SUMMARY OF PROPOSED COMMITTEE DRAFT:

Resolution 20-6
APPROVING AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND KG KAPOLEI PARKWAY, LLC, FOR THE DEVELOPMENT OF AN AFFORDABLE RENTAL PROJECT AT THE KAPOLEI PARKWAY LOTS 6 & 7, 91-0 KAPOLEI PARKWAY, KAPOLEI, HAWAII, ON THE CORNER OF KAPOLEI PARKWAY AND KUNEHI STREET TO KAPOLEI PARKWAY AND WAKEA STREET (TMK (1) 9-1-160:018).

THE PROPOSED CD1 makes the following amendments to the text of the resolution**:**

A. Revises the resolution title and first WHEREAS clause, to clarify the description of the Request for Proposals and the Development Agreement.

B. Moves the fifth and sixth WHEREAS clauses to appropriate areas of the resolution.

C. In the fifth WHEREAS clause, adds reference to Departmental Communication 808 (2019).

D. In the seventh WHEREAS clause, adds that the Developer is seeking a net fixed rent of $1.00 per year.

E. In the eighth WHEREAS clause, clarifies that the Project consists of at least 404 affordable studio, one-bedroom, two-bedroom, three-bedroom, and four-bedroom rental units to be rented to households earning 60 percent and below of the AMI; at least 21 units will be rented to households earning 30 percent and below of the AMI, and one additional unit will be reserved for an onsite staff member.

F. Adds a ninth WHEREAS clause to provide that the Developer may designate certain areas within the Project for commercial use.

G. Adds a tenth WHEREAS clause to provide that the Project includes a parking lot with 674 parking stalls (41 of which will be reserved for individuals with disabilities), and nine loading spaces.

H. Adds an 11th WHEREAS clause to provide that other Project amenities available to tenants include recreation rooms, laundry rooms, outdoor parks, and outdoor passive recreation areas; and that the Project will include a preschool with enrollment preference given to Project tenant families.

I. Adds a 12th WHEREAS clause to provide that the Developer will obtain approval to subdivide a portion of the parcel into four lots, and that the Project will be developed on two of the subdivided lots.

J. Adds a second to the last WHEREAS clause to provide that the Development Agreement is attached to the resolution as Attachment 1 (instead of Exhibit A), and the form of Lease is attached to the Development Agreement as Exhibit C.

K. Conforms the language of the BE IT RESOLVED clause to the standard authorizing language for this type of resolution.

L. In the BE IT FINALLY RESOLVED clause, adds the Mayor as a recipient of a copy of the adopted resolution.

M. Makes miscellaneous technical and nonsubstantive amendments.

THE PROPOSED CD1 also makes the following amendments to the Development Agreement attached to the resolution as Attachment 1 (instead of Exhibit A):

N. Adds a new Section 2.2.8 to require the Developer to include, as a part of the Project, a preschool with enrollment preference given to Project tenant families.

O. Makes miscellaneous technical and nonsubstantive amendments.

(Amendments to the Development Agreement are noted in a redlined version of the document).

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. **20-6, CD1**
PROPOSED

RESOLUTION

AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND KG KAPOLEI PARKWAY, LLC, FOR THE DEVELOPMENT OF AN AFFORDABLE RENTAL HOUSING PROJECT IN KAPOLEI.

WHEREAS, on December 18, 2018, pursuant to Section 28-3.4 of the Revised Ordinances of Honolulu 1990 ("ROH"), the Department of Land Management ("DLM") issued a Request for Proposals (DLM-1266304) ("RFP") to solicit proposals from qualified entities to plan, design, construct, operate, and manage, under a long-term leasehold interest, an affordable rental housing project to provide housing for low to moderate income households on a portion of a City-owned parcel located at 91-0 Kapolei Parkway in Kapolei, and identified as TMK (1) 9-1-160:018 (the "Property"); and

WHEREAS, on or before March 22, 2019, developers submitted their development proposals to the City in response to the RFP; and

WHEREAS, the DLM's evaluation committee evaluated the proposals, posed additional questions to the developers regarding their proposals, and evaluated developer responses to those additional questions; and

WHEREAS, on September 5, 2019, the City notified the Kobayashi Group, LLC (the "Kobayashi Group"), that its proposal was identified as the most advantageous to the City based on the criteria set forth in the RFP; and

WHEREAS, on December 19, 2019, in accordance with ROH Section 28-3.4(c)(2), by Departmental Communication 808 (2019), the DLM submitted to the Council a written report identifying the Kobayashi Group's proposal as the selected proposal, and describing the City's negotiations with Kobayashi Group regarding key elements of the proposal; and

WHEREAS, the Kobayashi Group established a single purpose entity, KG Kapolei Parkway, LLC, to develop the proposed affordable project (the "Developer"); and

WHEREAS, the Developer is seeking a lease term of 75 years at a net fixed rent of $1.00 per year; and

WHEREAS, the Developer will comply with the affordability requirements of its affordable funding sources, and proposes to develop three multi-story buildings consisting of at least 404 affordable studio, one-bedroom, two-bedroom, three-bedroom, and four-bedroom rental units to be rented to households earning 60 percent and below

of the area median income ("AMI") for Honolulu; at least 21 units will be rented to households earning 30 percent and below of the AMI, and one additional unit will be reserved for an onsite staff member (the "Project"); and

WHEREAS, the Developer may designate certain areas within the Project for commercial use, and the Developer, with the consent of the City, may sublease commercial spaces in the Project to commercial tenants; and

WHEREAS, the Project includes a parking lot with 674 parking stalls (41 of which will be reserved for individuals with disabilities), and nine loading spaces (some of the parking stalls and loading spaces will be designated for use by the Project's commercial tenants); and

WHEREAS, other Project amenities available to tenants include recreation rooms, laundry rooms, outdoor parks, and outdoor passive recreation areas; the Project will also include a preschool with enrollment preference given to Project tenant families; and

WHEREAS, the Developer will obtain approval to subdivide a portion of the Property into Lot 6 (4.232 acres), Lot 7 (6.015 acres), a roadway lot for the Manawai Street segment (0.444 acres), and a roadway lot for the Wakea Street segment (0.065 acres); the Project will be developed on subdivided Lots 6 and 7, the two street segments will be dedicated to the City, and the remaining portion of the Property will not be subdivided and will remain as one large parcel; and

WHEREAS, pursuant to ROH Section 28-3.4(g), the Development Agreement and the Lease must be submitted to the City Council for approval by resolution, and the two documents may be submitted for Council approval separately; and

WHEREAS, ROH Section 28-3.4(g) also requires that the Development Agreement specify the studies and design work that must be satisfactorily completed and approved as conditions precedent to the execution of the Lease; and

WHEREAS, the City and the Developer recently agreed to the terms of the Development Agreement and the form of the Lease for the Project, as provided in the Development Agreement attached hereto as Attachment 1 (the form of Lease is attached to the Development Agreement as Exhibit C thereto); and

RESOLUTION

WHEREAS, pursuant to ROH Section 28-3.4(g), the final version of the Lease will be submitted by the City administration to the Council for approval via a separate resolution after the Developer has satisfied all conditions precedent to the execution of the Lease, as set forth in the Development Agreement; now, therefore,

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

1. The Development Agreement in substantially the form attached hereto as Attachment 1 is hereby approved;

2. The Mayor or the Mayor's designee is hereby authorized to:

    a. Execute the Development Agreement in substantially the form attached hereto as Attachment 1, with any amendments recommended by the Corporation Counsel as necessary or desirable;

    b. Execute any incidental or related agreements or documents necessary to carry out the transaction described above, so long as such incidental or related documents do no increase either directly or indirectly the financial obligation of the City; and

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor; the Director of Budget and Fiscal Services; the Director of Land Management, and KG Kapolei Parkway, LLC, 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814.

INTRODUCED BY:

Ikaika Anderson (br)

DATE OF INTRODUCTION:

January 14, 2020
Honolulu, Hawaii

Councilmembers

ATTACHMENT 1

DEVELOPMENT AGREEMENT

Kapolei Lots 6 & 7

THIS **DEVELOPMENT AGREEMENT** (this "Agreement") is made as of the ___day of _____, 2020 (the "Effective Date"), by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, with its principal place of business and mailing address at Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (the "City"), and **KG Kapolei Parkway, LLC**, a limited liability company formed under the laws of the State of Hawaii, with its principal place of business in Hawaii and mailing address for purposes of this Agreement at 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814, Federal Tax Identification No:_____, State Tax Identification No: _____ (the "Developer").

This Agreement sets forth the terms, covenants and conditions pursuant to which: (i) Developer will obtain a right of entry and investigate the feasibility of financing and developing the Project (defined below); (ii) upon satisfaction of certain conditions precedent, including, without limitation, closing of financing for the Project and the compliance by Developer of all applicable laws, including, without limitation, compliance with the requirements of Chapter 343 (Environmental Impact Statements) of the Hawaii Revised Statutes, as amended ("HRS"), the City will lease to Developer, and Developer will lease from the City, certain real property located at 91-0 Kapolei Parkway, Kapolei, Oahu, Hawaii, designated as a portion of Tax Map Key No. (1) 9-1-160:018, more particularly described on **Exhibit A** attached hereto (the "Property") and generally depicted on the map attached hereto as **Exhibit B**; and (iii) Developer will develop, construct, own, manage, and operate upon such Property an affordable rental housing project for individuals and families who are "Qualified Tenants" (defined below), together with other components (the "Project") more particularly described in Article 2 of this Agreement.

Background

The City owns the Property and issued a Request for Proposals ("RFP") on December 18, 2018, for the development and lease of the Property. The Property was acquired by the City in February 2010.

The City established a committee (the "Evaluation Committee") to evaluate all timely submitted proposals based on evaluation criteria described in the RFP. Several proposals, including the proposal dated March 22, 2019, submitted by Kobayashi Group, LLC, a Hawaii limited liability company (the "Initial Developer"), were submitted.

On May 29, 2019, the Evaluation Committee held negotiations with the top offerors, who were each notified to submit (1) three (3) Requests for Clarification (RFC) by June 27, 2019 for the first set of clarifications, by July 31, 2019 for the second set, and by August 15, 2019 for the third set which is defined as the best revised offer after Evaluation Committee negotiations by August 15, 2019, and (2) responses to additional questions by August 15, 2019 (items (1) and (2), collectively, the "RFC"). Each of those proposers timely submitted its RFC to the City, and Initial Developer's proposal, as modified by Initial Developer's RFC (Initial Developer's original proposal, as modified by its RFC, is called "Developer's Proposal"), was identified by the City as most advantageous to the City based on the evaluation criteria set forth in the RFP.

The City notified Initial Developer of its determination on September 5, 2019, and on December 19, 2019, a report was filed with the City Clerk pursuant to Section 28-3.4(c)(2) of the Revised Ordinances of Honolulu 1990 ("ROH"), regarding the selection of, and results of negotiations with, Initial Developer. Developer is an affiliate of Initial Developer.

By letter dated January 8, 2020, from the Director of the City's Department of Land Management ("DLM") to the Chair and Members of the City Council of the City and County of Honolulu (collectively, the "City Council"), the following document, among others, was presented to it for consideration: Resolution ~~_____~~ 20-6, authorizing the City's execution of this Agreement and form of Ground Lease. Included in the other documents presented to the City Council was Developer's Proposal. Resolution ~~_____,~~ 20-6, CD_, FD_ was adopted by the City Council on _____, 2020.

The lease intended to be entered into between the City and Developer upon satisfaction of certain conditions under this Agreement is substantially in the form attached hereto as **Exhibit C**. The City shall present the final version of the lease to the City Council for consideration and approval by separate resolution in accordance with Sections 2.2.10 and 6.3 of this Agreement. The lease, as finally negotiated, shall hereinafter be referred to as the "Lease."

Now, therefore, for good and valuable consideration, including the mutual rights and obligations stated in this Agreement, the City and Developer hereby covenant and agree as follows:

Agreement

The opening paragraphs and background provisions set forth above, and all Exhibits attached to this Agreement, are hereby incorporated herein and made a part of this Agreement.

ARTICLE 1. PROPERTY DESCRIPTION

1.1 Description. The Property is generally identified as of the Effective Date as a portion of Tax Map Key No.: (1) 9-1-160:018 (the "Original Parcel")

and, after Final Subdivision Approval (as defined below), will have a land area of approximately 446,054 square feet, in the aggregate. A legal description and map of the Property (after Final Subdivision Approval) are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

1.2 Land Use Designation and Zoning. The Property is designated as an urban district according to the State Land Use Map. Under the Land Use Ordinance of the City and County of Honolulu, found in ROH Chapter 21, as amended ("LUO"), the Property is zoned BMX-3, Business Mixed-Use Community.

1.3 Leasehold Interest. Subject to certain conditions precedent described in this Agreement, including, without limitation, closing of Developer's financing for the Project construction and development costs, Developer's compliance with the requirements of HRS Chapter 343, and City Council approval of the Lease, the City will lease the Property to Developer, and Developer will lease the Property from the City, for the Project for a term of seventy-five (75) years, pursuant to and in accordance with the Lease. The Lease shall provide that at the end of the lease term, the City will have an option to accept the existing improvements constructed by Developer in its then "as is, where is" condition or to require the removal of such improvements prior to the surrender of the Property to the City.

1.4 "AS IS, WHERE IS". Except as otherwise expressly provided in this Agreement or the Lease, Developer shall accept the Property in its "AS-IS, WHERE-IS AND WITH ALL FAULTS" condition, without any express or implied warranties or representations of any kind whatsoever, whether oral or written, express or implied, from the City or any officers, agents, assigns, employees, consultants, and/or contractors, or persons acting for or on its behalf, contained or addressed in any materials (including, but not limited to, the completeness thereof), including, but not limited to: the condition of the soil, subsoil, surface or other physical condition of the Property; the existence or nonexistence of hazardous or toxic materials, wastes, substances, or archaeological matters, including without limitation, access, rights, gathering rights, trails, fishing rights, burial sites, and sites of religious significance; the fitness or suitability of the Property for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location, or development of the Property; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements, and other governmental permits, approvals, or acts; the physical condition of the Property, including, without limitation, any structural elements, appurtenances, access, landscaping, and any electrical, mechanical, plumbing, sewage systems, utility systems, facilities, and appliances; the Property's compliance with any building code, Occupational Safety and Health Administration laws and regulations, the Americans with Disabilities Act of 1990, as amended, and other laws, statutes, regulations or ordinances; the size, dimension, or topography of

the Property, including, without limitation, any flood hazard area, tsunami inundation area, surface condition, soil condition, geologic condition, hydrologic condition, or groundwater condition or other physical conditions and characteristics of or affecting the Property or adjoining land, such as aircraft overflight, traffic, drainage, flooding, erosion, air, water, or minerals; the availability or adequacy of water, sewage, gas, electrical, or other utilities serving the Property; and the Property's investment value or resale value.

Developer further acknowledges and agrees that it will be given the opportunity to inspect the Property, and Developer is relying solely on its own investigation of the Property and not on any information provided or to be provided by the City, except with respect to any of the City's warranties, representations and covenants expressly stated in this Agreement or the Lease.

Developer further acknowledges and agrees that any information with respect to the Property was obtained by Developer from a variety of sources and that the City has not made, and has no duty to make, any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.

Developer acknowledges and agrees that the City is not responsible for the engineering or construction of any of the existing improvements on the Property.

ARTICLE 2. PROJECT SCOPE

2.1 Project Description. The Project is described more particularly in Section 2.2 below and shall be developed in compliance with the "Project Documents," which are comprised of the Lease, this Agreement, the RFP and any addenda issued thereto, and Developer's Proposal, which includes the Developer's RFC. All of the Project Documents are incorporated into this Agreement by this reference and made a part hereof. In the event of any conflicts or inconsistencies among the Project Documents, the following shall control, in the following order of priority:

First Priority – the Lease;
Second Priority –this Agreement;
Third Priority – Developer's Proposal, with Developer's RFC having priority over Developer's original proposal; and
Fourth Priority – the RFP, including all Addenda.

2.2 Key Project Components. Developer shall design, construct, own, manage, operate and maintain the Project in accordance with the Project Documents. The purpose of the Project is to provide affordable residential rental units for Qualified Tenants (as defined below in Section 2.2.2). Subject to Section 2.2.10, the key components of the Project are set forth below.

2.2.1 Residential Units: There shall be approximately four hundred four (404) affordable residential rental units for Qualified Tenants (the "Units") plus one unit for an on-site staff member ("Staff Unit").

2.2.2 "Qualified Tenants": Individuals and families who meet the income limitations for occupancy set forth in this Agreement.

2.2.3 Unit Mix: The Units shall be rented to Qualified Tenants in accordance with the following income and Unit mix; provided, however, that (a) the below income limits shall be deemed a "ceiling" and (b) there shall be no "floor" for such income limits, except for minimum income requirements that are consistent with the minimum income requirements that are imposed by Developer, as property manager, for prospective tenants of all other affordable rental housing projects in the State of Hawaii that are managed by Developer, as property manager, for such projects (excluding Section 8 housing projects). Developer shall rent one-hundred percent (100%) of the Units (less one (1) resident manager unit) in the Project to Qualified Tenants with household incomes that do not exceed sixty percent (60%) of the area median income for the City and County of Honolulu, as adjusted for family size ("AMI"), of which five percent (5%) of the total units ~~are at~~must be rented to Qualified Tenants with household incomes that do not exceed thirty percent (30%) of the ~~area median income~~AMI ~~for the City and County of Honolulu, adjusted for family size ("AMI")~~, as determined by the United States Department of Housing and Urban Development ("HUD") and published by the Hawaii Housing Finance and Development Corporation ("HHFDC"). Annual income shall be determined based on rules for low-income housing tax credit projects under 24 Code of Federal Regulations ("CFR") Part 5, Subpart F, entitled~~,~~ Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment.

Type of (No.) Bedroom Unit	Approx. No. of Units @ 30% AMI	Approx. No. of Units @ 60% AMI	Total Units
Studio	4	72	76
1-bedroom	6	103	109
2-bedroom	8	146	154
3-bedroom	2	39	41
4-bedroom	1	23	24
Unit Total	21	383	404

Number of residential parking stalls: approximately 598 stalls

2.2.4 Parking and Loading. A parking lot, to include a total of 647 parking stalls, at least forty-one (41) of which shall be reserved for persons with disabilities in compliance with the Americans with Disabilities Act, as amended ("ADA"), and nine (9) loading spaces (located on the ground floor), all in compliance with the LUO and any other applicable law(s). Some of the parking stalls and loading space will be designated to serve the commercial rental units in the Project. Use of the parking stall(s) and loading space designated to serve the residential rental units shall be restricted to residents, visitors, and other approved guests, and Developer shall not charge residents and their guests for such use without the prior review and written approval of the City, which the City may withhold in its reasonable discretion. Except for the commercial parking stalls, public parking shall not be allowed, with or without charge, without prior review and written approval of the City, which the City may withhold in its sole and absolute discretion. Notwithstanding any provision to the contrary in this Section, Developer shall have the right to charge commercially reasonable rates for the use of any of the commercial parking stalls, including but not limited to, by residents and other guests of the residential rental units.

2.2.5 Resident Amenities. The following amenities shall be available exclusively for residents and their guests:

2.2.5.1 Parking; and

2.2.5.2 Common area amenities, including but not limited to, recreation rooms, laundry rooms, outdoor parks, and outdoor passive recreation areas.

2.2.6 Commercial Spaces. To the extent permitted under Federal and State requirements relating to the development of the Project, Developer may designate certain spaces within the Project for commercial purposes. Developer, with the consent of the City, shall have the right to sublease each such commercial space in the Project to a commercial tenant at such rents and for any use that is permitted under applicable laws, including but not limited to, day-care and preschool facilities, and on such terms as may be determined by Developer, in its sole discretion; provided that any such commercial sublease shall be subordinate to the terms and conditions of the Lease. Developer makes no representation or warranty regarding any commercial tenant and/or any use that may be available at the Project from time to time.

