



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



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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:



RESOLUTION

- (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



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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;



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- 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:

[Handwritten signature]

RECEIVED
CITY CLERK
AUG 29 2012
(br)

DATE OF INTRODUCTION:

AUG 28 2012
Honolulu, Hawaii

Councilmembers

Exhibit A

	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
Rental Housing Complex									
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”

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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, repossession, 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

LESSEE:

Date of execution by Lessee:
_____, 20__

CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

By Department of Budget and Fiscal Services

By _____
Name:
Title:

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
(INCLUDING 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]

LEASE

between

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

"Lessor"

and

_____'
a _____

"Lessee"

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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

CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii

By Department of Budget and Fiscal Services

By _____
Name:
Title:

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

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.]

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EXHIBIT C

NOTICE ADDRESSEES
(INCLUDING 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
(Commercial Rental Component)

Exhibit F

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 Sublessee'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 redevelop 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]

ADDENDUM TO LEASE

Exhibit I

(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.]

LAND COURT

REGULAR SYSTEM

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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**”).

WITNESSETH:

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 lesser 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 Kanoa Apartments, 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:

<u>Unit Size</u>	<u>Occupancy</u>
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

Signature Page to Regulatory Agreement

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: _____

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: _____

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: _____

EXHIBIT A
PROJECT DESCRIPTION

Exhibit A to Regulatory Agreement

A-1

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: _____

Exhibit B to Regulatory Agreement

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,

Exhibit D to Regulatory Agreement

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;

Exhibit D to Regulatory Agreement

(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 1 to Regulatory Agreement

Sch.1-1

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
C E R T I F I C A T E

RESOLUTION 12-229

Introduced: 08/28/12 By: ERNEST MARTIN (BR)

Committee: BUDGET

Title: 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.

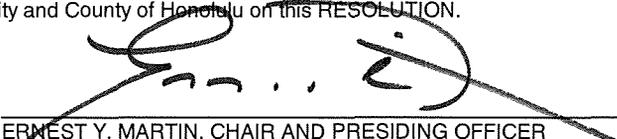
Links: [RES12-229](#)
[CR-348](#)

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

BUDGET	09/19/12	RESOLUTION NOT REPORTED OUT; PENDING IN COMMITTEE.							
BUDGET	10/02/12	CR-348 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.							
COUNCIL	10/03/12	ACTION ON CR-348 AND RESOLUTION 12-229 DEFERRED.							
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GARCIA	Y
HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				
SPECIAL COUNCIL	10/11/12	CR-348 AND RESOLUTION 12-229 WERE ADOPTED.							
ANDERSON	Y	BERG	N	CACHOLA	N	CHANG	Y	GARCIA	Y
HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y				

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER