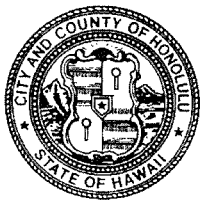
DEPARTMENT OF COMMUNITY SERVICES
CITY AND COUNTY OF HONOLULU
715 SOUTH KING STREET, SUITE 311 • HONOLULU, HAWAII 96813 • AREA CODE 808 • PHONE: 768-7762 • FAX: 768-7792



KIRK CALDWELL
MAYOR

PAMELA A. WITTY-OAKLAND
DIRECTOR

GARY K. NAKATA
DEPUTY DIRECTOR

March 14, 2014

RECEIVED
CITY CLERK
C & C OF HONOLULU
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The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

SUBJECT: Resolutions Authorizing the Lease of City-owned Property for Special Needs Housing

The Department of Community Services is pleased to transmit for your consideration two resolutions authorizing the execution of leases with two non-profit agencies for the operation of housing and facilities to assist persons with special needs. The leases will be executed pursuant to Section 28-3.5, Revised Ordinances of Honolulu (ROH).

By way of background, the Department of Community Services (DCS) issued a Request for Proposals (RFP) on March 21, 2013 and March 28, 2013, for the lease of two City-owned properties for use as special needs housing. One proposal was received for each property. Both proposals were from the current lessees.

The evaluations of these proposals were performed by the staff of DCS, and no external evaluation was done. This was because 1) there were no competing proposals, 2) only the current lessees submitted proposals, 3) there were no complaints from the public regarding the housing programs operated by these non-profits, and 4) the Department of Budget and Fiscal Services' Federal Grants Office did not notify us that there were any outstanding monitoring issues concerning any of these two non-profits or the conditions of the current leases.

DCS has recommended that both of these leases be executed with five-year lease terms.

In accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on October 24, 2013, identifying the proposals and selection of the non-profit agencies for the public record. The transmittal included a copy of the public notice advertising the RFP.

In accordance with Section 28-3.5, ROH, a public hearing was held on November 23, 2013, regarding the City's proposal to lease City-owned property to housing and human services providers at nominal lease terms. No written testimony was received, and there were no comments made at the hearing regarding method of payment for the lease rents.

The leases to be executed and the programs to be operated at each property are described below:

Honolulu Shelter at a confidential location on Oahu

Property Description: Newly constructed (2011) large, two-story, single-family dwelling with 9 bedrooms, 4 bathrooms, 1 kitchen, 2 living areas and 5 parking spaces on a 6,000 square foot lot
Lessee: Child and Family Service
Lease Term: Five years
Lease Rent: $1.00 per year
Program Description: Emergency shelter for victims of domestic violence and their children

91-002 Apa'a Street, Ewa Beach, Hawaii 96706, Tax Map Key: 9-1-065:001

Property Description: Single-family, two-story dwelling containing 5 bedrooms, 3 bathrooms and a garage on a 4,069 square foot lot
Lessee: Hale Kipa, Inc.
Lease Term: Five years
Lease Rent: $1,200 per year
Program Description: Group home for special needs youth aged 18-22 years transitioning out of homelessness

Both of these projects will principally serve persons of low or moderate income (less than 80% of median income). These projects further the goal of the City's Special Needs Housing Program of assisting persons with physical, mental, or social challenges to live as independently as possible within our community. Each of these projects is operated by an established non-profit agency with a history of providing services to our community and has established track records of assisting their clients.

Additionally, DCS has certified that the leasing of these properties has been performed according to Section 28-3.5, ROH. A copy of the certification is enclosed.

Your favorable consideration of the enclosed resolutions and leases will be appreciated. If you need further information or have any questions, please feel free to contact me at 768-7760.

Sincerely,

Pamela A. Witty-Oakland
Director

PAW:sgk

Enclosures: Two resolutions with attached leases
Department of Community Services Certification

APPROVED:

Ember Lee Shinn
Managing Director

CERTIFICATION FOR THE RECORD

This is to certify and attest to the fact that the City and County of Honolulu's Department of Community Services, as per Section 28-3.5 Revised Ordinances of Honolulu, has:

1) held a public hearing on November 22, 2013 for the leasing of two (2) City-owned properties for nominal rents. The properties are located at:

a) the Honolulu Shelter at a confidential location on Oahu,
b) 91-1002 Apa'a Street, Ewa Beach, Hawaii 96706

2) there is a compelling public need for the housing or human services to be provided

3) suitable and reasonably priced private facilities are not available

4) Child and Family Service and Hale Kipa, Inc. have demonstrated financial need for nominal lease rents

and

5) the leases comply with the restrictions specified in Section 28-4.2 Revised Ordinances of Honolulu.

CERTIFIED:

Pamela A. Witty-Oakland
Director of Community Services

1/8/2013
Date

CERTIFICATION FOR THE RECORD

This is to certify and attest to the fact that the City and County of Honolulu's Department of Community Services, as per Section 28-3.5 Revised Ordinances of Honolulu, has:

1) held a public hearing on November 22, 2013 for the leasing of two (2) City-owned properties for nominal rents. The properties are located at:

a) the Honolulu Shelter at a confidential location on Oahu,
b) 91-1002 Apa'a Street, Ewa Beach, Hawaii 96706

2) there is a compelling public need for the housing or human services to be provided

3) suitable and reasonably priced private facilities are not available

4) Child and Family Service and Hale Kipa, Inc. have demonstrated financial need for nominal lease rents

and

5) the leases comply with the restrictions specified in Section 28-4.2 Revised Ordinances of Honolulu.

CERTIFIED:

Pamela A. Witty-Oakland
Director of Community Services

1/8/2013
Date

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

AUTHORIZING THE LEASE OF CITY PROPERTY TO CHILD AND FAMILY SERVICE FOR SPECIAL NEEDS HOUSING UNDER SECTION 28-3.5, REVISED ORDINANCES OF HONOLULU

WHEREAS, on March 21 and 28, 2-13, the City and County of Honolulu published a notice of the issuance of a request for proposals for the lease of two City-owned properties to provide housing or human services for persons with special needs; and

WHEREAS, one proposal was received for each of the properties by the May 14, 2013 deadline; and

WHEREAS, an evaluation of the proposals was conducted by staff of the Department of Community Services which made recommendations for selection; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on October 24, 2013 identifying the proposals and selection of the nonprofits for the public record; and

WHEREAS, in accordance with Section 28-3.5, ROH, a public hearing was held on November 22, 2013, on the lease of the subject property for nominal rent; and

WHEREAS, the Department of Community Services has made the certification as required by Section 28-3.5(g) to support a lease for nominal rent; and

WHEREAS, as a result of the request for proposals process, the City selected Child and Family Service to be the lessee of City property located at a confidential location on Oahu, to provide emergency shelter for victims of domestic violence and their children; and

WHEREAS, the City desires to lease the property to Child and Family Service in accordance with Section 28-3.5, Revised Ordinances of Honolulu; and

WHEREAS, now therefore, the Council finds that it is in the public interest to lease the property to Child and Family Service;

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

1) The Director of Budget and Fiscal Services is authorized to execute the lease attached hereto as Attachment A, in substantially final form, with Child and Family

RESOLUTION

Service, for the property located at a confidential location on Oahu, for a rent of $1.00 per year for a period of five (5) years.

2) The lease attached as Attachment A to this resolution is approved in substantially final form, subject to any additions, deletions, or amendments to any terms or conditions of the lease by the City Council.

3) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transactions described above, as long as they 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 Nelson Koyanagi, Director of Budget and Fiscal Services and Pamela A. Witty-Oakland, Director of Community Services. Copies of the Resolution and the applicable lease shall also be transmitted to Howard Garval, Chief Executive Officer, Child and Family Service, 91-1841 Fort Weaver Road, Ewa Beach, Hawaii 96706.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION: _____

_____

_____ _____
Honolulu, Hawaii Councilmembers

FORM OF LEASE

ATTACHMENT A

LAND COURT SYSTEM **REGULAR SYSTEM**

Return by Mail ( ) Pickup ( ) To:

City and County of Honolulu
Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813

NO. OF PAGES:

PROPERTY DESCRIPTION

DOCUMENT NO.
TRANSFER CERTIFICATE OF TITLE NO:
Land Court ( ) Regular ( ) Double ( )

Tax Map Key No.

LEASE

THIS LEASE ("Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, ("City"), and a Hawaii nonprofit corporation, the principal place of business and mailing address of which is Honolulu, Hawaii 968 , ("Lessee").

In consideration of the respective rights and obligations stated below, the City and Lessee agree as follows:

1. DEMISE AND DESCRIPTION OF PROPERTY. The City, in consideration of the rent to be paid by Lessee and of the terms stated below to be performed by Lessee, leases to Lessee, and Lessee accepts, all of the real property and improvements "as is", description of which is Exhibit A, which exhibit is attached to this Lease and made a part of it ("Property"). Lessee has inspected the Property and finds the

Property in good condition and accepts the Property in its present condition.

2. TERM AND RENTAL. To have and to hold the Property together with the rights, easements, tenements, privileges, and appurtenances, unto Lessee for the term of five (5) years commencing on the first day of _____ and expiring on the same date five (5) years from the commencement date, unless terminated earlier as stated below ("Term"). Lessee will pay the City monthly rent of for the Property to be paid on the first day of each month during the Term.

3. QUIET ENJOYMENT. Upon payment of the rent and upon performance of the terms of this Lease by Lessee, Lessee shall peaceably hold and enjoy the Property for the Term without hindrance or interruption by the City or any other person or persons lawfully claiming by, through, or under the City, except as may be stated below.

4. AMENDMENTS TO FACILITATE FINANCING. This Lease and any other documents relating to the Property may be amended to comply with reasonable changes requested by a permanent lender financing the Property, if approved by the City, in advance. It is expressly understood and agreed that the City reserves the right to reject any request for an amendment of this Lease if the proposed amendment will adversely affect the City's rights in the Property.

