies, including the Hawai`i Housing Finance and Development Corporation ("**HHFDC**"), banks, financial institutions, HUD, and the Federal Housing Administration ("**FHA**") and other persons authorizing, issuing, or providing any part of Lessee's or Lessee's Affiliates financing relating to the Lease, including without limitation any persons or entities involved in the issuance, acquisition or credit enhancement of any multifamily tax-exempt bonds, or the sale or syndication or the purchase of the Federal and State Low Income Housing Tax Credits that the HHFDC reserves and allocates to Lessee or Lessee's Affiliates in connection with such financing.

"**Minimum Annual Reserve Account Amount**" means an amount equal to the product of the "**Per Unit Sum**" (as stated below) multiplied by the aggregate number of residential units located on the Premises. The initial Per Unit Sum shall be $300, and shall be increased to $500 for the deposit pursuant to Section 7.2.4 due January 31, 2022. Thereafter, the Per Unit Sum shall be increased annually on or before January 31 of each calendar year by the percentage increase, if any, in the Consumer Price Index from the "base period" of the Consumer Price Index to the "current period" of the Consumer Price Index for the calendar year for which the adjustment is being made. The term "base period" initially shall refer to the Consumer Price Index published for the month of November, 2016. Following the initial increase hereunder, the term "base period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which the Per Unit Sum was last adjusted hereunder. The "current period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which an adjustment is being made. In the event the Consumer Price Index shall not be published for any of the above-described months, then the Consumer Price Index published for the month

closest, but prior, to the described month shall be used in its place. Under no circumstances shall the percentage increase be less than zero.

"**Regulatory Agreement**" means that certain Regulatory Agreement and Declaration of Restrictive Covenants attached to this Addendum as **Exhibit A**.

"**Reserve Study**" means a written study made or commissioned by Lessee, at its sole expense, of the anticipated replacement needs of the Capital Improvements existing on or made to the Premises. The Reserve Study shall cover a period of not less than twenty (20) years and shall include estimates of the remaining useful lives of each of the Capital Improvements included within the scope of the Reserve Study and the cost to replace such Capital Improvements at the end of their respective useful lives. The Reserve Study shall take into account any funds already set aside in the Reserve Account, and shall set forth the amount required to be set aside each year throughout the period covered by the Reserve Study to prudently prepare for anticipated replacements of Capital Improvements.

Article 6 (Use)

6.1 **Permitted Use**. Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as an affordable rental housing subject to, and strictly in accordance with, the terms and conditions of the Lease and the Regulatory Agreement, and shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 7 (Maintenance, Repair, and Capital Improvements)

7.2 **Capital Improvement Obligations**. During the Term, Lessee shall make Capital Improvements to the Premises as set forth in this Section 7.2.

7.2.1 Initial Capital Improvements. As provided and detailed in Section 5.1 of that certain Purchase and Sale Agreement between Lessor and Lessee's Affiliate, Honolulu Affordable Housing Partners, LLC ("**HAHP**"), dated _____, 2012 (the "**PSA**"), HAHP has agreed that HAHP and its Affiliates (including Lessee) shall undertake a substantial capital rehabilitation of the Premises (the "**Initial Capital Improvements**") in conjunction with the rehabilitation of other properties leased by Lessor to Lessee or an Affiliate of Lessee. The scope and character of the Initial Capital Improvements shall be determined pursuant to a capital needs assessment covering the Premises and such other properties to be rehabilitated. The capital needs assessment shall determine the condition, working order, and state of repair of all major building systems (electrical, plumbing, HVAC, roof systems, hallways, and common areas) and the condition and state of repair of the various components or facilities in each apartment contained within the Premises (e.g., kitchen appliances, cabinets, and countertops; bathroom toilets, vanities, shower, and bathtub fixtures; electrical outlets and lighting fixtures throughout the apartments; plumbing fixtures; floor coverings; wall painting; entry and closet doors; windows and window coverings; and similar components and fixtures), and shall set forth the specific improvements required in connection with the Premises. Lessee shall carry out the Initial Capital Improvements as set forth in the capital needs assessment, and in accordance with the timing, terms and conditions set forth in

Section 5.1 of the PSA. Where available and appropriate, Lessee shall use union labor at the site of the Premises in performing the Initial Capital Improvements.

7.2.2 Subsequent Capital Improvements. After the Initial Capital Improvements, Lessee shall make subsequent Capital Improvements to the Premises in the amounts and no less frequently than as called for in the Reserve Study, as the same may be revised and updated from time to time.

7.2.3 Preparation of Reserve Study. Lessee shall cause an initial Reserve Study to be prepared, at its sole expense, prior to the start of calendar year 2017. The initial Reserve Study shall cover the period beginning with calendar year 2017. The Reserve Study shall be updated, or a new Reserve Study prepared, from time to time but no less frequently than once every five (5) years. Copies of the initial Reserve Study, any updates thereto, and any new Reserve Study shall be provided to Lessor promptly upon completion. In connection with any updated or new Reserve Study, Lessee may submit a written proposal to Lessor that the Minimum Annual Reserve Account Amount should be adjusted to account for circumstances then prevailing, and Lessor shall exercise its reasonable judgment in determining whether to approve Lessee's proposal.

7.2.4 Reserve Account. Lessee shall establish a reserve account (the "**Reserve Account**") and shall deposit annually in the Reserve Account no less than the Minimum Annual Reserve Account Amount commencing on January 31, 2017. Lessee shall continue to deposit no less than the Minimum Annual Reserve Account Amount in the Reserve Account on or before January 31st for each calendar year thereafter during the Term. Funds in the Reserve Account shall be expended in accordance with the Reserve Study, as the same may be updated or revised from time to time, or in such manner or for such uses as may be agreed in writing by Lessor and Lessee. Upon any Transfer of the Lease or the Leasehold Estate, all funds in the Reserve Account shall remain in the Reserve Account for the benefit of the Premises and shall not be removed or retained by the transferor. Any funds remaining in the Reserve Account at the expiration date of the Lease shall be paid to Lessor.

7.2.5 Capital Improvement Report. Lessee shall provide Lessor with an annual report within sixty (60) days after the end of each calendar year during the Term, with a level of detail and description, and together with supporting documentation, as reasonably required by Lessor, which report shall set forth the total cost of all maintenance, repairs, replacements, and improvements made during the preceding calendar year by Lessee of any and all Capital Improvements covered by the Reserve Study.

7.2.6 Permissible Pooling of Reserve Accounts. As part of a single, consolidated transaction, Lessor is simultaneously entering into a number of leases of improved real property with Lessee and with Affiliates of Lessee (the "**Affiliated Leases**"), of which this Lease is one. In lieu of opening a separate Reserve Account in respect of each Affiliated Lease, Lessee may elect to utilize an account opened by Lessee or an Affiliate of Lessee under an Affiliated Lease (a "**Consolidated Reserve Account**"), which Consolidated Reserve Account shall hold the replacement reserves required by this Lease as well as the reserves required under one, more, or all of such Affiliated Leases. In the event that Lessee elects to utilize a Consolidated Reserve

Account, the Consolidated Reserve Account shall be deemed a qualifying Reserve Account for all purposes under the Lease, but, in such event, Lessee shall continue to maintain on its books a separate accounting of the transactions in respect of such Consolidated Reserve Account that relate specifically to the Lease or the Premises.

7.2.7 Satisfaction of Reserve Requirements Pursuant to Other Agreements. The Premises will be subject to one or more agreements (including the Regulatory Agreement) between Lessee and various third parties, including but not limited to governmental entities or agencies, regulatory entities or agencies, or Lessee's Lenders, concerning Lessee's operation, use, management and care of the Premises. If any such agreements impose or require Lessee to maintain a reserve for Capital Improvements for the Premises (the "**Other Reserve Requirements**"), Lessee's compliance with the Other Reserve Requirements shall also satisfy the reserve requirements set forth herein on a dollar for dollar basis. If the Other Reserve Requirements are greater than or equal to the reserve amounts imposed by this Section 7.2, then the reserves maintained pursuant to such Other Reserve Requirements shall entirely satisfy Lessee's reserve requirements under this Section 7.2; otherwise, Lessee shall make up the shortfall by depositing into the Reserve Account or an account established pursuant to the Other Reserve Requirements the difference between the amount required to be deposited under this Section 7.2 and the amount required by the Other Reserve Requirements. Notwithstanding anything in the Lease to the contrary, Lessee shall not be required to maintain separate or multiple reserve accounts in respect of its reserve obligations under the Lease.

Article 16 (Regulatory Agreement)

The Regulatory Agreement governs, among other matters, various terms and conditions relating to the renting of the residential units on the Premises, such as rental rates and increases thereto, tenant eligibility, record keeping, reporting, operations and management. Any failure by Lessee to comply with each and every term of the Regulatory Agreement shall be an Event of Default under the Lease.

Article 17 (Lessee's Transfers)

The following provision shall be substituted for Section 17.1 of the Lease:

17.1 Lessee's Transfer Right. Lessee shall not Transfer this Lease or the Leasehold Estate, whether or not to an Affiliate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees, however, that it shall be conclusively presumed to be reasonable for Lessor to withhold its consent unless the following have occurred: (A) Lessor's receipt of reasonably satisfactory evidence that: (a) Lessee is not in Default under this Lease or the Regulatory Agreement (which may be evidenced, as to the Regulatory Agreement, by a Certificate of Continuing Program Compliance (as that term is defined in the Regulatory Agreement), unless Lessor has knowledge to the contrary), or, if Lessee is in Default, that the transferee undertakes to cure any such Default to the reasonable satisfaction of Lessor; (b) the continued operation of the Premises after the Transfer shall comply with the provisions of this Lease and the Regulatory Agreement; (c) the transferee has the financial capability and resources to operate and maintain the Premises as required by this Lease and the

Regulatory Agreement; (d) either (i) the transferee or its property manager has the experience, reputation, managerial and operational skills to operate and maintain rental housing projects (including rental housing projects containing below-market-rate units), and neither has a record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects, (ii) the transferee agrees to retain a property manager with the skills, experience and record described in clause (i) above, effective as of the date of the Transfer, or (iii) the transferor Lessee or its property manager will continue to manage the Premises, or another property management company reasonably acceptable to Lessor will manage the Premises, for at least one year following the Transfer and, if applicable, during such period the transferor Lessee or its property manager will provide training to the transferee and its property manager in the responsibilities relating to the Regulated Unit(s) (as that term is defined in the Regulatory Agreement); and (e) the transferee is not delinquent in any tax payments, or will make such tax payments current in connection with the Transfer, and does not have pending against it any charges of, and does not have a record of, material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any applicable local, state or federal regulatory agencies; (B) the execution by the transferee and delivery to Lessor of an assignment document specifically stating that the Transfer is made subject to all terms, covenants and conditions of this Lease and the Regulatory Agreement, and all such terms, covenants, and conditions in such documents shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer, and delivery to Lessor of an opinion of the transferee's counsel to the effect that each such document and this Lease and the Regulatory Agreement are valid, binding and enforceable obligations of the transferee, subject only to Bankruptcy Law and other standard limitations affecting creditor's rights; and (C) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee in connection with this Lease and/or the Regulatory Agreement. It is hereby expressly stipulated and agreed that any Transfer in violation of this Section 17.1 shall be null, void and without effect, shall cause a reversion of title to Lessee, and shall be ineffective to relieve Lessee of its obligations under this Lease and the Regulatory Agreement. The written consent of Lessor to any Transfer of this Lease or the Leasehold Estate shall constitute conclusive evidence that the Transfer is not in violation of this Section 17.1. Upon any Transfer by Lessee that complies with this Lease and the Regulatory Agreement, Lessee shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee except for: (x) any obligation to hold and apply Restoration Funds held by Lessee at the date of the Transfer (unless transferred to the transferee); (y) any unperformed obligations that arose before the Transfer (unless specifically assumed in writing by the transferee); and (z) any indemnity obligation under this Lease and/or the Regulatory Agreement (unless specifically assumed in writing by the transferee). Lessee shall pay all transfer and other taxes, if any, payable on account of any Transfer by Lessee or any holder of any Equity Interest in Lessee.

Article 18 (Subleases)

18.1 **Residential Rental Agreements**. The number and type of Dwelling Units (as that term is defined in the Regulatory Agreement) on the Premises are described in the Regulatory Agreement. In accordance with Lessee's obligation to

continually use and operate the Premises solely as an affordable rental housing project, Lessee shall, subject to compliance with the Regulatory Agreement, enter into rental agreements with residential tenants ("**Residential Tenants**") governing the occupancy of the Dwelling Units by such residential tenants (the "**Residential Rental Agreements**"). Lessor's consent shall not be required for any Residential Rental Agreement, or for any Modification thereof, so long as Lessee complies fully with the requirements of the Regulatory Agreement in connection therewith. No Residential Rental Agreement shall affect any obligations of Lessee or rights of Lessor under the Lease, all of which shall continue in full force and effect notwithstanding any Residential Rental Agreement. The fact that any Residential Tenant causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

Article 31 (General Matters)

31.1 **Resident Services**. In connection with its negotiations with Lessor preliminary to the execution of the Lease, Lessee has represented that it will target appropriate services that will best support the residential community at the Premises. In furtherance thereof, Lessee agrees that at the Commencement Date, Lessee shall conduct an evaluation of appropriate services to be offered to support the residential community. Residential tenant services to be evaluated include, but are not limited to, those services listed in Schedule 2 of the Regulatory Agreement. The evaluation shall solicit feedback from onsite management and residents. Lessee shall provide or facilitate provision of tenant services appropriate to the needs of the resident profile for the residential community at the Premises. Any fees for such services shall be reasonable. Lessee shall provide periodic reports (no less frequent than once each year) to Lessor on the services provided and the charges, if any, for such services, as set forth in the Regulatory Agreement. Lessee shall maintain oversight and supervision of the Premises, and shall remain actively involved with the residents of the Premises, including establishing a schedule of site visits and inspections as well as remaining accessible and responsive to residents' concerns and questions.