2.2.7 Photovoltaic System. Developer (or its designee) shall have the right, at any time and from time to time, to negotiate and enter into an agreement (the "Photovoltaic Agreement") for the design, installation, ownership, use, maintenance, repair and/or removal of a

photovoltaic system at the Project (the "Photovoltaic System") that will serve the Project (or any portion thereof). The Photovoltaic Agreement may provide that the Photovoltaic System shall be owned, operated, repaired and maintained by Developer (or its designee) and that power generated from the Photovoltaic System can be used solely by or for the Project (or any portion thereof). Developer or its designee, shall ensure that the Photovoltaic System is maintained in compliance with all applicable Federal, State, and County laws, regulations, codes and rules, including but not limited to, all Environmental Laws. Developer or its designee will remove all of the Photovoltaic System from the Project upon the earlier to occur of the following: (a) termination of use of the Photovoltaic System, or (b) expiration or sooner termination of the term of the Lease.

2.2.8 Preschool. The Developer shall include, as a part of the Project, a preschool with enrollment preference given to Project tenant families.

~~2.2.8~~2.2.9 Project Name. The name of the Project shall be determined at a later date by Developer. Developer shall not change the name by which the Project is known or identified without the prior written approval of the City.

~~2.2.9~~2.2.10 Commitment to Kapolei Design Plan. The Project is intended to preserve, protect, promote, and enhance the history, character and cultural heritage of the area in which the Property is located. The Project Design, to the extent practicable, shall be consistent with The City of Kapolei Urban Design Plan which must be reviewed and approved by the Kapolei Design Advisory Board to ensure that the Project Design achieves the character of the neighborhood.

~~2.2.10~~2.2.11 Modifications. The exact number of Units, Unit mix, Unit affordability mix, square footage(s), amenities and mixed-use components may be adjusted upon the request of the Developer and reasonable approval of the City based upon the results of Developer's due diligence permitted under Section 4.1 of this Agreement, the requirements of Developer's lenders and investors, and feedback from governmental authorities, community groups, and public stakeholders during the design, environmental review, and entitlement process. In addition, Developer, in its reasonable discretion, shall determine whether the Project will be developed as separate developments, each with a limited liability limited partnership that will serve as the developer and lessee pursuant to and in accordance with Section 14.4 below. By way of example only, the City and Developer hereby agree that it shall be reasonable for the parties to adjust the Project components as provided for in this Agreement, to the extent necessary to comply with any affordable housing regulatory agreement

or similar restrictive conditions or covenants imposed by a governmental agency to be recorded against the Property. Any such modifications shall not significantly deviate from Developer's Proposal and shall be made prior to the submission of the Lease to the City Council for approval, and the final details of all Project components shall be incorporated into the Lease.

2.3 Project Timeline. Developer acknowledges and agrees that there is a critical shortage of affordable housing in the City for Qualified Tenants and that it is a material condition of this Agreement for the benefit of the City that Developer develop, construct, complete, manage, own, operate, and maintain the Project in accordance with the development schedule attached hereto as **Exhibit D** (the "Development Schedule"), subject to the terms, conditions, and contingencies set forth in this Agreement. Prior to the execution of the Lease, the Development Schedule shall be updated and a copy shall be provided to the City. Developer shall have the right to amend the Development Schedule from time to time and shall provide an updated Development Schedule to the City.

2.4 Project Financing. Developer estimates that, as of the date of Developer's Proposal, the cost to develop and construct and complete the Project is approximately $180,000,000. Subject to the satisfaction of the contingencies set forth in this Agreement, Developer, prior to the execution of the Lease, shall secure financing adequate to develop, construct and complete the Project, substantially in accordance with the budget attached hereto as **Exhibit E**, as may be amended (the "Budget"). Prior to the execution of the Lease, Developer shall update the Budget in accordance with Project financing to be obtained concurrently with the execution of the Lease and shall provide the City with a copy of the updated Budget.

2.5 Project Design.

2.5.1 Community Design Goals. Subject to Section 2.2.9 The Project design shall be sensitive to the surrounding community and incorporate the following design goals to the extent feasible and reasonably practicable.

2.5.1.1 Trees will be planted in accordance with the City of Kapolei Street Tree Master Plan and vehicle sight distance safety standards.

2.5.1.2 Building faces on the boundary line shall be softened with landscaping or other features as appropriate.

2.5.2 Other Design Goals.

2.5.2.1 Project design shall be sensitive to view planes of surrounding neighborhood, to the extent feasible and reasonably practicable.

2.6 Subdivision. Developer will apply to the City and County of Honolulu Department of Planning and Permitting ("DPP") to obtain subdivision approval of the Original Parcel to create, among others, (a) Lot 91001, consisting of approximately 4.232 acres (net) ("Lot 6"), (b) Lot 91003, consisting of approximately of 6.015 acres (net) ("Lot 7"), (c) Lot 91002, consisting of approximately 0.444 acres, for roadway purposes (the "Manawai Street Segment"), and (d) Lot 91004, consisting of approximately 0.065 acres, for roadway purposes (the "Wakea Street Segment"), as shown on the proposed preliminary map attached hereto as **Exhibit H** (which may be modified as may be required by DPP and/or the Land Court); provided that the City shall execute and deliver to Developer such authorization to apply for such subdivision approval as may be required by DPP. Pursuant to such subdivision, Lot 6 shall have appurtenant easement rights for access and utility purposes over, across, under and through the Manawai Street Segment, and Lot 7 shall have appurtenant easement rights for access and utility purposes over, across, under and through each of the Manawai Street Segment and the Wakea Street Segment. All conditions to final subdivision approval that are imposed by DPP shall be subject to the review and approval by the City and Developer, each in its sole discretion; provided that the satisfaction of the conditions relating to the development of Lot 6 and Lot 7 shall be the responsibility of Developer, unless otherwise agreed upon by the City and Developer. Developer shall provide the City with a copy of the final subdivision approval of the Original Parcel promptly following the issuance thereof by DPP ("DPP Subdivision Approval"). Developer shall prepare such documentation, including but not limited to, a petition on behalf of the City, as the fee owner, to the Land Court of the State of Hawaii ("Land Court") for approval of the subdivision of the Original Parcel to create, among others, Lot 6 and Lot 7, together with such appurtenant easement rights as described above, or as otherwise approved by Developer and the City and such other matters that are shown on the DPP-approved subdivision map ("Land Court Petition"). The City shall promptly review the proposed form of the Land Court Petition (or any revisions thereto) and provide any comments to Developer, until the Land Court Petition is finalized. The City, as the fee owner of the Property, shall promptly execute and deliver to Developer the Land Court Petition of receipt from Developer, and Developer shall thereafter file the Land Court Petition with the Land Court for approval ("Land Court Approval" and, together with DPP Subdivision Approval, "Final Subdivision Approval"). Developer shall forward to the City any comments that may be received from Land Court regarding the Land Court Petition and shall otherwise keep the City apprised as to the status of the Land Court Petition until Land Court Approval is obtained. For purposes of this Agreement, the "Property" shall mean Lot 6 and Lot 7.

ARTICLE 3. TERM OF DEVELOPMENT AGREEMENT

3.1 This Agreement shall be effective commencing as of the Effective Date and shall terminate on the earliest to occur of: (a) all Units have been rented and are occupied by Qualified Tenants; (b) the issuance of a temporary certificate of occupancy for all buildings in the Project (the "Completion Date"),

which Completion Date is subject to extension in the event of Force Majeure (as defined in Section 14.11 below) or as otherwise provided herein; and (c) the earlier termination of this Agreement pursuant to the terms and conditions hereof. If entitlement, financing, or market conditions warrant, City may, in its reasonable discretion, grant Developer an extension of the Completion Date, provided that Developer has made and is making meaningful and substantial progress toward the entitlement, financing, and completion of the applicable Units. Developer shall construct the Units in an expeditious manner.

ARTICLE 4. DEVELOPER'S OBLIGATIONS

Developer agrees that, commencing as of the Effective Date, it will undertake the Project so that the Project is completed and operational (i.e., all Units available for rental) on or before the Completion Date, subject to the terms and conditions hereof.

4.1 Due Diligence. Developer shall have the right to perform such due diligence as it deems necessary commencing upon the earliest of: (a) the Effective Date; (b) the date the City and Developer enter into the Right of Entry Agreement ("ROE") pursuant to which Developer may proceed at its own expense and risk to initiate and undertake such studies with respect to the Property as Developer may wish, subject to the terms thereof. All third party reports or studies obtained by Developer shall name both Developer and City as intended recipients. Developer may conduct such due diligence until sixty (60) calendar days after the Effective Date. Due diligence shall be conducted in accordance with the terms of this Agreement and the ROE.

4.1.1 Developer shall be solely responsible for all items necessary to develop, construct, complete, manage, operate, and maintain the Project, including but not limited to all due diligence investigations, cost to repair damage to the Property resulting from Developer's due diligence investigations, title and survey review, conveyance documents, all costs and expenses, including closing costs, planning costs, and onsite and offsite improvements, onsite and offsite infrastructure, rezoning, installation and connection of utilities to the Project and cutting, filling and finish grading of the Property. Developer shall also be responsible for conducting all engineering, architectural, archaeological inventory assessments and surveys, and environmental impact assessments and statements related to the Property or existing improvements, or required by the Project or this Agreement, regardless of whether the applicable laws impose the obligation to perform the same on the City or Developer, and on-site and off-site infrastructure requirements.

4.1.2 Within sixty (60) calendar days after the Effective Date, Developer shall notify the City in writing of Developer's acceptance of the Property or its objections to specifically identified conditions of the

Property ("Objection Notice"). Upon receipt of an Objection Notice, the City shall have thirty (30) calendar days (the "City Cure Period") in which to cure, or to agree to cure prior to the execution of the Lease and the closing of the Lease transaction, the objectionable conditions specified in the Objection Notice and to notify Developer of such cure or agreement to cure; provided that if an objectionable condition cannot reasonably be cured within the City Cure Period, then the City shall have the right to extend the City Cure Period by up to sixty (60) days (or such longer period of time as may be agreed upon by the City and Developer) to cure such objectionable condition upon written notice by the City to Developer. Alternatively, the City may elect not to cure, or agree to cure, such objectionable conditions within such period by notifying Developer of such election not to cure within the City Cure Period. If the City fails to cure or to agree to cure any of such objectionable conditions set forth in the Objection Notice, whether by written notification or lack of a written response to Developer within the City Cure Period, as may be extended, Developer, in its sole discretion, shall have thirty (30) calendar days following the last day of the City Cure Period, as may be extended, either: (a) to terminate this Agreement, or (b) to waive the objectionable conditions and continue to proceed under the terms of this Agreement. If Developer does not respond as specified, Developer shall be deemed to have elected to terminate this Agreement. Any such termination or cancellation of this Agreement by Developer under this Section 4.1.2 shall be without liability, penalty, or compensation to either party.

4.2 Copies of Due Diligence to the City. Unless obtained prior to the Effective Date, within ten (10) Business Days of receipt by Developer of any non-confidential or non-proprietary due diligence documents obtained from sources other than the City, including without limitation, surveys, property inspection reports, title reports, studies, data, evaluations, and analyses, received by Developer, Developer shall provide one (1) electronic copy to the City. Developer shall share with the City all non-confidential, non-proprietary documents relating to the Property or Project obtained by it prior to the Effective Date promptly following the Effective Date.

4.3 Environmental Review. Developer will satisfy all environmental review requirements for the Project pursuant to Chapter 343, HRS. Such environmental review shall include, but not be limited to, the preparation of an Environmental Assessment or Environmental Impact Statement, to the extent required and not exempt under the terms of Chapter 343, HRS and Chapter 11-200.1 of the Hawaii Administrative Rules of the State of Hawaii, Department of Health (collectively, the "Environmental Impact Laws"). Developer shall be solely responsible for complying with the requirements set forth in the Environmental Impact Laws, unless the Project is exempt thereunder. Regardless of whether the Project is exempt under the Environmental Impact Laws, Developer shall cause the following reports and evaluations of the Property to be prepared: Phase 1 environmental site assessment and a Phase 2 environmental site

assessment, archaeological study as required by the State of Hawaii Historic Preservation Division ("SHPD") of the Department of Land and Natural Resources ("DLNR"), traffic impact assessment report, preliminary title report, and topographical map. All costs associated with the environmental review shall be the responsibility of Developer. The requirements of this Section 4.3 must be satisfied and, unless an exemption under the Environmental Impact Laws applies to the Project, the applicable challenge periods under the Environmental Impact Laws must have expired without a challenge being filed before the Lease can be executed.

4.4 No Strip or Waste; Permitted Uses. Developer shall use and allow the use of the Property and the Project only as permitted under all applicable laws, including the LUO, unless waived or modified by the Exemptions (defined below), and shall not make, permit, or suffer any: (a) spoil, nuisance, strip, or waste of the Property, or (b) unlawful, improper, or offensive use of the Property or the Project.

4.5 Construction Industry Standards. All construction shall be performed according to construction industry standards and in a good, workmanlike manner.

4.6 Appointment of a Development Manager. Subject to the terms and conditions of this Agreement, Developer shall devote commercially reasonable effort and energy to the development of the Project. Developer hereby appoints Elton Wong as its development manager ("Development Manager"). Any changes or substitutions of said Development Manager shall be subject to the reasonable approval by the City; provided that if any full-time employee of Developer is substituted as a Development Manager, such substitution shall not require the consent of the City so long as the City is notified at least fifteen (15) calendar days in advance, and in writing, of such substitution. The Development Manager shall be experienced and qualified in the type of work involved and shall be directly responsible for managing and facilitating the development of the Project. The Development Manager shall be the authorized agent of Developer, and the City shall be entitled to receive and reasonably rely upon information from the Development Manager to the same extent as if it were from Developer directly. Any information or direction provided by the City to any Development Manager shall be deemed to have been provided to Developer.

4.7 Construction Plans. Based on the Project Design, Developer shall prepare plans, drawings, and specifications necessary to obtain building permits (collectively, the "Construction Plans") and shall submit them to the City for its review and written approval on or before the deadline set forth in the Development Schedule and prior to submittal to the applicable agency set forth in the Development Schedule. The Construction Plans (a) shall be consistent with this Agreement and Developer's Proposal, (b) shall comply with all applicable laws and ordinances; and (c) shall be consistent with The City of Kapolei Urban Design Plan and approved by the Kapolei Design Advisory Board. Developer

shall promptly provide the City with copies of any material modifications to the Construction Plans which shall be subject to the City's review and written approval. A "material modification" means a change to the Construction Plans which would (i) delay or involve extensions of time with respect to the Development Schedule in excess of sixty (60) calendar days when combined with all other delays and extensions to time; or (ii) increase the costs of construction by more than $500,000.00 when combined with all other cost increases.

4.8 Exemptions. Developer may pursue development of the Project pursuant to Section 46-15.1, HRS, and Chapter 201H, HRS. In connection therewith, Developer may request from applicable authorities exemptions from applicable statutes, ordinances, rules, and regulations, including without limitation, those pertaining to planning, zoning, taxation, construction, and land development to undertake the Project (the "Exemptions"). Prior to submitting requests or applications for such Exemptions, Developer shall obtain the City's prior consent and approval including, if required by applicable law, prior approval by the City Council. In any such events, Developer shall be responsible for obtaining such approvals at Developer's sole cost and expense.

4.9 [RESERVED]

4.10 Rental Program. Developer shall develop a rental program prior to the execution of the Lease which shall be subject to the City's prior review and approval, and which rental program shall include all of the following.

4.10.1 Requirements and procedures for reviewing applications, evaluating applicants, determining eligibility as a Qualified Tenant, selecting renters, and renting to Qualified Tenants.

4.10.2 A system for determining preferences by lot, in the event the number of qualified applicants exceeds the number of Units available.

4.10.3 A description of how the rental program will ensure compliance with all applicable laws and standards relating to the rental of real property.

4.10.4 Maximum rents based on Unit type and income level. The affordable Units shall be rented at rates which are determined to be affordable, based on the income level of the tenant. Developer shall agree not to increase rents above the maximum affordable rental rates for the City and County of Honolulu published annually by HHFDC based on income levels and limits established by HUD, adjusted for household income, Unit and family size, and utility allowances.

4.10.5 In establishing the maximum rental rates based on Unit type and income level, the HUD area median income for the

following household sizes shall apply, based on the Unit type to be rented:

Unit Type	Household Size
Studio	1-2 persons
1 bedroom	1-2 persons
2 bedroom	2-4 persons
3 bedroom	3-6 persons
4 bedroom	5-8 persons

4.10.6 The rental and occupancy of the Project shall comply with occupancy limits set by Fair Housing, Federal, State, or City laws in order to prevent over occupancy in each unit.

4.11 Condominiumization; Legal Description of the Property; Documentation, Recordation, and Closing Costs. If requested by Developer, the City consents and agrees, in its sole and absolute discretion, to consent to and approve submitting the Property to a condominium property regime; provided that the condominium documents shall include a disclaimer from liability and indemnity in favor of the City relating to the creation of a condominium property regime on the Property. Developer shall be solely responsible for the same, including, without limitation, all costs, including legal costs, incurred by Developer and the City in connection with preparation, review and negotiation of the condominium documents, and all recordation and closing costs required under this Agreement. The condominium property regime will include a unit or units for the Project and a unit or units for commercial uses. The condominium documents shall be recorded prior to the financial closing of the Project construction loan and execution of the Lease.

4.12 Construction of Improvements. Subject to the terms and conditions of this Agreement, Developer shall construct or cause to be constructed the Project substantially in accordance with the approved Construction Plans. All construction shall be in accordance with the applicable Federal, State and City laws, codes and regulations.

4.12.1 Unit Amenities. Subject to Section 2.2.10, at a minimum, each Unit shall include a range/oven, range hood, solar water heater, refrigerator and sink, in standard sizes acceptable to the City, provided that such solar water heaters may serve multiple Units and may be located on a floor instead of within each Unit. Laundry facilities will be provided to accommodate all of the tenants, including washer and dryer, in sizes adequate to the Units served and acceptable to the City.

4.12.2 Potable Water. Developer shall be responsible at its sole expense for obtaining potable water for the Project, including any fees or exemptions related to obtaining a potable water allocation and

water facilities charges. The City shall cooperate with respect to any application for water service, at no cost or expense to the City.

4.12.3 Sewage. Developer shall be responsible at its sole expense for securing sewage treatment capacity and connection approvals and payment of any facilities charges or exemptions therefrom. The City shall cooperate with respect to any application for sewer service, at no cost or expense to the City.

4.12.4 Disabilities. Developer shall consult with the Disability and Communication Access Board. The Project shall be accessible to and usable by persons with disabilities in compliance with Section 103-50, HRS. Prior to the start of construction, Developer shall submit to the City written evidence that the Disability and Communication Access Board has approved the Project plans. This requirement is in addition to any other applicable requirements for accessibility as may be set forth in the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) and the Fair Housing Accessibility Guidelines (24 CFR Chapter 1). In addition, the Project shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §701 et. seq.).

4.12.5 Impact on Waters. Developer shall comply with the provisions of the Clean Water Act and Chapter 342D, HRS, and Chapter 11-55, Hawaii Administrative Rules ("HAR"), relative to the National Pollutant Discharge Elimination System ("NPDES") permit requirements. Developer shall implement best management practices to eliminate or minimize the impact of its activities on nearby waters, including waters through storm drains and storm water runoff, and shall not proceed with construction until the applicable NPDES permits are obtained. Developer shall ensure that its contractors understand and comply with the permit requirements.

4.12.6 Energy Conservation. The Project shall comply, to the extent reasonably possible, with Section 196-9, HRS, related to energy conservation. Developer's proposed sustainability design concepts in Developer's Proposal, to promote sustainability and minimize energy consumption, should be further evaluated for the Project.