5. USE AND TRANSFER OF PROPERTY. The Property shall be used exclusively as a ("Project") in accordance with the Request for Proposals dated _____, the Management Agreement attached hereto as Exhibit B, and Lessee's proposal dated _____, all of which are incorporated herein by reference. Lessee covenants that except as stated in this Agreement, it will not sell, assign, convey, sublease, mortgage, encumber, or transfer Lessee's interest in this Lease, or relinquish possession of any portion of the Property, without the prior written consent of the City.

In addition to the provision stated in section 33.F. below, if the prior approval of DCS is required by provisions of this instrument, DCS will promptly review the request, will give Lessee specific reasons why a request may be denied, and will work with Lessee to attempt to remedy the reasons for a denial.

6. PAYMENT OF TAXES AND ASSESSMENTS. Lessee shall pay, before the same become delinquent, all real property taxes and assessments for which the Property is liable during the Term, whether payable by the City or Lessee. Taxes and assessments shall be prorated between the City and Lessee as of the dates of commencement and expiration of the Term. If any assessment is made under any betterment or improvement law which is payable in installments, Lessee shall pay only such installments, together with interest, which are due and payable during the Term.

7. PAYMENT OF RATES AND OTHER CHARGES. During the Term, Lessee shall pay all charges for electricity, gas, refuse collection, telephone, sewage disposal, water, and all other utilities or services pertaining to the Property, before the charges are delinquent.

8. OBSERVANCE OF LAWS AND COVENANTS. Lessee shall at all times keep the Property in a reasonably clean and sanitary condition, shall observe all laws, ordinances, rules and regulations now or hereafter made by any governmental authority which are applicable to the Property and will observe all covenants and restrictions affecting the Property.

Lessee shall comply with all City, State and Federal laws, rules, and regulations and any amendments thereto, including without limitation, those promulgated by the U.S. Department of Housing and Urban Development ("HUD") regarding the Community Development Block Grant Program and in particular 24 Code of Federal Regulations, Part 8, relating to "Nondiscrimination Based on Handicap in Federal Assisted Programs and Activities of the Department of Housing and Urban Development".

Additionally, the Lessee shall comply with the Management Agreement with the City, attached

hereto as Exhibit B, regarding the requirements of the federal HOME and CDBG programs, as applicable.

9. REPAIR AND MAINTENANCE. Lessee shall at all times during the Term, at its own expense, substantially repair, maintain, and keep the Property in good order and condition.

10. IMPROVEMENTS REQUIRED BY LAW. Subject to Section 11 below, Lessee shall build, maintain, and repair, at its sole expense, all improvements which may be required by law in connection with its use of the Property.

11. CONSTRUCTION OF IMPROVEMENTS. Lessee will not construct any structure or other improvements on the Property with an aggregate value greater than $1,000, alter the Property, or place any signs on the Property, without the prior written consent of the City.

12. WASTE AND UNLAWFUL USE. Lessee will not make or suffer any strip, waste, or unlawful, improper, or offensive use of the Property.

13. INSPECTION. The City and its agents may enter and inspect the Property at all reasonable times during the Term. Subject to the provisions of Sections 9 and 10 above, Lessee shall, at its own expense, repair all defects in the Property within 30 days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within 30 days, commence such repair within that time period and act with diligence until the repair is completed. If Lessee shall fail to commence or complete the repairs within the period provided above, the City may make such repairs. If the City makes such repairs, Lessee shall pay to the City the cost thereof plus interest at the rate of twelve percent (12%) per annum on demand. The City shall not be responsible to Lessee for any loss or damage that may be caused to the Property or business of Lessee by reason thereof.

14. AUDITS. All of Lessee's records relating to the Property will be available for examination during normal business hours by the City, HUD, and/or representatives of the Comptroller General of the United States.

15. NEITHER PARTY AGENT, JOINT VENTURER OR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, or a joint venturer or partner with, the other party.

16. BOND. Before the commencement of construction of any improvement on the Property exceeding $5,000.00 in costs, Lessee will obtain and deposit with the City, a good and sufficient surety bond naming the City as an additional obligee, in a penal sum of not less than 100% of the cost for all labor and materials to be furnished and used for such construction, with a corporate surety authorized to do business in Hawaii guaranteeing (1) the full and faithful performance and completion of the construction contract and (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

17. PROPERTY INSURANCE. During the Term, Lessee shall be responsible for any and all loss or damage to Lessee's personal property, including all goods, materials, supplies, tools, machinery, equipment, furnishings, improvements, or other property, and at Lessee's discretion, may insure such property. Lessee waives any right of recovery against the City for any loss or damage to Lessee's property.

During the Term, the City shall be responsible for any and all loss or damage to all buildings now or hereafter erected on the property, and in the event of such a loss, the City shall have the sole discretion to determine whether to repair, rebuild or replace such buildings. The City shall provide written notice to Lessee of such election, at which time Lessee shall, after payment to the City of all accrued rent and unpaid taxes and all other required payments, be relieved of any further obligation hereunder. The City waives any right of recovery against Lessee for any casualty to the Property unless caused, in whole or in part, by the Lessee.

Lessee shall report the occurrence of any loss or damage to the Property to the City as soon as practicable within 48 hours after such occurrence.

18. LIABILITY INSURANCE. Lessee will procure and maintain at all times during the term of this Lease any and all insurance required under any federal, state or local law, statute, ordinance, or rules and regulations as may be applicable to Lessee's operations and activities hereunder, including but not limited to workers compensation insurance. In addition, Lessee shall procure and maintain Commercial General Liability (CGL) insurance covering the premises, covering against bodily injury and property damage, with limits of not less than $1,000,000 per occurrence and general aggregate, with the following extensions: (1) contractual liability to cover liability assumed under this Lease; (2) personal injury liability with the "employee" and "contractual" exclusions deleted; and (3) products and completed operations coverage. This policy shall name the City, its elected and appointed officials, employees and agents as additional insureds; provide that this insurance is primary coverage with respect to all insureds; contain a severability of interest clause providing that the insurance applies separately to each insured and that the policies cover claims or suits by one insured against another; and provide that the policy will not be cancelled, or terminated without 60 days prior written notice to the City.

Lessee will provide the City with current certificates of insurance for all policies and/or coverages required herein. The City reserves the right to review these requirements from time to time and require additional amounts or types of insurance.

19. CITY'S COSTS AND EXPENSES. Lessee shall pay to the City on demand all costs, including reasonable attorneys' fees, incurred by the City in enforcing any of the terms of this Lease, in remedying any breach of the terms of this Lease by Lessee, in recovering possession of the Property, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee to which the City shall be made a party without any fault on its part.

20. INDEMNITY. Lessee will indemnify and defend the City, and hold the City harmless against all claims whatsoever for: (a) failure of Lessee or its agents and employees to make any required disclosures in connection with the Property to users or any other person as required by law; (b) any misrepresentations made by Lessee or its agents and employees in connection with the Property to any person; (c) the failure of Lessee or its occupants, its clients, agents, employees, tenants, contractors, or subcontractors to observe all applicable laws and covenants as stated in Section 8., above, (d) the failure of Lessee to observe and perform its obligations stated in this Lease; and (e) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the use or occupancy of the Property by Lessee or any client, tenant, occupant, or other person claiming by, through or under Lessee, or any accident or fire on the Property, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Property in a safe condition, or any other liability whatsoever on account of the Property, or on account of the acts or omissions of Lessee, its employees, agents, contractors, subcontractors, tenants, occupants, clients, or any other persons present upon the Property in connection with Lessee's use or occupancy thereof. In connection with the foregoing, the Lessee will reimburse the City for all its costs and expenses including but not limited to reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within the Property at the sole risk of Lessee and hold the City harmless for any loss or damage thereto by any cause whatsoever.

21. LIENS. Lessee will keep the Property free of all liens and encumbrances arising out of its activities. Should any such lien or encumbrance attach to the Property then: (a) Lessee shall immediately notify the City of such attachment, and (b) Lessee shall pay the claim and cause the same to be satisfied and discharged of record, and if Lessee shall not pay the same and cause it to be satisfied and discharged of record promptly, City may, at its option, pay the same and any amount paid by the City shall become immediately due and payable by Lessee to City as additional rent. Lessee will indemnify and hold the City harmless against such lien or encumbrance and all expenses incurred by the City including but not limited to reasonable attorneys' fees.

22. SURRENDER. At the end of the Term, Lessee will peaceably deliver up to the City possession of the Property and all improvements in good condition except for reasonable wear and tear, free and clear of encumbrances which shall include, without being limited to, all claims, liens, charges or liabilities.

23. CONDEMNATION. In case at any time or times during the Term, the Property or any part thereof shall be required, taken, or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the Property so required, taken or condemned shall at once cease and terminate, and Lessee shall not by reason thereof be entitled to any claim against the City or others for compensation or indemnity for the leasehold interest, and all compensation and damages payable for or on account of the Property or portion thereof shall be payable to and be the sole property of the City.

24. TRANSFER BY CITY. City may transfer, assign, or sell this Lease, or any interest in this Lease or the Property, at any time, with prior notice to Lessee, upon which transfer, assignment or sale, City shall be released of all liability hereunder. Lessee shall attorn to the transferee, assignee, or purchaser, and shall perform all obligations required to be performed by Lessee under this Lease after the date Lessee is notified of the transfer, assignment, or sale, as though the transferee, assignee or purchaser was the original Lessor named in this Lease.

25. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this Lease, to which the City has consented in writing, the City will not terminate this Lease because of any default by Lessee if, within a period of 30 days after the City has mailed written notice to the mortgagee of intention to terminate this Lease at the last known address thereof, such mortgagee shall either cure such default or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the terms of this Lease until this Lease is sold upon foreclosure. Upon such undertaking, the City will not terminate this Lease within such further time as may be required by the mortgagee to complete the foreclosure process provided that such process is pursued and completed diligently. Ownership by the same person of both the fee and leasehold estates in the Property shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

26. DEFAULT. Lessee shall be in default of its obligations under this Lease upon occurrence of any of the following events (hereinafter called "events of default"):

1. Failure to Pay Rent. Lessee's failure to pay rent or other charges required to be paid by Lessee under this Lease within ten days of its due date; or

2. Failure to Comply. Lessee's failure to comply with any other provision of this Lease which Lessee is obligated to comply with within thirty days of written notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within thirty days, then so long as Lessee has commenced the action to comply and diligently prosecutes the same, Lessee shall not be in default; or

3. Abandonment. Lessee's abandonment of the Property, for a period of 30 consecutive days or more; or

4. Assignment to Creditors. Lessee's assignment of this Lease for the benefit of creditors; or

5. Writ of Execution. Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or

6. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or

7. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of thirty days after written notice to Lessee; or

8. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to City concerning the financial condition or credit standing of either

Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or City reasonably determines that its position as City is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

27. REMEDIES.

1. Interest and Late Payment Charge. If Lessee shall be delinquent in payment of the rent or the payment of any other charge required to be paid by Lessee under this Lease, Lessee shall pay, with each overdue payment, interest on the overdue payment at the rate of twelve percent (12%) per year. In addition to interest, Lessee shall also pay to City a late fee equal to five percent (5%) of the overdue payment to cover City's administration costs of processing such overdue payment.

2. Remedies Upon Default. Upon occurrence of any event of default, City may exercise any of the following remedies:

a. Re-entry: Termination. City may elect to terminate this Lease, but only by specific written notice of its election to Lessee, and may terminate the rights of Lessee to this Lease and the Property, and may reenter the Property to take possession of it;

b. Re-entry: No Termination. Without terminating this Lease, City may reenter the Property and occupy it and may, but is not obligated to, relet any portion or all of the Property for the account of Lessee; provided that City may terminate this Lease at any time after Lessee's default, even if City has relet any portion of the Property for the account of Lessee.

c. Cure. City may but shall not be obligated to cure any event of default and to charge Lessee for the cost of effecting such cure.

3. Exercising City's Remedies. Upon City exercising any of its above-listed remedies, Lessee agrees to the following:

a. Removal of Persons and Property. If City reenters the Property, it may remove all persons from the Property by any lawful means available. City may also remove all property of Lessee from the Property, and may enforce its right against that property, or may store the property at the expense of Lessee, or may dispose of the property if Lessee does not reclaim the property within 30 days after City has re-entered the Property.

b. No Termination. City's re-entry into the Property or its action to obtain possession of the Property shall not be deemed to constitute a termination of this Lease Agreement, or a termination of Lessee's obligation to pay rent or any other charge required to be paid by Lessee under this Lease Agreement, or a termination of any other liability of Lessee under this Lease Agreement including but not limited to Lessee's liability for damages.

c. Reletting. If City elects to relet the Property to a replacement Lessee, with or without terminating this Lease Agreement, City may enter into an agreement with the replacement Lessee for such rent and on such terms as City in its sole discretion deems appropriate. City may repair or alter the Property to suit the purposes of the replacement Lessee or to enable City to relet the Property or any portion of the Property.

d. Application of Rent. City shall apply the rent and other payments received from the replacement Lessee, in the following order and priority: (1) to the costs incurred by City to recover possession of the Property, including but not limited to reasonable attorney's fees and costs; (2) to the costs incurred by City to relet the Property, including but not limited to the costs of repairs and alterations, and broker's commissions; (3) to the unpaid rent and other payments required to be paid by Lessee under this Lease Agreement. If there shall be a surplus, City may retain such surplus to pay subsequent amounts which

become due and payable by Lessee under this Lease Agreement, and if there shall be any surplus at the expiration of this Lease Agreement, City shall pay such surplus to Lessee at the expiration of this Lease Agreement. If there shall be any deficiency between the rent and payments received from the replacement Lessee and the amount required to pay the items described in subparagraphs (1), (2), and (3) of this paragraph, Lessee shall be liable to City for such deficiency.

e. Legal Action. City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease Agreement, even though such action is initiated prior to termination of this Lease Agreement or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease Agreement and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.

f. Additional Remedies. If City terminates this Lease Agreement, then in addition to any other remedy available to City, City may recover from Lessee either (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease Agreement exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.

g. Remedies Cumulative. The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.

h. Costs and Attorney's Fees. City shall be entitled to recover from Lessee all costs incurred by City in enforcing any provision of this Lease which Lessee is required to comply with, including but not limited to reasonable attorney's fees and costs.

28. SURRENDER: HOLDING OVER.

1. Surrender. Upon expiration or earlier termination of this Lease Agreement, Lessee shall immediately vacate and surrender the Property to City, together with all improvements, additions and fixtures then on the Property, whether installed by City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; provided that City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease Agreement within seven days following the expiration or earlier termination of this Lease Agreement. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease Agreement. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.

2. Failure to Restore. If Lessee fails to complete the removal and the restoration in the manner and within the time specified, City may complete such removal and restoration in which event Lessee shall be liable to City for all costs incurred by City which amount shall be immediately due and payable after notice to Lessee by City of the amount due.

3. Holding Over. If Lessee remains in possession of the Property after the expiration or earlier termination of this Lease Agreement without the consent of City, Lessee shall be liable (1) for two times the fair market rent for the premises, determined as of the expiration or earlier termination of this Lease Agreement, (2) for all other charges payable by Lessee pursuant to other provisions of this Lease Agreement, and (3) for all other damages City may sustain as a result of such wrongful holdover. Acceptance of rent or other payments by City from Lessee during any holdover period shall not be deemed to create a new tenancy in favor of Lessee, but to the contrary, City may initiate action against Lessee at any time to recover possession of the Property, and to recover all damages sustained by City as a result of Lessee's wrongful

holdover.

29. DISSOLUTION OF LESSEE. In the event of the corporate dissolution of Lessee, the City may terminate this Lease.

30. HAZARDOUS SUBSTANCES. Lessee shall not cause, permit, or allow the storage, use, escape, disposal or release of any hazardous substances or materials in or about the Property by Lessee, Lessee's agents, employees, contractors, invitees or licensees, except in full compliance with all hazardous materials laws. Hazardous substances and materials shall include those described in the Hazardous Materials Laws. "Hazardous Materials Laws" shall include, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 USC Section 6901 et seq., the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act and the Safe Drinking Water Act, the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D, as well as any similar state and local laws and ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto as the same may be amended from time to time. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any storage, presence or release of hazardous substances or materials, then the reasonable costs thereof shall be reimbursed by Lessee to the City upon demand as additional charges if such requirement applies to the Property. In addition, Lessee shall execute affidavits, representations and the like from time to time at the City's request concerning Lessee's best knowledge and belief regarding the presence of hazardous substances or materials on the Property. In all events, Lessee shall defend, indemnify and hold harmless the City, its employees, agents, successors and assigns from and against any claims, demands, actions, lawsuits, proceedings, losses, damages, liabilities, fines, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, removal or presence of hazardous substances or materials on or under or about the Property by Lessee or attributable to Lessee including, but not limited to any damages, the cost of clean up or detoxification of the Property and the preparation and implementation of any closure or remedial or other required plans and all reasonable costs and expenses incurred by the City in connection with such items including, but not limited to, attorneys' fees and costs. The foregoing covenants shall survive the expiration or earlier termination of this Lease.

31. ADA COMPLIANCE. As between the City and Lessee, Lessee shall be responsible for ensuring that the Property, all alterations and improvements in the Property, and Lessee's use and occupancy of the Property complies with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, *et seq.*), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect therewith (the "ADA"). However, Lessee shall not make any such alterations or improvements except in accordance with the provisions of Sections 11 and 16.

32. SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY. All entities having a contract with the City (referred to in this Section as a "Contractor") must comply with the Revised Ordinances of Honolulu, 1990, Chapter 1, Article 18 ("Article 18") on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the Contractor's business and includes the following:

a. Prohibitions against an officer's or employee's sexual harassment of the following:

(1) Another officer or employee of the employer;
(2) An individual under consideration for employment with the employer; or
(3) An individual doing business with the employer;

b. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Subdivision a of the ordinance;

c. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

d. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

e. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

f. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

g. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"

h. Disciplinary action which may be imposed on an officer or employee who committed a prohibited act; and

i. For a Contractor with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the Contractor's contract with the City. The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Article 18. Article 18 is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii, 96813.

33. MISCELLANEOUS PROVISIONS

A. Amendment. The provisions of this Agreement may be amended only by each party executing a subsequent written Agreement which states each amended provision.

B. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

C. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Agreement.

D. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

E. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement in order to

assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to the Lessee. The Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments.

F. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

G. Construction. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.

H. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.

I. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.

J. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.

K. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

L. Gender: Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.

M. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.

N. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Agreement which is not included as a provision in it.

O. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.

P. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.

Q. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.

R. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.

S. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

T. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.

U. Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee shall ensure that any vending facilities on the Property, including but not limited to vending machines, shall be placed in compliance with Hawaii Revised Statutes Section 102-14 and the rules adopted by the State of Hawaii Department of Human Services to implement such statute.

(1) CITY AND COUNTY OF HONOLULU:
Department of Community Services
Community-Based Development Division
715 South King Street, Suite 311
Honolulu, Hawaii 96813
Attention:

(2) (Nonprofit name and address)
Attention:

V. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.

W. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreements and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.

X. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

Y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

Z. Survival. Any representation and warranty stated in this Agreement made by a party shall survive the termination of the agreement stated in this Agreement, unless otherwise specifically stated.

AA. Time is of the Essence. Time is of the essence with respect to Lessee's obligations under this Agreement.

THE PARTIES have executed this Agreement on _____, 20____.