Article 32 (Property Specific Terms)

32.1 **[Caption]**. _____.

32.2 **[Caption]**. _____.

EXHIBIT A

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

[TO BE ATTACHED]

ADDENDUM TO LEASE Exhibit E

(Market Rental Housing Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 1 (Definitions)

"**Capital Improvements**" mean (a) improvements that extend the useful life or increase the value of the asset (building, structure, infrastructure, etc.) or adapt it to new uses, (b) equipment with an anticipated service life of three (3) years or more, and (c) improvements approved, requested or required by Lessee's Lenders. Capital improvements are not annually recurring costs or routine maintenance and repairs.

"**Lessee's Lenders**" means any and all governmental agencies, including the Hawai`i Housing Finance and Development Corporation ("**HHFDC**"), banks, financial institutions, HUD, and the Federal Housing Administration ("**FHA**") and other persons authorizing, issuing, or providing any part of Lessee's or Lessee's Affiliates financing relating to the Lease, including without limitation any persons or entities involved in the issuance, acquisition or credit enhancement of any multifamily tax-exempt bonds, or the sale or syndication or the purchase of the Federal and State Low Income Housing Tax Credits that the HHFDC reserves and allocates to Lessee or Lessee's Affiliates in connection with such financing.

"**Minimum Annual Reserve Account Amount**" means an amount equal to the product of the "**Per Unit Sum**" (as stated below) multiplied by the aggregate number of residential units located on the Premises. The initial Per Unit Sum shall be $300, and shall be increased to $500 for the deposit pursuant to Section 7.2.4 due January 31, 2022. Thereafter, the Per Unit Sum shall be increased annually on or before January 31 of each calendar year by the percentage increase, if any, in the Consumer Price Index from the "base period" of the Consumer Price Index to the "current period" of the Consumer Price Index for the calendar year for which the adjustment is being made. The term "base period" initially shall refer to the Consumer Price Index published for the month of November, 2016. Following the initial increase hereunder, the term "base period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which the Per Unit Sum was last adjusted hereunder. The "current period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which an adjustment is being made. In the event the Consumer Price Index shall not be published for any of the above-described months, then the Consumer Price Index published for the month

closest, but prior, to the described month shall be used in its place. Under no circumstances shall the percentage increase be less than zero.

"**Reserve Study**" means a written study made or commissioned by Lessee, at its sole expense, of the anticipated replacement needs of the Capital Improvements existing on or made to the Premises. The Reserve Study shall cover a period of not less than twenty (20) years and shall include estimates of the remaining useful lives of each of the Capital Improvements included within the scope of the Reserve Study and the cost to replace such Capital Improvements at the end of their respective useful lives. The Reserve Study shall take into account any funds already set aside in the Reserve Account, and shall set forth the amount required to be set aside each year throughout the period covered by the Reserve Study to prudently prepare for anticipated replacements of Capital Improvements.

Article 6 (Use)

6.1 **Permitted Use**. Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as a residential housing project subject to, and strictly in accordance with, the terms and conditions of the Lease, and shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 7 (Maintenance, Repair, and Capital Improvements)

7.2 **Capital Improvement Obligations**. During the Term, Lessee shall make Capital Improvements to the Premises as set forth in this Section 7.2.

7.2.1 Initial Capital Improvements. As provided and detailed in Section 5.1 of that certain Purchase and Sale Agreement between Lessor and Lessee's Affiliate, Honolulu Affordable Housing Partners, LLC ("**HAHP**"), dated _____, 2012 (the "**PSA**"), HAHP has agreed that HAHP and its Affiliates (including Lessee) shall undertake a substantial capital rehabilitation of the Premises (the "**Initial Capital Improvements**") in conjunction with the rehabilitation of other properties leased by Lessor to Lessee or an Affiliate of Lessee. The scope and character of the Initial Capital Improvements shall be determined pursuant to a capital needs assessment covering the Premises and such other properties to be rehabilitated. The capital needs assessment shall determine the condition, working order, and state of repair of all major building systems (electrical, plumbing, HVAC, roof systems, hallways, and common areas) and the condition and state of repair of the various components or facilities in each apartment contained within the Premises (e.g., kitchen appliances, cabinets, and countertops; bathroom toilets, vanities, shower, and bathtub fixtures; electrical outlets and lighting fixtures throughout the apartments; plumbing fixtures; floor coverings; wall painting; entry and closet doors; windows and window coverings; and similar components and fixtures), and shall set forth the specific improvements required in connection with the Premises. Lessee shall carry out the Initial Capital Improvements as set forth in the capital needs assessment, and in accordance with the timing, terms and conditions set forth in Section 5.1 of the PSA. Where available and appropriate, Lessee shall use union labor at the site of the Premises in performing the Initial Capital Improvements.

7.2.2 Subsequent Capital Improvements. After the Initial Capital Improvements, Lessee shall make subsequent Capital Improvements to the Premises in the amounts and no less frequently than as called for in the Reserve Study, as the same may be revised and updated from time to time.

7.2.3 Preparation of Reserve Study. Lessee shall cause an initial Reserve Study to be prepared, at its sole expense, prior to the start of calendar year 2017. The initial Reserve Study shall cover the period beginning with calendar year 2017. The Reserve Study shall be updated, or a new Reserve Study prepared, from time to time but no less frequently than once every five (5) years. Copies of the initial Reserve Study, any updates thereto, and any new Reserve Study shall be provided to Lessor promptly upon completion. In connection with any updated or new Reserve Study, Lessee may submit a written proposal to Lessor that the Minimum Annual Reserve Account Amount should be adjusted to account for circumstances then prevailing, and Lessor shall exercise its reasonable judgment in determining whether to approve Lessee's proposal.

7.2.4 Reserve Account. Lessee shall establish a reserve account (the "**Reserve Account**") and shall deposit annually in the Reserve Account no less than the Minimum Annual Reserve Account Amount commencing on January 31, 2017. Lessee shall continue to deposit no less than the Minimum Annual Reserve Account Amount in the Reserve Account on or before January 31st for each calendar year thereafter during the Term. Funds in the Reserve Account shall be expended in accordance with the Reserve Study, as the same may be updated or revised from time to time, or in such manner or for such uses as may be agreed in writing by Lessor and Lessee. Upon any Transfer of the Lease or the Leasehold Estate, all funds in the Reserve Account shall remain in the Reserve Account for the benefit of the Premises and shall not be removed or retained by the transferor. Any funds remaining in the Reserve Account at the expiration date of the Lease shall be paid to Lessor.

7.2.5 Capital Improvement Report. Lessee shall provide Lessor with an annual report within sixty (60) days after the end of each calendar year during the Term, with a level of detail and description, and together with supporting documentation, as reasonably required by Lessor, which report shall set forth the total cost of all maintenance, repairs, replacements, and improvements made during the preceding calendar year by Lessee of any and all Capital Improvements covered by the Reserve Study.

7.2.6 Permissible Pooling of Reserve Accounts. As part of a single, consolidated transaction, Lessor is simultaneously entering into a number of leases of improved real property with Lessee and with Affiliates of Lessee (the "**Affiliated Leases**"), of which this Lease is one. In lieu of opening a separate Reserve Account in respect of each Affiliated Lease, Lessee may elect to utilize an account opened by Lessee or an Affiliate of Lessee under an Affiliated Lease (a "**Consolidated Reserve Account**"), which Consolidated Reserve Account shall hold the replacement reserves required by this Lease as well as the reserves required under one, more, or all of such Affiliated Leases. In the event that Lessee elects to utilize a Consolidated Reserve Account, the Consolidated Reserve Account shall be deemed a qualifying Reserve Account for all purposes under the Lease, but, in such event, Lessee shall continue to

maintain on its books a separate accounting of the transactions in respect of such Consolidated Reserve Account that relate specifically to the Lease or the Premises.

7.2.7 Satisfaction of Reserve Requirements Pursuant to Other Agreements. The Premises will be subject to one or more agreements between Lessee and various third parties, including but not limited to governmental entities or agencies, regulatory entities or agencies, or Lessee's Lenders, concerning Lessee's operation, use, management and care of the Premises. If any such agreements impose or require Lessee to maintain a reserve for Capital Improvements for the Premises (the "**Other Reserve Requirements**"), Lessee's compliance with the Other Reserve Requirements shall also satisfy the reserve requirements set forth herein on a dollar for dollar basis. If the Other Reserve Requirements are greater than or equal to the reserve amounts imposed by this Section 7.2, then the reserves maintained pursuant to such Other Reserve Requirements shall entirely satisfy Lessee's reserve requirements under this Section 7.2; otherwise, Lessee shall make up the shortfall by depositing into the Reserve Account or an account established pursuant to the Other Reserve Requirements the difference between the amount required to be deposited under this Section 7.2 and the amount required by the Other Reserve Requirements. Notwithstanding anything in the Lease to the contrary, Lessee shall not be required to maintain separate or multiple reserve accounts in respect of its reserve obligations under the Lease.

Article 18 (Subleases)

18.1 Residential Spaces. Lessee may enter into rental agreements with residential tenants ("**Residential Tenants**") governing the occupancy of the dwelling units included in the Premises by such residential tenants (the "**Residential Rental Agreements**"). Lessor's consent shall not be required for any Residential Rental Agreement, or for any Modification thereof, so long as Lessee complies fully with the requirements of the Lease. No Residential Rental Agreement shall affect any obligations of Lessee or rights of Lessor under the Lease, all of which shall continue in full force and effect notwithstanding any Residential Rental Agreement. The fact that any Residential Tenant causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

18.2 Restriction on Rent Increases for Initial Period of Term. Rent payable by a Residential Tenant shall be as set forth in such Tenant's Residential Rental Agreement, as determined by Lessee in its sole and absolute discretion. Notwithstanding the foregoing, during the period starting with the Commencement Date and ending on the day five (5) years after the Commencement Date (the "**Rent Restriction Period**"), Lessee shall determine rent in accordance with this Section 18.2. During such Rent Restriction Period, the rent payable by any Residential Tenant who was a Residential Tenant on the Commencement Date shall not be increased by more than ten percent (10%) per annum over the rent payable by such Residential Tenant for the immediately preceding period. The restriction on rent increases set forth in this Section 18.2 shall not apply to rentals of vacant dwelling units to tenants not already residing in the Premises.

Article 31 (General Matters)

31.1 **Oversight**. In connection with its negotiations with Lessor preliminary to the execution of the Lease, Lessee has represented that it will maintain oversight of the Premises. In furtherance thereof, Lessee agrees that from and after the Commencement Date, Lessee shall maintain oversight and supervision of the Premises and shall remain actively involved with the residents of the Market Rental Housing Component, including establishing an active schedule of site visits and inspections as well as remaining accessible and responsive to residents' concerns and questions.

Article 32 (Property Specific Terms)

32.1 **[Caption]**. _____.

32.2 **[Caption]**. _____.

ADDENDUM TO LEASE

Exhibit F

(Commercial Rental Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 6 (Use)

6.1 **Permitted Use**. Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as sub-leased commercial facilities subject to, and strictly in accordance with, the terms and conditions of the Lease, and shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 18 (Subleases)

18.1 **Commercial Spaces**. The Premises include the commercial spaces described in **Exhibit A** attached to this Addendum. Lessee may enter into subleases with commercial tenants ("**Commercial Tenants**") governing the occupancy of such commercial spaces (the "**Commercial Subleases**"). Lessor's consent shall not be required to any Commercial Sublease, or to any Modification thereof, so long as Lessee complies fully with the requirements of the Lease and all applicable Laws in connection therewith. Each Commercial Sublease shall be subject and subordinate to the Lease, and no Commercial Sublease shall affect any obligations of Lessee or rights of Lessor under the Lease, all of which shall continue in full force and effect notwithstanding any Commercial Sublease. Any Commercial Sublease shall expire no later than one day before the Expiration Date. The fact that any Commercial Tenant causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

18.1.2 Required Provisions. Except for any existing Commercial Subleases assigned to Lessee at the time Lessee entered into the Lease, each new Commercial Sublease shall contain provisions in form and substance substantially as set forth below in this Section 18.1.2. By executing its Commercial Sublease, each Commercial Tenant shall be deemed to have agreed to such provisions, which reflect the definitions in the Lease. All such defined terms shall be modified in the Commercial Sublease as appropriate to reflect the definitions in the Commercial Sublease.

> **All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Sublessee under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the Leasehold Estate**

terminate, then this Sublease shall terminate. In that event, Sublessee, only at the option and request of Lessor (except as Lessor has agreed otherwise in writing), shall attorn to Lessor and recognize Lessor as Sublessee's direct Lessor under this Sublease. Sublessee shall execute and deliver, at any time and from time to time, upon the request of Lessee, Lessor, or any mortgagee, any instrument necessary or appropriate to evidence such attornment. Sublessee appoints each of the foregoing as Subessee's attorney-in-fact, irrevocably, with full power of substitution, to execute and deliver any such instrument. This appointment is coupled with an interest and is irrevocable. Sublessee waives any Law that may allow Sublessee to terminate this Sublease or surrender possession of the demised subpremises if the Lease terminates.

Article 32 (Property Specific Terms)

32.1 [Caption]. _____.