4.12.7 Market Analysis. The City may require Developer to submit a current comprehensive market analysis substantiating the feasibility of the Project. The specifications and scope of the market study shall be reasonably determined by the City and subject to Developer's reasonable approval; provided, however, that the City agrees that a standard market study prepared for Developer's Tax Credit

(defined below) application or for institutional lenders or investors shall be sufficient in specifications and scope.

4.12.8 Termites. Developer shall adequately protect the Project against termites in the design and construction of the Project and shall implement an ongoing extermination maintenance program.

4.12.9 Archaeological Sites. Prior to doing any work on the Property, Developer shall consult with the SHPD and shall, at its own expense, observe and comply with all requirements for the identification, protection, and preservation of burial and significant archaeological sites at the Property.

4.12.10 Maintenance of Site. Commencing on the effective date of the Lease, Developer shall be responsible at its sole expense for the maintenance of the Property, including, but not limited to, the area from the Property boundary to the nearest street curb.

4.12.11 On-site and Off-site Infrastructure and Costs. Subject to the terms and conditions of this Agreement, Developer shall be responsible for building and maintaining all on-site and associated off-site infrastructure required for the development and use of the Project, including but not limited to, planning, design, and payment of permit fees (or exemptions therefrom), for such infrastructure such as the Manawai Street Segment, the Wakea Street Segment, walkway and related improvements within Palailai Mall (which shall be located on-site within the Property), waterlines, sewers, drainage, and electrical, telephone, gas, and cable television lines, conduits, and hookups within the Property, except as may otherwise be set forth in any grant of easement that may be entered into with a public utility relating to such on- and off-site utility equipment, lines and related appurtenances as described therein. Developer shall maintain such off-site infrastructure, until Developer's obligation to maintain such off-site infrastructure is terminated as set forth in this Section 4.12.11. Prior to issuance of the Notice to Proceed by the City, Developer shall obtain the approval of the Board of Water Supply, Department of Environmental Services, Hawaiian Electric Company, and all other required entities for all connections to off-site infrastructure and for roadway access improvements. Lessee is hereby granted the right to enter upon and construct such off-site infrastructure improvements in accordance with approved plans and specifications for the same on, under, or within such lands owned by the City, including without limitation, the Manawai Street Segment and the Wakea Street Segment, and/or easement areas in which the City owns an interest, and Developer's insurance and indemnity obligations under this Agreement shall apply to Lessee's Construction of such off-site infrastructure improvements. Developer shall be responsible for paying or obtaining exemptions from the

respective entities of any and all applicable charges associated with connections to off-site infrastructure and access improvements. Failure to provide proper infrastructure will result in the termination of Development Rights.

Provided that Developer has completed construction of the Project and complied with its submittal obligations under Section 8.3 of this Agreement, Developer shall provide written notice to the City of the completion of construction of the Manawai Street Segment road improvements and the Wakea Street Segment road improvements in accordance with applicable City standards. The City shall promptly inspect the condition thereof to certify completion of construction of the same in accordance with applicable City standards; provided that if the City has not conducted such inspection in a timely manner after written notice thereof has been delivered to the City by Developer, Developer, with approval from the City, shall have the right but not the obligation to provide the City with written certification, in form and substance reasonably approved by the City ("Engineer Roadway Certification"), from a Hawaii-licensed engineer certifying that the construction of the Manawai Street Segment road improvements and the Wakea Street Segment road improvements have been completed in accordance with applicable City standards. Upon the date of certification either by the City in connection with the City's inspection or by Developer's engineer in accordance with the Engineer Roadway Certification that construction of the Manawai Street Segment road improvements and the Wakea Street Segment road improvements have been completed in accordance with applicable City standards, whichever shall first occur (the "Roadway Certification Date"), (a) all obligations of Developer relating to the Manawai Street Segment and the Wakea Street Segment, including any obligation to repair and maintain such roadway improvements, shall automatically terminate and be of no further force or effect as of the Roadway Certification Date, (b) the City shall thereafter be solely responsible for repair and maintenance of the Manawai Street Segment and the Wakea Street Segment as public roads from and after the Roadway Certification Date, and (c) the City shall cooperate as may be reasonably requested by Developer to execute and deliver such documents that are necessary or appropriate to partially cancel and release the Lease (and any other recorded encumbrance relating to the Project to which the City is a party) from title to the Manawai Street Segment and the Wakea Street Segment, respectively, effective as of the Roadway Certification Date, and to obtain the release of any subdivision bond.

4.12.12 Chapter 104, HRS. To the extent applicable, Developer shall comply with the provisions of Chapter 104, HRS, relating to prevailing wage rates. Developer, its contractors and subcontractors shall pay all mechanics and laborers employed on the Project, minimum

prevailing wages for the corresponding work classifications as determined by the Director of Labor and Industrial Relations of the State of Hawaii, pursuant to Chapter 104, HRS. A certified copy of each weekly payroll shall be submitted to the City on a weekly basis beginning no later than twenty-one (21) calendar days after the end of the first weekly payroll period, with certified copies of all prior weekly payrolls included with the initial submittal. Developer shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates, and that the classifications set forth for each laborer and mechanic conform with the work performed. If certified payrolls are not submitted on a timely basis, or if the City finds that any laborer or mechanic employed on the Project has been or is being paid less than the applicable prevailing wage, or has not received the laborer's or mechanic's full overtime compensation, the City may take appropriate action in accordance with HRS Section 104-21, and the City may, by written notice to Developer, terminate Developer's right, or the right of any contractor or subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid, and may complete such or part by contract or otherwise, and Developer and its sureties shall be liable to the City for any excess costs occasioned thereby. The Developer shall not employ, use, or subcontract any contractors currently suspended under Chapter 104, HRS, as indicated on the State of Hawaii - Department of Labor and Industrial Relations website.

4.12.13 Noise and Dust Abatement. Developer shall implement best management practices to minimize noise and dust and their impacts on neighboring properties and the public, to the maximum extent practicable. Developer shall respond to and address all complaints in a manner satisfactory to the City. Developer shall comply with all laws and regulations governing dust, noise, and other nuisances; provided that such compliance shall not limit or satisfy Developer's obligation to take all reasonable measures to minimize the impacts of its construction activities.

4.13 Public Presentations about the Project. Developer shall be responsible for Project presentations to the applicable Neighborhood Board, City Council, State of Hawaii Legislature, interested community groups, and public officials as reasonably requested by the City (upon no less than seventy-two (72) hour notice) or required by law.

4.14 Publicity and Project Signage. Developer shall have sole responsibility for funding the advertising and promotional program for the Project. The advertising and promotional program shall disclose the fact that the Project is being developed by Developer with assistance from the City. All of

Developer's advertising and promotional program materials shall be subject to review and prior approval of the City, which approval shall not be unreasonably withheld. The City shall be given fifteen (15) Business Days to provide comments to Developer. If no comments are received, the materials shall be deemed approved.

During construction, Developer shall provide signs to identify the Project. The signs shall be erected at locations mutually agreed to by Developer and the City at the Project site. Signs shall be properly erected and kept clean and legible. After the Completion Date, Developer shall remove the signs.

4.15 Construction Financing – Interim and Permanent Financing.

If all or part of the project will utilize Hawaii Housing Finance and Development Corporation financing:

4.15.1 The City acknowledges that Developer intends: (a) to develop the Project as a low-income housing project and to apply for and receive an award from the Hawaii Housing Finance and Development Corporation (HHFDC) of Federal and State low-income housing tax credits ("Tax Credits") and/or low-income housing bonds ("Bonds") pursuant to the provisions of Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), HRS Section 235-110.8, and other applicable laws; (b) to have HHFDC allocate Tax Credits and/or Bonds to the Project; and (c) to seek other affordable housing loans, grants, subsidies, or financing for the Project from the City, State, HUD, other Federal agencies, or other affordable housing programs promulgated under City, State, or Federal law, rules, or regulations. Developer shall be responsible for using commercially reasonable efforts to secure all funding necessary for the development, construction and operation of the Project. This Agreement does not constitute any commitment by the City to lend or grant money for the Project, nor any covenant by Developer that Tax Credits, Bonds, or other financing will be granted by the City, State, HUD, or other Federal agencies.

4.15.2 Developer shall provide the City with all of the loan documents of each Project lender (as defined below), the limited partnership agreement of the Partnership, and related ancillary documents attached thereto that will be executed concurrently with the execution of the Lease, together with evidence reasonably satisfactory to the City that Developer has secured financing adequate to cover the Project costs as described in the Budget, as may be updated from time to time, prior to execution of the Lease.

4.16 Assumption of Risk and Liability. Developer shall assume sole and complete risk and liability for the development of the Project.

4.17 Sexual Harassment. Developer shall comply with the City's sexual harassment policy (ROH Chapter 1, Article 18), attached hereto as **Exhibit F** and made a part hereof.

4.18 Developer's Cooperation. Developer shall keep the City fully informed as to the status of all approvals and delays and at all times to act in good faith, reasonably, and in full cooperation with the City in connection with the construction and development of the Project.

4.19 Observance of Laws, Ordinances, and Regulations. Developer, its officers, agents, assigns, employees, consultants, subcontractors and/or contractors, or persons acting for or on its behalf, shall comply with all applicable laws, ordinances, codes, rules, regulations, guidelines, and policies of the Federal, State, and City governments, and any order or direction of any governmental agency or court.

4.20 Safe, Sanitary, and Orderly Condition. Developer, its officers, agents, assigns, employees, consultants, subcontractors and/or contractors, or persons acting for or on its behalf, shall keep the Property and any improvements in a safe, clean, sanitary, and orderly condition.

4.21 Information to be Provided by Developer. On or prior to the end of each calendar quarter, Developer shall furnish (i) an update to the Development Schedule, showing Developer's progress to date and estimated time for completing the Project (each significant design phase for preparing the Project plans shall be indicated), and (ii) an update to the Budget, showing Developer's estimated costs for developing and constructing the Project, including Developer's estimates of costs incurred to date and to be incurred over the remainder term of development.

4.22 Notice of Claims. Developer shall notify the City immediately when Developer becomes aware of any demand, litigation, claim, or enforcement action brought or threatened, of any kind, which might subject Developer or the City to any governmental fines or penalties, or which might subject the City to liability, in any amount. Developer shall notify the City immediately when Developer becomes aware of any written demand, litigation, claim, or enforcement action brought or threatened, of any kind, relating to the Property or Developer's activities under this Agreement, which might subject Developer, but not the City, to liability in an amount in excess of $100,000, whether or not covered by insurance.

4.23 Hazardous Materials Assessments. Developer shall conduct at its own cost, a Hazardous Materials Survey, a Phase 1 environmental site assessment (pursuant to ASTM E1527-13) and a Phase 2 environmental site assessment. The Phase 1 environmental site assessment and Phase 2 environmental site assessment, including all reports, surveys and/or studies triggered by the Phase 2 environmental site assessment, shall establish the

baseline environmental condition of the Property for purposes of defining Developer's environmental obligations, and shall be submitted to the City and the City Council upon completion, and as may be supplemented by any subsequent environmental assessment, study, report or other proof thereafter conducted by Developer. As used herein, "Hazardous Materials Survey" means a hazardous materials survey of asbestos-containing materials, lead-based paint, and other hazardous materials which may be found in an existing building, and which survey may be prepared and submitted as part of a Phase 2 environmental site assessment.

4.24 Hazardous Materials. Developer shall not cause or permit the escape, disposal, or release (as defined below) of any Hazardous Materials (as defined below) in violation of Environmental Laws on the Property.

4.24.1 Developer shall not allow any Hazardous Materials on the Property, except as authorized by law and for use in the ordinary course of Developer's business, and then only in accordance with construction industry standards and after written notice is given to the City. The City may object to and prohibit the presence, storage, or use of any such Hazardous Materials on the Property in the City's sole and absolute discretion by delivering written notice of such objection and/or prohibition to Developer. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any escape, disposal, or release of Hazardous Materials by Developer, then Developer shall be responsible for all costs. In addition, Developer shall execute affidavits, representations and the like from time to time at the City's reasonable request, concerning Developer's best knowledge and belief regarding the presence, escape, disposal, or release of Hazardous Materials on the Property.

4.24.2 Except as provided herein, Developer agrees to defend, indemnify, and hold harmless the City from any actions, claims, damages or injury resulting from the presence, escape, disposal or release of Hazardous Materials on the Property occurring while Developer is conducting its due diligence on the Property pursuant to the ROE, or elsewhere if caused by Developer or persons acting under Developer. Notwithstanding the immediately preceding sentence and any other provision to the contrary in this Agreement, Developer shall not be responsible for, and Developer shall not defend, indemnify or hold harmless the City from, any actions, claims, damages or injury resulting from, the presence, escape, disposal or release of Hazardous Materials on the Property (a) occurring prior to Developer's entry onto the Property pursuant to the ROE (as established by the Phase 1 and/or Phase 2 environmental site assessment, including all reports, surveys and/or studies triggered by the Phase 2 environmental site assessment which shall be done during the due diligence period after the date of the ROE and any subsequent Phase I and/or Phase 2 environmental site

assessment of the Property, including all reports, surveys and/or studies triggered by the Phase 2 environmental site assessment, and other tests that maybe conducted by Developer, copies of which shall have been provided to the City, or (b) which may migrate, enter, or leach onto, above or beneath the Property, at any time, from an adjacent property or properties at no fault of Developer ((a) and (b) are collectively, "Other Environmental Conditions"). This covenant shall survive the expiration or earlier termination of this Agreement.

4.24.3 In the event of a spill, release, escape, or discharge of Hazardous Materials in violation of Environmental Laws ("release") on the Property while Developer is in possession of the Property, or adjacent to the Property if caused by Developer or persons acting under Developer, Developer shall take immediate corrective action to correct or remove the cause of the release, shall contain, clean, remove, and remediate any resulting contamination in compliance with Environmental Laws, and shall restore the Property and any affected areas and waters to a condition that is acceptable to and that meets all applicable standards of the governmental agencies with applicable jurisdiction, such as the State Department of Health ("DOH") and the United States Environmental Protection Agency ("EPA"). Developer shall also be responsible for all associated reporting requirements. Developer shall undertake all of these obligations at its sole cost and expense.

4.24.4 Developer shall maintain and employ debris, pollution, and contamination control measures, safeguards, and techniques to prevent debris, pollution, or contamination to ocean waters, streams, or waterways resulting from the activities of Developer, its contractors and agents, in connection with the Property.

4.24.5 Notwithstanding any provision to the contrary in this Agreement, if Hazardous Materials in violation of Environmental Laws are encountered on or adjacent to the Property, Developer shall immediately notify the City and shall immediately cease all activity that may disturb or otherwise contribute to a release. Developer shall not be responsible for such Hazardous Materials if Developer can establish, based upon the Phase 1 and/or Phase 2 environmental site assessments (including all reports, surveys and/or studies triggered by the Phase 2 environmental site assessment), and any other studies or evidence that may then be provided by Developer, that the Hazardous Materials were present before Developer occupied the Property pursuant to the Lease and were not the result of Developer's use or occupancy of the Property.

4.24.6 Developer shall ensure that all waste generated from its demolition and construction activities shall be properly handled

and disposed of, at its own expense, in accordance with all applicable laws and regulations.

4.24.7 For purposes of this Agreement:

4.24.7.1 "Environmental Laws" shall mean all Federal, State, and City laws of every nature, including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law, which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption, or otherwise, which in any way may pertain to, relate to, or have any relevance to the environment, health or safety. Environmental Laws include, but are not limited to, regulations and orders of the EPA and DOH.

4.24.7.2 "Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be in the future, or has been determined by State or Federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the DOH or Federal authorities.

4.24.7.3 "Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, Hazardous Substance, and/or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, or any other Federal, State, or City Environmental Laws, regulations, ordinances or rules, whether existing or subsequently enacted.

4.25 Inspections and Monitoring. During normal business hours and with reasonable advance written notice of not less than two (2) Business Days, all of Developer's records relating to the Property and the Project shall be made available for examination by the City.

4.26 Financing Contingency. Notwithstanding anything in this Agreement to the contrary, Developer, at any time prior to the execution of the Lease, may terminate this Agreement upon prior written notice to the City if Developer, in its sole discretion and after exercising commercially reasonable efforts and due diligence, determines that it is unable to obtain sufficient Tax

Credits, Bonds, or other financing acceptable to Developer, in its sole discretion, as Developer determines is reasonably necessary to construct, own, and operate the Project in a timely manner. If Developer properly elects to terminate this Agreement pursuant to this Section 4.27, this Agreement, then the rights and obligations of the City and Developer shall be cancelled and of no further force or effect, except as otherwise expressly provided in Section 14.23 of this Agreement.

4.27 Termination for Infeasibility. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that Developer's ability to perform certain responsibilities hereunder prior to the execution of the Lease are contingent upon actions by third parties. Developer agrees to work with its consultants to show progress throughout the process. The parties therefore agree that Developer shall notify the City by written notice of any matter that shall be a condition precedent to Developer's ability to execute the Lease and to proceed with the development of the Project and to fulfill the terms and conditions of this Agreement ("Development Contingency"), provided that Developer shall use its commercially reasonable efforts to satisfy such Development Contingency. Failure to provide evidence of Developer's commercially reasonable efforts will result in a termination of the Development Rights.

If, after the commercially reasonable efforts of Developer, a Development Contingency does not or cannot occur in a manner consistent with the development plan for the Project and in a manner which reasonably permits the accomplishment of the Project in accordance with this Agreement, the parties will negotiate in good faith to revise the development plan in a mutually acceptable fashion by extending deadlines, revising budgets or otherwise. If the parties cannot agree as to a revision of the development plan within sixty (60) calendar days, or such longer period as may be mutually agreed upon the parties, Developer or the City may terminate this Agreement upon written notice to the other.

If Developer is not able to develop a rental housing facility due to any conditions due to delays, Developer shall provide to the City and the City Council its recommendations for any changes in facility use or the target populations to be served by the proposed development at the Project site before taking further action.

4.28 Maintenance and removal of the Photovoltaic System. In the event that a Photovoltaic Agreement is entered into by Developer or its designee, pursuant to Section 2.2.7. Developer or its designee shall ensure that the Photovoltaic System is maintained in compliance with all applicable Federal, State and County laws, regulations, codes and rules, including but not limited to, all Environmental Laws.

Upon the earlier to occur of (a) the termination of the use of the

Photovoltaic System, or (b) the expiration or sooner termination of the term of the Lease, Developer or its designee shall cause the Photovoltaic System to be removed from the Project and shall restore and repair any roof penetrations in the roof of the Project or elsewhere. Developer, or its designee, shall have sixty (60) days following the termination of the use of the Photovoltaic System, or the expiration or sooner termination of the Lease, whichever is first, for the purpose of removing the Photovoltaic System, including the restoration and repair described above.

4.29 Affordability Restrictions. Upon the execution of the Lease, Developer shall comply with affordability restrictions applicable to Developer's use of and activities on the Property for the term of the Lease. Notwithstanding the foregoing, Developer shall comply with all use and affordability requirements set forth in the Lease for the entire term of the Lease. The use of and activities upon, the Property shall at all times comply with all applicable requirements and other laws.

ARTICLE 5. CITY'S OBLIGATIONS.

5.1 Cooperation.

5.1.1 The City and Developer shall keep the other fully informed as to the status of all approvals and delays for which each party is responsible, and shall at all times act in good faith, reasonably, and in full cooperation with the other party in connection with the entitlement, construction, development, financing, and operation of the Project, except where this Agreement provides that a party shall have sole and absolute discretion. Such cooperation shall include, but not be limited to, the following:

5.1.1.1 Responding to all requests for review, consent and approval within ten (10) Business Days of the receipt of such request, unless a different time period is expressly required hereunder or mutually agreed to by the parties; provided, however, that if circumstances prevent the City from responding within such time period, the City shall notify Developer, provide Developer with a reasonable estimate of when the City expects to respond, and shall respond within a reasonable time thereafter; provided further that the requests for review shall not include City regulatory agency reviews (e.g., permit applications to be reviewed by the Department of Planning and Permitting) or action before the City Council or any other reviews that are not deemed the responsibility of the City Liaison (as defined below) by the terms of this Agreement.