APPROVED AS TO FORM AND LEGALITY:

By_____
Deputy Corporation Counsel
City and County of Honolulu

CITY AND COUNTY OF HONOLULU

By_____
Director of Budget and Fiscal Services

APPROVAL RECOMMENDED:

_____
Director of Community Services

(LESSEE)

By_____
Its

ACKNOWLEDGMENT

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

On this _____ day of _____, 20___, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____of the Department of Budget and Fiscal Services of the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council, and said _____ acknowledged the instrument to be the free act and deed of said municipal corporation.

_____

Notary Public, State of Hawaii

Printed Name _____

My commission expires: _____

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

On this _____ day of _____, 20___, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____acknowledged said instrument to be the free act and deed of said corporation.

_____

Notary Public, State of Hawaii
Printed name _____

My commission expires: _____

Exhibit “A”

(intentionally not included)

EXHIBIT B

CDBG Management Agreement
Management and Monitoring Requirements
CDBG-Assisted Public Facility

Owner Name: _____

Facility Name: **HONOLULU SHELTER**

A. The following Facility-specific variable requirements are binding upon Lessee:

1. National Objective. The CDBG national objective of this Facility is: _____[detailed description of this Facility's target group and national objective]_____.

2. National Objective Period. The Facility shall be used to achieve its CDBG national objective for a period of five (5) years.

3. Wholly Compliant. _____ percent of the usable area of the Facility shall be used to achieve the National Objective. This percentage must be 100 percent unless otherwise specified by the City.

4. Achievement and Documentation of National Objective. The Owner shall achieve and document the low- and moderate-income status of its beneficiaries in the following manner:

___ Serve and document that it is serving all residents of a specific geographical area that has been determined by the City and County of Honolulu to be a low- and moderate-income area, i.e., a residential area in which predominately low- and moderate-income households reside.

___ Serve and document that it is serving *exclusively* one or more of the following groups: abused children, battered spouses, elderly persons, *adults* meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, or migrant farm workers.

___ The Facility has been determined by the City and County of Honolulu to be of such nature and be in such location that leads to

the conclusion that the Facility's clientele will primarily be low and moderate income persons.

___ The Facility shall obtain and keep records of information on family size and income from its clients such that it is evident that *at least 51 percent* of the clientele are persons whose family income does not exceed 80 percent of the median income for Honolulu.

____ The Facility will impose income eligibility requirements which limit the activity *exclusively* to low and moderate income persons.

5. If applicable, the Owner selects the following definition of income:

____ "Annual income" as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106

____ Annual income as reported under the Census long-form for the most recent available decennial Census.

____ Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

B. The following general CDBG requirements are binding upon all Lessees

1. The entire Facility must achieve the Facility's CDBG national objective, even if the Facility is only partially funded with CDBG. Any exceptions to this general rule would be under 570.200(b)(1), and require case-by-case review and approval.

(24 CFR 570.200(a))

2. Fair housing, equal opportunity, and affirmative marketing.

a. The Facility must comply with federal affirmative marketing, equal opportunity, and fair housing law. It may not be operated so as "to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin...." It may not be operated so as to deny services to a person on the basis of familial status (persons with children under 18 years of age, including pregnant women), age, or disability.

(24 CFR, Parts 570.506(g), 570.601, 570.602, 570.904, 570.905, 24 CFR 100.60(a))

b. The Facility must maintain and file the following information with the City:

   i. An affirmative marketing plan, HUD form 935.2. The affirmative marketing plan should describe how the Facility will publicize its services. The plan should be such that a monitor could reasonably conclude that the non-profit had thought about its CDBG national objective, its target group or area, impediments to reaching its target group or area, and concrete steps to overcome impediments to reaching out its target group or area.

   ii. HUD form 27061 - Race and Ethnic Data Reporting.

   iii. The number of households headed by single females and the number of households headed by single males.

c. The Facility must actively and affirmatively market its services. It may not refrain from marketing activities.

d. The Facility must identify and reach out to the persons who are least likely to apply. For example, to reach a population that has no or limited proficiency in the English language, the nonprofit could:

   i. Translate its marketing material to serve this population,

   ii. Work with the language minority-owned print media, radio and television stations,

   iii. Place marketing material at movie theaters that provide for free public service announcements,

   iv. Partner with faith-based and community organizations that serve newly arrived immigrants, and

   v. Conduct marketing activities at adult-education training centers or during "English as a Second Language" classes.

e. A public facility that serves a special needs population, e.g., persons who are homeless, disabled, elderly, or who suffer from HIV/AIDS, must comply with all affirmative marketing, fair housing, and equal opportunity regulations. To affirmatively market its services:

i. The nonprofit shall make a good faith effort to inform and solicit applications from all members of its special needs group, not just to certain members.

ii. The nonprofit shall not depend on referrals from a single source, such as a single social service agency, or from one physician, or one hospital.

f. A public facility or nonprofit that contains the name of a race, ethnicity, or nation has an impediment that discourages persons outside of those races, ethnicities, or national origins from applying for services at this facility.

i. The marketing and publicity efforts of such a facility shall inform its target group or target area that it is not for the exclusive use of the race, ethnicity, or nation after which it is named, and that all are welcome.

ii. Such a facility shall not confine itself to advertising in ethnic newspapers or ethnic radio stations

iii. Because its name constitutes a kind of negative marketing, it does not suffice for that facility to make no marketing efforts: an ethnically named facility or nonprofit shall actively seek out participants who are outside of its own ethnicity.

iv. A monitor should be able to review the affirmative plan of an ethnically-named facility or nonprofit, review the activities taken to implement the plan and reasonably conclude that the facility had considered and made a good-faith effort to reach out to the community at large, and not exclusively or predominately to any particular group.

g. National origin discrimination: A public facility shall not favor persons of a particular national origin, whether American born, naturalized, resident aliens, or nationals (24 CFR 570.602). Section 13 of the Equal Employment Opportunity Commission Compliance Manual defines discrimination based on national origin as follows.

i. "National origin discrimination includes discrimination because a person (or his or her ancestors) comes from a particular place...for example, Colombia or Serbia. In some cases, the place has never been a country, but is closely associated with a group of people who share a common

language, culture, ancestry, and/or other similar social characteristics, for example, Kurdistan."

ii. "National origin discrimination also includes discrimination against anyone who does *not* belong to a particular ethnic group, for example, less favorable treatment of anyone who is not Hispanic."

3. If the facility is charged with benefiting low-mod persons, then it shall *directly* benefit low-mod persons. Personnel in the facility must actually provide services to low mod persons in the facility itself, and they cannot be solely or predominately administrative or support for the staff that actually provide the services at a different location.

(24 CFR 570.208(a))

5. A facility that is charged with serving a specific low- and moderate-income area or preventing slum and blight "shall be operated so as to be open for use by the general public during all normal hours of operation."

(24 CFR 570.201(c))

6. "Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted."

(24 CFR 570.200(b)(2))

7. "Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services."

(24 CFR 570.200(j)(2))

8. "An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief."

(24 CFR 570.200(j)(4))

9. No part of the Facility shall be used for an activity that may be construed as "the general conduct of government."

(24 CFR 570.207(a)(1))

10. No part of the Facility shall be used "for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any."

(24 CFR 570.207(a)(3))

11. If the Facility is newly constructed, it shall not be used for housing for persons that do not have special needs. Persons with special needs are defined in 570.201(c) and are listed in Paragraph A, above. (Persons of low- and moderate-income are not special needs persons simply by virtue of being low- and moderate-income; they must also belong to one of the categories of persons listed in 570.201(c).)

(24 CFR 570.207(b)(3)

12. The Facility must be accessible to disabled persons.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered and provide emergency egress so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and accessibility standards that apply to buildings covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of construction or alteration being undertaken, and in this case, the definitions, requirements and standards of the ADAAG shall apply.

(24 CFR 9.151)

13. Program Income

a. Rental income from permanent tenants or occasional users of the Facility is CDBG program income. Program income is defined in the CDBG program regulation. Program income includes "Gross income from the use or rental of real property that is acquired, constructed, or rehabilitated by a subrecipient with CDBG funds, less costs incidental to generation of the income." CDBG program income is subject to all CDBG regulations pertaining to the use of CDBG funds. Subrecipients may not retain program income, especially to use on expenses that are not eligible CDBG activities.

(24 CFR 570.500(a)(1)

b. Gross program income in facilities that are only partially funded with CDBG must be prorated. For example, if the Facility is 50%

CDBG-assisted, then 50% of the gross income is CDBG program income.

c. Program income does *not* include contract or grant income, contributions from 3rd parties made to support the nonprofit Facility operator, and/or interest or investment income received from non-CDBG funds.

d. Program income does *not* include the fees that the Facility charges to its clients for the services that it provides in the Facility. For example, if a YMCA charges program fees for clients to participate in programs in its facility, those program fees are not program income.

e. "Costs incidental to the generation of income" are defined as "monthly expenses relating to the maintenance and operation of the building." Subrecipients can use tenant rental income to pay for the tenants' prorated share of building maintenance costs.