32.2 [Caption]. _____.

EXHIBIT A

LIST OF COMMERCIAL SPACES

[TO BE ATTACHED]

ADDENDUM TO LEASE

(Redevelopment Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 1 (Definitions)

"**Capital Improvements**" mean (a) improvements that extend the useful life or increase the value of the asset (building, structure, infrastructure, etc.) or adapt it to new uses, and (b) equipment with an anticipated service life of three (3) years or more. Capital improvements are not annually recurring costs or routine maintenance and repairs.

"**Minimum Annual Reserve Account Amount**" means the amount which equals ten percent (10%) of Lessee's gross revenue from the Premises from the calendar year immediately preceding the calendar in which the deposit required by Section 7.2.4 is due.

"**Regulatory Agreement**" means that certain Regulatory Agreement and Declaration of Restrictive Covenants attached to this Addendum as **Exhibit A**.

"**Reserve Study**" means a written study made or commissioned by Lessee, at its sole expense, of the anticipated replacement needs of the Capital Improvements existing on or made to the Premises. The Reserve Study shall cover a period of not less than twenty (20) years and shall include estimates of the remaining useful lives of each of the Capital Improvements included within the scope of the Reserve Study and the cost to replace such Capital Improvements at the end of their respective useful lives. The Reserve Study shall take into account any funds already set aside in the Reserve Account, and shall set forth the amount required to be set aside each year throughout the period covered by the Reserve Study to prudently prepare for anticipated replacements of Capital Improvements.

Article 3 (Term)

3.3 **No Option to Extend; No Renewal**. Except as otherwise permitted in connection with any redevelopment of the Premises pursuant to Section 32.1 below, Lessee shall have no right to extend or renew the Term. Upon expiration or earlier termination of this Lease, Lessor shall have no obligation to extend or renew this Lease, or to enter into a new lease with Lessee.

Article 6 (Use)

6.1 **Permitted Use**. Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as an affordable rental housing project subject to, and strictly in accordance with, the terms and conditions of this Lease and the Regulatory Agreement, and shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 7 (Maintenance, Repair, and Capital Improvements)

7.2 **Capital Improvement Obligations**. During the Term, Lessee shall make Capital Improvements to the Premises as set forth in this Section 7.2.

7.2.1 Initial Capital Improvements. Within thirty-six (36) months after the Commencement Date, Lessee shall make Capital Improvements to the Premises costing not less than $25,000 [$400,000 for Pauahi Hale]. Where available and appropriate, Lessee shall use union labor at the site of the Premises in performing such initial Capital Improvements. In lieu of making the initial Capital Improvements required by this Section 7.2.1, Lessee (or Lessee's permitted assignee) may commence a redevelopment of the Premises as provided in Article 32, in which event the requirements of this Section 7.2.1 shall be deemed satisfied in full.

7.2.2 Subsequent Capital Improvements. After the initial Capital Improvements, Lessee shall make subsequent Capital Improvements to the Premises in the amounts and no less frequently than as called for in the Reserve Study, as the same may be revised and updated from time to time.

7.2.3 Preparation of Reserve Study. Lessee shall cause an initial Reserve Study to be prepared, at its sole expense, prior to the fourth anniversary of the Commencement Date. The initial Reserve Study shall cover the period beginning with the fourth anniversary of the Commencement Date. The Reserve Study shall be updated, or a new Reserve Study prepared, from time to time but no less frequently than once every five (5) years. Copies of the initial Reserve Study, any updates thereto, and any new Reserve Study shall be provided to Lessor promptly upon completion. In connection with any updated or new Reserve Study, Lessee may submit a written proposal to Lessor that the Minimum Annual Reserve Account Amount should be adjusted to account for circumstances then prevailing, and Lessor shall exercise its reasonable judgment in determining whether to approve Lessee's proposal.

7.2.4 Reserve Account. Lessee shall establish a reserve account (the "**Reserve Account**") and shall deposit annually in the Reserve Account the Minimum Annual Reserve Account Amount commencing on January 31st of the calendar year immediately following the Commencement Date. Lessee shall continue to deposit the Minimum Annual Reserve Account Amount in the Reserve Account on January 31st for each calendar year thereafter during the Term. Funds in the Reserve Account shall be expended in accordance with the Reserve Study, or in such manner or for such uses as may be agreed in writing by Lessor and Lessee. Upon any Transfer of the Lease or the Leasehold Estate, all funds in the Reserve Account shall remain in the Reserve Account for the benefit of the Premises and shall not be removed or retained by the transferor.

Any funds remaining in the Reserve Account at the expiration date of the Lease shall be paid to Lessor.

7.2.5 Capital Improvement Report. Lessee shall provide Lessor with an annual report within sixty (60) days after the end of each calendar year during the Term, with a level of detail and description, and together with supporting documentation, as reasonably required by Lessor, which report shall set forth the total cost of all maintenance, repairs, replacements, and improvements made during the preceding calendar year by Lessee of any and all Capital Improvements covered by the Reserve Study.

7.2.6 Permissible Pooling of Reserve Accounts. As part of a single, consolidated, transaction, Lessor is simultaneously entering into a number of leases of improved real property with Lessee and with Affiliates of Lessee (the "**Affiliated Leases**"), of which this Lease is one. In lieu of opening a separate Reserve Account in respect of each Affiliated Lease, Lessee may elect to utilize an account opened by Lessee or an Affiliate of Lessee under an Affiliated Lease (a "**Consolidated Reserve Account**"), which Consolidated Reserve Account shall hold the replacement reserves required by this Lease as well as the reserves required under one, more, or all of such Affiliated Leases. In the event that Lessee elects to utilize a Consolidated Reserve Account, the Consolidated Reserve Account shall be deemed a qualifying Reserve Account for all purposes under the Lease, but, in such event, Lessee shall continue to maintain on its books a separate accounting of the transactions in respect of such Consolidated Reserve Account that relate specifically to the Lease or the Premises.

7.2.7 Satisfaction of Reserve Requirements Pursuant to Other Agreements. The Premises will be subject to one or more agreements (including the Regulatory Agreement) between Lessee and various third parties, including but not limited to governmental entities or agencies, regulatory entities or agencies, or Lessee's Lenders, concerning Lessee's operation, use, management and care of the Premises. If any such agreements impose or require Lessee to maintain a reserve for Capital Improvements for the Premises (the "**Other Reserve Requirements**"), Lessee's compliance with the Other Reserve Requirements shall also satisfy the reserve requirements set forth herein on a dollar for dollar basis. If the Other Reserve Requirements are greater than or equal to the reserve amounts imposed by this Section 7.2, then the reserves maintained pursuant to such Other Reserve Requirements shall entirely satisfy Lessee's reserve requirements under this Section 7.2; otherwise, Lessee shall make up the shortfall by depositing into the Reserve Account or an account established pursuant to the Other Reserve Requirements the difference between the amount required to be deposited under this Section 7.2 and the amount required by the Other Reserve Requirements. Notwithstanding anything in the Lease to the contrary, Lessee shall not be required to maintain separate or multiple reserve accounts in respect of its reserve obligations under the Lease.

Article 16 (Regulatory Agreement)

The Regulatory Agreement governs, among other matters, various terms and conditions relating to the renting of the residential units on the Premises, such as rental rates and increases thereto, tenant eligibility, record keeping, reporting, operations and

management. Any failure by Lessee to comply with each and every term of the Regulatory Agreement shall be an Event of Default under the Lease.

Article 17 (Lessee's Transfers)

The following provision shall be substituted for Section 17.1 of the Lease:

17.1 Lessee's Transfer Right. Lessee shall not Transfer this Lease or the Leasehold Estate, whether or not to an Affiliate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees, however, that it shall be conclusively presumed to be reasonable for Lessor to withhold its consent unless the following have occurred: (A) Lessor's receipt of reasonably satisfactory evidence that: (a) Lessee is not in Default under this Lease or the Regulatory Agreement (which may be evidenced, as to the Regulatory Agreement, by a Certificate of Continuing Program Compliance (as that term is defined in the Regulatory Agreement), unless Lessor has knowledge to the contrary), or, if Lessee is in Default, that the transferee undertakes to cure any such Default to the reasonable satisfaction of Lessor; (b) the continued operation of the Premises after the Transfer shall comply with the provisions of this Lease and the Regulatory Agreement; (c) the transferee has the financial capability and resources to operate and maintain the Premises as required by this Lease and the Regulatory Agreement; (d) either (i) the transferee or its property manager has the experience, reputation, managerial and operational skills to operate and maintain rental housing projects (including rental housing projects containing below-market-rate units), and neither has a record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects, (ii) the transferee agrees to retain a property manager with the skills, experience and record described in clause (i) above, effective as of the date of the Transfer, or (iii) the transferor Lessee or its or its property manager will continue to manage the Premises, or another property management company reasonably acceptable to Lessor will manage the Premises, for at least one year following the Transfer and, if applicable, during such period the transferor Lessee or its property manager will provide training to the transferee and its property manager in the responsibilities relating to the Regulated Unit(s) (as that term is defined in the Regulatory Agreement); and (e) the transferee is not delinquent in any tax payments, or will make such tax payments current in connection with the Transfer, and does not have pending against it any charges of, and does not have a record of, material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any applicable local, state or federal regulatory agencies; (B) the execution by the transferee and delivery to Lessor of an assignment document specifically stating that the Transfer is made subject to all terms, covenants and conditions of this Lease and the Regulatory Agreement, and all such terms, covenants, and conditions in such documents shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer, and delivery to Lessor of an opinion of the transferee's counsel to the effect that each such document and this Lease and the Regulatory Agreement are valid, binding and enforceable obligations of the transferee, subject only to Bankruptcy Law and other standard limitations affecting creditor's rights; and (C) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee in connection with this Lease and/or the Regulatory Agreement. It is

hereby expressly stipulated and agreed that any Transfer in violation of this Section 17.1 shall be null, void and without effect, shall cause a reversion of title to Lessee, and shall be ineffective to relieve Lessee of its obligations under this Lease and the Regulatory Agreement. The written consent of Lessor to any Transfer of this Lease or the Leasehold Estate shall constitute conclusive evidence that the Transfer is not in violation of this Section 17.1. Upon any Transfer by Lessee that complies with this Lease and the Regulatory Agreement, Lessee shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee except for: (x) any obligation to hold and apply Restoration Funds held by Lessee at the date of the Transfer (unless transferred to the transferee); (y) any unperformed obligations that arose before the Transfer (unless specifically assumed in writing by the transferee); and (z) any indemnity obligation under this Lease and/or the Regulatory Agreement (unless specifically assumed in writing by the transferee). Lessee shall pay all transfer and other taxes, if any, payable on account of any Transfer by Lessee or any holder of any Equity Interest in Lessee.

Article 18 (Subleases)

18.1 **Residential Rental Agreements**. The number and type of Dwelling Units (as that term is defined in the Regulatory Agreement) on the Premises are described in the Regulatory Agreement. In accordance with Lessee's obligation to continually use and operate the Premises solely as an affordable rental housing project, Lessee shall, subject to compliance with the Regulatory Agreement, enter into rental agreements with residential tenants ("**Residential Tenants**") governing the occupancy of the Dwelling Units by such residential tenants (the "**Residential Rental Agreements**"). Lessor's consent shall not be required to any Residential Rental Agreement, or to any Modification thereof, so long as Lessee complies fully with the requirements of the Regulatory Agreement in connection therewith. No Residential Rental Agreement shall affect any obligations of Lessee or rights of Lessor under the Lease, all of which shall continue in full force and effect notwithstanding any Residential Rental Agreement. The fact that any Residential Tenant causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

Article 31 (General Matters)

31.1 **Resident Services**. In connection with its negotiations with Lessor preliminary to the execution of the Lease, Lessee has represented that it will target appropriate services that will best support the residential community at the Premises. In furtherance thereof, Lessee agrees that at the Commencement Date, Lessee shall conduct an evaluation of appropriate services to be offered to support the residential community. Residential tenant services to be evaluated include, but are not limited to, those services listed in Schedule 2 of the Regulatory Agreement. The evaluation shall solicit feedback from onsite management and residents. Lessee shall provide or facilitate provision of tenant services appropriate to the needs of the resident profile for the residential community at the Premises. Any fees for such services shall be reasonable. Lessee shall provide periodic reports (no less frequent than once each year) to Lessor on the services provided and the charges, if any, for such services, as set forth in the

Regulatory Agreement. Lessee shall maintain oversight and supervision of the Premises, and shall remain actively involved with the residents of the Premises, including establishing an schedule of site visits and inspections as well as remaining accessible and responsive to residents' concerns and questions.

Article 32 (Redevelopment)

32.1 **Lessee's Redevelopment Option**. During the first ten (10) years of the Term, Lessee may elect to redevelop the Premises as provided in this Section 32.1 (the "**Redevelopment Option**"). If Lessee elects to redevelopment the Premises, the Term shall be extended for an additional ten (10) years, provided that the total Term of the Lease shall not exceed seventy-five (75) years. Any redevelopment shall be subject to the following:

32.1.1 Submittal of Redevelopment Proposal. Lessee shall submit a redevelopment proposal to Lessor with detail and information sufficient to allow Lessor to evaluate the proposal in accordance with the criteria set forth in Revised Ordinances of Honolulu Section 28-3.4(d)(1) through (6), as amended. The redevelopment shall comply with all Laws and restrictive covenants applicable to the Premises, including, but not limited to, then current building codes, land use and zoning regulations, and historic laws and regulations, if applicable. Lessee shall promptly provide any information, documents or plans that Lessor requests in connection with Lessor's review and evaluation of the redevelopment proposal.