5.1.1.2 In connection with any reasonable request by a requesting party hereto for a consent or approval required under this Agreement, not unreasonably conditioning, delaying, or withholding such

consent or approval, except where this Agreement provides that a receiving party shall have sole and absolute discretion;

5.1.1.3 Expressing support for the Project, and facilitating, supporting, and cooperating in various community and public stakeholder meetings and discussion forums, at no cost to the City; and

5.1.1.4 Supporting and assisting Developer with the City Council approval process.

5.2 Appointment of City Liaison. The City hereby appoints the DLM Director or the DLM Director's designee as its primary contact person and manager of the Project and the Property on behalf of the City ("City Liaison"). This City Liaison shall only be responsible and able to speak to contractual obligations and issues arising directly under this Agreement and pertaining to the City's proprietary capacity as a party to this Agreement. The City Liaison shall not, under any circumstances, be authorized or available to address or comment on questions of Project entitlements, legality, or compliance with City ordinances, codes, rules, or other requirements – all such questions being answerable or addressable only by the responsible City Departments in the ordinary course of their operations. The City shall have the right to change or substitute said City Liaison at any time, so long as the Developer is notified at least fifteen (15) calendar days in advance, and in writing, of such substitution. The City Liaison shall be the authorized agent of the City for purposes of carrying out the City's contractual rights and obligations under this Agreement, and as limited above, and Developer shall be entitled to receive and rely upon information from the City Liaison as it pertains to rights and obligations under this Agreement, to the same extent as if it were from the City directly. Any information or direction provided by Developer to the City Liaison pertaining to rights and obligations under this Agreement, and as limited above, shall be deemed to have been provided to the City. Furthermore, all approvals required to be considered by the City under this Agreement, and as limited above, shall be directed to and answered by the City Liaison, unless otherwise expressly reserved in this Agreement or applicable law for City Council approval.

5.3 Reserved.

5.4 GET and Real Property Tax Exemptions. Upon request by Developer and provided the Project qualifies for an exemption from general excise tax or real property tax under applicable laws, ordinances or rules, the City agrees to cooperate with Developer in submitting claims for exemptions from taxes on behalf of itself or its contractors, consultants, or assigns only after execution of the Lease and Notice to Proceed for commencement of construction. Developer shall be responsible for all associated costs.

ARTICLE 6. CONDITIONS PRECEDENT TO EXECUTION OF THE LEASE

The conditions that must be satisfied before the Lease is executed are as follows:

6.1 This Agreement shall be approved by the City Council and executed by the City and Developer.

6.2 A public hearing shall be held on proposed lease rent in accordance with ROH Section 28-3.4(h).

6.3 Once the Developer has completed its due diligence investigations pursuant to Section 4.1, finalized the Project scope based on the requirements of Developer's lenders and investors and feedback from governmental authorities, community groups, and public stakeholders, and agreed on a final form of the Lease with the City pursuant to Section 2.2.10, the City shall transmit the final version of the Lease to the City Council for approval by resolution. The City Council's approval, in its absolute discretion, of the Lease by resolution shall be a condition precedent to the execution of the Lease.

6.4 There shall be no material defaults by Developer under this Agreement that have occurred and are continuing after the giving of written notice and expiration of the applicable cure period under this Agreement.

6.5 The Construction Plans shall have been approved by the City and by the Disability and Communication Access Board, pursuant to Sections 4.7 and 4.12.4 herein.

6.6 A rental program shall have been approved by the City pursuant to Section 4.10 herein.

6.7 Developer shall have consulted with SHPD and have evidence of an understanding regarding historic preservation requirements for the Project. If an archaeological inventory survey is required, such archaeological inventory survey shall be completed prior to the execution of the Lease.

6.8 Developer shall have provided, to the reasonable satisfaction of the City, evidence that there are funds available and committed to Developer sufficient to pay for one hundred percent (100%) of the Project costs in accordance with Section 4.15 herein. Developer shall allow the City the right to promptly review and approve, the proposed final version of the loan documents required by each Project lender, which approval shall not be unreasonably withheld, conditioned or delayed; provided that the City shall conduct such review and respond to such request for approval in a timely manner as may be requested by Developer.

6.9 Developer shall have conducted, at its own cost, a Hazardous Materials Survey, a Phase 1 environmental site assessment (pursuant to ASTM E1527-13) and a Phase 2 environmental site assessment.

6.10 Developer shall have complied with the requirements of the Environmental Impact Laws and, unless an exemption under the Environmental Impact Laws apply to the Project, the accepting authority shall have accepted as final any environmental assessment or environmental impact statement, to the extent required by law, and no legal challenges shall have been filed in the time allotted pursuant to Section 343-7, HRS. If an exemption applies to this Project under the Environmental Impact Laws, then Developer shall have conducted such studies and evaluations of the Project as identified in Section 4.3 hereof, which collectively demonstrate that the Project will not have a significant impact on the environment.

6.11 Developer shall demonstrate to the City's reasonable satisfaction that it has reached an agreement with the Kapolei Master Association with respect to the assessments that will be applicable to the Project.

6.12 Developer shall have delivered to the City certificates or other satisfactory evidence that Developer has obtained or caused its Contractor (defined below) to obtain the bonds required pursuant to Article 10 of this Agreement.

ARTICLE 7. CONDITIONS PRECEDENT TO COMMENCEMENT OF CONSTRUCTION

Developer shall not commence with any part of construction of the Project until a Notice to Proceed has been issued by the City. The Notice to Proceed shall be issued upon Developer's request upon the fulfillment, to the City's reasonable satisfaction, of all of the following conditions precedent:

7.1 Developer shall have performed and complied with all agreements and conditions required to be performed and complied with by Developer pursuant to this Agreement prior to or at Commencement of Construction. As used herein, "Commencement of Construction", shall mean the date that Developer commences actual construction of the Project or any portion thereof after the building permit for such construction has been issued.

7.2 Developer shall furnish to the City evidence satisfactory to the City that Developer has obtained all required permits for the proposed construction, including but not limited to, the applicable NPDES permits and superstructure permit or building permits.

7.3 Developer shall furnish to the City one (1) complete set of plans and specifications for the Project approved by the City and the Disability and Communication Access Board.

7.4 Developer shall furnish to the City evidence that Developer has obtained the approvals of the Board of Water Supply, the Department of Environmental Services, Hawaiian Electric Company, and all other required

entities for all connections to off-site infrastructure and for the Wakea and Manawai Street roadway improvements, pursuant to Section 4.12.11 herein.

7.5 Developer shall have entered into one or more construction contracts (collectively, the "Construction Contract") that covers the entire development and construction of the Project. The Construction Contract must be in form and content reasonably satisfactory to the City and shall be assignable to the City upon Developer's uncured breach of this Agreement, subject to the rights of the lender(s) providing financing for the Project and only upon such lender(s)' prior written consent. The general contractor ("Contractor") for the construction of the Project shall be acceptable to the City in its reasonable discretion. Developer shall provide the City a copy of the executed Construction Contract.

7.5.1 Contractor(s) and sub-contractor(s) shall be licensed in accordance with HRS Chapter 444 and HAR Chapter 16-77 for the corresponding work that shall be performed on the Project.

7.5.2 The Developer shall not employ, use or subcontract any Contractor(s) currently suspended under Chapter 104, HRS, as indicated on the State of Hawaii Department of Labor and Industrial Relations website.

7.6 Any contract for architectural services shall be satisfactory to the City and shall be assignable to the City upon Developer's uncured breach of this Agreement, subject to the rights of the lender(s) providing financing for the Project and only upon such lender(s)' prior written consent. Developer shall furnish the City with a copy of the architectural contract.

7.7 Any contract for engineering services shall be satisfactory to the City and shall be assignable to the City upon Developer's uncured breach of this Agreement, subject to the rights of the lender(s) providing financing for the Project and only upon the prior written consent of such lender(s). Developer shall furnish the City with a copy of the engineering contract.

7.8 Developer or its Contractor shall procure and furnish to the City a copy of a performance and payment bond equal to one hundred percent (100%) of the Construction Contract for the work to be commenced as set forth in Article 10.

7.9 The City shall be named as a co-obligee on such bond. The Project lender(s) may also be named as co-obligee(s) on such bond.

7.10 Developer shall furnish to the City a construction schedule for the Project and any updates as requested by the City, which schedule shall be subject to the City's reasonable approval and binding upon Developer, subject to the terms and conditions of this Agreement.

7.11 Developer shall furnish to the City a breakdown of the total development cost of the Project, including estimated contingencies.

7.12 Developer shall provide updated evidence reasonably satisfactory to the City that there are funds available and committed to Developer sufficient to pay for one hundred percent (100%) of the total estimated balance of the construction costs.

7.13 The Lease has been fully executed and a short form of the Lease has been recorded in the State of Hawaii Bureau of Conveyances, or the office of the assistant registrar of the land court of the State of Hawaii, or both ~~and/or the Land Court~~, as ~~applicable~~appropriate.

7.14 Developer shall have a waste management plan and a noise and dust abatement plan that have been approved by the City.

7.15 The representations and warranties of Developer contained in this Agreement and otherwise made by or on behalf of Developer in writing, in connection with this Project shall apply.

ARTICLE 8. CONSTRUCTION

8.1 City Inspection. Upon twenty-four (24) hours prior written notice to Developer, the City and its agents, including any appraiser, inspector, architect, or engineer who may be retained by the City, shall at all times during normal hours of the construction of the Project, have the right of entry upon and reasonable access to the Property, subject to safety and other monitoring conditions or requirements reasonably imposed by Developer or the Contractor. The City and its agents shall have the right to inspect all work done, labor performed, and materials furnished in and about the construction site and to inspect all books, contracts, records, and papers of Developer relating to the development, financing, and construction of the Project under this Agreement. The City and its agents shall not interfere with the work in progress. At least two (2) weeks prior to start of construction, Developer shall furnish the City with a current construction schedule, and updated Development Schedule. The City shall be invited to Developer's pre-construction meeting with its Contractor and to Developer's regularly scheduled owner-architect-contractor ("OAC") meetings for the Project; provided that Developer may proceed with any such meeting as scheduled if the City is unable to attend such meeting.

8.2 Coordination of Construction with Ongoing Activities. Developer shall coordinate its construction on the Property and shall also cooperate with other landowners and other activities taking place in the vicinity of the Property. Developer shall be responsible for repairing or paying for the costs of repairing any damage that its activities may cause to any existing improvements, other than improvements that are replaced, removed, or demolished as part of the approved construction.

8.3 Submittals to the City Upon Completion of Construction. Within five (5) Business Days of receipt of each item, Developer shall submit the following to the City:

8.3.1 A certification by an architect or engineer duly licensed under the laws of the State of Hawaii that the improvements have been completed in accordance with the Project plans and specifications upon the completion of such work.

8.3.2 One half-sized print set, and an electronic "pdf" file on Compact Disk ("CD"), or as otherwise directed by the City, of "as built" drawings reflecting all construction changes, alterations, or deletions and bearing the seal and signature of the registered professional engineer or architect, after each increment of construction work has been completed.

8.3.3 All copies of the Certificates of Occupancy issued by the City for the increment of construction work completed.

8.3.4 Copy of the Affidavit of Publication filed at the First Circuit Court of the State of Hawaii indicating that a notice of completion of the applicable increment of construction work has been published.

8.4 Construction by Hawaii Workforce. Developer, its contractors and subcontractors shall comply with HRS Chapter 103B (Act 68 SLH 2010), as amended by Act 192 SLH 2011 and implemented by State of Hawaii Comptroller's Memorandum No. 2011-18 dated July 25, 2011 to ensure that Hawaii residents compose not less than eighty (80%) percent of the workforce employed to perform the contract for the construction of this Project. Every contractor shall comply with this requirement for the entire duration of its contract on the project. Certifications of Compliance for Employment of State Residents shall be made under oath by an officer of the general contractor and subcontractor whose subcontract is $50,000 or more and submitted to City. Shortage trades, as determined by the State of Hawaii Department of Labor and Industrial Relations, shall not be included in the calculation. All improvements under this Agreement shall be a public building for purposes of this requirement.

ARTICLE 9. INSURANCE AND INDEMNITY

9.1 Indemnity. Developer shall defend, indemnify, and hold harmless the City from and against all claims, demands, losses, judgments, fines or penalties whatsoever that are incurred by the City for: (a) failure of Developer or its agents and employees to make any required disclosures in connection with the Project to tenants or any other person or other entities, as required by law; (b) any misrepresentations made by Developer or its agents and employees in connection with the Project to any person or entity; (c) any failure by Developer, its agents or employees or any party claiming under Developer, to comply with

any laws, regulations, ordinances, orders or other legal authority applicable to such party's use, occupancy, or activity on the Property (excluding any Other Environmental Condition); and (d) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the development and construction of the Project by Developer, its agents, employees, contractors, subcontractors, or invitees, or in the event of accident, fire, or any failure by Developer to keep the Project in a safe condition during the development and construction of the Project; provided that such claims, loss, or damage is not the result of the negligence or willful misconduct of the City, its officials, directors, agents or employees, or the result of any Other Environmental Condition.

9.2 Insurance.

9.2.1 Developer's Insurance. At all times during the term of this Agreement and until such time as action against the City, Developer, its Contractor or subcontractors for death, injuries, losses, and damages is barred by the provisions of Chapter 657, HRS, Developer shall procure and maintain in full force and effect, at Developer's sole expense, any and all insurance that may be required by any laws as they may pertain to Developer's activities under this Agreement, as well as the following policies of insurance in the following amounts:

9.2.1.1 Workers Compensation and Employers Liability Insurance. Developer shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than:

Bodily Injury – Each Accident	$500,000
Disease – Policy Limit	$500,000
Disease – Each Employee	$500,000

The policy must include a waiver of subrogation in favor of the City.

9.2.1.2 Liability Insurance. Developer shall maintain commercial general liability (CGL) with a limit of not less than:

General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Personal/Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-

completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The policy shall be endorsed to redefine the word occurrence to include construction defect coverage. City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and as appropriate CG 20 37 (or equivalent), and under the commercial umbrella. The policy(ies) shall contain a waiver of subrogation in favor of the City.

9.2.1.3 Business Automobile Liability Insurance. Developer shall maintain business auto liability insurance covering all owned, non-owned, and hired automobiles with limits of not less than:

Bodily Injury – Per Person	$1,000,000
Bodily Injury – Per Accident	$1,000,000
Property Damage – Each Accident	$1,000,000

The City shall be included as an additional insured under the Business Automobile Liability Insurance.

9.2.1.4 Umbrella/Excess Liability. Developer shall maintain umbrella/excess liability insurance with limits of not less than:

Each Occurrence	$10,000,000
Aggregate	$10,000,000

with the aggregate to apply per project/per location. Such insurance shall be written on an occurrence basis in excess of the underlying insurance described in Sections 9.2.1.1 through 9.2.1.3, which is at least as broad as each of the underlying policies, and otherwise including “pay on behalf” wording, concurrency of effective dates with underlying primary coverages, blanket contractual liability, and construction defect coverage. The amounts of insurance required in Sections 9.2.1.1 through 9.2.1.4 may be satisfied by Developer purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the total limits required under this Section 9.2.1.4.

9.2.1.5 Professional Liability Insurance. Developer shall require that the architect hired by Developer maintain professional liability insurance with limits of not less than:

Each Common Cause	$3,000,000
Aggregate	$3,000,000

covering such architect’s employees, agents, and any subcontractors and subcontractors’ employees or agents for liability arising out of errors, omissions, or negligence in the performance of Professional Services

relating to the Project or this Agreement. Any design professional or consultant hired by Developer's architect as a subcontractor shall maintain professional liability insurance with limits of not less than $1,000,000 per occurrence and in the aggregate. Such insurance shall remain in full force and effect continuously for the period of design and construction of the improvements, and for a period of three (3) years following substantial completion of construction of the Project, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed. For the purposes of this section, "Professional Services" has the meaning set forth in Section 103D-104, HRS.

9.2.1.6 Environmental Impairment Liability or Contractors Pollution Liability Insurance. Developer shall maintain, or cause its Contractor to maintain, environmental impairment liability or contractors pollution liability insurance covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the Property, Developer's activities or completed operations. Such requirement shall commence upon the commencement of construction of the Project, and terminate no less than three (3) years after the receipt of the final Certificate of Occupancy for the Project issued by the City for the final increment of construction work completed. The limits of coverage will not be less than:

Each Common Cause	$2,000,000
Aggregate	$ 4,000,000

9.2.2 Insurance Coverage For Construction Phase. Prior to ~~commencing~~ Commencement of ~~c~~Construction or site preparation work**,** Developer shall procure or cause to be procured and maintain (as provided herein), all insurance to cover the demolition, construction and development activities under this Agreement, that may be required by any laws, in addition to the coverages specified in above, and the following types and amounts of insurance described below.

(a) Builders Risk Insurance. Developer shall maintain builders risk insurance covering all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, and windstorm. The insurance shall apply on a replacement cost basis. This insurance shall cover the entire work at the site, including all improvements, materials, and equipment, and reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work, materials, and equipment located away from the site but intended for use at the site, and shall also cover portions of the work, materials, and equipment in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the

site. The policy shall cover the cost of removing debris, including demolition. The insurance required shall name as insured, the City, Developer, Contractor, and all subcontractors that perform work on the Project.

Developer is responsible for paying any portion of any loss not covered because of the operation of any deductible or co-insurance provision applicable to the insurance required herein.

(b) Boiler and Machinery Insurance. Developer shall maintain boiler and machinery insurance covering insured objects, including rooftop HVAC units and any separate heating units or boilers which serve the Property, during installation and testing and until final acceptance, and including mechanical breakdown. Such coverage shall be for the full replacement value without deduction for depreciation. This insurance shall name as insured the City, Developer, Contractor, and all subcontractors that perform work on the Project.

(c) Developer shall be responsible for any and all loss or damage to equipment, tools, and other personal property, and may at its option purchase insurance to cover such property and equipment.

9.2.3 Nature of Insurance Program. All insurance policies required by this Agreement shall be issued by carriers that: (a) have a policyholders' rating of "A-, VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State. Developer may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.

9.2.4 Policy Requirements and Endorsements. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

9.2.4.1 Contractor Insurance. Developer shall either: (a) include all contractors as insureds under all insurance set forth above; or (b) cause each contractor employed by Developer to purchase and maintain insurance of the types specified above. Permission is granted for the Developer to secure General Liability and Excess Liability insurance as required under sections 9.2.1.2 and 9.2.1.4 under an insurance program commonly referred to as an Owner Controlled Insurance Program (OCIP)

covering both the Developer and all enrolled contractors as long as the coverage and limits are substantially the same as what is required above. When requested by the City, Developer shall furnish copies of certificates of insurance evidencing coverage for each contractor.

9.2.4.2 Insureds. Insurance policies shall identify the City as an "additional insured" using ISO additional insured endorsement form CG 20 10 (or equivalent), and as appropriate CG 20 37 (or equivalent), and under the commercial general liability umbrella policy ~~will also be required~~. Insurance policies shall name the City and Developer as loss payees as their respective interests may appear, and each mortgagee this Agreement allows under a standard noncontributing mortgagee clause. Notwithstanding anything to the contrary, all insurance proceeds shall be paid and applied as this Agreement provides. On all insurance policies where the City is named as an additional insured, the City shall be an additional insured to the full limits of coverage purchased by Developer even if those limits are in excess of those required under this Agreement.

9.2.4.3 Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that the City may carry, and Developer's insurers shall not seek contribution from other insurance available to the City.

9.2.4.4 Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for Developer's indemnity obligations under this Agreement, to the extent covered by customary contractual liability insurance coverage. Developer's failure to obtain such contractual liability coverage shall not relieve Developer from any indemnity obligation under this Agreement.

9.2.4.5 Severability of Interest. Liability insurance policies shall contain a clause clarifying that, except with respect to coverage limits, the insurance applies separately to each insured and that the policy covers claims or suits by one insured against other, to the extent customarily covered by liability insurance policies.