(Memo dated 3/12/1990, available at http: //www.hud.gov/offices/cpd/community development/rulesandregs/memoranda/dekalb90.cfm)

f. Examples of costs incidental to the generation of income are:

- Janitorial supplies
- Utilities
- Insurance
- Maintenance
- Management fees
- Cost of security
- Salaries of persons that maintain, manage, or secure the Facility

g. The salaries of persons that are incidental to generation of program fees, grants, and government contracts are not costs incidental to the generation of income.

h. The Lessee shall calculate program income due to the City annually after the close of the Facility's fiscal year. The City will reconcile the statement of program income due with the organization's audit.

i. An example of a program income calculation in a CDBG-assisted public facility is shown below:

	Total	22.50% CDBG Assisted	77.50% Other Funding
Revenue			
Contract Income	60,000.00	-	60,000.00
Grant Income	15,000.00	-	15,000.00
Monthly Rental Income	30,000.00	6,750.00	23,250.00
Event Rental Income	20,000.00	4,500.00	15,500.00
Contributions	5,000.00	-	5,000.00
Investment Income	500.00	-	500.00
	130,500.00	11,250.00	119,250.00
Expenses			
Organization's Program Expenses	50,000.00	-	50,000.00
Direct Rental Expenses	20,000.00	4,500.00	15,500.00
General Overhead *			
Attributable to leased space	15,000.00	3,375.00	11,625.00
Attributable to non-leased space	15,000.00	-	15,000.00
	100,000.00	7,875.00	92,125.00
Excess revenue over expenses:	30,500.00	3,375.00	27,125.00
		**	

* Calculating CDBG Share of Overhead Expense:

Total square footage of facility:	10,000
Total leased to 3rd parties:	5,000
% leased to 3rd parties:	50.00%

** Program income due to the City

14. The Facility must benefit low- and moderate-income persons pursuant to 24 CFR 570.208(a)(2)(i)(A - D)), as prescribed in its subrecipient agreement with the City:

> A public facility that is charged with benefiting a specific low- and moderate-income clientele must serve only that clientele: it may not make its services available to all residents of an area or Oahu's entire population.
>
> (24 CFR 570.208(a)(2))

> A public facility that is charged with serving a particular residential area, designated in its subrecipient agreement, where at least 51 percent of the residents are low and moderate income

persons, must makes its services available to all the residents of that area.

(24 CFR 570.208(a)(1)(i)

A public facility that is charged with serving a limited clientele who are *presumed* to be of low- and moderate-income must serve only those clients. The following is an inclusive list of presumed low-mod persons. Only the persons on this list are presumed to be of low- and moderate-income.

- abused children
- battered spouses
- elderly persons
- adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled,"
- homeless persons
- illiterate adults
- persons living with AIDS
- migrant farm workers

The facility may be of such nature and be in such location that leads to the conclusion that the facility's clientele will primarily be low and moderate income persons.

A facility that is required to obtain information on family size and income may obtain such information from enough of its clients so that it is evident that *at least 51 percent* of the clientele are persons whose family income does not exceed the low and moderate income limit.

A facility that imposes income eligibility requirements which limit the activity *exclusively* to low and moderate income persons shall serve exclusively low and moderate income persons.

If the facility is certifying incomes of its clients, then it must do so using (i) the definitions of income and (ii) the method of certifying incomes prescribed in 570.3 "Income."

This 570.3 definition currently reads as follows:

Income. For the purpose of determining whether a family or household is low- and moderate-income under subpart C of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of Sec. 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under Sec. 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under Sec. 570.208(a)(1)(vi). Activities qualifying under Sec. 570.208(a)(1) generally must use the area income data supplied to recipients by HUD.

The three definitions are as follows:

(1) (i) ``Annual income" as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under Sec. 570.202, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

(ii) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent

Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions; and

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

If the facility uses the IRS Form 1040 definition of income:

- The facility must use IRS Form 1040, not 1040EZ.
- The facility may use tax returns as proof of income.
- Documentation of income is good for 12 months.

(*Technical Guide for Determining Income and Allowances for the HOME Program*, HUD, Jan 2005, p. 17)

C. Reports

1. The Lessee shall maintain a Facility Compliance Report. This report should contain the information listed below. The Lessee shall transmit this Report to the City annually. It should report on all the clients that the Facility served over the Property's program year.

   a. Low-Mod Area Facilities

      i. Time period covered by Report
      ii. Description of area served by facility
      iii. Data on household incomes in the service area
      iv. Fees charged for services.
      v. Type of services
      vi. Data on the race and ethnicity of persons in the service area
      vii. Data on single male or single female head of household in the service area.

   b. Limited Clientele Facilities.

      i. Time period covered by Report
      ii. Client name or number
      iii. If applicable, household income
      iv. If applicable, percent of median of household income.
      v. Date(s) or period service provided.
      vi. Fees charged for service.
      vii. Type of service
      viii. Race of client.
      ix. Ethnicity of client.
      x. Is client a single male or single female head of household.

2. The Lessee shall annually provide to the City a report showing the calculation of any CDBG program income due to the City, accompanied by a cashiers check for any amount due.

3. The Lessee shall annually transmit to the City the results of any third party audit of the Property. If the audit does not break out the Property separately, the Lessee shall also transmit the Property's unaudited financial statements in addition to the audited statements. The financial statements should enable the monitoring agent to determine the amounts in the Property's reserve accounts.

4. The Lessee shall annually transmit to the City an annual program report in a form specified by the City.

5. The Lessee shall annually transmit to the City any other documents that are required by the agreements between the Lessee and the City, e.g., insurance certificates.

D. Files and records

1. If applicable, the Property's client files should contain:

   a. Documentation that each client was certified as belonging to the Property's target group, e.g., elderly persons, homeless persons.

   b. If applicable, evidence that the income of the client was determined.

   c. Documentation as to fees charged to clients.

   d. Copy of agreements executed by clients.

2. The Lessee should keep on file:

   a. Copies of any agreements with the City pertaining to the CDBG assistance that the City provided to the Property.

   b. Evidence that the Facility filed Form HUD-935.2 Affirmative Fair Housing Marketing Plan; and evidence that the plan was reviewed every five years.

   c. Evidence of marketing and outreach to the Facility's target groups.

   d. Copy of the client selection policy and procedures, including policy and procedures for administering waitlists.

   e. Copies of any brochures and handouts that are distributed to applicants. These materials should disclose and explain the CDBG rules that directly affect the Facility and the clients.

   f. Copies of the Facility Compliance Report for each year.

   g. Copies of any insurance certificates required by agreements between the Owner and the City.

By: _____ Its: _____

Printed Name: _____ Date: _____

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. _____

RESOLUTION

AUTHORIZING THE LEASE OF CITY PROPERTY TO HALE KIPA, INC. FOR SPECIAL NEEDS HOUSING UNDER SECTION 28-3.5, REVISED ORDINANCES OF HONOLULU

WHEREAS, on March 21 and 28, 2013, the City and County of Honolulu published notice of the issuance of a request for proposals for the lease of two City-owned properties to provide housing or human services for persons with special needs; and

WHEREAS, one proposal was received for each of the properties by the May 14, 2013 deadline; and

WHEREAS, an evaluation of the proposals was conducted by staff of the Department of Community Services which made recommendations for selection; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on October 24, 2013 identifying the proposals and selection of the nonprofits for the public record; and

WHEREAS, in accordance with Section 28-3.5, ROH, a public hearing was held on November 22, 2013 on the lease of the subject property for nominal rent; and

WHEREAS, the Department of Community Services has made the certification as required by Section 28-3.5(g) to support a lease for nominal rent; and

WHEREAS, as a result of the request for proposals process, the City selected Hale Kipa, Inc. to be the lessee of City property located at 91-1002 Apa'a Street, Ewa Beach, Hawaii 96706, to provide a group home for special needs youth, aged 18 to 24 years, who are aging out of homelessness; and

WHEREAS, the City desires to lease the property to Hale Kipa, Inc. in accordance with Section 28-3.5, Revised Ordinances of Honolulu; and

WHEREAS, now therefore, the Council finds that it is in the public interest to lease the property to Hale Kipa, Inc.;

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

1) The Director of Budget and Fiscal Services is authorized to execute the lease attached hereto as Attachment A, in substantially final form, with Hale Kipa, Inc.

RESOLUTION

for the property located at 91-1002 Apa'a Street, Ewa Beach, Hawaii 96706, identified as TMK: 9-1-065: 001 for a rent of $1,200 per year for a period of five (5) years.

2) The lease attached as Attachment A to this resolution is approved in substantially final form, subject to any additions, deletions, or amendments to any terms or conditions of the lease by the City Council.

3) The Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to execute any incidental or related documents to carry out the transactions described above, as long as they 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 Nelson Koyanagi, Director of Budget and Fiscal Services and Pamela A. Witty-Oakland, Director of Community Services. Copies of the Resolution and the applicable lease shall also be transmitted to Punky Pletan-Cross, Chief Executive Officer, Hale Kipa, Inc., 615 Piikoi Street, Suite 203, Honolulu, Hawaii 96814.

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION: _____

_____

_____ _____
Honolulu, Hawaii Councilmembers

FORM OF LEASE

ATTACHMENT A

LAND COURT SYSTEM **REGULAR SYSTEM**

Return by Mail ( ) Pickup ( ) To:

City and County of Honolulu
Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813

NO. OF PAGES:

PROPERTY DESCRIPTION

DOCUMENT NO.
TRANSFER CERTIFICATE OF TITLE NO: _____
Land Court ( ) Regular ( ) Double ( )

Tax Map Key No.

LEASE

THIS LEASE ("Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, ("City"), and a Hawaii nonprofit corporation, the principal place of business and mailing address of which is Honolulu, Hawaii 968 , ("Lessee").

In consideration of the respective rights and obligations stated below, the City and Lessee agree as follows:

1. DEMISE AND DESCRIPTION OF PROPERTY. The City, in consideration of the rent to be paid by Lessee and of the terms stated below to be performed by Lessee, leases to Lessee, and Lessee accepts, all of the real property and improvements "as is", description of which is Exhibit A, which exhibit is attached to this Lease and made a part of it ("Property"). Lessee has inspected the Property and finds the

Property in good condition and accepts the Property in its present condition.

2. TERM AND RENTAL. To have and to hold the Property together with the rights, easements, tenements, privileges, and appurtenances, unto Lessee for the term of five (5) years commencing on the first day of _____ and expiring on the same date five (5) years from the commencement date, unless terminated earlier as stated below ("Term"). Lessee will pay the City monthly rent of for the Property to be paid on the first day of each month during the Term.

3. QUIET ENJOYMENT. Upon payment of the rent and upon performance of the terms of this Lease by Lessee, Lessee shall peaceably hold and enjoy the Property for the Term without hindrance or interruption by the City or any other person or persons lawfully claiming by, through, or under the City, except as may be stated below.