32.1.2 Rental Mix. After redevelopment, Lessee shall maintain a ratio of unit income mix type that is similar to what existed prior to the redevelopment for the Premises.

32.1.3 Redevelopment Agreement. If the redevelopment proposal is acceptable to Lessor, Lessor and Lessee shall enter into a redevelopment agreement (the "**Redevelopment Agreement**") setting forth in detail all covenants, obligations, restrictions requirements and conditions to govern the proposed redevelopment and subsequent operation of the Premises, indicate all studies and design work that must be satisfactorily carried out and approved as a condition to the redevelopment of the Premises, and shall also include the following terms and conditions:

a) Be for a term not to exceed five (5) years;

b) Assure that affordable dwelling units are replaced on a one-for-one or better basis;

c) Provide for a reasonable plan that complies with all Laws relating to the relocation of residential tenants during the redevelopment period, including monthly rents not more than the current rent that the residential tenant is paying and at a location that is not more than a certain distance from the Premises; and

d) Be otherwise on terms acceptable to Lessor.

32.1.4 City Council Approval. The Redevelopment Agreement shall be subject to approval by Honolulu City Council by resolution. Prior to approval of the

Redevelopment Agreement, the City Council may add, delete or amend any term or condition of the Redevelopment Agreement.

32.1.5 Extension of Redevelopment Option. In the event Lessee desires to exercise the Redevelopment Option after the expiration of the initial 10-year period of the Term, Lessor may, in its sole discretion and subject to Honolulu City Council approval, grant an extension to Lessee to exercise the Redevelopment Option. Any extension may be conditioned on the payment of additional compensation to Lessor.

Article 33 (Property Specific Terms)

33.1 **[Caption]**. _____.

33.2 **[Caption]**. _____.

EXHIBIT A

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

[TO BE ATTACHED]

ADDENDUM TO LEASE

(Resident Parking Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 6 (Use)

6.1 **Permitted Use**. Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as a parking facility for (a) resident tenants of the apartment building to which the Premises is attached, or (b) tenants not residing in the building to which the Premises is attached, but residing in an affordable housing project operated by Lessee or an Affiliate of Lessee that is subject to a regulatory agreement governing rent and tenant income qualification. Lessee's use shall be subject to, and strictly in accordance with, the terms and conditions of this Lease, and Lessee shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 18 (Subleases)

18.1 **Parking Stalls**. The Premises includes parking stalls, the use of which shall be subleased or licensed by Lessee to: (a) resident tenants of the apartment building to which the Premises is attached, or (b) tenants not residing in the building to which the Premises is attached, but residing in an affordable housing project operated by Lessee or an Affiliate of Lessee that is subject to a regulatory agreement governing rent and tenant income qualification.

18.2 **Parking Rates, etc.** The initial parking rates for the parking stalls (i.e., the rates which shall be in effect on the Commencement Date) are set forth in **Exhibit A** attached to this Addendum. From and after the Commencement Date, Lessee shall establish parking rates in its sole and absolute discretion; provided that, for the first ten (10) years of the Term of this Lease, Lessee shall not increase applicable parking rates more than ten percent (10%) over the applicable rates in effect for the immediately prior year.

All parking revenues generated from the rental of parking stalls in the Premises during the Term shall belong to Lessee, subject to any third-party vendor contracts with existing parking operators assumed by Lessee. Lessor's consent shall not be required to any monthly parking agreement, or to any Modification thereof, so long as Lessee complies fully with the requirements of this Lease. The fact that any person parking on

the Premises causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

EXHIBIT A

INITIAL PARKING RATES

[TO BE ATTACHED]

Exhibit I

ADDENDUM TO LEASE

(Public Parking Component)

The following provisions of this Addendum shall be deemed to be part of the foregoing Lease (the "**Lease**") to which this Addendum is attached and shall be given full force and effect as provisions of such Lease.

Unless otherwise specified herein, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the Lease.

The following provisions shall be added to, inserted in, and supplement the provisions of the Lease. In the event of any conflict between the terms of this Addendum and the Lease, the terms of this Addendum shall control over any terms of the Lease that are inconsistent with this Addendum.

Article 6 (Use)

6.1 **Permitted Use.** Lessee shall continually use and operate the Premises throughout the entirety of the Term solely as a public pay-parking facility subject to, and strictly in accordance with, the terms and conditions of this Lease, and shall not use or permit the Premises to be used for any other purpose or purposes whatsoever.

Article 18 (Subleases)

18.1 **Parking Stalls**. The Premises includes parking stalls for use by the public. Lessee may, without the consent of Lessor, enter into a sublease or other agreement with a third-party to operate the Premises as a public parking lot, provided that such sublease or other agreement is made subject to the terms and conditions of this Lease. Lessee shall be permitted to restripe or otherwise reconfigure the parking stalls, provided that such reconfiguration and the resulting number and size of stalls is in conformity with applicable Law.

18.2 **Parking Rates, etc.** The parking rates, minimum number of stalls, time limits and other regulations for the parking stalls included in the Premises (including both the monthly and the hourly public parking stalls) are established by the Honolulu City Council from time to time and such rates, time limits and regulations shall not be altered without the express written consent of Lessor in its sole discretion. The parking rates, time limits and regulations in effect, as of the Commencement Date, are set forth in **Exhibit A** attached to this Addendum.

All parking revenues generated from the rental of parking stalls in the Premises during the Term shall belong to Lessee, subject to any third-party vendor contracts with existing parking operators assumed by Lessee. Lessor's consent shall not be required to any monthly parking agreement, or to any Modification thereof, so long as Lessee complies fully with the requirements of this Lease and applicable Law. The fact that any person parking on the Premises causes any Default shall not relieve Lessee of Lessee's obligation to cure it. Lessee shall take all steps reasonable and necessary to prevent any such Default.

EXHIBIT A

PARKING RATES, TIME LIMITS AND REGULATIONS

[TO BE ATTACHED]

PROPERTY SPECIFIC LEASE TERMS

[TO BE INSERTED IN APPLICABLE ADDENDA]

West Loch Village

(a) **HOME Requirements and Affordability Expiration Dates**. The Premises was developed in whole or in part with HOME match funding. The Premises will remain subject to HOME program requirements until _____, after which the HOME program requirement will automatically expire. Lessee shall be solely responsible, for the remaining term of the HOME program requirements, for determining all applicable statutory and regulatory HOME Program requirements and for abiding therewith. Lessee shall be required to execute a Use Restriction Agreement that will be recorded against the Project. The costs of compliance with any such HOME requirements shall be borne solely by Lessee.

(b) **West Loch Village: Water Cost Disclosure**. Currently, West Loch Village is not assessed for the cost of the non-potable water used to irrigate the landscaping at the West Loch Village Project. The Board of Water Supply for the County delivers the non-potable water to the County's West Loch Golf Course and the cost of the non-potable water is paid for by the County department overseeing the County's golf courses. Various users, including the West Loch Golf Course and West Loch Village, use the non-potable water. The County is working on allocating the costs of such non-potable water and the costs for the installation, maintenance and repair of infrastructure and waterlines to all users. Lessee will be responsible for the West Loch Village Project's share of such allocated costs based on a reasonable determination by the County.

Bachelors' Quarters

(a) **HOME Program Requirements**. Redevelopment shall not commence until the HOME Program compliance period has expired.

(b) **HOME Requirements and Affordability Expiration Dates**. The Premises was developed in whole or in part with HOME funding. The Premises will remain subject to HOME program requirements until August 30, 2014, after which the HOME program requirement will automatically expire. Lessee shall be solely responsible, for the remaining term of the HOME program requirements, for determining all applicable statutory and regulatory HOME Program requirements and for abiding therewith. Lessee shall be required to execute a Use Restriction Agreement that will be recorded against the Project. The costs of compliance with any such HOME requirements shall be borne solely by Lessee.

Kanoa Apartments

(a) **HOME Program Requirements**. Redevelopment shall not commence until the HOME Program compliance period has expired.

(b) **HOME Requirements and Affordability Expiration Dates**. The Premises was developed in whole or in part with HOME funding. The Premises will

remain subject to HOME program requirements until March 2, 2013, after which the HOME program requirement will automatically expire. Lessee shall be solely responsible, for the remaining term of the HOME program requirements, for determining all applicable statutory and regulatory HOME Program requirements and for abiding therewith. Lessee shall be required to execute Use Restriction Agreement that will be recorded against the Project. The costs of compliance with any such HOME requirements shall be borne solely by Lessee.

Kulana Nani

(a) **HOME Requirements and Affordability Expiration Dates**. The Premises was developed in whole or in part with HOME funding. The Premises will remain subject to HOME program requirements until July 10, 2021, after which the HOME program requirement will automatically expire. Lessee shall be solely responsible, for the remaining term of the HOME program requirements, for determining all applicable statutory and regulatory HOME Program requirements and for abiding therewith. Lessee shall be required to execute a Use Restriction Agreement that will be recorded against the Project. The costs of compliance with any such HOME requirements shall be borne solely by Lessee.

(b) **Settlement of Tamashiro Claims**. Certain claims pursuant to Hawai'i Revised Statutes § 102-14 were asserted against Lessor by named plaintiffs in the class action case, Tamashiro, et al. v. Department of Human Services, et al., Civil No. 96-3011007 (the "**Tamashiro Case**"). The Tamashiro Case was settled in 1999, but the plaintiffs continue to raise claims in connection with the settlement, including a claim relating to a right to the income from vending machines located at the Kulana Nani Apartments Project (the "**Kulana Nani Claim**"). Lessor, who is attempting to settle the Kulana Nani Claim, hereby reserves the right and authority to continue to pursue such negotiations and settlement with such plaintiffs, and will indemnify and hold Lessee harmless from the Kulana Nani Claim pursuant to and in accordance with Section 14.8 of the Lease.

Marin Tower

(a) **Marin Tower Disclosures**. Lessor has informed Lessee that (a) there is a burial crypt on the Premises where Don Francisco is interred, (b) need to address handling of the artifacts in the Lobby display case [Lessor presently determining whether to remove the artifacts prior to closing or allow the artifacts to remain in place subject to a reservation allowing Lessor to remove the artifacts at any time during the Term]

(b) **Pacific Gateway Center Easement**. [If easement is not granted prior to Lease Commencement Date, include this provision] Lessor has agreed to grant to Pacific Gateway Center, a Hawai'i nonprofit corporation, an access easement over the Marin Tower Project for fire escape purposes. Pacific Gateway Center owns that certain adjacent property located at 83 North King Street, Honolulu, Hawai'i, and identified as TMK (1) 1-7-002-008. Lessor reserves the right and power to grant said easement pursuant to Section 14.4.1; provided, however, that the grant of easement document shall be subject to Lessee's consent, which consent shall not be unreasonably withheld, delayed or conditioned. Following such grant of easement, Lessor and Lessee agree to amend the Lease to include and be subject to such easement.

Chinatown Manor

(a) **Chinatown Manor: Alleyway**. [add to Lease for Chinatown Manor to the extent not resolved prior to PSA closing] The State has granted to Lessor a right-of-way for Chinatown Manor to use the alleyway shown on that certain ALTA/ACSM Land Title Survey "Chinatown Manor" dated May 21, 2012, prepared by R. M. Towill Corporation, for access purposes to and from King Street. Under the terms of the right-of-way granted by the State, it was anticipated that the County would ultimately obtain from the State a formal easement or deed to the alleyway. Lessor is pursuing an agreement with the State to acquire such easement or deed for the alleyway. Lessor hereby reserves the right and authority to continue to pursue such easement or deed, provided that Lessor shall be responsible and liable for all costs and fees in connection therewith, including, but not limited to, the payment of consideration for such acquisition, Lessor's attorneys' fees and costs, and recordation fees related thereto. If Lessor obtains the fee interest or an easement in the alleyway, Lessor and Lessee shall amend this Lease to include such alleyway as part of the Premises under this Lease and all obligations of Lessee hereunder shall also apply to the alleyway. Lessee shall fully cooperate with Lessor in obtaining such easement or deed for the alleyway.

Manoa Gardens

(a) **Access**. Access to Manoa Gardens is over and through Manoa District Park from a public road. Lessor is working on obtaining documentation for a right-of-access over Manoa District Park or may pursue a subdivision application creating an extension of Kahaloa Drive.

Pauahi Hale

(a) "**Minimum Annual Reserve Account Amount**" means the sum which results when $400 is multiplied by the aggregate number of residential units located on the Premises, increased annually at the end of each calendar year by the percentage increase, if any, in the Consumer Price Index from the "base period" of the Consumer Price Index to the "current period" of the Consumer Price Index for the calendar year for which the adjustment is being made. The term "base period" initially shall refer to the Consumer Price Index published for the month of November, 2016. Following the initial increase hereunder, the term "base period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which the Per Unit Sum was last adjusted hereunder. The "current period" shall refer to the Consumer Price Index published for the month of November immediately preceding the calendar year for which an adjustment is being made. In the event the Consumer Price Index shall not be published for any of the above-described months, then the Consumer Price Index published for the month closest, but prior, to the described month shall be used in its place. Under no circumstances shall the percentage increase be less than zero.

Winston Hale

(a) [Winston Hale will need a combined Affordable/Redevelopment Addendum.]

Exhibit K

LAND COURT	REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL ( ) PICK-UP ( )

Total No. of Pages: __

Tax Map Key No. 1 - - -

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Affordable Rental Housing Component)
-[Project Name]-

City: CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawaii
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813
Attention: _____

Lessee: _____
_____
_____
_____

Administrator: _____
_____
_____
_____

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Affordable Rental Housing Component)
-[Project Name]-

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Agreement**"), dated as of _____, 201_, is made by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii (the "**City**"), and _____, a _____ (the "**Lessee**").