9.2.4.6 Notice to City. All policies required hereunder shall be written to provide not less than thirty (30) calendar days prior notice of cancellation or material change to City; provided that upon Developer's request, the City shall allow Developer to assume this obligation if Developer demonstrates that its insurers will not provide such notice at a reasonable cost.

9.2.5 Waiver of Certain Claims. Notwithstanding anything to the contrary contained in this Agreement, Developer and the City each waive any right of recovery against the other party, for any loss or damage sustained by Developer or the City, as the case may be, that is

covered by any policy of property insurance maintained (or required to be maintained under this Agreement) with respect to the Property, or the contents of the same or any operation in the Property, whether or not such loss is caused by the fault or negligence of the City or its agents, directors, or employees, or is caused by the fault or negligence of Developer or its agents, directors, employees or officers.

9.2.6 Waiver of Subrogation. Developer shall require all insurance policies in any way related to the Agreement and secured and maintained by Developer to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against the City. Developer shall require of contractors and consultants, by appropriate written agreements, similar waivers against the City. If Developer's policy of insurance relating to this Agreement or to the Property does not permit the foregoing waiver or if the coverage under such policy would be invalidated as a result of such waiver, Developer shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against the City in connection with any claim, loss, or damage covered by such policy.

9.2.7 Evidence of Insurance.

9.2.7.1 Upon execution of this Agreement by Developer, Developer shall furnish the City with current certificate(s) of insurance, executed by a duly authorized representative of each insurer, certifying that at least the minimum coverages required herein are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages will not be cancelled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without sixty (60) calendar days advance written notice to the City.

9.2.7.2 Prior to commencing construction work at the Property, Developer shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 9.2.2 above.

9.2.7.3 Upon final acceptance of the Construction, and prior to the use or occupancy of any improvements, Developer shall furnish City with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the applicable insurance required under the Lease.

9.2.7.4 Developer shall provide certified copies of all insurance policies required above within ten (10) calendar days of the City's written request for said copies.

9.2.7.5 Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Developer's obligations to maintain such insurance.

9.2.7.6 The acceptance of delivery by the City of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the City that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Agreement.

9.2.8 Deductibles, Retentions, and Co-Insurance. Developer is solely responsible for any loss or portion of loss not covered by the insurance required herein by reason of the application of any deductible, self-insured retention, or co-insurance provision of the respective policy(ies), or due to policy limits or exclusions.

9.2.9 Failure to Maintain Insurance.

9.2.9.1 Failure to maintain the required insurance may result in termination of this contract at the City's option after the giving of written notice to Developer and opportunity to cure of not less than ten (10) Business Days. If the City is damaged by the failure of Developer to maintain insurance as required in this paragraph, then Developer shall bear all reasonable costs properly attributable to that failure.

9.2.9.2 City shall have the right, but not the obligation, to prohibit Developer or any of its contractors or subcontractors from entering the Property until Developer has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the City.

9.2.9.3 If Developer fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at Developer's expense. In no event shall the City be liable for payment of premiums due under any policy issued to Developer by reason of the City being added as an 'insured' as required herein.

9.2.9.4 Failure to maintain the required insurance may result in termination of this contract at the City's option after the giving of written notice to Developer and opportunity to cure of not less than ten (10) Business Days.

9.2.10 Additional Insurance. City reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed from time to time. Developer shall periodically, but not less

frequently than once every three (3) years, reevaluate the scope of risks covered and the limits of its insurance and, if commercially reasonable, increase such coverage or limits in order to provide coverage for Developer's and City's protection for risks and limits that a prudent business person would provide for property being put to uses similar to those of the Property.

9.2.11 No Representation. City makes no representation that the limits of liability required to be carried by Developer pursuant to this Article are adequate to protect Developer. If Developer believes that any of such insurance coverage is inadequate, Developer shall obtain such additional insurance coverage as Developer deems adequate, at Developer's sole expense. No approval by City of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by City of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, or to limit Developer's contractual obligations and liabilities, and Developer assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

ARTICLE 10. PERFORMANCE AND PAYMENT BONDS.

10.1 Acceptable Development Contract Performance and Payment Bonds. Prior to the Commencement of Construction, Developer shall provide or shall cause the Contractor to provide, at no cost to the City, a performance and payment bond covering the cost of the Construction Contract. Acceptable performance and payment bonds shall be limited to surety bonds underwritten by a company licensed or otherwise authorized under applicable law to issue bonds in the State. The bonds must be issued by a corporate surety who is listed on the United States Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds," and the A.M. Best rating of the corporate surety issuing such bonds must be rated A or higher. The corporate surety issuing such bonds shall not be a captive or an entity related in any way to Developer.

10.2 Bond Forms.

10.2.1 Developer shall execute or cause the Contractor to execute the surety performance and payment bond substantially in the form attached as **Exhibit G**, or as otherwise reasonably approved by the City.

10.2.2 The Contractor shall be the principal, and the surety shall be a corporate surety satisfactory to the City. A performance and payment bond obtained from a captive insurance company or other entity related in any way to Developer shall not be permitted. The bond

shall be conditioned upon the full and proper performance of the work in accordance with the plans and specifications approved by the City and upon the payment of all materials and labor in connection with the development and construction of the Project.

10.3 [RESERVED]

10.4 Payment Claims Against the Payment Bond.

10.4.1 Each person who has furnished labor or material to Developer for the work required under this Agreement for which a payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety (90) calendar days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against Developer or Developer and its sureties, on the payment bond and have its rights and claims adjudicated in the action, and judgment rendered thereon; subject to the City priority on the bond, if such priority is approved by the Project's lender(s).

As a condition precedent to any such suit, written notice shall be given by registered or certified mail to Contractor, Developer, and surety, within ninety (90) calendar days from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

10.4.2 Every suit instituted upon a payment bond shall be brought in the First Circuit Court of the State of Hawaii, but no suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in this Agreement. The obligee named in the bond need not be joined as a party in any suit.

10.4.3 With respect to any such payment bond, if the full amount of the liability of Developer or Developer and its sureties on the security is insufficient to pay the full amount of the claims, then after paying the full amount due to the City (if any), the remainder shall be distributed pro rata among the claimants.

10.4.4 Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall

be prima facie evidence of the contents, execution, and delivery of the original.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY.

11.1 Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Developer agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

11.2 Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

ARTICLE 12. REPRESENTATIONS AND WARRANTIES

12.1 Developer's Representations and Warranties. Developer represents and warrants to the City to the best of its knowledge and belief, as of the Effective Date and as of the date the Lease is executed by Developer, as follows:

12.1.1 Execution of this Agreement on behalf of Developer by the signatory hereto is duly authorized, Developer has the full right and authority to enter into this Agreement and all documents contemplated hereby, and the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Agreement by Developer. Upon full execution, this Agreement shall be valid, legally binding, and enforceable against Developer according to its terms. Developer and the person signing below for Developer further represent and warrant that there are no restrictions, agreements, or limitations on Developer's right or ability to enter into and perform the terms of this Agreement.

12.1.2 No consents or approvals are required to be obtained from any governmental body or agency for the execution, delivery, and performance of this Agreement by Developer or, if required, the same have been obtained.

12.1.3 All tax returns and reports of Developer required by law to be filed have been duly filed and all taxes, assessments,

contributions, fees, and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith) upon Developer's properties or assets or income which are due and payable have been paid, and Developer has submitted applicable State and Federal tax clearance certificates prior to execution of this Agreement.

12.1.4 Developer is not in violation of or in default with respect to any term or provision of any mortgage, indenture, contract, agreement, or instrument which materially and adversely affects or will materially and adversely affect the business or prospects or condition (financial or other) of Developer or the Project. The execution, delivery, performance of, and compliance with this Agreement will not result in any such violation or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien, or charge on any of the properties or assets of Developer. There is no term or provision of a mortgage, indenture, contract, agreement, or instrument applicable to Developer or by which Developer is bound which materially and adversely affects or will materially and adversely affect the business or prospects or condition (financial or other) of Developer or Developer's properties and assets.

12.1.5 There is no action, suit, proceeding, or investigation pending, or to the best of Developer's knowledge, threatened against Developer, or the Project in any court, or before or by any governmental entity from which any adverse decision might materially affect Developer's ability to observe and perform Developer's obligations under this Agreement.

12.1.6 Any financial statements of Developer delivered to the City are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles, and fairly represent the financial condition of Developer as of the date of financial statements. No materially adverse change has occurred in Developer's financial condition since the date of the financial statement.

12.1.7 Developer has made no contract or arrangement of any kind, and has taken no action or failed to take any action that would give rise to a lien on the Project, except for, and to the extent, applications for Project financing result in awards, loans, or financing which would result in a lien upon the closing of such financing.

12.2 City's Representations and Warranties. The City represents and warrants to Developer as follows:

12.2.1 Execution of this Agreement on behalf of the City by the signatory hereto is duly authorized, the City has the full right and

authority to enter into this Agreement and all documents contemplated hereby, and the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Agreement by the City. Upon full execution, this Agreement shall be valid, legally binding and enforceable against the City according with its terms.

12.2.2 To the City Liaison's actual knowledge, without independent investigation, the City has not received written notice of a violation of any law, ordinance, rule, or regulation with respect to the Property

12.2.3 To the City Liaison's actual knowledge, without undertaking any independent investigation, there are no actions, suits, material claims, legal proceedings, or any other proceeding pending or threatened before any court or governmental agency, with respect to the Property, including but not limited to, eminent domain.

ARTICLE 13. DEFAULT; TERMINATION

13.1 Developer's Default and Consequences. In the event Developer:

13.1.1 fails to perform any of its obligations under this Agreement within the prescribed time period as stated in this Agreement;

13.1.2 fails to perform any of its obligations under the Lease within the prescribed time period as stated in the Lease;

13.1.3 fails to execute the Lease or commence construction by the deadline established by the Project schedule, as may be amended, including but not limited to any such default resulting from Developer's failure to satisfy any of the conditions prior to execution of the Lease (as set forth in Article 6) or prior to Commencement of Construction (as set forth in Article 7); subject, however, to Developer's right to extensions pursuant to Section 3.1 or right to terminate this Agreement in accordance with Sections 4.1.2, 4.27 and 4.28;

13.1.4 abandons or substantially suspends construction work other than as is expressly contemplated or permitted by this Agreement or in the Lease; or

13.1.5 attempts to transfer the Property or any interest therein, other than as permitted under the Lease;

Then the City shall notify Developer in writing of such default.

Developer shall have fifteen (15) calendar days to cure any default which can be remedied and cured by the payment of money. If a default cannot be remedied by the payment of money ("Nonmonetary Default"), Developer shall

have thirty (30) calendar days from the receipt of written notice of such default in which to cure such Nonmonetary Default. Developer shall immediately proceed with taking all action necessary to cure the Nonmonetary Default. If a Nonmonetary Default cannot be cured within said 30-day period, Developer shall submit a written request to the City for an extension of time to cure the Nonmonetary Default supported by the reasons thereof. The City may, within its reasonable discretion, grant such extension. During such period of default, Developer shall continuously and diligently attempt to cure the default, shall as reasonably as possible protect the Project site from loss or damage, and shall maintain the Development Schedule to the extent that it is practicable to do so.

After Developer has been declared in default and provided written notice thereof by the City, and Developer has failed to cure such default within the applicable cure period prescribed above, the City shall have all legal and equitable rights to which the City may be entitled under this Agreement and the laws of the State, including the right to terminate this Agreement. In the event the City terminates this Agreement, if required by the City, Developer shall raze all improvements constructed by Developer and restore the Property to the condition substantially similar to that existing as of the date prior to the execution of the Lease.

13.2 City's Default and Consequences. In the event the City fails to perform in a timely manner any of its obligations stated in this Agreement, Developer shall notify the City in writing of its default. If the default is not cured within thirty (30) calendar days of the written notice, or, if not reasonably curable within such 30-day period, cured within such further period of time as may be reasonably requested by City in writing and approved by Developer, so long as the City continuously and diligently attempts to cure the default, then, Developer may terminate this Agreement and/or exercise all rights and remedies available at law or in equity.

13.3 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.

13.4 Termination for Illegal Purposes. At any time during the term of this Agreement, the City shall have the right to terminate this Agreement if the Property, or any part of the Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime by Developer; provided that (a) the City shall first provide Developer with written notice of such illegal use or activity and allow Developer not less than forty-eight (48) hours from receipt of such written notice to commence action to

terminate such illegal use or activity on the Property; and (b) the City shall not have the right to terminate this Agreement if Developer commences action to terminate such illegal use or activity on the Property within such 48-hour period and diligently prosecutes the same to completion.

ARTICLE 14. MISCELLANEOUS.

14.1 Amendment. The provisions of this Agreement may be amended only by each party executing a subsequent written Agreement which states each amended provision. The terms of this Agreement may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by the City and Developer.

14.2 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.

14.3 Approvals. Any approvals obtained by Developer from the City pursuant to this Agreement shall be for the purposes of this Agreement only. Such approvals shall not be construed to relieve or absolve Developer of compliance with any laws or regulations. Nor shall any such approvals serve as a substitute for, or excuse Developer from obtaining, any required approvals from Federal, State, and City agencies.

14.4 Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of the other party, which may be withheld in such other party's sole and absolute discretion; provided, however, that Developer may, with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed: (i) assign or transfer all or a part of its rights under this Agreement upon the closing of the construction financing for the Project (or a portion thereof if the Project will be developed and ground leased from the City as separate developments on the same terms and conditions as the Lease) to an entity, in each case, that is managed or controlled by Developer or an affiliate of Developer ("Related Developer Entity"); (ii) partially assign or transfer its rights under this Agreement with respect to the development, use and operation of the commercial units to a Related Developer Entity (including the right to lease such commercial units pursuant to a separate ground lease from the City on the same terms and conditions as the Lease for the Project to the extent applicable); and (iii) to collaterally assign its rights under this Agreement to any lender and/or investor of the Project. With respect to any requested assignment under (i), (ii) or (iii) above, Developer shall provide the City with written notice of such assignment and a copy of the proposed assignment document(s).

14.5 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.

14.6 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 ensure compliance with all City and County of Honolulu, State of Hawaii, and 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 Developer. Subject to Sections 4.27 and 4.28 of this Agreement, Developer agrees that it shall immediately take any and all reasonable steps to comply with such amendments and not to jeopardize this Agreement.

14.7 No Party Deemed Drafter. Each party to this Agreement acknowledges and agrees that each party: (a) is of equal bargaining strength; (b) has actively participated in the negotiation and preparation of this Agreement; (c) has consulted with its respective legal counsel and other professional advisors as each party has deemed appropriate with respect to this Agreement; and (d) agrees that neither party shall be deemed the drafter of this Agreement and, therefore, no provision stated in this Agreement shall be construed against any party as its drafter.

14.8 Counterparts. This Agreement may be executed by the parties in counterparts, and the counterparts executed by the parties taken together shall constitute a single agreement.

14.9 Business Days. As used in this Agreement, the term, "Business Day" shall mean any day which is not a Saturday, Sunday, or legal holiday observed by the City, State or Federal government. If the last day of any period ~~which~~ that is calculated using Business Days, as specified in this Agreement, falls on a Saturday, Sunday or legal holiday observed by the City State or Federal government, the last day of such period shall be the next Business Day.

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

14.10.1 "Party" shall mean the City or Developer, and "parties" shall mean the City and Developer.

14.11 Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the control of that party including, but not limited to, an act of God, natural disasters, civil unrest, riots, earthquakes, volcanic eruptions, tsunamis, floods, public enemy, acts of terrorism, invasion, rebellion, revolution, act of foreign enemies, war, fire, nuclear event, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component, an act or failure to act of a government entity (except on the part of the City if the City is claiming an event of Force Majeure), unavailability of materials due to a national or local strike, or actions by or against labor unions (each an event of "Force Majeure"), such party shall not be in default in the performance of its obligations stated in this Agreement; PROVIDED, HOWEVER, that 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 (10) Business Days following the event. If such written notice is provided, the time to perform the obligations stated in this Agreement shall be extended by the number of calendar days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

14.12 Gender; Number. 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.

14.13 Independent Contractor/Non-Agency. There is no partnership, joint venture, employer and employee, master and servant, or other agency relationship between the City and Developer, including guarantors. The City is not a developer of the Project nor the operator and manager of the Project. Developer, inclusive of any person acting by, through, under, or for the benefit of Developer such as, for example, any real estate property manager, shall not represent or hold itself out as being a partner, joint venture, employee, servant or agent of the City. Developer, inclusive of any person acting by, through, under or for the benefit of Developer, does not have the authority to bind, act for or represent the City in any respect.

14.14 Integration. This Agreement contains all of the provisions of the agreements between the parties pertaining to the subject matter stated in this Agreement, except as otherwise provided herein. Each party acknowledges that no person or entity made any oral or written representation 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.

14.15 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 reasonable expenses, including attorneys' fees and costs.

14.16 Memorandum. Concurrently with the execution and recordation of the Lease, a memorandum of this Agreement shall be executed by the parties with the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances, State of Hawaii and/or filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as applicable.

14.17 No Obligations to Third Parties. 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 the other party.

14.18 Notices. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be in writing and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to the other party at the address and to the person designated by each party as follows:

If to the City:

CITY AND COUNTY OF HONOLULU
Department of Land Management
558 S. King Street
Honolulu, Hawaii 96813
Attention: Director

If to Developer:

KG Kapolei Parkway, LLC
1288 Ala Moana Boulevard, Suite 201
Honolulu, Hawaii 96814
Attn.: Ms. Alana Kobayashi-Pakkala

14.19 Headings. The headings of articles, sections, and paragraphs in this Agreement are included for convenience only and shall not be considered in the construction of this Agreement.

14.20 Required Actions by the Parties. Each party named in this Agreement agrees 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.

14.21 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.

14.22 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).

14.23 Survival. The following provisions shall survive the expiration or earlier termination of this Agreement: 4.12.5 (Impact on Waters); 4.12.12 (Chapter 104, HRS); 4.14 (Publicity and Project Signage); 4.19 (Observation of Laws, Ordinances and Regulations); 4.22 (Notice of Claims); 4.24 (Hazardous Materials); 8.3 (Submittals to the City Upon Completion of Construction); 9.1 (Indemnity); and 9.2.9 (Failure to Maintain Insurance).

14.24 Time is of the Essence. Time is of the essence with respect to the performance of the parties' obligations under this Agreement.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

THE CITY:

APPROVED AS TO CONTENT:

CITY AND COUNTY OF HONOLULU

_____
Director
Department of Land Management

_____
By _____
Its _____

APPROVED AS TO FORM
AND LEGALITY:

_____
Deputy Corporation Counsel

DEVELOPER:

KG KAPOLEI PARKWAY, LLC,
a Hawaii limited liability company

By: Kobayashi Group, LLC,
a Hawaii limited liability company
Its Manager

By _____
Name: _____
Its: _____

<u>List of Exhibits:</u>
Exhibit A: Property Legal Description
Exhibit B: Property Map
Exhibit C: Lease
Exhibit D: Development Schedule
Exhibit E: Budget
Exhibit F: City's Sexual Harassment Policy
Exhibit G: Surety Performance and Payment Bond
Exhibit H: Proposed Subdivision Map

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 _____, that instrument was signed on behalf of the City and County of Honolulu by authority of its City Council and the said _____ acknowledged the instrument to be the free act of said the City and County of Honolulu.

Notary Public, State of Hawaii

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

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

On this _____ day of _____, 20___, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawai‘i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

EXHIBIT A
Property Legal Description

LOT 6

Being a portion of Lot 3 as shown on the City and County of Honolulu, Department of Planning and Permitting File No. 2013/SUB-24, being also a portion of Lot 18774 as shown on Map 1494 of Land Court Application 1069.

Situate at Honouliuli, Ewa, Oahu, Hawaii

Beginning at the Northwesterly corner of this parcel of land, on the South side of Kapolei Parkway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 17,422.20 feet South and 1,673.79 feet East, and running by azimuths measured clockwise from true South:

1. 265° 30' 667.00 feet along the South side of Kapolei Parkway;

2. Thence along same, on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 310° 30' 70.71 feet;

3. 355° 30' 293.00 feet along the remainder of Lot 3 as shown on the City and County of Honolulu, Department of Planning and Permitting File No. 2013/SUB-24, being also a portion of Lot 18774 as shown on Map 1494 of Land Court Application 1069;

4. 85° 30' 767.00 feet along the North side of Lots 19704, 19705 and 19706 of as shown on Map 1585 of Land Court Application 1069;

5. 175° 30' 293.00 feet along the remainder of Lot 3 as shown on the City and County of Honolulu, Department of Planning and Permitting File No. 2013/SUB-24, being also a portion of Lot 18774 as shown on Map 1494 of Land Court Application 1069;

6. Thence along the South side of Kapolei Parkway, on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 220° 30' 70.71 feet to the point of beginning and containing an area of 6.015 acres.

19129 Lot 6

ControlPoint Surveying, Inc.
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

Subject to the restriction of vehicle access rights over and across Course 1 of the above described Lot 6.

Subject, to Easement 9765 as shown on Map 1420 of Land Court Application 1069.

Subject, also to Easement 9766 as shown on Map 1420 of Land Court Application 1069.

Subject, also to Easement 10296 as shown on Map 1494 of Land Court Application 1069.

Subject, also to Easement 133 as shown on the City and County of Honolulu Department of Planning and Permitting File No. 2010/SUB-216.

Subject, also to Easement 9714 as shown on Map 1416 of Land Court Application 1069.

CHAD T. KODAMA
LICENSED PROFESSIONAL LAND SURVEYOR
No. 11249
HAWAII, U.S.A.

November 13, 2019
Honolulu, Hawaii

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number 11249
License Expires April 30, 2020

19129 Lot 6

ControlPoint Surveying, Inc.
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

LOT 7

Being a portion of Lot 3 as shown on the City and County of Honolulu, Department of Planning and Permitting File No. 2013/SUB-24, being also a portion of Lot 18774 as shown on Map 1494 of Land Court Application 1069.

Situate at Honouliuli, Ewa, Oahu, Hawaii

Beginning at the Northwesterly corner of this parcel of land, on the South side of Kapolei Parkway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 17,356.84 feet South and 843.36 feet East, and running by azimuths measured clockwise from true South:

1. 265° 30' — 459.54 feet along the South side of Kapolei Parkway;

2. Thence along same, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: 310° 30' 42.43 feet;

3. 355° 30' — 313.00 feet along the West side of Kunehi Street;

4. 85° 30' — 539.54 feet along the North side of Lot 18257 as shown on Map 1416 of Land Court Application 1069;

5. 175° 30' — 293.00 feet along the remainder of Lot 3 as shown on the City and County of Honolulu, Department of Planning and Permitting File No. 2013/SUB-24, being also a portion of Lot 18774 as shown on Map 1494 of Land Court Application 1069;

6. Thence along the South side of Kapolei Parkway, on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 220° 30' 70.71 feet to the point of beginning and containing an area of 4.232 acres.

19129 Lot 7

ControlPoint Surveying, Inc.
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

Subject to the restriction of vehicle access rights over and across Courses 1, 2 and 3 of the above described Lot 7.

Subject, to Easement 9764 as shown on Map 1420 of Land Court Application 1069.

CHAD T. KODAMA
LICENSED PROFESSIONAL LAND SURVEYOR
No. 11249
HAWAII, U.S.A.

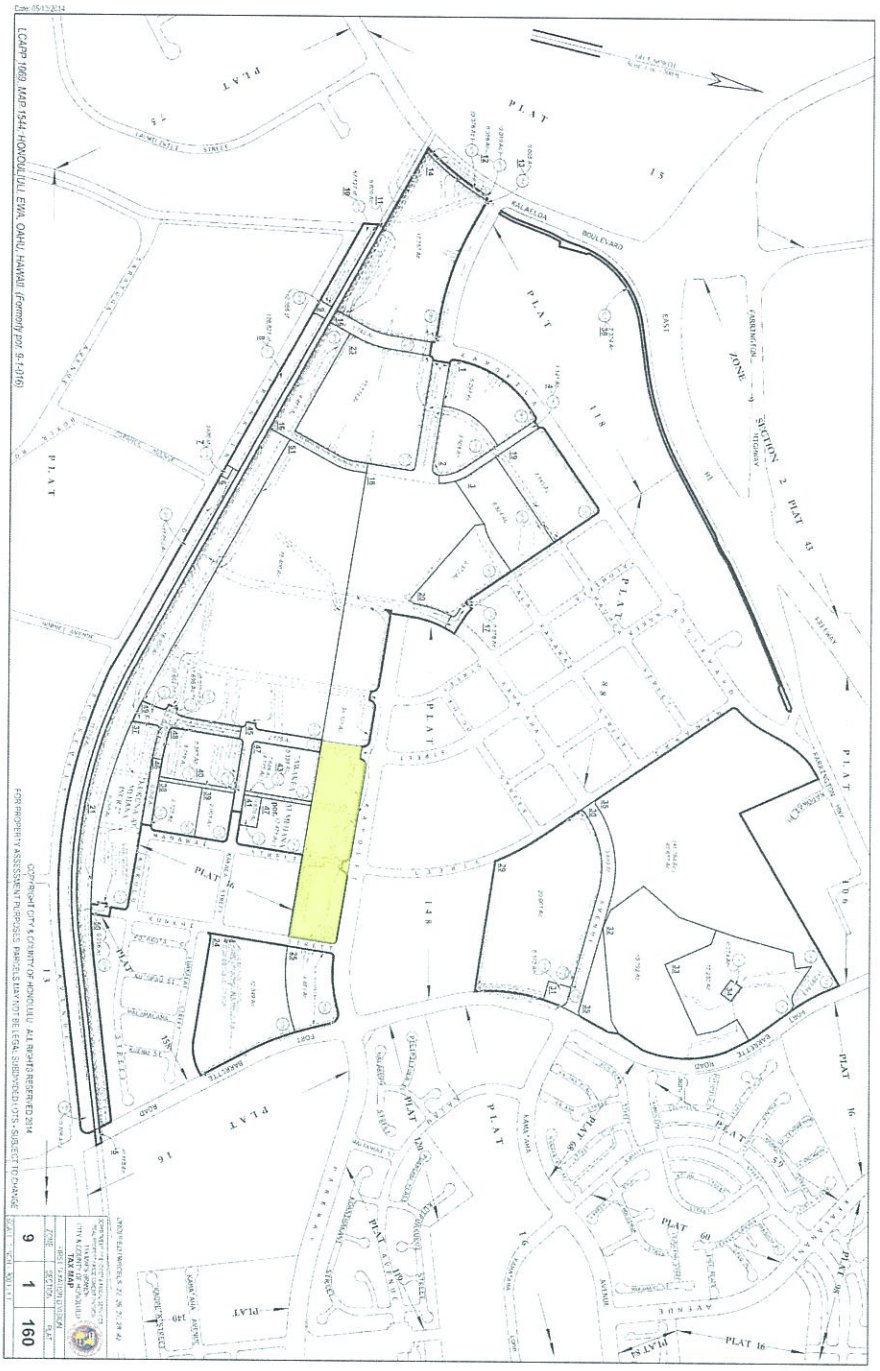
November 13, 2019
Honolulu, Hawaii

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number 11249
License Expires April 30, 2020

19129 Lot 7

ControlPoint Surveying, Inc.
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

EXHIBIT B


LCAPP 1069, MAP 1544 HONOLULU, EWA, OAHU, HAWAII (Formerly pcy 9-1-016)
KALAELOA BOULEVARD
PLAT 16
PLAT 43
PLAT 60
PLAT 69
PLAT 119
PLAT 120
PLAT 141
PLAT 142
PLAT 143
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PLAT

EXHIBIT C

Form of Lease

Kapolei Parkway, Lots 6 and 7

LEASE

between

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

"Lessor"

and

KG KAPOLEI PARKWAY, LLC,
a Hawaii limited liability company

"Lessee"

DRAFT

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LEASE

This **LEASE** (this "**Lease**") is made and entered into as of _____, 20___ (the "**Commencement Date**"), between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i ("**Lessor**"), and KG **KAPOLEI PARKWAY, LLC**, a Hawaii limited liability company ("**Lessee**").

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

ARTICLE 1: DEFINITIONS

The following definitions apply in this Lease:

"Additional Rent" has the meaning set forth in Section 5.1 of this Lease.

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

"Affordable Rent" has the meaning set forth in Section 18.1.3 of this Lease.

"Affordable Rental Housing Area" means the gross square foot area of the entire Premises, excluding the Commercial Area.

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

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

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

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

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

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

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

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

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

"**Certifying Party**" has the meaning set forth in Section 25.1 of this Lease.

"**CFR**" means the United States Code of Federal Regulations, as may be amended from time to time.

"**Commencement Date**" has the meaning set forth in the opening paragraph of this Lease.

"**Completion of the Project**" means the date when the applicable Government agency issues a temporary or permanent "certificate of occupancy" for the Project.

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

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

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

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

"**Consumer Price Index**" means the index published by the United States Department of Labor, Bureau of Labor Statistics, and now known as the Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City average, All Items (or such comparable index as may be utilized in substitution for or as the successor to the stated index). If such index is not published by the United States Bureau of

Labor Statistics, or successor agency thereof, at any time during the Term, then the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority and selected by Lessor shall be utilized in lieu of such index.

"Contest" has the meaning set forth in Section 11.1 of this Lease.

"Contest Conditions" has the meaning set forth in Section 11.1 of this Lease.

"Contest Security" has the meaning set forth in Section 11.1.1 of this Lease.

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

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

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

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

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

"**Development Agreement**" means that certain Development Agreement dated _____ by and between Lessor and Lessee, approved by the Honolulu City Council via Resolution No. _____.

"Easements" has the meaning set forth in Section 14.4.1 of this Lease.

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

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

"**Equity Interest**" means all or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

"Event of Default" means those any one of those certain events of default described in Section 22.1 of the Lease, including without limitation a Monetary Default and a Nonmonetary Default.

"Excise Tax" has the meaning set forth in Section 5.7 of this Lease.

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

"**Federal and State Affordable Housing Requirements**" means any and all federal and state statutory, executive order and regulatory requirements applicable to any residential units on the Premises as such requirements now exist or as they may be amended from time to time, including, but not limited to, the Housing Act of 1937 as amended (42 U.S.C. §1437 et seq.), or its successor, the HOME Program, all requirements of law relating to any multi-family revenue bonds authorized in connection with the financing of Lessee's acquisition of the Lease, the Tax Credit Requirements (as defined below), and any other housing assistance program funded, insured, or operated by HUD or the State.

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

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

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

"**Fixed Rent**" has the meaning set forth in Section 4.1 of this Lease.

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

"**Hazardous Substances**" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, *et seq.*, as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.* or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of

energy from whatever source. The term "Hazardous Substances" for purposes of this Lease shall also include any mold, fungus or spores, whether or not the same is defined, listed, or otherwise classified as a "hazardous substance" under any Environmental Laws, if such mold, fungus or spores may pose a risk to human health or the environment or negatively impact the value of the Premises.

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

"Historic Items" has the meaning set forth in Section 26.2.1 of this Lease.

"Housing Act" means the Housing Act of 1937, as may be amended from time to time.

"HRS" means the Hawaii Revised Statutes, as may be amended from time to time.

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

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

"**Improvements**" means all buildings, structures, and other improvements and appurtenances located on the Land.

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

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

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

"**Institutional Lender**" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the Laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code, a syndicator or other entity in the business of low-income housing tax credit investment, or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets, security interests or private activity bonds; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; any entity the liabilities of which are

insured by a governmental agency, or any combination of Institutional Lenders; or a government-sponsored enterprise, such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac); provided, however, that each of the entities above shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

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

"Land" has the meaning set forth in Section 2.1 of this Lease.

"Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

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

"Lease" means this Lease, together with the exhibits attached hereto, as the same may be amended from time to time.

"Lease-Related Documents" has the meaning set forth in Section 27.1 of this Lease.

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

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

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

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

"Lessee" means KG Kapolei Parkway, LLC, a Hawaii limited liability company, its successors and permitted assigns.

"**Lessor**" initially means the City and County of Honolulu, a municipal corporation of the State of Hawaii. After every transfer of the Fee Estate made in accordance with Article 15, "Lessor" means only the owner(s) of the Fee Estate at the time in question.

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

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

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

"**LUO**" means the County's Land Use Ordinance, codified in Chapter 21 of the ROH.

"**Major Construction**" means any Construction that is reasonably anticipated to cost in excess of $1,000,000 (which amount shall be increased in proportion to the percentage increase, if any, in the Consumer Price Index since the Commencement Date).

"**Manawai Street Segment**" means Lot 91002, as shown on Map__ of Land Court Application 1069, consisting of 0.444 acres, more or less, subject to, among other encumbrances, an easement for access and utility purposes in favor of Lot 91001, as shown on Map __ of Land Court Application No.__, and is owned in fee by Lessor. The Manawai Street Segment is subject to the development rights of Lessee as set forth in Section 8.14 of this Lease but is not a part of the Premises leased hereunder.

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

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

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

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

"**Monetary Default**" means Lessee's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as required under this Lease (subject to Lessee's right to cure during the applicable cure period after receipt of Notice as set forth in Article 22 of this Lease) or the Development Agreement (after the giving of written notice and failure to cure within the applicable cure period as set forth in Section 13.1 of the Development Agreement)..

"**Nonmonetary Default**" means Lessee's: (a) failure to comply with any material affirmative or negative covenant or obligation in any material respect in this Lease (subject to Lessee's right to cure during the applicable cure period after receipt of Notice as set forth in Article 22 of this Lease) or in the Development Agreement (after the giving of notice and failure to cure within the applicable cure period as

set forth in Section 13.1 of the Development Agreement), except a Monetary Default; or (b) breach by Lessee of any material representation or warranty in any material respect (as of the date made or deemed made) made in this Lease (subject to Lessee's right to cure during the applicable cure period after receipt of Notice as set forth in Article 22 of this Lease).

"**Notice**" means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with Article 24.

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

"Notice to Proceed" means that certain notice which permits Lessee to commence with the Construction of the Project in accordance with Article 7 of the Development Agreement.

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

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

"Permitted Uses" means the uses described in Section 6.1 of this Lease.

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

"Pre-Existing Hazardous Substances Condition" means any Hazardous Substances Discharge or other violation of Environmental Law that existed or that occurred prior to the Commencement Date and that was not the result of Lessee's use or occupancy of the Premises.

"Premises" has the meaning set forth in Section 2.1 of this Lease.

"**Prime Rate**" means the prime rate or equivalent "base" or "reference" rate for corporate loans that is published in the Wall Street Journal as of the applicable date or, if such rate is no longer published, then a reasonably equivalent rate published by an authoritative third party mutually designated by Lessor and Lessee. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

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

"Project" means that certain affordable rental housing project for individuals and seniors, together with commercial spaces and other components, to be developed on the Land, and more particularly described in Article VI.

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

"**Public Accommodations Laws**" means all applicable Laws, including, without limitation, Title II and Title III of the Americans with Disabilities Act of 1990 (the "**ADA**"), the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 USC § 2000a *et seq.*, the Architectural Barriers Act of 1968, 42 USC § 4151 *et seq.*, as amended, Title V of the Rehabilitation Act of 1973, the Minimum Guidelines and Requirements for Accessible Design, 36 CFR Part 1190, and the Uniform Federal Accessibility Standards, and any similar Laws now or hereafter adopted, published or promulgated, as the same are now in effect or may be hereafter modified, amended or supplemented.

"**Qualified Tenants**" mean tenants that meet the age and income requirements for a Residential Rental Unit set forth in Section 6.1.1.

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

"**Rent**" means the Fixed Rent, the Additional Rent, and any other amounts required to be paid by Lessee to Lessor under the provisions of this Lease.

"**Requesting Party**" has the meaning set forth in Section 25.1 of this Lease.

"**Residential Rental Units**" means those residential rental units that are designated for occupancy by persons who meet the income qualifications set forth herein, and shall not include the residential unit occupied by the resident staff person.

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

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

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

"RFP" means that certain Request for Proposals issued by the Lessor on December 18, 2018 for the development of the Premises.

"ROH" means the Revised Ordinances of Honolulu, as may be amended from time to time.

"Scheduled Expiration Date" has the meaning set forth in Section 3.1 of this Lease.

"SHPD" has the meaning set forth in Section 26.2.2 of this Lease.

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

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

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

"**Substantial Casualty**" means a Casualty that (a) occurs less than ten (10) years before the end of the Term and renders the Premises, in Lessee's reasonable judgment (with Leasehold Mortgagee's consent), not capable of being economically Restored, or (b) pursuant to Law, prevents the Premises from being Restored to substantially the same condition, and for the same use, as before the Casualty.

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

"**Tax Credit Requirements**" means any and all matters required by Section 42 of the Internal Revenue Code of 1986 (26 U.S.C.), as amended (and the cognate provisions of the laws of the State) and/or any applicable agreement or restrictions relating to the receipt of any federal or State low income housing tax credits in connection with Lessee's activities and obligations under this Lease, whether or not such requirement is explicitly stated in Section 42 or regulations thereunder (or the applicable provisions of the laws of the State and the regulations thereunder).

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

"Term" has the meaning set forth in Section 3.1 of this Lease.

"**Transfer**" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance); or (b) any conversion, exchange, issuance, Modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property by

the holders of such Equity Interest(s). Except as provided below, a transaction affecting Equity Interests, as referred to in clause (b) above shall be deemed a Transfer by Lessee even though Lessee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law; (ii) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred, or (iv) to such transferee in accordance with the terms and conditions applicable to such Transfer as set forth in Lessee's limited liability limited partnership agreement. In addition to the foregoing, the trading of an Equity Interest in any entity whose capital stock is listed on a nationally recognized stock exchange shall not constitute a Transfer.

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

"**Unrelated Hazardous Substance Discharge**" any Hazardous Substance Discharge migrating, entering or leaching onto, above, or beneath the Property at any time subsequent to the Commencement Date from adjacent or nearby property or properties over which Lessee has no control or in which Lessee has no ownership interest. "**Usury Limit**" means the highest rate of interest, if any, that Law allows under the circumstances.

"**Wakea Street Segment**" means Lot 91004, as shown on Map __ of Land Court Application 1069, consisting of 0.605 acres, more or less, subject to an easement for access and utility purposes in favor of Lot 91001 and Lot 91003, as shown on Map __ of Land Court Application No.__, and is owned in fee by Lessor. The Wakea Street Segment is subject to the development rights of Lessee as set forth in Section 8.14 of this Lease but is not a part of the Premises leased hereunder.

"**Year**" means a period of 365 days except in leap years, in which case the period is 366 days.

ARTICLE 2:
PREMISES

2.1 **Premises**. At the Commencement Date, Lessor owns the following real property (collectively, the "**Premises**"): (a) the land described in **Exhibit A** attached hereto (the "**Land**"); (b) the Improvements

existing thereon as of the Commencement Date; (c) the appurtenances and all the estate and rights of Lessor in and to the Land; and (d) all Building Equipment attached or appurtenant to any of the foregoing existing as of the Commencement Date. This Lease is subject to the encumbrances described in **Exhibit A**, the Permitted Exceptions, and any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease.

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

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

2.2.2 Improvements. The quality, nature, adequacy and physical condition of any existing Improvements.

2.2.3 Title. The nature and extent of any recorded right of way, lease, possession, lien, encumbrance, license, reservation or other title condition of record as of the Commencement Date affecting the Premises including, without limitation, the existence of any easements, rights of ways or other rights across, to or in other properties that might burden and/or benefit the Premises; provided, however, that Lessor represents and warrants to Lessee that it owns fee simple title to the Land and that no other party has any right or option to purchase the Land or the Leasehold Estate therein as of the Commencement Date of this Lease.

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

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

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

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

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

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

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

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

2.3 **Release of Lessor**. Lessee, on behalf of itself, its agents, directors, employees, Equity Interest holders, mortgagees, and officers, hereby waives, releases and forever discharges Lessor and its agents, directors, employees and officers of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any its agents, directors, employees, Equity Interest holders, mortgagees or officers now have or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic or condition of the Premises of the nature and type specified in Section 2.2.1 through Section 2.2.10; provided, however, that this release shall not cover, pertain to, or deem to release any claim of Lessee against Lessor for breach of this Lease or the Development Agreement or any claim under Article 9 or Section 10.2 of this Lease.

ARTICLE 3:
TERM

3.1 **Term**. The terms and provisions of this Lease shall be effective as of the Commencement Date. The term of this Lease (the "**Term**") shall be for seventy-five (75) years commencing on the Commencement Date and terminating at 11:59 p.m. on _____, 20__ (the "**Scheduled Expiration Date**"), unless terminated sooner in accordance with this Lease.

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

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

ARTICLE 4:
RENT

4.1 **Fixed Rent**. Lessee shall pay Lessor, without notice or demand, in lawful money of the United States of America, a net annual rental (the "**Fixed Rent**") of One and No/100 Dollars ($1.00). Lessor acknowledges that Lessee has paid the Fixed Rent for the entire Term hereof as of the Commencement Date.

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

4.3 **Payment - Generally**. [RESERVED]

ARTICLE 5:
ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES

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

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

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

5.4 **BID Decisions**. If any proposal is made to include the Premises in any BID applicable to the Term (or to Modify the terms of any BID, including the amount or calculation of any required payments or assessments) and the owner of the Premises is entitled to vote in favor of or against such proposal, then Lessee shall decide how to vote, the parties shall cooperate to effectuate such decision, and Lessee shall have full power to represent the Premises in all matters regarding the BID applicable to the Term, provided that at the time of determination no uncured Event of Default exists, and provided further that Lessee shall not make any decisions or commitments, or incur any obligations with respect to any BID involving the Premises that extend beyond the Term without Lessor's written consent.

5.5 **Direct Payment by Lessor**. If any Additional Rent must be paid directly by Lessor then: (a) Lessor shall Notify Lessee of such Additional Rent and the payee entitled thereto, such Notice constituting Lessee's authorization to make such payment, insofar as applicable, on behalf of Lessor, and (b) if the payee nevertheless refuses to accept payment from Lessee, then Lessee shall Notify Lessor and shall pay such amount to Lessor in a timely manner with reasonable instructions on remittance of such payment. Lessor shall with reasonable promptness comply with Lessee's reasonable instructions. In such event, provided Lessee provides Lessor with payment and reasonable instructions on remittance of such payment in a reasonable amount of time prior to the payment due date, Lessor shall be responsible for any late charges or fees, interest or penalties arising from Lessor's payment if Lessor is late in making such payment.

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

5.7 **Excise Tax**. Lessee shall pay to Lessor, as Additional Rent, the applicable State general excise or surcharge tax on gross income, as the same may be amended, and all other similar applicable taxes, surcharges, rates and/or charges imposed upon Lessor with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax, surcharge or the like, ***excluding*** federal, state or county net income taxes, imposed by any Government (collectively, the "**Excise Tax**"), such Excise Tax to be paid at the time and together with each payment of Fixed Rent and Additional Rent (which includes any and all charges required under this Lease to be made by Lessee to Lessor) to the extent they are subject to the Excise Tax. The Excise Tax due from Lessee shall be the amount which, when added to the applicable Rent due or other payment (whether actually or constructively received by Lessor), shall yield to Lessor (after deduction of all such tax payable by Lessor with respect to all such payments) a net amount which Lessor would have realized from such payment had no such tax been imposed. It is the intent of this Section 5.7 that Rent will be received by Lessor without diminution by any tax, assessment, charge, or levy of any nature whatsoever, except net income taxes imposed by any Government, and the terms and conditions of this Lease shall be liberally construed to effect such purpose.

5.8 **Conveyance Tax**. Lessee shall pay the entire amount of any conveyance tax or related tax imposed by Law on account of this Lease or any amendment to this Lease (including, without limitation, to the extent resulting from any increase in Rent under this Lease and/or any renewal or extension of the Term), and for preparing, executing and/or filing when due such documentation as may be necessary or proper in connection therewith; provided that Lessor shall promptly execute and deliver to Lessee such required documentation in connection with such payment. If Lessor chooses, in its sole discretion, to collect said conveyance tax from Lessee and pay it to the tax authority on behalf of Lessee, Lessee shall execute the required documentation and promptly deliver the same together with payment of said conveyance tax to Lessor. At Lessor's request, Lessee shall promptly execute such affidavits and other documents as may be necessary or proper in connection with said conveyance tax. Lessee's obligations as aforesaid shall survive the expiration or earlier termination of this Lease.

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

5.10 **Tax Exemptions**. Nothing contained herein shall prevent Lessee from applying for any exemptions which may be available to Lessee for its Real Estate Tax, Excise Tax, conveyance tax or other tax obligations; provided however, that it shall be Lessee's sole responsibility to apply for and maintain any such exemptions as and when required by Law and Lessor shall cooperate as may be reasonably requested by Lessee to provide such certifications and other information in support of such application and renewals throughout the Term hereof. Any such exemptions are subject to all Laws applicable thereto.

5.11 **Lessor Expenses**. Lessee shall pay to Lessor, within ten (10) Business Days after the date of mailing or personal delivery of statements, all reasonable costs and expenses, including attorneys' fees, paid or actually incurred by Lessor: (i) required to be paid by Lessee under any covenant in this Lease (including without limitation any indemnity provision), (ii) in enforcing any of Lessee's covenants or obligations in this Lease, (iii) in remedying any breach of this Lease by Lessee, (iv) in recovering possession

of the Premises or any part of the Premises, (v) in collecting or causing to be paid any delinquent rent, taxes or other charges payable by Lessee under this Lease, (vi) in connection with any estoppel certificate requested by Lessee, or (vii) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All such costs, expenses and fees shall constitute Additional Rent, and Lessee's obligations under this Section 5.11 shall survive the expiration or earlier termination of the Term.

ARTICLE 6:
USE

6.1 **Permitted Use**. Lessee shall use the Premises for the following purposes:

6.1.1 Affordable Residential Rental Units. Lessee shall design, construct, operate and maintain Residential Rental Units, in the number and of the type described below[1], for individuals and families who meet the following income qualifications associated with said Residential Rental Units:

No. of units	No. of bedrooms	Income qualifications
		At or below 30% of HUD area median income
		At or below 60% of HUD area median income
		Staff unit

Total: ___[2] residential units; ___ Residential Rental Units

Monthly Rent for the Residential Rental Units shall not exceed Affordable Rent, as set forth herein.

6.1.2 Parking and Loading.[3] Lessee shall design, construct, operate and maintain a parking lot, to include a total of ___ parking stalls and ___ loading space(s). Of the ___ total parking stalls and ___ loading space, ___ parking stalls and ___ loading space (collectively, the "**Commercial Parking Stalls**") shall be designated to serve the Commercial Rental Units. A sufficient number of the parking stalls shall be reserved for persons with disabilities in compliance with Public Accommodations Laws. Use of the parking stalls and loading space designated to serve the Residential Rental Units shall be restricted to residents, visitors, and other approved guests, and Lessee shall not charge residents and their guests for use of such stalls without the prior review and written approval of the Lessor, which Lessor may withhold in

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[1] *Note: the income and unit mix is subject to adjustment prior to the submission of the final form of the Lease to City Council for approval; provided, however, the income and unit mix described herein shall be deemed a "ceiling." Lessee shall rent 100% of the Units in the Project to Qualified Tenants with incomes at or below 60% AMI. No fewer than 100% of the total number of Units shall be rented to Qualified Tenants with incomes at or below 60% AMI, and no fewer than 5% of the total number of Units shall be rented to Qualified Tenants with incomes at or below 30% AMI.*

[2] *The provisions of this Section may be adjusted upon the reasonable approval of the City and Developer based upon the results of Developer's due diligence permitted under Section 4.1 of the Development Agreement, the requirements of Developer's lenders and investors, and feedback from governmental authorities, community groups and public stakeholders during the design, environmental review and entitlement process. Any such modifications shall not constitute a significant deviation from Developer's proposal and shall be made prior to the submission of the final version of the Lease to the City Council for approval. The final details of all Project components shall be incorporated into the Lease that is presented to the City Council for approval.*

[3] *Id.*

its reasonable discretion. Except for the Commercial Parking Stalls, public parking shall not be allowed, with or without charge, without prior review and written approval of Lessor, which Lessor may withhold in its sole and absolute discretion. Notwithstanding any provision to the contrary in this Section, Lessee shall have the right to charge commercially reasonable rates for the use of any of the Commercial Parking Stalls, including but not limited to, by residents, visitors and other guests of the Residential Rental Units.

6.1.3 Resident Amenities.[4] Unless stated otherwise, Lessee shall design, construct, operate and maintain the following amenities available exclusively for residents and their guests:

i) Parking (except for any Commercial Parking Stalls as set forth in Section 6.1.2 of this Lease):

ii) Common Area Amenities including but not limited to, laundry room, outdoor parks, outdoor passive recreation area.

6.1.4 Commercial Rental Units. To the extent permitted under Federal and State Affordable Housing Requirements, Lessee may design, construct, operate and maintain certain spaces within the Project for commercial purposes (collectively, "**Commercial Rental Units**"). The use and rental of any such Commercial Rental Units within the Project is set forth in Section 18.2 of this Lease.

6.1.5 Indigenous Plants. Indigenous species of plants shall be used for landscaping whenever and wherever reasonably feasible.

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

6.3 **Exclusive Ownership of Improvements and Control of Premises**. During the Term, Lessee shall be the exclusive owner of the Project Improvements within the Premises, including FF&E. Except as otherwise expressly provided in this Lease, Lessee shall have exclusive control, use, and management of the Premises during the Term. Subject to any applicable Laws, Lessee may enter into, terminate, or Modify any existing contract which Lessee agreed to assume as of the Commencement Date or future contract for management or operation of the Premises or provision of services to the Premises effective from and after the Commencement Date (provided that any such termination or Modification is done in conformity with the terms of such contracts). Lessee shall Indemnify Lessor arising as a result of any such cancellation or termination. All such contracts shall expire automatically on or before the Scheduled Expiration Date, except for contracts entered into in the ordinary course of maintenance and operation of the Premises, which shall expire no later than one (1) year after the Scheduled Expiration Date. Following the end of the Term, ownership of the Project Improvements shall belong to Lessor and remain with the Premises.

6.4 **Compliance with Laws**. Lessee shall not use the Premises, or do anything or suffer anything to be done in or about the Premises that will in any way violate any Laws applicable to the use, condition or occupancy of the Premises, subject to Article 9 of this Lease. At its sole cost and expense, Lessee shall, in all material respects and subject to Lessee's right of Contest, promptly comply with all such applicable Laws, subject to Article 9 of this Lease. Lessee shall, at its sole cost and expense, make all alterations to the Premises, that are required to comply with applicable Laws, whether in effect as of the Commencement Date or thereafter subject to Article 9 of this Lease. Lessee's obligations under this Section 6.4 shall include the obligation that Lessee, at its sole cost and expense, in accordance with the terms of this Lease, make,

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[4] *See note 2.*

build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks, parking areas and other improvements that are located within the Premises and that may be required by applicable Laws to be made, built, maintained and repaired in connection with Lessee's or its Sublessees' use of the Premises or any part of the Premises. Notwithstanding any provision to the contrary in this Lease, Lessor and not Lessee shall be responsible for the repair and maintenance of any dedicated off-site roads that are constructed in connection with the Project.

6.5 **Copies of Notices**. Lessor shall promptly give Lessee and Lessee shall promptly give Lessor a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Lessor receives from any Government, utility company or insurance carrier affecting the Premises.

6.6 **Entitlements**. Lessee shall maintain in full force and effect all entitlements and permits necessary for the Permitted Uses specified in Section 6.1.

6.7 **Illegal Activities**. Upon Lessor's receipt of actual notice or if Lessor, in its reasonable business judgment, believes or suspects that illegal acts are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Premises, to any Government, Lessor may Notify Lessee, and Lessor may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises (provided that any such entry by Lessor into a Residential Rental Unit shall comply with advance written notice requirements under applicable Law). In such circumstances, Lessor shall have the right to conduct an investigation, including, without limitation, the right of entry to the Premises and a review of Lessee's records (provided that any such entry by Lessor into a Residential Rental Unit shall comply with advance written notice requirements under applicable Law). For any entry onto the Premises, Lessor shall (a) provide Lessee with oral or written notice prior to such entry, unless it is an emergency (provided that any such entry by Lessor into a Residential Rental Unit shall comply with advance written notice requirements under applicable Law), (b) meet with Lessee's property manager and/or designated representative, or if neither is present, the individual who is physically present at the Premises on the day of the entry and claims to be Lessee's representative, and (c) have such property manager or representative accompany Lessor during its entry. If such investigation yields any evidence of any illegal activity on the Premises, Lessor shall immediately Notify Lessee of the results of such investigation, and Lessor may immediately commence all reasonable and appropriate action as may be necessary to stop such illegal activity; provided that if Lessor elects to take any such action, Lessor shall Notify Lessee of any such action to be taken by Lessor. If Lessee unreasonably refuses to commence taking any action to stop such illegal activity within forty-eight (48) hours of receipt of such notice from Lessor, such failure or refusal shall constitute an Event of Default. By having the right to take certain actions in this Section 6.7, Lessor is neither obligated nor required to take any such action, and shall not be liable to Lessee, any Person or any Government if Lessor does not exercise such right.

6.8 **Public Accommodations Laws**. Without limiting Lessee's obligation to comply generally with all applicable Laws, Lessee, at its sole cost and expense, shall cause the Premises, including all Improvements, and Lessee's use and occupancy of the Premises, and Lessee's performance of its obligations under this Lease, to comply with the requirements of the Public Accommodations Laws, and to take such actions and make such alterations or reasonable accommodations as are necessary for such compliance. If Lessee concludes that the Premises are not in compliance with Public Accommodations Laws as of the Commencement Date, or that the Premises thereafter fail to comply with Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within one hundred twenty (120) days of the Commencement Date or the date of such subsequent noncompliance. At minimum, such plan shall identify the work to be done to cause the Premises to be in compliance with Public Accommodations Laws and the timetable for completing such work. Any such work shall be subject to Lessor's reasonable approval, and to the terms and conditions of Article 7 and Article 8 as applicable.

6.9 **Use of Public Buildings by Blind or Visually Handicapped Persons.** Lessor and Lessee acknowledge and agree that the Premises is not a public building and will not be subject to the provisions of HRS Section 102-14 relating to the placement of certain vending machines and concessions in public buildings for operation by blind or visually handicapped persons.

6.10 **Project Name.** Lessee agrees that it will not change the name by which the Project is known or identified without the prior written approval of Lessor.

ARTICLE 7:
MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS

7.1 **Obligation to Maintain.** Lessee, at its sole cost and expense, shall keep and maintain the Premises in good order, condition and repair, reasonable wear and tear excepted, at all times during the Term (which obligation shall include all structural and non-structural, and capital and non-capital, repairs and replacements including, without limitation, plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises). Lessee shall manage and operate the Premises and perform its duties and obligations under this Lease in a manner consistent with the standards followed by institutional quality owners and management companies that are managing comparable projects. Lessee shall cause the Improvements to be inspected periodically by qualified Persons to be certain the repair, maintenance and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied (including for purposes of ascertaining and curing infestation of the Improvements by termites, rodents and other pests). Lessee shall thereafter take all measures that may be reasonably required to prevent or cure any discovered repair, maintenance and/or replacement item.

7.2 **Capital Improvement Obligations.** Lessee shall demolish and clear the Improvements on the Premises existing as of the Commencement Date, and develop the Project on the Premises, all as provided and detailed in the Development Agreement. Lessee shall carry out the capital improvements in accordance with the timing, terms, and conditions set forth in the Development Agreement. Lessee shall thereafter make subsequent capital improvements during the Term as may be required to comply with any applicable Laws. Lessee, not more than two (2) years prior to the Scheduled Expiration Date, shall deliver Notice to Lessor to request that Lessor provide Notice of Lessor's election either to (a) accept the existing Improvements constructed by Lessee in their "as is, where is" condition as of the surrender of the Premises on the Scheduled Expiration Date, or (b) to require the removal of such Improvements by Lessee prior to surrender of the Premises to Lessor. Lessor shall provide Lessee with such Notice of Lessor's election not less than one (1) year prior to the Scheduled Expiration Date.

ARTICLE 8:
CONSTRUCTION

8.1 **General.** Lessee shall comply with all of the terms of this Article 8 and of the Development Agreement in connection with all Construction affecting the Premises (including, without limitation, any existing and new Improvements, alterations, any capital improvements to the Premises, Restoration after a Loss, and those required to comply with applicable Laws or otherwise required under this Lease).

8.2 **Commencement of Construction.** Lessee shall not commence Construction until a Notice to Proceed has been issued by the Lessor, and until all conditions precedent to the commencement of construction, as set forth in Article VII of the Development Agreement, have been satisfied.

8.3 **Manner of Construction**. All Construction shall be diligently and continuously pursued from the commencement thereof through completion, and shall be performed in a good and workmanlike manner, strictly in conformance with any and all Laws, in accordance with any approved plans and specifications, and in accordance with the terms of the Development Agreement.

8.4 **Permits**. Lessee shall be responsible for obtaining, at its sole cost and expense, all Approvals required for any Construction, and for any issuance or re-issuance of all certificates of occupancy or equivalent permits required by Law for the use and occupancy of the Premises. Notwithstanding the foregoing, Lessee shall apply for and prosecute any required Government review process for a general plan amendment or rezoning only through and in the name of Lessor, or otherwise with the approval of Lessor.

8.5 **Applications**. Upon Lessee's request, Lessor shall, without charge to Lessee (except reimbursement of Lessor's reasonable out-of-pocket costs and expenses), promptly join in and execute any Application as Lessee reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law, this Lease or the Development Agreement) upon Lessor; and (b) no uncured Event of Default exists. Promptly upon Lessee's request and without charge (except reimbursement of Lessor's reasonable out-of-pocket costs and expenses), Lessor shall furnish all information in its possession that Lessee reasonably requests for any Application.

8.6 **Bond**. Lessee or its general contractor shall deposit with Lessor performance and payment bonds, underwritten by a corporate surety licensed to issue bonds in the State, that is listed on the United States Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds" and that holds an A.M. Best rating of A or higher. The total amount of the bond shall not be less than 100% of the total Construction cost, naming Lessor and Lessee as co-obligees, in form and content reasonably satisfactory to Lessor, guaranteeing the full and faithful performance of the contract for such Construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen.

8.7 **Completion**. Upon substantial completion of any Construction: (a) Lessee shall properly publish and file a "Notice of Completion" in the Office of the Clerk of the Circuit Court of the State in the circuit where the Premises are located, a certified "filed" stamped copy of which shall be provided by Lessee to Lessor, (b) Lessee shall comply with any other applicable requirements of Law with respect to the completion of works of improvement, and (c) Lessee's architect or engineer shall deliver to Lessor a certificate setting forth the total cost of such Construction and, if the Construction is Major Construction, certifying that the Construction has been completed in compliance with the approved plans and specifications for such work. In addition, Lessee shall deliver to Lessor a reproducible copy of the "as built" drawings of all Construction as well as all Approvals and other Government documents, if any, issued in connection with such Construction.

8.8 **Construction Insurance**. Lessee shall maintain insurance coverage in accordance with Article 12.