4. AMENDMENTS TO FACILITATE FINANCING. This Lease and any other documents relating to the Property may be amended to comply with reasonable changes requested by a permanent lender financing the Property, if approved by the City, in advance. It is expressly understood and agreed that the City reserves the right to reject any request for an amendment of this Lease if the proposed amendment will adversely affect the City's rights in the Property.

5. USE AND TRANSFER OF PROPERTY. The Property shall be used exclusively as a ("Project") in accordance with the Request for Proposals dated _____, the Management Agreement attached hereto as Exhibit B, and Lessee's proposal dated _____, all of which are incorporated herein by reference. Lessee covenants that except as stated in this Agreement, it will not sell, assign, convey, sublease, mortgage, encumber, or transfer Lessee's interest in this Lease, or relinquish possession of any portion of the Property, without the prior written consent of the City.

In addition to the provision stated in section 33.F. below, if the prior approval of DCS is required by provisions of this instrument, DCS will promptly review the request, will give Lessee specific reasons why a request may be denied, and will work with Lessee to attempt to remedy the reasons for a denial.

6. PAYMENT OF TAXES AND ASSESSMENTS. Lessee shall pay, before the same become delinquent, all real property taxes and assessments for which the Property is liable during the Term, whether payable by the City or Lessee. Taxes and assessments shall be prorated between the City and Lessee as of the dates of commencement and expiration of the Term. If any assessment is made under any betterment or improvement law which is payable in installments, Lessee shall pay only such installments, together with interest, which are due and payable during the Term.

7. PAYMENT OF RATES AND OTHER CHARGES. During the Term, Lessee shall pay all charges for electricity, gas, refuse collection, telephone, sewage disposal, water, and all other utilities or services pertaining to the Property, before the charges are delinquent.

8. OBSERVANCE OF LAWS AND COVENANTS. Lessee shall at all times keep the Property in a reasonably clean and sanitary condition, shall observe all laws, ordinances, rules and regulations now or hereafter made by any governmental authority which are applicable to the Property and will observe all covenants and restrictions affecting the Property.

Lessee shall comply with all City, State and Federal laws, rules, and regulations and any amendments thereto, including without limitation, those promulgated by the U.S. Department of Housing and Urban Development ("HUD") regarding the Community Development Block Grant Program and in particular 24 Code of Federal Regulations, Part 8, relating to "Nondiscrimination Based on Handicap in Federal Assisted Programs and Activities of the Department of Housing and Urban Development".

Additionally, the Lessee shall comply with the Management Agreement with the City, attached

hereto as Exhibit B, regarding the requirements of the federal HOME and CDBG programs, as applicable.

9. REPAIR AND MAINTENANCE. Lessee shall at all times during the Term, at its own expense, substantially repair, maintain, and keep the Property in good order and condition.

10. IMPROVEMENTS REQUIRED BY LAW. Subject to Section 11 below, Lessee shall build, maintain, and repair, at its sole expense, all improvements which may be required by law in connection with its use of the Property.

11. CONSTRUCTION OF IMPROVEMENTS. Lessee will not construct any structure or other improvements on the Property with an aggregate value greater than $1,000, alter the Property, or place any signs on the Property, without the prior written consent of the City.

12. WASTE AND UNLAWFUL USE. Lessee will not make or suffer any strip, waste, or unlawful, improper, or offensive use of the Property.

13. INSPECTION. The City and its agents may enter and inspect the Property at all reasonable times during the Term. Subject to the provisions of Sections 9 and 10 above, Lessee shall, at its own expense, repair all defects in the Property within 30 days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within 30 days, commence such repair within that time period and act with diligence until the repair is completed. If Lessee shall fail to commence or complete the repairs within the period provided above, the City may make such repairs. If the City makes such repairs, Lessee shall pay to the City the cost thereof plus interest at the rate of twelve percent (12%) per annum on demand. The City shall not be responsible to Lessee for any loss or damage that may be caused to the Property or business of Lessee by reason thereof.

14. AUDITS. All of Lessee's records relating to the Property will be available for examination during normal business hours by the City, HUD, and/or representatives of the Comptroller General of the United States.

15. NEITHER PARTY AGENT, JOINT VENTURER OR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, or a joint venturer or partner with, the other party.

16. BOND. Before the commencement of construction of any improvement on the Property exceeding $5,000.00 in costs, Lessee will obtain and deposit with the City, a good and sufficient surety bond naming the City as an additional obligee, in a penal sum of not less than 100% of the cost for all labor and materials to be furnished and used for such construction, with a corporate surety authorized to do business in Hawaii guaranteeing (1) the full and faithful performance and completion of the construction contract and (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

17. PROPERTY INSURANCE. During the Term, Lessee shall be responsible for any and all loss or damage to Lessee's personal property, including all goods, materials, supplies, tools, machinery, equipment, furnishings, improvements, or other property, and at Lessee's discretion, may insure such property. Lessee waives any right of recovery against the City for any loss or damage to Lessee's property.

During the Term, the City shall be responsible for any and all loss or damage to all buildings now or hereafter erected on the property, and in the event of such a loss, the City shall have the sole discretion to determine whether to repair, rebuild or replace such buildings. The City shall provide written notice to Lessee of such election, at which time Lessee shall, after payment to the City of all accrued rent and unpaid taxes and all other required payments, be relieved of any further obligation hereunder. The City waives any right of recovery against Lessee for any casualty to the Property unless caused, in whole or in part, by the Lessee.

Lessee shall report the occurrence of any loss or damage to the Property to the City as soon as practicable within 48 hours after such occurrence.

18. LIABILITY INSURANCE. Lessee will procure and maintain at all times during the term of this Lease any and all insurance required under any federal, state or local law, statute, ordinance, or rules and regulations as may be applicable to Lessee's operations and activities hereunder, including but not limited to workers compensation insurance. In addition, Lessee shall procure and maintain Commercial General Liability (CGL) insurance covering the premises, covering against bodily injury and property damage, with limits of not less than $1,000,000 per occurrence and general aggregate, with the following extensions: (1) contractual liability to cover liability assumed under this Lease; (2) personal injury liability with the "employee" and "contractual" exclusions deleted; and (3) products and completed operations coverage. This policy shall name the City, its elected and appointed officials, employees and agents as additional insureds; provide that this insurance is primary coverage with respect to all insureds; contain a severability of interest clause providing that the insurance applies separately to each insured and that the policies cover claims or suits by one insured against another; and provide that the policy will not be cancelled, or terminated without 60 days prior written notice to the City.

Lessee will provide the City with current certificates of insurance for all policies and/or coverages required herein. The City reserves the right to review these requirements from time to time and require additional amounts or types of insurance.

19. CITY'S COSTS AND EXPENSES. Lessee shall pay to the City on demand all costs, including reasonable attorneys' fees, incurred by the City in enforcing any of the terms of this Lease, in remedying any breach of the terms of this Lease by Lessee, in recovering possession of the Property, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee to which the City shall be made a party without any fault on its part.

20. INDEMNITY. Lessee will indemnify and defend the City, and hold the City harmless against all claims whatsoever for: (a) failure of Lessee or its agents and employees to make any required disclosures in connection with the Property to users or any other person as required by law; (b) any misrepresentations made by Lessee or its agents and employees in connection with the Property to any person; (c) the failure of Lessee or its occupants, its clients, agents, employees, tenants, contractors, or subcontractors to observe all applicable laws and covenants as stated in Section 8., above, (d) the failure of Lessee to observe and perform its obligations stated in this Lease; and (e) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the use or occupancy of the Property by Lessee or any client, tenant, occupant, or other person claiming by, through or under Lessee, or any accident or fire on the Property, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Property in a safe condition, or any other liability whatsoever on account of the Property, or on account of the acts or omissions of Lessee, its employees, agents, contractors, subcontractors, tenants, occupants, clients, or any other persons present upon the Property in connection with Lessee's use or occupancy thereof. In connection with the foregoing, the Lessee will reimburse the City for all its costs and expenses including but not limited to reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within the Property at the sole risk of Lessee and hold the City harmless for any loss or damage thereto by any cause whatsoever.

21. LIENS. Lessee will keep the Property free of all liens and encumbrances arising out of its activities. Should any such lien or encumbrance attach to the Property then: (a) Lessee shall immediately notify the City of such attachment, and (b) Lessee shall pay the claim and cause the same to be satisfied and discharged of record, and if Lessee shall not pay the same and cause it to be satisfied and discharged of record promptly, City may, at its option, pay the same and any amount paid by the City shall become immediately due and payable by Lessee to City as additional rent. Lessee will indemnify and hold the City harmless against such lien or encumbrance and all expenses incurred by the City including but not limited to reasonable attorneys' fees.

22. SURRENDER. At the end of the Term, Lessee will peaceably deliver up to the City possession of the Property and all improvements in good condition except for reasonable wear and tear, free and clear of encumbrances which shall include, without being limited to, all claims, liens, charges or liabilities.

23. CONDEMNATION. In case at any time or times during the Term, the Property or any part thereof shall be required, taken, or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the Property so required, taken or condemned shall at once cease and terminate, and Lessee shall not by reason thereof be entitled to any claim against the City or others for compensation or indemnity for the leasehold interest, and all compensation and damages payable for or on account of the Property or portion thereof shall be payable to and be the sole property of the City.

24. TRANSFER BY CITY. City may transfer, assign, or sell this Lease, or any interest in this Lease or the Property, at any time, with prior notice to Lessee, upon which transfer, assignment or sale, City shall be released of all liability hereunder. Lessee shall attorn to the transferee, assignee, or purchaser, and shall perform all obligations required to be performed by Lessee under this Lease after the date Lessee is notified of the transfer, assignment, or sale, as though the transferee, assignee or purchaser was the original Lessor named in this Lease.

25. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this Lease, to which the City has consented in writing, the City will not terminate this Lease because of any default by Lessee if, within a period of 30 days after the City has mailed written notice to the mortgagee of intention to terminate this Lease at the last known address thereof, such mortgagee shall either cure such default or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the terms of this Lease until this Lease is sold upon foreclosure. Upon such undertaking, the City will not terminate this Lease within such further time as may be required by the mortgagee to complete the foreclosure process provided that such process is pursued and completed diligently. Ownership by the same person of both the fee and leasehold estates in the Property shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

26. DEFAULT. Lessee shall be in default of its obligations under this Lease upon occurrence of any of the following events (hereinafter called "events of default"):

1. Failure to Pay Rent. Lessee's failure to pay rent or other charges required to be paid by Lessee under this Lease within ten days of its due date; or

2. Failure to Comply. Lessee's failure to comply with any other provision of this Lease which Lessee is obligated to comply with within thirty days of written notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within thirty days, then so long as Lessee has commenced the action to comply and diligently prosecutes the same, Lessee shall not be in default; or

3. Abandonment. Lessee's abandonment of the Property, for a period of 30 consecutive days or more; or

4. Assignment to Creditors. Lessee's assignment of this Lease for the benefit of creditors; or

5. Writ of Execution. Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or

6. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or

7. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of thirty days after written notice to Lessee; or

8. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to City concerning the financial condition or credit standing of either

Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or City reasonably determines that its position as City is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

27. REMEDIES.

1. Interest and Late Payment Charge. If Lessee shall be delinquent in payment of the rent or the payment of any other charge required to be paid by Lessee under this Lease, Lessee shall pay, with each overdue payment, interest on the overdue payment at the rate of twelve percent (12%) per year. In addition to interest, Lessee shall also pay to City a late fee equal to five percent (5%) of the overdue payment to cover City's administration costs of processing such overdue payment.

2. Remedies Upon Default. Upon occurrence of any event of default, City may exercise any of the following remedies:

a. Re-entry: Termination. City may elect to terminate this Lease, but only by specific written notice of its election to Lessee, and may terminate the rights of Lessee to this Lease and the Property, and may reenter the Property to take possession of it;

b. Re-entry: No Termination. Without terminating this Lease, City may reenter the Property and occupy it and may, but is not obligated to, relet any portion or all of the Property for the account of Lessee; provided that City may terminate this Lease at any time after Lessee's default, even if City has relet any portion of the Property for the account of Lessee.

c. Cure. City may but shall not be obligated to cure any event of default and to charge Lessee for the cost of effecting such cure.

3. Exercising City's Remedies. Upon City exercising any of its above-listed remedies, Lessee agrees to the following:

a. Removal of Persons and Property. If City reenters the Property, it may remove all persons from the Property by any lawful means available. City may also remove all property of Lessee from the Property, and may enforce its right against that property, or may store the property at the expense of Lessee, or may dispose of the property if Lessee does not reclaim the property within 30 days after City has re-entered the Property.

b. No Termination. City's re-entry into the Property or its action to obtain possession of the Property shall not be deemed to constitute a termination of this Lease Agreement, or a termination of Lessee's obligation to pay rent or any other charge required to be paid by Lessee under this Lease Agreement, or a termination of any other liability of Lessee under this Lease Agreement including but not limited to Lessee's liability for damages.

c. Reletting. If City elects to relet the Property to a replacement Lessee, with or without terminating this Lease Agreement, City may enter into an agreement with the replacement Lessee for such rent and on such terms as City in its sole discretion deems appropriate. City may repair or alter the Property to suit the purposes of the replacement Lessee or to enable City to relet the Property or any portion of the Property.

d. Application of Rent. City shall apply the rent and other payments received from the replacement Lessee, in the following order and priority: (1) to the costs incurred by City to recover possession of the Property, including but not limited to reasonable attorney's fees and costs; (2) to the costs incurred by City to relet the Property, including but not limited to the costs of repairs and alterations, and broker's commissions; (3) to the unpaid rent and other payments required to be paid by Lessee under this Lease Agreement. If there shall be a surplus, City may retain such surplus to pay subsequent amounts which

become due and payable by Lessee under this Lease Agreement, and if there shall be any surplus at the expiration of this Lease Agreement, City shall pay such surplus to Lessee at the expiration of this Lease Agreement. If there shall be any deficiency between the rent and payments received from the replacement Lessee and the amount required to pay the items described in subparagraphs (1), (2), and (3) of this paragraph, Lessee shall be liable to City for such deficiency.

e. Legal Action. City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease Agreement, even though such action is initiated prior to termination of this Lease Agreement or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease Agreement and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.

f. Additional Remedies. If City terminates this Lease Agreement, then in addition to any other remedy available to City, City may recover from Lessee either (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease Agreement exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.

g. Remedies Cumulative. The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.

h. Costs and Attorney's Fees. City shall be entitled to recover from Lessee all costs incurred by City in enforcing any provision of this Lease which Lessee is required to comply with, including but not limited to reasonable attorney's fees and costs.

28. SURRENDER: HOLDING OVER.

1. Surrender. Upon expiration or earlier termination of this Lease Agreement, Lessee shall immediately vacate and surrender the Property to City, together with all improvements, additions and fixtures then on the Property, whether installed by City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; provided that City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease Agreement within seven days following the expiration or earlier termination of this Lease Agreement. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease Agreement. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.

2. Failure to Restore. If Lessee fails to complete the removal and the restoration in the manner and within the time specified, City may complete such removal and restoration in which event Lessee shall be liable to City for all costs incurred by City which amount shall be immediately due and payable after notice to Lessee by City of the amount due.

3. Holding Over. If Lessee remains in possession of the Property after the expiration or earlier termination of this Lease Agreement without the consent of City, Lessee shall be liable (1) for two times the fair market rent for the premises, determined as of the expiration or earlier termination of this Lease Agreement, (2) for all other charges payable by Lessee pursuant to other provisions of this Lease Agreement, and (3) for all other damages City may sustain as a result of such wrongful holdover. Acceptance of rent or other payments by City from Lessee during any holdover period shall not be deemed to create a new tenancy in favor of Lessee, but to the contrary, City may initiate action against Lessee at any time to recover possession of the Property, and to recover all damages sustained by City as a result of Lessee's wrongful

holdover.

29. DISSOLUTION OF LESSEE. In the event of the corporate dissolution of Lessee, the City may terminate this Lease.

30. HAZARDOUS SUBSTANCES. Lessee shall not cause, permit, or allow the storage, use, escape, disposal or release of any hazardous substances or materials in or about the Property by Lessee, Lessee's agents, employees, contractors, invitees or licensees, except in full compliance with all hazardous materials laws. Hazardous substances and materials shall include those described in the Hazardous Materials Laws. "Hazardous Materials Laws" shall include, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 USC Section 6901 et seq., the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act and the Safe Drinking Water Act, the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D, as well as any similar state and local laws and ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto as the same may be amended from time to time. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any storage, presence or release of hazardous substances or materials, then the reasonable costs thereof shall be reimbursed by Lessee to the City upon demand as additional charges if such requirement applies to the Property. In addition, Lessee shall execute affidavits, representations and the like from time to time at the City's request concerning Lessee's best knowledge and belief regarding the presence of hazardous substances or materials on the Property. In all events, Lessee shall defend, indemnify and hold harmless the City, its employees, agents, successors and assigns from and against any claims, demands, actions, lawsuits, proceedings, losses, damages, liabilities, fines, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, removal or presence of hazardous substances or materials on or under or about the Property by Lessee or attributable to Lessee including, but not limited to any damages, the cost of clean up or detoxification of the Property and the preparation and implementation of any closure or remedial or other required plans and all reasonable costs and expenses incurred by the City in connection with such items including, but not limited to, attorneys' fees and costs. The foregoing covenants shall survive the expiration or earlier termination of this Lease.

31. ADA COMPLIANCE. As between the City and Lessee, Lessee shall be responsible for ensuring that the Property, all alterations and improvements in the Property, and Lessee's use and occupancy of the Property complies with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, *et seq.*), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect therewith (the "ADA"). However, Lessee shall not make any such alterations or improvements except in accordance with the provisions of Sections 11 and 16.

32. SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY. All entities having a contract with the City (referred to in this Section as a "Contractor") must comply with the Revised Ordinances of Honolulu, 1990, Chapter 1, Article 18 ("Article 18") on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the Contractor's business and includes the following:

a. Prohibitions against an officer's or employee's sexual harassment of the following:

(1) Another officer or employee of the employer;
(2) An individual under consideration for employment with the employer; or
(3) An individual doing business with the employer;

b. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Subdivision a of the ordinance;

c. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

d. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

e. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

f. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

g. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"

h. Disciplinary action which may be imposed on an officer or employee who committed a prohibited act; and

i. For a Contractor with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the Contractor's contract with the City. The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Article 18. Article 18 is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii, 96813.

33. MISCELLANEOUS PROVISIONS

A. Amendment. The provisions of this Agreement may be amended only by each party executing a subsequent written Agreement which states each amended provision.

B. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

C. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Agreement.

D. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

E. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement in order to

assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to the Lessee. The Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments.

F. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

G. Construction. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.

H. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.

I. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.

J. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.

K. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

L. Gender: Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.

M. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.

N. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Agreement which is not included as a provision in it.

O. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.

P. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.

Q. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.

R. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.

S. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

T. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.

U. Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee shall ensure that any vending facilities on the Property, including but not limited to vending machines, shall be placed in compliance with Hawaii Revised Statutes Section 102-14 and the rules adopted by the State of Hawaii Department of Human Services to implement such statute.

(1) CITY AND COUNTY OF HONOLULU:
Department of Community Services
Community-Based Development Division
715 South King Street, Suite 311
Honolulu, Hawaii 96813
Attention:

(2) (Nonprofit name and address)
Attention:

V. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.

W. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreements and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.

X. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

Y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

Z. Survival. Any representation and warranty stated in this Agreement made by a party shall survive the termination of the agreement stated in this Agreement, unless otherwise specifically stated.

AA. Time is of the Essence. Time is of the essence with respect to Lessee's obligations under this Agreement.

THE PARTIES have executed this Agreement on _____, 20____.

APPROVED AS TO FORM AND LEGALITY:

By_____
Deputy Corporation Counsel
City and County of Honolulu

APPROVAL RECOMMENDED:

_____
Director of Community Services

CITY AND COUNTY OF HONOLULU

By_____
Director of Budget and Fiscal Services

(LESSEE)

By_____
Its

ACKNOWLEDGMENT

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

On this _____ day of _____, 20___, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____of the Department of Budget and Fiscal Services of the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council, and said _____ acknowledged the instrument to be the free act and deed of said municipal corporation.

_____

Notary Public, State of Hawaii

Printed Name _____

My commission expires: _____

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

On this _____ day of _____, 20___, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of _____ and that the seal affixed to said instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____acknowledged said instrument to be the free act and deed of said corporation.

_____

Notary Public, State of Hawaii
Printed name _____

My commission expires: _____

EXHIBIT A

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

Lot 7083, area 4,069 square feet, as shown on Map 578, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

TOGETHER with a non-exclusive perpetual easement for vehicular access over and through Lot 7102 as shown on said Map 578, and in, on, over, under and through Easement 3087 shown on said Map 578, for utility and other reasonable purposes.

Being a portion of the land described in Transfer Certificate of Title No. 421,440 issued to the Grantor herein.

SUBJECT, HOWEVER, to:

1. Terms and conditions contained in instrument dated February 17, 1989, recorded in said Bureau of Conveyances in Liber 22883, Page 224.

2. Terms and conditions contained in instrument dated November 3, 1989, filed in said Office of the Assistant Registrar as Document No. 1684310, and also recorded in said Bureau of Conveyances in Liber 23899, Page 199.

3. Covenants, conditions and restrictions set forth in Declaration of Covenants, Conditions and Restrictions dated October 25, 1991, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1862778, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-151535, as amended by instruments dated February 10, 1992, and January 30, 1992, filed in said Office of the Assistant Registrar as Document Nos. 1888370 and 1888371, respectively, and also recorded in said Bureau of Conveyances as Document Nos. 92-020281 and 92-020282, respectively, and as the same may be further amended from time to time.

4. Amendment to Conditions dated April 28, 1992, recorded in said Bureau of Conveyances as Document No. 92-068835, made by the City and County of Honolulu, a municipal corporation, by its Department of General Planning.

5. Second Amendment to Conditions dated October 5, 1992, recorded in said Bureau of Conveyances as Document No. 92-176379, made by the City and County of Honolulu, a municipal corporation, by its Department of General Planning.

6. Amendment to Design Standards of the West Loch Fairways Subdivision, dated January 14, 1994, filed in said Office of the Assistant Registrar as Document No. 2152684, and also recorded in said Bureau of Conveyances as Document No. 94-095075.

7. Easement 3075 (area 163 square feet) for the use and benefit of Lot 7082 as shown on Map 578, as set forth by Land Court Order No. 104859 filed on December 2, 1991.

8. Easement 3076 (area 96 square feet) for drainage purposes as shown on Map 578, as set forth by Land Court Order No. 104859 filed on December 2, 1991.

EXHIBIT B

GROUP HOME MANAGEMENT AGREEMENT
HOME INVESTMENT PARTNERSHIPS
PROGRAM (HOME)

Lessee Name: _____

Property Name: 91-1002 APA'A STREET

The Lessee agrees as follows:

1. 91-1002 APA'A STREET shall be managed as a HOME-assisted group home rental project. The Lessee shall comply with all applicable HOME regulations and HUD's January 2009 guidelines entitled "Compliance in HOME Rental Projects: A Guide for Property Owners" (hereafter "Guide"). (The latter guidebook is on the web at: http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/2009/2009homerentalpo.cfm)

2. This Agreement summarizes the main points in the aforementioned regulations and Guide, but does not substitute for them. If there is a conflict, the regulations and Guide take precedence over this Agreement.

3. The lessee shall manage 91-1002 APA'A STREET in compliance with the HOME regulations for five (5) years as a group home.

4. A group home is defined as the following:

   A Group Home consists of housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one bedroom units) separate private space for each family. A Group Home may be a single-family dwelling unit that is being used as a group home.

5. 91-1002 APA'A STREET has _____ dwelling units total, ALL of which are considered HOME-assisted.

6. 91-1002 APA'A STREET'S HOME-assisted units are (check one):

   ___ fixed ___ floating

   If the HOME units are fixed, then the designated HOME units are listed as follows: _____ (List each unit individually, by apartment number.

7. If there is any conflict, the HOME regulations and guidelines take precedence over the Hawaii Landlord Tenant Code.

8. While a transitional housing project may not be subject to the Hawaii Landlord Tenant Code, it is still wholly subject to the HOME regulations and the Guide.

9. HOME rental projects, including transitional housing projects and 91-1002 APA'A STREET, shall charge rent. The rent may be nominal. The Lessee may charge program or service fees; provided, however, that it charges for program or service fees separately from the rent.

10. The total cost to the tenant of rent plus utility costs plus any mandatory fees (including mandatory fees for parking, programs, food, or services) shall not exceed the HOME rent limits. HUD revises the HOME rent limits annually; the Lessee shall annually obtain and use the latest rent limits.

    NOTE: The maximum rent for a bedroom in the Group Home is the current HUD Fair Market Rent for a single-family dwelling unit with the same number of bedrooms as the group home, divided equally between the number of bedrooms in the group home. For example, the rent for one bedroom in a 6-bedroom group home, for which the 2012 HUD Fair Market Rent is $3,731will be $3,732 divided by 6, or $622.

11. HOME rental projects, including 91-1002 APA'A STREET, may provide programs and services to their tenants.

12. HOME rental projects, including HOME transitional housing projects and 91-1002 APA'A STREET, may require tenants to participate in the programs and accept services as a condition of living in the project; however, before doing so, they must secure the City's prior written approval of any mandatory programs and services. (The City, in turn, must secure HUD's written approval of the programs and services.)

13. HOME transitional rental housing projects must provide supportive services; and they must secure the City's prior written approval of the services.

14. With the exception noted below, HOME transitional rental housing projects may require the tenants to accept services as a condition of living in the project.

15. HOME-assisted group homes for people with disabilities and HOME-assisted SROs for people with disabilities may require the disabled tenants to accept some services as a condition of living in the project; however, they may not require the disabled tenants to accept "disability-related services" as a condition of living in the project.

16. All HOME rental projects, including transitional housing projects and 91-1002 APA'A STREET, must execute lease agreements with tenants. A program agreement does not substitute for a lease agreement. If it so desires, Lessee may execute a separate program agreement with tenants in addition to a lease agreement.

17. The HOME lease agreement, including that for transitional housing projects and 91-1002 APA'A STREET, shall meet the specifications and contain the disclosures stated in the Guide. The City will be satisfied that the lease agreement complies if the Lessee uses the language in the attached sample "Addendum to Lease Agreement," attached as Attachment A to this Management Agreement.

18. All HOME rental projects, including transitional housing projects and 91-1015 APA'A STREET, must comply with the HOME regulation at 24 CFR 92.253(c), which requires the Lessee to give 30-days written notice to any tenant before terminating the tenant's occupancy, regardless of any provision to the contrary in the Hawaii Landlord Tenant Code. The lease agreement shall contain a provision to this effect.

19. The lease agreement shall state whether any fee-based services are optional or required. The lease agreement must identify the amount of the additional fees or surcharges separately from the basic HOME rent for each tenant.

20. The lease agreement shall be for at least one year.

21. The Lessee shall maintain the property in accordance with the housing, plumbing, building, and fire codes in the Revised Ordinances of Honolulu.

22. The Lessee shall inspect the units for compliance every year, using a checklist.

23. When selecting tenants, the Lessee shall date- and time-stamp applications and use a waiting list system with written procedures.

24. The Lessee shall maintain contacts with as many service agencies as possible to refer clients to the project.

25. The Lessee shall post the HUD Fair Housing poster in a site accessible and visible to tenants. The Lessee shall use the HUD Fair Housing Logo on its lease agreement and marketing materials.

26. Every five years, the Lessee shall update its HUD Form 935.2A, the Affirmative Fair Housing Marketing Plan, and provide it to the City.

27. Every year, the Lessee shall provide the City a report on the race and ethnicity of all the tenants served during the program year.

28. Every year, the Lessee shall provide the City a report of the number households headed by single females and households headed by single males.

29. The Lessee shall certify the income of every household who enters the project. Only households with incomes of less than 60 percent of the Honolulu median income are eligible to enter into the project.

30. At least 20 percent of the HOME units must be occupied by tenants who have incomes below 50 percent of the Honolulu median income.

31. Every year, the Lessee shall fully re-certify every tenant's income.

32. When certifying incomes, the Lessee shall use the latest schedule of income limits published by HUD.

33. When certifying incomes, the Lessee shall select one definition of income from those listed below and apply it consistently to all households:

    ___ Section 8
    ___ IRS Form 1040
    ___ U.S. Census long form

34. Every year, the Lessee shall provide the City with a 12-month cash flow that shows the revenues and expenses of the project. If audited financial statements and audit reports available, the Lessee shall provide those to the City.

35. Every year, the Lessee shall provide the City with any insurance certificates required in its contract.

36. Throughout the year, the Lessee shall maintain the HOME Rental Project Compliance Report using an Excel spreadsheet, in a form that is specified by or otherwise acceptable to the City, and provide this report to the City annually. Such a form attached as Attachment B to this Management Agreement.

Lessee Name: Lessee Name

By _____ Its _____
Signed name

_____
Printed name

Date: _____