W I T N E S S E T H:

WHEREAS, the City owns that certain real property more commonly known as_____, situated at _____, City and County of Honolulu, State of Hawaii, designated as Tax Map Key No. 1- - - - (the "**Property**"); and

WHEREAS, the Property has been submitted to a condominium property regime under Hawaii Revised Statutes Chapter 514B (Condominiums), and includes that certain separate parcel of real estate (the "**Project**"), which Project is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, the City and the Lessee have entered into that certain Lease (the "**Lease**") of such Project of even date herewith, which Lease or a memorandum of which Lease is recorded in the Bureau of Conveyances for the State of Hawaii, and/or with the Assistant Registrar of the Land Court of the State of Hawaii, as _____, wherein the City is leasing the Project to Lessee; and

WHEREAS, the Project consists of and includes residential rental housing apartments; and

WHEREAS, the City and the Lessee intend that the Project shall be used, maintained and operated as an affordable rental housing project throughout the sixty-five (65) year term of the Lease, and, in furtherance of such intent, desire to enter into this Agreement; and

WHEREAS, Lessee's acquisition of the Lease for the Project may be financed through the issuance of tax-exempt multi-family revenue bonds authorized pursuant to Sections 103 and 141 et seq. of the Internal Revenue Code of 1986 (26 U.S.C.), as amended (the "**Code**"), and with equity raised through the sale of federal low-income housing tax credits ("**LIHTC**") authorized under Section 42 of the Code (and the sale of State of Hawaii LIHTC authorized under the cognate provisions of the laws of the State of Hawaii), and the Project may also receive federal assistance in the form of Section 8 Housing Assistance Payments contract subsidies or other federal program assistance and, therefore, may be subjected to the affordable housing requirements relating to such financing and such programs; and

WHEREAS, in addition to the requirements of the foregoing recital, certain apartment units in the Project may from time to time also be subject to other Federal Affordable Housing Requirements (as defined below) which may either be applicable to such apartment units at the time of execution of the Lease or may be made applicable to apartment units in the Project by the Lessee during the term of the Lease and this Agreement; and

WHEREAS, the City and the Lessee intend that, for as long as any applicable Federal Affordable Housing Requirements shall be in place and as further described herein, the requirements contained herein shall supplement, but shall remain subordinate to, any applicable Federal Affordable Housing Requirements, including specifically and without limitation the Federal Affordable Housing Requirements made applicable to apartment units in the Project in connection with the multi-family revenue bonds issued and federal and State of Hawaii LIHTC allocated as part of the financing for Lessee's acquisition of the Lease; and

WHEREAS, the City and the Lessee intend that the requirements contained herein shall continue to govern the apartment units in the Project after the expiration of any applicable Federal Affordable Housing Requirements.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the City and the Lessee hereby agree as follows:

Section 1. Definitions and Interpretation. Unless the context otherwise requires, capitalized terms used in this Agreement shall for all purposes of this Agreement have the meanings specified in the preambles hereto or in this Section.

"**Administrator**" means any administrator appointed by the City as its agent in the administration of this Agreement, and any successor so appointed. Until any different Administrator is appointed, and at any time while such office is vacant, the term "Administrator" shall mean the City.

"**Affordability Period**" means the entire sixty-five (65) year term of the Lease, as it may be extended.

"**Affordable Rent**" has the meaning set forth in Section 4(a) hereof.

"**Annual Income**" means the annual income of a Tenant, as calculated in the manner prescribed in 24 CFR Section 5.609.

"**Area**" means the City and County of Honolulu.

"**Certificate of Continuing Program Compliance**" means a Certificate in substantially the form set forth in **Exhibit B** attached hereto, or such other form as may be provided by the Lessee and approved by the City.

"**DPP**" means the City's Department of Planning and Permitting, or its successor.

"**Dwelling Unit(s)**" means residential units in the Project. Unless otherwise inconsistent with any applicable Federal Affordable Housing Requirements, the term Dwelling Unit shall have the meaning set forth in Section 8-10.20(a), Revised Ordinances of Honolulu 1990, as amended ("**ROH**"). **[DELETE SECOND SENTENCE FOR PAUAHI HALE.]**

"Federal Affordable Housing Requirements" means any and all federal statutory, executive order and regulatory requirements applicable to any Dwelling Units in the Project as such requirements now exist or as they may be amended from time to time, including, but not limited to, the Housing Act, the HOME Program, all requirements of law relating to any multi-family revenues bonds authorized in connection with the financing of Lessee's acquisition of the Lease, the Tax Credit Requirements (as defined below), and any other housing assistance program funded, insured, or operated by HUD.

"HOME Program" means the requirements established by HUD under the HOME Investment Partnership Act, and all regulations applicable thereto at 24 CFR part 92.

"**Housing Act**" means the United States Housing Act of 1937, as amended, or its successor (42 U.S.C. §1437 et seq.)

"**HUD**" means the United States Department of Housing and Urban Development.

"**Income Certification**" means, taken together, an Occupancy Certificate and a Verification of Income, as those terms are hereinafter defined.

"**Kitchen**" shall have the meaning of "kitchen" set forth in ROH Section 8-10.20(a), unless otherwise inconsistent with any applicable Federal Affordable Housing Requirements.

"**Lower Income Tenant**" means any Tenant whose Annual Income does not exceed the <u>lesser</u> of (i) sixty percent (60%) of median income for the Area, as adjusted for smaller and larger families, in accordance with the Tax Credit Requirements, and (ii) with respect to any Dwelling Units in the Project subject to any Federal Affordable Housing Requirements, including without limitation Section 8 of the Housing Act, the HOME Program, and any other applicable Federal Affordable Program Requirements, any lower income limit determined in accordance with such Federal Affordable Housing Requirements applicable to such Dwelling Units. The determination of a Tenant's status as a Lower Income Tenant shall be made upon initial occupancy of a Dwelling Unit in the Project by such Tenant on the basis of an Income Certification executed by the Tenant and, thereafter, on an annual basis as set forth herein.

[For <u>Kanoa Apartments</u>, ADD: "For the Affordability Period, Lessee shall set aside and lease nine (9) Dwelling Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area ("City 50% Units"), and, with respect to such City 50% Units, the term "Lower Income

Tenant" shall mean any Tenant whose Annual Income does not exceed fifty percent (50%) of median income for the Area."]

[For Kulana Nani, ADD: "For the Affordability Period, pursuant to Section 6-63.1 et seq., Revised Ordinances of Honolulu 1990, Lessee shall set aside and lease thirty-five (35) Dwelling Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area ("City 50% Units"), and, with respect to such City 50% Units, the term "Lower Income Tenant" shall mean any Tenant whose Annual Income does not exceed fifty percent (50%) of median income for the Area.]

[For Bachelors Quarters, ADD: "For the Affordability Period, Lessee shall set aside and lease two (2) Dwelling Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area ("City 50% Units"), and, with respect to such City 50% Units, the term "Lower Income Tenant" shall mean any Tenant whose Annual Income does not exceed fifty percent (50%) of median income for the Area."]

[For West Loch Village, ADD: "For the Affordability Period, Lessee shall set aside and lease seventeen (17) Dwelling Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area ("City 50% Units"), and, with respect to such City 50% Units, the term "Lower Income Tenant" shall mean any Tenant whose Annual Income does not exceed fifty percent (50%) of median income for the Area."]

"**Lower Income Unit(s)**" means the Dwelling Units required to be rented to, or held available for occupancy by, Lower Income Tenants. All Lower Income Units in the Project are Regulated Units as defined below.

"**Occupancy Certificate**" means a certification that a Tenant has leased premises in the Project in substantially the form set forth in **Exhibit C** attached hereto, or such other form as may be provided by the Lessee and approved by the City.

"**Regulated Unit(s)**" means the Dwelling Units required to be rented to, or held available for occupancy by, Lower Income Tenants in accordance with this Agreement or that are otherwise subject to any applicable Federal Affordable Housing Requirements that govern the income limitations of eligible Tenants for such Dwelling Units or the maximum allowable rents that can be charged in respect thereof.

"**State**" means the State of Hawaii.

"Tax Credit Requirements" means any and all matters required by Section 42 of the Code (and the cognate provisions of the laws of the State of Hawaii) and/or any applicable agreement or restrictions relating to the receipt of any federal or State of Hawaii LIHTC in connection with Lessee's acquisition of the Lease for the Project, whether or not such requirement is explicitly stated in Section 42 or regulations thereunder (or the applicable

provisions of the laws of the State of Hawaii and the regulations thereunder).

"**Tenant**" means, at any time of determination thereof, all persons who together occupy a single Dwelling Unit, and upon the occupancy of a Dwelling Unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

"**Verification of Income**" means a Verification of Income in substantially the form set forth in **Exhibit D** attached hereto, or such other similar form as may comply with the Federal Affordable Housing Requirements or be provided by the Lessee and approved by the City.

Section 2. Representations, Covenants and Warranties of the Lessee.

(a) The Lessee agrees that each of the representations, covenants and warranties of the Lessee contained in the Lease relating to the acquisition, operation and/or rehabilitation of the Project is hereby incorporated in this Agreement, as if set forth in full herein.

(b) The Lessee acknowledges and agrees that the Project is to be owned, managed and operated as a "housing project" (within the meaning of ROH Section 8-10.20), and shall be subject to the provisions of this Regulatory Agreement regarding the rental of Dwelling Units to Lower Income Tenants at the Affordable Rents specified herein.

(c) The Lessee further represents, warrants and covenants as follows:

(1) For the Affordability Period, the Lessee will maintain the Project as multifamily rental housing consisting of one or more buildings (or portions thereof that are created as "separate parcels of real estate" as part of a condominium property regime created pursuant to Chapter 514B, Hawaii Revised Statutes), together with any functionally related and subordinate facilities, which are used on other than a transient basis, which meet the other requirements set forth herein, and which are available to members of the general public. For purposes of this Section 2(c)(1), the term "functionally related and subordinate facilities" means and includes such facilities existing at the commencement date of the Lease, as supplemented and expanded by the Lessee, for use by the Tenants (e.g., recreational facilities, parking areas, etc.) and other facilities existing at the commencement date of the Lease, as supplemented and expanded by the Lessee, which are reasonably required for the Project (e.g., cooling equipment, trash disposal equipment, units for a resident manager, etc.). All of the foregoing will be located on the Property or within the building or buildings that are part of the Property in which the Project is located. The Project will not be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, or rest home, or in any manner in contravention of applicable law.

(2) All of the Dwelling Units will be and remain similarly constructed, and each Dwelling Unit will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which will be and remain an independent living unit complete, separate and distinct from other Dwelling Units and will include and will continue to include a

sleeping area, at least one bathroom, and a single Kitchen equipped with a cooking range, refrigerator, and sink. **[FOR REDEVELOPMENT PROPERTIES, ADD AT BEGINNING OF SENTENCE: "Until redeveloped, ..."] [FOR PAUAHI HALE, DELETE THIS PROVISION.]**

(3) The Dwelling Units in the Project that are subject to any Federal Affordable Housing Requirements shall at all times comply with all Federal Affordable Housing Requirements applicable thereto, including requirements established by such programs affecting both income limitations and allowable rent levels in respect of the Regulated Units in the Project; provided, however that no Tenant in any Regulated Unit shall be required to make a tenant payment toward the rent for such Regulated Unit in excess of the limits established by this Agreement for such Regulated Unit. In the event of a conflict between the requirements of this Agreement and any Federal Affordable Housing Requirements, the latter shall control. Upon the expiration of any Federal Affordable Housing Requirements, the requirements of this Agreement shall remain in place and shall control for the balance of the Affordability Period. Nothing in this Agreement shall preclude or be interpreted or deemed to prohibit Lessee from applying for and receiving rent and other subsidies that shall, as applicable under any program concerning such rent or other subsidies, subsidize or be in addition to the Affordable Rents specified in this Agreement.

(4) For the Affordability Period, subject to any applicable Federal Affordable Housing Requirements, all (100%) of the Dwelling Units comprising the Project shall be Lower Income Units and shall at all times during the Affordability Period be rented to and occupied by Lower Income Tenants at the Affordable Rents specified in this Regulatory Agreement.

[For Kanoa Apartments, DELETE PERIOD AT END OF SENTENCE AND ADD: "; PROVIDED THAT, for the Affordability Period, Lessee shall set aside and lease the nine (9) City 50% Units in the Project to Tenants whose Annual Income does not exceed thirty percent (50%) of median income for the Area."]

[For Kulana Nani, DELETE PERIOD AT END OF SENTENCE AND ADD: "; PROVIDED THAT, for the Affordability Period, Lessee shall set aside and lease the thirty-five (35) City 50% Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area.]

[For Bachelors Quarters, DELETE PERIOD AT END OF SENTENCE AND ADD: "; PROVIDED THAT, for the Affordability Period, Lessee shall set aside and lease the two (2) City 50% Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area."]

[For West Loch Village, DELETE PERIOD AT END OF SENTENCE AND ADD: "; PROVIDED THAT, for the Affordability Period, Lessee shall set aside and lease the seventeen (17) City 50% Units in the Project to Tenants whose Annual Income does not exceed fifty percent (50%) of median income for the Area."]

For the purposes of this subsection, a vacant unit that was most recently occupied by a Lower Income Tenant shall be treated as rented and occupied by a Lower Income Tenant until reoccupied, other than for a temporary period of not more than thirty one (31) days, at which time the character of such unit shall be redetermined.

(5) For the Affordability Period, each Dwelling Unit shall be rented or held available for rental, on a first-come first-served basis, subject to the other requirements hereof, to members of the general public who are natural persons, on a continuous basis, and may not be converted to owner-occupied condominium units or other non-rental use. In renting Dwelling Units to the public, the Lessee will not give preference to any particular class or group, except as set forth on **Schedule 1** attached hereto and to the extent that Dwelling Units are required to be leased or rented to Lower Income Tenants under any applicable Federal Affordable Housing Requirements and/or this Agreement.

[Add for Manoa Gardens and West Loch Village: "Notwithstanding the foregoing, Lessee acknowledges that occupancy in the Project is restricted to families whose head of household, a spouse, or sole member is a person at least 62 years of age. Such family may include two or more persons at least 62 years of age living together or one or more persons at least 62 years of age living with one or more live-in aides. There is nothing in this requirement, however, that is intended to or shall exclude children. For the Affordability Period, the rental of Dwelling Units in the Project shall continue to be restricted to families whose head of household, a spouse, or sole member is a person at least 62 years of age.]

(6) For the Affordability Period, the Lessee shall obtain, complete and maintain on file and file with the City (i) at the time of initial occupancy of any Regulated Unit, (ii) upon the vacancy and re-occupancy of any Regulated Unit, and (iii) at least once annually, an Income Certification which shall be subject to independent investigation and verification by the City and/or the Administrator. The Lessee shall use its best efforts to verify the information set forth in any Verification of Income submitted by each Tenant of a Regulated Unit at the time of submission of such Income Certification, including taking, for other than Section 8 certificate or voucher holders, the following steps as part of the verification process by the Lessee: (1) either (A) obtain a federal income tax return for such Tenant for the most recent tax year; and/or (B) obtain a written verification of employment from such Tenant's current employer; or (2) if such Tenant is not employed and has no tax return, obtain other verification of such Tenant's source of income. The Lessee shall file with the Administrator a Certificate of Continuing Program Compliance on or before the first (1st) day of each September during the Affordability Period, setting forth the required information for the preceding calendar or fiscal year. The Administrator shall monitor compliance of the Project with the requirements set forth herein on behalf of the City and shall provide the Lessee with notice of any circumstances of noncompliance of which the Administrator becomes aware. The books and records of the Lessee pertaining to the incomes of Tenants residing in Regulated Units in the Project must be open to inspection by any authorized representative of the City and the Administrator. During any period that any Federal Affordable Housing Requirements are in effect, Lessee shall be deemed to have satisfied the requirements of this Section 2(c)(6) if Lessee obtains, completes and maintains on file and files with the City income certification and other forms that comply with the applicable Federal

Affordable Housing Requirements and that contain substantially the same information and certifications contemplated by the Income Certification, including the Verification of Income, specified herein.

(7) For the Affordability Period, on or before sixty (60) days following the end of each fiscal year of the Lessee, the Lessee shall submit to the City statistical information in substantially the form set forth in **Exhibit E** attached hereto, or such other form as may be provided by the Lessee and approved by the City, for such fiscal year. During any period that any Federal Affordable Housing Requirements are in effect, Lessee shall be deemed to have satisfied the requirements of this Section 2(c)(7) if Lessee shall submit to the City such similar statistical information as is required in connection with the applicable Federal Affordable Housing Requirements and that contains substantially the same statistical information as specified in **Exhibit E** hereto.

(8) The City or its property manager will provide with an initial applicant waiting list for the Project. At the commencement of the Lease, Lessee shall preserve all wait list applicants' positions and shall process unit occupancies based on the waiting list, subject in all instances to any restrictions, provisions, and terms contained in any document relating to any Federal Affordable Housing Requirements and the income and other qualifications for Lower Income Tenants specified in this Agreement. For the Affordability Period, all Tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Lessee which is unrelated to the Project and shall be maintained, as required from time to time by the Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination during business hours by the Administrator. Failure to keep such lists and applications or to make them available to the Administrator will be a default hereunder.

(9) For the Affordability Period, all Tenant leases shall be subordinate to this Agreement and shall contain clauses, among others, wherein each Tenant who occupies a Regulated Unit: (i) certifies the accuracy of the statements made in the Verification of Income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Lessee or the Administrator on behalf of the City, and that the failure to provide accurate information in the Verification of Income or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial and material obligation of the tenancy of such Tenant.

(10) For the Affordability Period, the Lessee shall exercise best efforts to comply with the requirements of this Agreement and shall correct any noncompliance within sixty (60) days after first discovering or receiving notice of such noncompliance, and, with respect to any noncompliance that cannot be corrected within the aforesaid 60-day period, Lessee shall undertake its best efforts to (a) commence correction of any such noncompliance within such 60-day period and (b) diligently pursue such corrective action until completed, provided, however, that in any event such corrective action shall, if feasible and practicable, be completed within one hundred twenty (120) days after discovering or receiving notice of such

noncompliance.

(11) The Lessee shall submit to the Administrator, within fifteen (15) days after receipt of a written request (or such longer period as may be reasonably required by the Lessee to obtain such information or forms, or, if feasible and practicable, such shorter period as may be required in order for the City to comply with any such applicable reporting requirements), any information or completed forms requested by the City in order for the City to comply with any applicable Federal Affordable Housing Requirements.

(12) The Lessee shall notify the City, in writing, of the completion of the rehabilitation of the Project, if any.

(13) For the Affordability Period, the Lessee shall comply with any and all capital improvement obligations relating to the Project as set forth in the Lease.

(14) At the commencement of the Lease, the Lessee shall conduct an evaluation of appropriate services to be offered to support the Tenant community at the Project, as specified in the Lessee's revised proposal letter dated May 22, 2012, to Samuel E. H. Moku, Director of the City's Department of Community Services. Tenant services to be evaluated include, but are not limited to, those summarized on **Schedule 2** attached hereto. The evaluation shall solicit feedback from onsite management and residents. For the Affordability Period, the Lessee shall provide or facilitate provision of Tenant services appropriate to the needs of the Project's resident profile. Any fees for such services shall be reasonable. The Lessee shall set forth in its annual Certificate of Program Compliance the Tenant services provided during the program year pursuant to this Section and any charges for such services.

Section 3. Consideration. The City has entered into the Lease with the Lessee for the purpose, among others, of inducing the Lessee to acquire, operate and/or rehabilitate the Project. In consideration of the entry into the Lease by the City, the Lessee has entered into this Agreement and has agreed to restrict the uses to which the Project can be put for the Affordability Period.

Section 4. Additional Requirements of the City. In addition to the requirements set forth in Section 2 hereof, each of which is hereby incorporated as a specific requirement to be performed by Lessee, whether or not required by State or federal law, the Lessee hereby agrees to comply with each of the requirements of the City set forth in this Section, as follows:

(a) "**Affordable Rent**" means, with respect to any Lower Income Unit, a monthly rent which does not exceed the lesser of (i) the maximum rent permitted for persons whose Annual Income does not exceed 60% of the median income for the Area, adjusted for the number of bedrooms or as otherwise specified in Section 42(g) of the Code, as applicable under the Tax Credit Requirements, (ii), the Fair Market Rents (FMR) as published annually by HUD, and (iii) with respect to any Dwelling Units in the Project subject to any other Federal Affordable Housing Requirements, any lower rent applicable to such Dwelling Units pursuant to such Federal Affordable Housing Requirements.

[For Kanoa Apartments, ADD: "Notwithstanding the foregoing (i) the Affordable Rents for seven (7) of the nine (9) City 50% Units (four (4) one-bedroom units, one (1) three-bedroom unit, and two (2) four-bedroom units) shall not exceed thirty percent (30%) of the Tenant's Annual Income, as determined in the same manner that would be applicable for purposes of determining a Section 8 tenant's monthly rent payment under Section 8 of the Housing Act, unless the City shall specify any higher rent limits with respect to such City 50% Units; and (ii) the Affordable Rents for remaining two (2) City 50% Units (one (1) two-bedroom unit and one (1) three-bedroom unit) shall not exceed the then applicable Low Home Rents specified under HUD's HOME program, unless, following expiration of any Federal Affordable Housing Requirements (including HOME program limitations) that might otherwise be applicable with respect to such City 50% Units, the City shall specify any higher rent limits with respect to such City 50% Units."]

[For Kulana Nani, ADD: "Notwithstanding the foregoing, the Affordable Rents for eight (8) of the thirty five (35) City 50% Units (two (2) one-bedroom units, four (3) three-bedroom units and two (2) four-bedroom units) shall not exceed the then applicable Low Home Rents specified under HUD's HOME program, unless, following expiration of any Federal Affordable Housing Requirements (including HOME program limitations) that might otherwise be applicable with respect to such City 50% Units, the City shall specify any higher rent limits with respect to such City 50% Units."]

[For Bachelors Quarters, ADD: "Notwithstanding the foregoing, the Affordable Rents for two (2) City 50% Units (one (1) one-bedroom unit and one (2) two-bedroom unit) shall not exceed the then applicable Low HOME Rents specified under HUD's HOME program, unless, following expiration of any Federal Affordable Housing Requirements (including HOME program limitations) that might otherwise be applicable with respect to such City 50% Units, the City shall specify any higher rent limits with respect to such City 50% Units."]

[For West Loch Village, ADD: Notwithstanding the foregoing, the Affordable Rents for the seventeen (17) City 50% Units (ten (10) studio units and seven (7) one-bedroom units) shall not exceed the then applicable Low HOME Rents specified under HUD's HOME program, unless, following expiration of any Federal Affordable Housing Requirements (including HOME program limitations) that might otherwise be applicable with respect to such City 50% Units, the City shall specify any higher rent limits with respect to such City 50% Units."]

Affordable Rent shall be inclusive of Tenant utility payments. In the event that a Tenant pays for utilities, Affordable Rents shall be adjusted for Tenant-paid utilities in accordance with Section 8 utility allowances in effect from time to time, as published by the City for its Section 8 program. The Affordable Rent limits shall be adjusted upon publication by HUD of new median Annual Income data for the Area. The Lessee shall confirm adjustments to the Affordable Rent limits by submitting such adjustments to City along with HUD's published

new median Annual Income data for the Area. Notwithstanding the foregoing, with respect to Tenants, if any, who are recipients of rent subsidies pursuant to Section 8 of the Housing Act (or any rent subsidy or other HUD program of State of Hawai'i or City program), if the contract rent for a Dwelling Unit under such program is greater than the Affordable Rent, the rent for such Dwelling Unit may be such contract rent.

In the event maximum rents for Lower Income Tenants for the Area is no longer published at least annually by HUD, then rent limits calculated in a manner that most closely approximates the manner in which the aforesaid rents are calculated shall be substituted herein as the Affordable Rent limits applicable for all purposes under this Agreement, and in such event, the parties hereto shall acknowledge in writing the utilization of such substitute Affordable Rent limits.

(b) The following shall apply to rents of Dwelling Units in the Project:

No Tenant qualifying as a Lower Income Tenant upon initial occupancy shall be denied continued occupancy of a Dwelling Unit in the Project because, after admission, such Tenant's Annual Income increases to exceed the qualifying limit for Lower Income Tenants. However, should a Lower Income Tenant's Annual Income, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Lower Income Tenant of the same household size, then, as soon as the lease permits, such Tenant who no longer qualifies as a Lower Income Tenant may be charged as annual rent an amount not exceeding thirty percent (30%) of the Tenant's Annual Income and the Project and Lessee shall continue to be deemed in compliance with this Agreement. Notwithstanding the foregoing, this paragraph shall apply with respect to Dwelling Units and Tenants subject to any Federal Affordable Housing Requirements only on and after the date of the expiration or termination of the applicable Federal Affordable Housing Requirements.

For the initial ten (10) years of the term of the Lease and of this Agreement, rent increases for Regulated Units shall be limited to a maximum of ten percent (10%) per annum. Notwithstanding the foregoing, during this initial ten (10) year period, the Lessee may increase the rent of any Regulated Unit that is currently vacant, or that becomes vacant, immediately up to the maximum rent permitted under Section 4(a) hereof, based upon the unit size of the specific vacant Regulated Unit.

(c) The financial records of the Project are to be maintained by the Lessee in accordance with recognized industry-accepted accounting principles consistently applied. At the request of the City, the Lessee shall provide the City access to the books of account for the Project and the records pertaining to the Regulated Units. The Lessee shall provide to the City annual operating statements for the Project, not more than ninety (90) days following the end of each fiscal year. In addition, the Lessee shall, from time to time, provide the City such other reports as the City may request relative to the operation of the Project. Not more than ninety (90) days following the end of each fiscal year, the Lessee shall provide to the City audited financial statements for the Project, prepared by an independent certified public accounting firm. The Lessee shall provide to the City an annual operating budget for the Project at least thirty (30) days prior to the beginning of each fiscal year.

(d) The Lessee shall comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, creed, color, sex, familial status, marital status, religion, national origin, age (except as to age, as may be expressly provided herein) or any other prohibited basis, including but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. §3601 *et seq.*; 24 CFR. 100 *et seq.*), Executive Orders 11063 (Equal Opportunity in Housing) and 13166 (Improving Access to Services for Persons with Limited English Proficiency), Section 504 of the Rehabilitation Act of 1973, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107 and 110, and Subparts I and M of Part 200, and the Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily Housing, Form HUD-935.2A (12/2011). The Lessee shall also comply with the provisions of any applicable federal, state or local law prohibiting discrimination on the basis of race, creed, color, sex, familial status, marital status, religion, national origin, age, or any other prohibited basis, in connection with the employment or application for employment of persons for the construction, operation and management of the Project. The Lessee further agrees not to refuse to lease a Dwelling Unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any Tenant or prospective Tenant is the holder of a certificate or a voucher under Section 8 of the Housing Act, or any successor legislation.

(e) The following occupancy guidelines shall be utilized for the occupancy of all Regulated Units:

Unit Size	Occupancy
Studio	1-2 persons
1 Bedroom	1-3 persons
2 Bedroom	2-5 persons
3 Bedroom	3-7 persons
4 Bedroom	4-8 persons

(f) No Current Tenant (as defined below) shall be displaced except for good cause, which shall include, but not be limited to, failure to pay rent; breach of any material terms of such tenant's rental agreement of a Dwelling Unit at the Project; dishonesty in completing and providing income information; any violations of Project rules; permitting an unauthorized person to reside in the Dwelling Unit; unauthorized or illegal alterations to the Dwelling Unit; material noncompliance with applicable building and housing laws materially affecting health and safety; and any acts or omissions by the Current Tenant constituting grounds for termination of the rental agreement under the Residential Landlord-Tenant Code (Chapter 521, Hawaii Revised States, as amended). "**Current Tenant**" means a Tenant lawfully occupying a Dwelling Unit in the Project at the time of the execution of the Lease between the City and the Lessee relating to the Property.

(g) The Lessee agrees that throughout the Affordability Period, it shall (1) maintain the Project in good repair and condition in accordance with applicable City codes, and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G, as amended; (2) maintain and operate the Dwelling Units and related facilities in the Project to provide

decent, safe and sanitary housing, including the provision of all essential and appropriate services, maintenance and utilities; and (3) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended.

(h) The Lessee shall provide a written notice, approved in advance by the City, of the policies pertaining to the Regulated Units to all applicants.

Any of the foregoing requirements of the City may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Section 4 shall, or shall be deemed to, extend to or affect any other provision of this Agreement, including particularly but without limitation the provisions of Section 2 hereof.

Section 5. Default and Enforcement. The Lessee shall be deemed to be in default under this Agreement if the Lessee shall fail to observe or perform any covenant, condition or agreement contained herein on its part to be observed or performed, and, except as otherwise provided in this Agreement, shall fail to correct such noncompliance within sixty (60) days after receiving written notice of such noncompliance from the City (or, if any such noncompliance is of a nature that cannot be corrected within such 60-day period, if the Lessee shall fail to exercise best efforts to (i) undertake to correct any such noncompliance within such 60-day period or (ii) diligently pursue such corrective action thereafter until completed; provided, however, that any failure, if feasible and practicable, to complete such corrective action within one hundred twenty (120) days shall in any event be deemed a default by the Lessee under this Agreement). In such event of default, and so long as such failure has not been promptly and fully cured, the City shall be entitled, in addition to all other remedies provided by law or in equity, to the following:

(a) To compel specific performance by the Lessee of its obligations under this Agreement, it being recognized that the beneficiaries of the Lessee's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Lessee's default; and

(b) To cause the Lessee to pay to the City, on demand, amounts equal to all rent payable to the Lessee with respect to Regulated Units, if such units are knowingly or negligently rented to persons who do not comply with the requirements of such units; provided, however, that any City demands for payment under this Section 5(b) shall at all times be subordinate to the provisions and liens of any mortgages, regulatory agreements, declarations, and other indentures relating any Federal Affordable Housing Requirements respecting the Project arising or incurred or recorded against the Project in connection with Lessee's acquisition of this Lease and or thereafter recorded against or made applicable to the Project with the City's consent.

Any default by the Lessee under the Lease shall be deemed to be a default by the Lessee under this Agreement and shall give to the City all rights and remedies provided herein with respect to a default under this Agreement, and any default by the Lessee with respect to this Agreement shall be deemed to be a default by the Lessee under the Lease and shall give to the City all rights and remedies provided under the Lease with respect to a default under the Lease.

The City shall give prompt written notice to the Lessee upon obtaining actual knowledge of any default hereunder; provided, however, that the failure to give any such notice shall not limit the ability of the City thereafter to pursue any remedies hereunder in accordance with the terms of this Agreement.

Section 6. Covenants to Run with the Property; Termination of Covenants. The City and the Lessee hereby covenant and agree that the covenants set forth herein that govern the use and occupancy of the Property shall be and are covenants running with the Project for the Affordability Period stated herein and shall be binding upon all subsequent Lessees of the Property for such Affordability Period, and are not merely personal covenants of the City and the Lessee. The Lessee hereby agrees that any and all requirements of the laws of the State of Hawaii to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the Property shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or, in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the Affordability Period each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Agreement. Upon the end of the Affordability Period, this Agreement and all covenants and agreements herein shall automatically terminate and be of no further force or effect; provided, however, that, within thirty (30) days following such termination, the City and the Lessee hereby agree to execute and record a written instrument evidencing the termination and release of this Agreement. The failure of any party to execute or record such release shall not affect or limit the automatic termination and release of this Agreement upon the end of the Affordability Period. All costs and expenses relating to the preparation and recording of such release shall be paid by the Lessee.

Section 7. Real Property and General Excise Tax Exemptions. Lessee shall be responsible for paying and discharging all real property taxes for the Project payable or accruing during the Affordability Period. Based on the recordation of this Agreement, Lessee may file an application or claim for exemption from the assessment and payment of real property taxes, including any claim for exemption subject to and pursuant to Section 8-10.20 and Section 8-10.21, Revised Ordinances of Honolulu, relating to low-income rental housing, and the City agrees to process such application in the ordinary course based upon and subject to the requirements of Section 8-10.20 and Section 8-10.21. Lessee understands that Lessee must file for such exemption annually and that the City shall not be responsible or liable for Lessee's failure to timely file for such exemption on an annual basis.

Pursuant to Hawai'i Revised Statutes Section 46-15.1, Section 201H-36, and Section 237-29, the City may certify for exemption from general excise taxes any projects which meet the requirements of said statutes. The City will work with Lessee to issue such certifications provided that the requirements under said statutes and applicable laws are met. Lessee understands that Lessee is responsible for preparing and filing any exemption request and that the City shall not be responsible or liable for Lessee's failure to file for such exemptions. Lessee further understands that such exemptions

are subject to all laws and rules applicable thereto.

The exemptions from real property taxes and general excise taxes currently available are subject to change by legislative or administrative action.

Section 8. **No Conflict with Other Documents**. The Lessee warrants that it has not executed, and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement and the Lease are paramount and controlling as to the rights and obligations herein and therein set forth and supersede any other requirements in conflict with this Agreement and the Lease. Notwithstanding the foregoing, the City acknowledges that the terms, provisions, and requirements of this Agreement shall be subordinate to any and all Federal Affordable Housing Requirements applicable to the Project.

Section 9. **Severability**. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

Section 10. **Gender; Number; Construction**. Unless the context clearly requires otherwise, as used in this Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and *vice versa*, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 11. **Titles and Headings**. The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 12. **No Drafter**. The parties to this Agreement acknowledge that each such party and its respective counsel have participated in the drafting and revision of this Agreement. Accordingly, all such parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any supplement or exhibit hereto.

Section 13. **Amendments**. Subject to the limitations in this Section and any other limitations in this Agreement, this Agreement may be amended, changed, modified, altered or terminated by written instrument executed and acknowledged by each of the parties hereto or their successors and duly recorded in the office in which this Agreement is recorded.

Section 14. **Parties in Interest; Successors**. This Agreement and the covenants and conditions contained herein shall bind, and the benefits shall inure to, respectively, the Lessee and its successors and assigns and all subsequent Lessees of the Project or any interest therein, and the City and its successors and assigns, for the Affordability Period.

Section 15. **Assignment of City's Rights**. Certain rights of the City in this

Agreement may be assigned to the Administrator and, if so assigned, shall be enforceable by the Administrator in accordance with their terms.

Section 16. **Notices**. All notices, certificates or other communications shall be sufficiently given by hand delivery or overnight commercial delivery or registered or certified mail and shall be deemed given when hand delivered or on the date of delivery shown on the records of the commercial delivery service, as applicable, or three (3) days after mailing if mailed by certified mail, postage prepaid, return receipt requested. The City, the Administrator and the Lessee may, by notice given hereunder to the applicable address(es) included on the cover sheet of this Agreement, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. All notices hereunder shall also be given to any additional persons who are entitled to receive notice under the notice provision of the Lease.

Section 17. **Governing Law**. This Agreement shall be governed by the laws of the State of Hawaii. The parties hereto expressly acknowledge and agree that any judicial action to interpret or enforce the terms of this Agreement shall be brought and maintained in the Circuit Court of the First Circuit of the State of Hawaii, or in the United States District Court in and for the District of Hawaii, or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Lessee or the Project.

Section 18. **No Third Party Benefit**. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the City and the Lessee, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

Section 19. **Agreement Authorized**. The City and the Lessee each represents and warrants for itself that it has all requisite power and authority to execute this Agreement, and that the execution and delivery of this Agreement by the persons signing on behalf of it have been duly authorized by all necessary action. This instrument constitutes the legal and binding obligations of the City and the Lessee, enforceable in accordance with its terms.

[Signature Page to Follow.]

"LESSEE"

_____

a _____

By: _____
Name: _____
Title: _____

"CITY"

CITY AND COUNTY OF HONOLULU,
a municipal corporation of the State of Hawaii

By: _____
Director, Department of Budget and Fiscal Services

RECOMMEND APPROVAL:

_____
Director, Department of Community Services

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

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

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

Further, I certify, as of this date, as follows:

□ Date of Document: _____ □ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit where signed: First

_____
Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

PL No_____//_____

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

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

Further, I certify, as of this date, as follows:

□ Date of Document: _____ □ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit where signed: First

_____
Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

PL No_____//_____

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

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

Further, I certify, as of this date, as follows:

□ Date of Document: _____ □ undated at time of notarization
Number of Pages: _____ (if counterpart signature pages are subsequently attached, the document may have a different number of pages)
Document Description: Regulatory Agreement and Declaration of Restrictive Covenants
Jurisdiction/Judicial Circuit where signed: First

_____
Type or print name: _____
Date: _____
Notary Public, State of Hawaii
My commission expires: _____

PL No_____//_____

EXHIBIT A

PROJECT DESCRIPTION

EXHIBIT B

[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Capitalized terms not otherwise defined in this Certificate of Continuing Program Compliance shall have the meanings set forth in that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawaii (the "City"), and _____, a _____ (the "Lessee"), with respect to the below-referenced Project (such agreement, the "Agreement").

Witnesseth that on this _____ day of _____, the undersigned, having leased from the City that certain multifamily rental housing development known as _____ (the "Project"), does hereby certify that during the preceding year (i) such Project was continually in compliance with the Regulatory Agreement and Declaration of Restrictive Covenants executed in connection with such Lease; (ii) _____ of the Dwelling Units in the Project were occupied by Lower Income Tenants at Affordable Rents; (iii) and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Set forth below are the names of the Lower Income Tenants who commenced or terminated occupancy during the preceding year.

Commenced Occupancy	Terminated Occupancy
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

Attached is a separate sheet listing the number of each Dwelling Unit and indicating which Dwelling Units are occupied by Lower Income, the size, the number of bedrooms of such Dwelling Units and the respective number of Lower Income who commenced occupancy of Dwelling Units during the preceding year.

Unit No.	Class of Unit	No. of Bedrooms	Rent	Total Eligible Income	Size (Sq. Ft.)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Units: _____

Percentage of Lower Income Units: _____

Number of Lower Income Tenants commencing occupancy this year: _____

EXHIBIT C

FORM OF INCOME CERTIFICATION

OCCUPANCY CERTIFICATE

(To be filed with the City along with a Verification of Income upon the rental of a Dwelling Unit to any Lower Income Tenant.)

Capitalized terms not otherwise defined in this Income Certification shall have the meanings set forth in that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawaii (the "City"), and _____, a _____ (the "Lessee"), with respect to the below-referenced Project (such agreement, the "Agreement").

Project: _____

The tenant identified in the attached Verification of Income has entered into a lease with respect to a Dwelling Unit in the above-described Project.

Such Tenant is/is not (circle one) a Lower Income Tenant.

Such Tenant is/is not (circle one) a full-time student.

The rental of a Dwelling Unit to such Tenant will not result in a violation of any of the requirements of the Agreement.

_____
Witness:
Date: _____

_____,
a _____

By: _____

Name:
Title:

EXHIBIT D

FORM OF INCOME CERTIFICATION

VERIFICATION OF INCOME

RE: [Name of Project]
[Address]

Apartment Number: _____. Initial Occupancy Date: _____.

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

A. Name of Members of the Household	**B.** Relationship to Head of Household	**C.** Age	**D.** Social Security Number	**E.** Place of Employment
	Head of Household			
	Spouse			

1. The anticipated income of all the above persons during the 12-month period beginning this date, including income described in Item 1(a) below, but excluding all income described in subitem (b) below, is $_____.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions;

(ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

(iii) interest and dividends (include all income from assets as set forth in Item 2(b) below);

(iv) the full amount of periodic payments received from social security,

annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(vi) the maximum amount of public assistance available to the above persons;

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) casual, sporadic or irregular gifts;

(ii) amounts which are specifically for or in reimbursement of medical expenses;

(iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;

(v) hazardous duty to a member of the household in the armed forces who is away from home and exposed to hostile fire;

(vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(vii) income from employment of children (including foster children) under the age of 18 years;

(viii) foster child care payments;

(ix) the value of coupon allotments under the Food Stamp Act of 1977;

(x) payments to volunteers under the Domestic Volunteer Service Act of 1973;

(xi) payments received under the Alaska Native Claims Settlement Act;

(xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(xiii) payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(xiv) payments received from the Job Partnership Training Act;

(xv) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(xvi) the first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

2. If any of the persons described in Column A in the table above (or any person whose income or contributions were included in Item 1 above) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

(a) the total value of all such assets owned by all such persons: $_____, and

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: $_____

3. (a) Will all of the persons listed in Column A above be, or have they been, full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____ No _____

(b) (Complete only if the answer to Item 3(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____ No _____

We acknowledge that all of the foregoing information is relevant to verification of our status as Tenants of a Regulated Unit and compliance with City affordable housing policies and ordinances and HUD affordable housing program requirements. We consent to the disclosure of such information by the City to HUD and other third-parties involved in the audit, monitoring or enforcement of such policies or programs.

We declare under penalty of perjury that the foregoing is true and correct.

Date: _____

_____
Head of Household

_____
Spouse

FOR COMPLETION BY PROJECT LESSEE ONLY:

Capitalized terms not otherwise defined in this form shall have the meanings set forth in that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawaii (the "City"), and _____, a _____ (the "Lessee"), with respect to the above-referenced Project (such agreement, the "Agreement").

I. Calculation of eligible income:

(A) Enter amount entered for entire household from Item 1 above: $_____

(B) Is the amount entered in Item 2(a) above is greater than $5,000? **Yes / No**

If the answer to Item I(B) is "Yes," please complete subitems (i)-(iii) below:

(i) The product of the amount entered in Item 2(a) above and the current passbook savings rate as determined by HUD: $_____.

(ii) The amount entered in Item 2(b) above: $_____.

(iii) Item I(i) minus Item I(ii) (if less than $0, enter $0): $_____.

(C) TOTAL ELIGIBLE INCOME (Item I(A) plus, if applicable, Item I(B)(iii)): $_____.

II. Qualification as a Lower Income Tenant:

(A) Is the amount entered in Item I(C) less than or equal to one hundred twenty percent (60%) of median income for the Area? **Yes / No**

(B) Circle one of the following four items, as applicable:

(i) If Item II(A) above is "No," then the household does **NOT** qualify as a Lower Income.

(ii) If Item II(A) above is "Yes" and Item 3(a) above is "No," then the household qualifies as a Lower Income.

(iii) If Item II(A) above is "Yes" and Item 3(b) above is "Yes," then the household qualifies as a Lower Income Tenant.

(iv) If neither Subitem (ii) nor (iii) above is applicable, then the household does

NOT qualify as a Lower Income Tenant.

III. Number of apartment unit assigned: _____ (enter here and on page one)

_____
Lessee

NOTE TO PROJECT LESSEE: A vacant unit previously occupied by a Lower Income Tenant may be treated as occupied by a Lower Income Tenant until reoccupied, other than for a period of thirty-one (31) consecutive days or less, at which time the character of the unit shall be re-determined.

EXHIBIT E

FORM OF STATISTICAL REPORT TO CITY

Reporting Period: _____, ____. Date:

Name of Project: _____

Capitalized terms not otherwise defined in this form shall have the meanings set forth in that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawaii (the "City"), and _____, a _____ (the "Lessee"), with respect to the above-referenced Project (such agreement, the "Agreement").

As of the date hereof:

1. Total units: _____; units occupied by Lower Income Tenants: _____; vacant units most recently occupied by Lower Income Tenants: _____.

2. Total units occupied by households with children: _____; Regulated Units so occupied: _____

3. Total units occupied by elderly households with a member of age 62 or over: _____ Regulated Units so occupied:

4. The percentage of units currently occupied by Caucasian, African American, Hispanic, Asian/Pacific Islander and American Indian persons are as follows:

Caucasian:	_____%
African American:	_____%
Hispanic:	_____%
Asian/Pacific Islander:	_____%
American Indian:	_____%

5. The number of Lower Income Tenants who terminated their rental agreements during the previous twelve (12) month period is _____.

6. The number of units rented to new Lower Income Tenants during the last twelve (12) month period is _____.

7. The family name of each household currently occupying a Regulated Unit is listed on the schedule attached hereto.

8. The number of Regulated Units of various sizes is:

	Lower Income Tenant
Studio	
One Bedroom	
Two Bedrooms	
Three Bedrooms	
Four Bedrooms	

By _____

SCHEDULE 1

TENANT PREFERENCES

1. Persons displaced by government action, provided that their Tenant application is submitted between (a) the date of the initial displacement notice and (b) six (6) months after the actual displacement action, and includes sufficient documentation of such displacement.

2. For Dwelling Units designed as accessible for persons with mobility, visual, hearing and/or mental impairment, households containing at least one person with such impairment will have first priority for those units. No special priority shall be given among such applicants with regard to the specific type(s) of impairment.

SCHEDULE 2

TENANT SERVICES

1. **Computer & Internet Access**, including, but not limited to, on-site computer labs, online training programs and broadband wireless internet access.

2. **Educational Opportunities**, including, but not limited to, on-site lectures (covering health and nutrition, computers, finance and recreation) and financial management seminars conducted in partnership with local banking institutions.

3. **Nutritional Opportunities**, including, but not limited to, partnerships with local food banks and nonprofit organizations (e.g., Meals on Wheels Association of America) to help Tenants maintain the healthiest possible diet and lifestyle.

4. **Veterans Support Opportunities**, including, but not limited to, partnership with the Veterans Administration and the Hawaii Public Housing Authority to target services to honorably discharged working veterans in conjunction with Hawaii nonprofits specifically serving veterans.

5. **Health Opportunities**, including, but not limited to, connecting providers with residents for flu shots, screenings and preventative care.

6. **Community Building**, including, but not limited to, local sports teams, summer programs, other programs previously provided by school programs which have been cancelled or reduced, contact and discussions with local cultural organizations and safety programs (e.g., work with the local police departments to improve communication and visibility; financial support to police as well as other organizations that work with local at-risk youth).

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

AUTHORIZING THE TRANSFER OF THE CITY'S CALENDAR YEAR 2012 PRIVATE BOND ACTIVITY ALLOCATION IN THE APPROXIMATE AMOUNT OF $103,000,000.00 TO THE STATE OF HAWAII FOR REALLOCATION TO HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

WHEREAS, the City and County of Honolulu issued a request for proposals on February 15, 2012 (the "RFP"), for the lease of twelve City-owned affordable housing projects: Bachelors Quarters, Chinatown Gateway Plaza, Chinatown Manor, Harbor Village, Kanoa Apartments, Kulana Nani Apartments, Manoa Gardens, Marin Tower, Pauahi Hale, Westlake Apartments, West Loch Village and Winston Hale (collectively, the "Projects"); and

WHEREAS, upon conclusion of the evaluation process, the City selected Honolulu Affordable Housing Partners, LLC ("HAHP") to be the lessee of the Projects; and

WHEREAS, concurrently with the submission of this resolution the City has submitted for Council approval resolutions authorizing the execution of a purchase and sale agreement and leases of the Projects to HAHP; and

WHEREAS, HAHP intends to finance the acquisition of the leases in part through the use of tax-exempt private activity bonds for multifamily housing and through the use of low income housing tax credits; and

WHEREAS, pursuant to the Internal Revenue Code, the Internal Revenue Service annually sets a ceiling on the principal amount of all private activity bonds that may be issued in a calendar year by all issuers and counties within a state; and

WHEREAS, each year pursuant to Chapter 39B of the Hawaii Revised Statutes, as amended ("HRS"), the City is allocated a 37.55 per cent share of the annual state ceiling for the State of Hawaii; and

WHEREAS, for calendar year 2012, the City's allocated share of the annual state ceiling in dollar terms has been set at approximately $103,000,000.00; and

WHEREAS, the City does not have the resources to issue private activity bonds for multifamily housing at this time and has no need for the current-year allocation for other private activities; and

WHEREAS, the Hawaii Housing Finance and Development Corporation ("HHFDC") has been very active in the issuance of multifamily housing bonds, and has indicated a willingness to issue multifamily housing bonds on behalf of HAHP to support

D 640

the acquisition of the City's rental housing complexes, provided that HAHP meets all program requirements; and

WHEREAS, HRS Chapter 39B-2(d) provides for assignment by the City or any county of all or any part of its allocation of the annual state ceiling; and

WHEREAS, the City desires to assign all of its allocation of the annual state ceiling for calendar year 2012 to the State of Hawaii for reallocation to HHFDC solely for the purpose of facilitating the issuance of private activity bonds by HHFDC in support of the City's Honolulu Affordable Housing Preservation Initiative; and

WHEREAS, the State of Hawaii, HHFDC and the City propose to enter into a Memorandum of Agreement, a copy of which is attached hereto as Exhibit A, to document their agreement to the proposed transfer and to the reallocation of the City's private bond activity authority for the current calendar year to HHFDC; and

WHEREAS, Council approval is required for a mid-year transfer of the City's private bond activity allocation; and

WHEREAS, the Council finds that it is in the public interest to facilitate HAHP's acquisition of City leases as part of the Honolulu Affordable Housing Preservation Initiative by transferring the City's private bond activity allocation for the current calendar year to the State of Hawaii for reallocation to HHFDC as proposed; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

1) The proposed transfer of the City's entire private bond activity allocation in the approximate amount of $103,000,000.00 for the current calendar year to the State of Hawaii for reallocation to HHFDC is hereby approved;

2) The Director of Budget and Fiscal Services is authorized to execute the Memorandum of Agreement by and among the City and County of Honolulu, the Department of Budget and Finance, State of Hawaii and the Hawaii Housing Finance and Development Corporation, substantially in the form attached hereto as Exhibit A,

3) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transaction described above, as long as such documents do not impose either directly or indirectly any financial obligation on the City; and

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be, and is hereby directed to transmit copies of this Resolution to Michael R. Hansen, Director of Budget and Fiscal Services, and Samuel E. H. Moku, Director of Community Services. Copies of this Resolution shall also be transmitted to the Director of the Department of Budget and Finance, State of Hawaii and to the Executive Director of the Hawaii Housing Finance and Development Corporation.

INTRODUCED BY:

_____

_____

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_____

DATE OF INTRODUCTION:

_____
Honolulu, Hawaii

_____
Councilmembers

Exhibit A

MEMORANDUM OF AGREEMENT BY AND AMONG THE CITY AND COUNTY OF HONOLULU, THE DEPARTMENT OF BUDGET AND FINANCE, STATE OF HAWAII AND THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

This Memorandum of Agreement is entered into by and among the City and County of Honolulu (the "City"), the Department of Budget and Finance, State of Hawaii ("Budget and Finance") and the Hawaii Housing Finance and Development Corporation ("HHFDC") for the purpose of setting forth the understandings of the parties regarding (A) the City's assignment to the State of Hawaii of the City's calendar year 2012 private activity bond allocation, and (B) the future use of said allocation by the State of Hawaii.

RECITALS

WHEREAS, pursuant to the Internal Revenue Code, the Internal Revenue Service annually sets a ceiling on the principal amount of all private activity bonds that may be issued in a calendar year by all issuers and counties within a state; and

WHEREAS, each year pursuant to Chapter 39B of the Hawaii Revised Statutes, as amended ("HRS"), the City is allocated a 37.55 per cent share of the annual state ceiling for the State of Hawaii; and

WHEREAS, for calendar year 2012, the City's allocated share in dollar terms of the annual state ceiling has been set at approximately $103,000,000.00; and

WHEREAS, HRS Chapter 39B-2(d) provides for assignment by the City or any county of all or any part of its allocation of the annual state ceiling; and

WHEREAS, the City desires to assign all of its allocation of the annual state ceiling for calendar year 2012 to HHFDC solely for the purpose of facilitating the issuance of private activity bonds by HHFDC in support of and to the extent required for the City's Honolulu Affordable Housing Preservation Initiative ("HAHPI"), which initiative involves the long-term leasing of twelve City affordable housing projects to a private sector entity; and

WHEREAS, Budget and Finance and HHFDC are amenable to the assignment of the City's calendar year 2012 allocation to HHFDC solely for that purpose;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

AGREEMENT

1. The City agrees to take in timely fashion all reasonable steps necessary to assign to HHFDC all of its allocation of the annual state ceiling for private activity bonds for calendar

year 2012, in the approximate amount of $103,000,000.00, for the sole purpose of facilitating the issuance of private activity bonds by HHFDC in support of and to the extent required for the City's HAHPI project.

2. The parties acknowledge and agree that the assignment by the City is subject to approval by the City Council, and the City agrees to take in timely fashion all reasonable steps necessary to obtain such approval.

3. Budget and Finance agrees to take in timely fashion all reasonable steps necessary to cause the City's assigned allocation for calendar year 2012 to be reallocated to HHFDC, for the sole purpose of facilitating the issuance of private activity bonds by HHFDC in support of and to the extent required for the City's HAHPI project.

4. HHFDC agrees to take in timely fashion all reasonable steps necessary to issue private activity bonds solely in support of and to the extent required for the City's HAHPI project, up to the amount assigned by the City and reallocated to HHFDC.

5. The parties agree to enter into such other and further agreements or instruments as may be necessary to fully implement the purposes of this Memorandum of Agreement.

The parties have executed this Memorandum of Agreement on _____, 2012.

CITY AND COUNTY OF HONOLULU

By: _____
Director of Budget
and Fiscal Services

DEPARTMENT OF BUDGET AND FINANCE,
STATE OF HAWAII

By: _____
Its: _____

HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION

By: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED AS TO LEGALITY:

_____
Deputy Attorney General