8.9 **Ownership**. All Improvements from Construction that may be installed or placed in or about the Premises shall be owned by Lessee during the Term, deemed to become an integral part of the Premises and shall not be removed or otherwise severed from the Premises except as otherwise permitted by this Lease. Upon the expiration of the Term or earlier lawful termination of this Lease, all the then existing Improvements shall automatically revert to Lessor without compensation or payment of any kind to, or requirement of consent or other act of Lessee or any other Person, and without the necessity of executing a deed, bill of sale, conveyance or other act or agreement of Lessee or any other Person. If requested by Lessor, Lessee shall, without charge to Lessor, execute, acknowledge and deliver to Lessor appropriate documentation (in form and content reasonably satisfactory to Lessor) which acknowledges and confirms

that Lessor retains all of right, title and interest in and to the then existing Improvements as of the expiration of the Term or earlier termination of this Lease.

8.10 **Inspection**. During and upon completion of any Construction, Lessor and its agents may, following not less than 24 hours written notice, inspect the Improvements and all work and materials as rendered and installed. Lessee shall permit Lessor and its representatives to examine the Construction at all reasonable times following such written notice and shall furnish Lessor with copies of all plans, shop drawings and specifications relating to any Construction. Lessor shall comply with all reasonable safety rules and requirements of Lessee or its contractors during any such inspections.

8.11 **Lessee's Covenant**. Lessee covenants to keep the Premises free from all Prohibited Liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Lessee shall commence taking necessary or appropriate action to remove any Prohibited Liens by bond or otherwise within 20 days after Lessee is informed of the existence of such lien or encumbrance, and if Lessee shall fail to remove such Prohibited Liens, Lessor may pay the amount necessary to remove such Prohibited Liens, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Lessor under this Lease. Nothing contained in this Lease shall be deemed or construed in an way to constitute Lessor's consent or request, express or implied, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any Construction, nor as giving Lessee any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Fee Estate.

8.12 **Title Encumbrances**. Lessee shall keep the Fee Estate free from any encumbrances against title, and shall not record or permit the recordation of any lien, encumbrance, easement, and memorandum of Sublease or other document that affects the record title to the Fee Estate without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessee shall cause any recorded title encumbrances arising during the Term (other than those caused to be recorded by Lessor), which are consented to in writing by Lessor, to be released as of the ***earlier*** of (a) the date each individual encumbrance ceases to be valid (e.g., as of the expiration of a Sublease for which there is a recorded memorandum), and (b) the date this Lease expires or earlier terminates. Lessee shall cause any recorded title encumbrances on the Fee Estate arising during the Term (other than those caused to be recorded by Lessor), which are not consented to in writing by Lessor, to be cleared immediately, and in any event, within thirty (30) days of a written demand by Lessor. During the Term, Lessor shall not encumber the Premises or Lessee's leasehold interest therein.

8.13 **Lease Termination**. If this Lease expires or is terminated prior to the completion of any Construction, Lessee shall, at Lessor's option and at Lessee's sole expense, either (a) promptly complete such Construction, or (b) remove all such partially completed improvements, construction materials, equipment and other items from the Premises and restore the Premises to their pre-Construction condition.

8.14 **Infrastructure**. As set forth in Section 4.12.11 of the Development Agreement, Lessee shall be responsible for Construction of all on-site and associated off-site infrastructure required for the development and use of the Project, including but not limited to, planning, design, payment of permit fees (or exemptions therefrom) for such infrastructure such as the Manawai Street Segment, the Wakea Street Segment, waterlines, sewers, drainage, and electrical, telephone, gas and cable television lines, conduits, and hookups within the Premises and following completion, to maintain all on-site infrastructure within the Premises. Lessee is hereby granted the right to enter upon and Construct such off-site infrastructure improvements in accordance with approved plans and specifications for the same on, under, or within such lands owned by Lessor, including without limitation, the Manawai Street Segment and the Wakea Street Segment, and/or easement areas where Lessor owns an interest, and Lessee's insurance and indemnity

obligations under this Lease shall apply to Lessee's Construction of such off-site infrastructure improvements.

Provided that Lessee has completed Construction of the Project and complied with its obligations under Section 8.7 of this Lease, Lessee shall provide written notice to Lessor and the City Department of Design and Construction (or the then applicable Government agency) of the completion of Construction of the Manawai Street Segment road improvements and the Wakea Street Segment road improvements in accordance with applicable County dedication standards. Lessor and the City Department of Design and Construction (or the then applicable Government agency) shall promptly inspect the condition of the same to certify the completion of Construction of the same in accordance with such County standards. Upon certification by Lessor that Construction of the Manawai Street Segment road improvements and the Wakea Street Segment road improvements have been completed in accordance with such standards: (a) all obligations of Lessee under this Lease relating to the Manawai Street Segment and the Wakea Street Segment, including any obligation to repair and maintain such road improvements, shall automatically terminate and be of no further force or effect, (b) Lessor shall thereafter be solely responsible for the repair and maintenance of the Manawai Street Segment and the Wakea Street Segment as public roads, and (c) Lessor shall cooperate as may be requested by Lessee to execute and deliver such documents that are necessary or appropriate to partially cancel and release this Lease (and any other recorded encumbrance relating to the Project to which Lessor is a party) from title to the Manawai Street Segment and the Wakea Street Segment, respectively, and to obtain the release of any subdivision bond.

ARTICLE 9:
HAZARDOUS SUBSTANCES

9.1 **Restrictions**. Lessee shall not cause and shall not permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Laws; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary in accordance with professional standards for the Permitted Uses of the Premises and (ii) in compliance with all Environmental Laws. Notwithstanding the foregoing, Lessee shall not have any clean-up obligation or other responsibility under this Lease with respect to any Pre-Existing Hazardous Substances Condition or any Unrelated Hazardous Substance Discharge.

9.2 **Compliance; Clean-Up**. Except with respect to any Pre-Existing Hazardous Substances Condition or Unrelated Hazardous Substance Discharge, Lessee shall, at Lessee's sole expense: (a) comply with Environmental Laws and, to the extent Environmental Laws require, clean up any Hazardous Substances Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify Lessor against any Hazardous Substances Discharge or violation of Environmental Laws that occurred during Lessee's possession of the Premises or that is attributable to the Project or Lessee's use, occupancy, or activities on the Premises (excluding however, any Pre-Existing Hazardous Substances Condition or Unrelated Hazardous Substances Discharge). Notwithstanding the foregoing, Lessee shall inform Lessor of any Pre-Existing Hazardous Substances Condition, and the parties shall negotiate in good faith to mutually agree upon an agreement on how to best remediate this situation. In the event that Lessor and Lessee mutually agree upon a clean-up plan, only then shall Lessee have the right but not the obligation to clean up any Pre-Existing Hazardous Substances Discharge, in which event Lessor shall promptly reimburse Lessee for the actual costs and expenses incurred by Lessee in connection with the clean-up of any such Pre-Existing Hazardous Substances Condition and, if Lessor is the responsible party, any Unrelated Hazardous Substance Discharge, in accordance with the requirements under Environmental Law. Lessor's obligations under this Section 9.2 to reimburse Lessee shall not limit

Lessee or Lessor's respective rights against third parties whatsoever with respect to any Pre-Existing Hazardous Substances Condition or Unrelated Hazardous Substances Discharge, as applicable.

9.3 **Surrender Obligations**. At the expiration or earlier termination of the Term, Lessee, at Lessee's sole expense, shall cause all Hazardous Substances at the Premises to be in compliance with Environmental Laws, which may include ongoing compliance with an environmental hazard management plan or similar requirements approved by the applicable Government agency, except that Lessee shall not be responsible for any Pre-Existing Hazardous Substances Condition or Unrelated Hazardous Substance Discharge. Lessee shall dispose of all Hazardous Substances required to be removed by Lessee under this Section 9.3 in accordance with all Environmental Laws. Lessee shall cause to be repaired any damage to the Premises caused by such removal. Prior to surrendering the Premises, Lessee shall clean up and/or remediate the Premises to the environmental condition it was in as of the Commencement Date, as established by the environmental studies and assessments conducted by Lessee prior to the Commencement Date (including the Phase 1 and/or Phase 2 environmental site assessments of the Premises conducted by Lessee), as necessary for the unrestricted use of the Premises under Environmental Laws; provided, that, notwithstanding the foregoing, Lessee's clean up obligations under this Section 9.3 shall exclude the Improvements if Lessor shall have elected to accept the Improvements in their "as is, where is" condition as of the Scheduled Expiration Date pursuant to Section 7.2 of this Lease.

9.4 **Copies of Environmental Reports**. Subject to applicable Laws, within thirty (30) days of receipt thereof, Lessee shall provide Lessor with a copy of any and all environmental assessments, audits, studies and reports with respect to the Premises, or ground water beneath the Land, or the environmental condition or any clean-up thereof, that is conducted by or on behalf of Lessee. Lessee shall be obligated to provide Lessor with a copy of such materials without regard to whether such materials are generated by Lessee or prepared for Lessee, or how Lessee comes into possession of such materials.

9.5 **Survival**. Each covenant, agreement, representation, warranty and indemnification made by Lessee and Lessor set forth in this Article 9 shall survive the expiration or earlier termination of this Lease and shall remain effective until each party's obligations under this Article 9 have been performed and satisfied.

9.6 **Discharges before Commencement**. Lessee agrees to accept the Premises in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition as described in Section 2.2, but Lessee shall have no responsibility for or to clean up or remediate any Hazardous Substances Discharge or other violation of Environmental Law that existed or occurred prior to the Commencement Date and that was not the result of Lessee's use or occupancy of the Premises (individually and collectively, "**Pre-Existing Hazardous Substances Condition**"), as established and identified by environmental studies and assessments conducted by Lessee prior to or after the Commencement Date (including the Phase 1 and/or Phase 2 environmental site assessment conducted by Lessee for the Premises) or other proof of existence or occurrence of such Hazardous Substances Condition prior to the Commencement Date. As between Lessor and Lessee, any Pre-Existing Hazardous Substances Condition is and shall continue to be Lessor's sole responsibility.

ARTICLE 10:
INDEMNIFICATION; LIABILITY OF LESSOR

10.1 **Obligations**. Lessee shall Indemnify Lessor against any: (a) wrongful act, wrongful omission, or negligence of Lessee (and anyone claiming by or through Lessee) or its or their partners, members, directors, officers, or employees relating to Lessee's use or occupancy of the Premises or this Lease; (b) breach or default by Lessee under this Lease; or (c) breach of any representation or warranty Lessee makes in this Lease. In addition, Lessee shall Indemnify Lessor against the following during the Term and so long as Lessee remains in possession after the Expiration Date: (i) any Contest Lessee initiates; (ii) any

Application made at Lessee's request; (iii) Lessee's use, occupancy, control, management, operation, and possession of the Premises; (iv) any Construction and any agreements that Lessee (or anyone claiming through Lessee) makes for any Construction; (v) the condition of the Premises from and after the Commencement Date (except as otherwise provided in Article 9 and Section 10.2 of this Lease); and (vi) any accident, injury or damage whatsoever caused to any person or property in or on or originating from the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall not be required to Indemnify Lessor for claims, liabilities, or losses arising solely from Lessor's and/or its officials, directors, employees, agents and consultants' (and anyone claiming by or through Lessor) intentional acts or omissions or negligence any Pre-Existing Hazardous Substance Condition, any Unrelated Hazardous Substances Discharge and as otherwise provided in this Lease.

10.2 **Liability of Lessor**. During the Term: (a) Lessee is and shall be in exclusive control and possession of the Premises; and (b) Lessor shall not be liable for any injury or damage to any property (of Lessee or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Lessor's and/or its officials, directors, employees, and agents' (and anyone claiming by or through Lessor) willful misconduct or negligence. Lessor's right to enter and inspect the Premises is intended solely to allow Lessor to ascertain whether Lessee is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Lessor any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Lessor from or against any liability of Lessor: (i) to third parties existing at or before the Commencement Date; or (ii) arising from Lessor's and/or its officials, directors, employees, and agents' (and anyone claiming by or through Lessor) willful misconduct or gross negligence.

10.3 **Indemnification Procedures**. Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

10.3.1 Prompt Notice. Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

10.3.2 Selection of Counsel. Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

10.3.3 Cooperation. At Indemnitor's request, Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

10.3.4 Settlement. Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (b) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) Indemnitee's interest in the Premises is not jeopardized in any way.

10.3.5 Insurance Proceeds. Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

ARTICLE 11:
RIGHT OF CONTEST

11.1 **Lessee's Right; Contest Conditions**. Notwithstanding anything to the contrary in this Lease, Lessee shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Lessee to Indemnify Lessor (any of the foregoing, a "**Contest**"). Lessee may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Lessee causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

11.1.1 No Criminal Act. Such deferral or noncompliance shall not constitute a criminal act by Lessor or subject Lessor to a material risk of any fine or penalty, except civil penalties for which Lessee has given Lessor a bond, letter of credit, or other security reasonably satisfactory to Lessor (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties, provided that such civil penalties do not otherwise prejudice Lessor.

11.1.2 No Liability. Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Lessee has given Lessor Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability, and such Contest Security otherwise is acceptable to Lessor.

11.1.3 No Forfeiture. Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

11.1.4 No Cost to Lessor. Such Contest shall be without cost, liability, or expense, and without risk of future cost, liability, or expense, to Lessor.

11.1.5 Diligence. Lessee shall prosecute such Contest with reasonable diligence and in good faith.

11.1.6 Payment. If required for such Contest, Lessee shall have paid the Real Estate Taxes or other matter subject to the Contest.

11.1.7 Collection of Real Estate Taxes. If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Lessor and the Fee Estate.

11.1.8 No Event of Default. No uncured Event of Default shall exist under this Lease at the time of such Contest.

11.1.9 Named Parties. If Lessor has been named as a party in any action consistent with this Article 11, then Lessee shall cause Lessor to be removed as such party and Lessee substituted in Lessor's place, if practicable and permissible under the circumstances.

11.2 **Lessor Obligations and Protections**. Lessor need not join in any Contest unless Lessee has complied with the Contest Conditions, and such Contest must be initiated or prosecuted in Lessor's name. In such case, Lessor shall cooperate, as Lessee reasonably requests, to permit the Contest to be prosecuted in Lessor's name. Lessor shall give Lessee any documents, deliveries, and information in Lessor's control and reasonably necessary for Lessee to prosecute its Contest. Lessor shall otherwise assist Lessee in such Contest as Lessee reasonably requires. Lessee shall pay all reasonable costs and

expenses, including Legal Costs, of any Contest. Lessee shall, at Lessor's request, advance (when Lessor incurs them) such reasonable costs and expenses as Lessor incurs or reasonably anticipates incurring, for Lessee's Contest and Lessor's assistance with such Contest.

11.3 **Miscellaneous**. Lessee shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Lessee), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Lessee concludes Lessee's Contest of any Real Estate Taxes, Lessee shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Lessee's Contest of a Law, Lessee shall comply with such final determination. So long as the Contest Conditions remain satisfied, Lessor (in its role as owner, and not in its role as Government authority) shall enter no objection to any Contest. Lessor may contest any matter for which Lessee is entitled to (but does not) prosecute a Contest, but only if: (a) Lessor Notifies Lessee of Lessor's intention to do so; (b) Lessee within thirty (30) Days after receipt of such Notice fails to Notify Lessor that it shall commence such Contest; and (c) Lessor's contest complies with all conditions and covenants that would apply to a Contest by Lessee transposing references to the parties and their respective interests as appropriate and (d) Lessee has obtained the prior written consent of each Leasehold Mortgagee to such contest by Lessor.

11.4 **Contest Security**. Lessor shall promptly release any Contest Security to Lessee after the Contest has been resolved and Lessee has performed its obligations, if any, as determined by such resolution.

ARTICLE 12:
INSURANCE

12.1 **Lessee's Insurance**. At all times during the Term and until such time as action against the Lessee, the developer, its contractor or subcontractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, Lessee shall procure and maintain in full force and effect, at Lessee's sole expense, any and all insurance that may be required by any Laws as they may pertain to Lessee's use and occupancy of, and operations at the Premises, as well as the following policies of insurance in the following amounts:

12.1.1 Workers' Compensation and Employers' Liability Insurance. The Lessee shall maintain workers' compensation and employers' liability insurance. Workers' compensation coverage shall be in accordance with State statutes. Employers' liability coverage shall provide limits of not less than **$1,000,000** each accident for bodily injury by accident or **$1,000,000** each employee, **$1,000,000** aggregate, for bodily injury by disease. The policy will include a waiver of subrogation in favor of the Lessee.

12.1.2 Liability Insurance. Lessee shall maintain commercial general liability (CGL) with a limit of not less than **$2,000,000** each occurrence, and **$4,000,000** general aggregate, and **$4,000,000** aggregate for this Project. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The CGL policy to be carried by Lessee during the course of Construction shall be endorsed to redefine the word occurrence to include construction defect coverage. Lessor shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (11/85) (or equivalent), and as appropriate CG 20 37 or equivalent and under the commercial umbrella. The policy(ies) shall contain a waiver of subrogation against Lessor.

12.1.3 Business Automobile Liability Insurance. Lessee shall maintain business auto liability (including no-fault coverage) insurance with a limit of not less than **$1,000,000** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this Lease. Business auto coverage shall be written on ISO form CA 00 01 or CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

12.1.4 Umbrella/Excess Liability. Lessee shall maintain umbrella/excess liability insurance with limits of not less than **$8,000,000** per occurrence combined single limits and aggregate, with the aggregate to apply per project/per location. Such insurance shall be written on an occurrence basis in excess of the underlying insurance described in Sections 12.1.1 through 12.1.3, which is at least as broad as each of the underlying policies, and otherwise including "pay on behalf" wording, concurrency of effective dates with underlying primary coverages, blanket contractual liability, and construction defect coverage (provided that construction defect coverage shall be carried during the course of Construction only). The amounts of insurance required in Sections 12.1.1 through 12.1.4 may be satisfied by Lessee purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the total limits required by this Section 12.1.4.

12.1.5 Professional Liability Insurance. Lessee's architect shall be required to maintain professional liability insurance with limits of not less than **$3,000,000** per occurrence/annual aggregate, covering such architect and its employees and agents, and any subcontractors and subcontractors' employees or agents, for liability arising out of errors, omissions, or negligence in the performance of professional services in connection with the Project. Such insurance shall remain in full force and effect continuously for the period of design and construction of the improvements, and for a period of 3 years following substantial completion of Construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed. Any design professional or consultant hired by Developer's architect as a subcontractor shall maintain professional liability insurance with limits of not less than $1,000,000 per occurrence and in the aggregate. For the purposes of this section "professional services" has the meaning set forth in Section 103D-104 of the Hawai'i Revised Statutes.

12.1.6 Environmental Impairment Liability or Contractors Pollution Liability Insurance. Lessee shall maintain, or cause its contractor to maintain, environmental impairment liability or contractors pollution liability insurance covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the Premises, Lessee's operations or completed operations. Such requirement shall commence upon the Commencement of Construction for the Project, and terminate no less than three (3) years after the Completion of the Project. The limits of coverage will not be less than **$2,000,000**.

12.1.7 Insurance Coverage For Construction Phase.[5] Prior to commencing Construction or site preparation work, the Lessee shall procure or cause to be procured and maintain (as provided herein), all insurance to cover the demolition, construction and development activities under this Lease and the Development Agreement, that may be required by any Laws, in addition to the coverages specified in above, and the following types and amounts of insurance described below.

(a) Builders Risk Insurance. Lessee shall maintain builders risk insurance covering all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, and collapse, earthquake, flood and windstorm. The insurance shall apply on a replacement cost basis.

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[5] Subject to continuing review by Lessee.

This insurance shall cover the entire work at the site, including all Improvements, materials and equipment, and reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work, materials and equipment located away from the site but intended for use at the site, and shall also cover portions of the work, materials, and equipment in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition. The insurance required shall name as insured, the Lessor, the Lessee and all subcontractors in the work.

The Lessee is responsible for paying any portion of any loss not covered because of the operation of any deductible or co-insurance provision applicable to the insurance required herein.

Waiver of Subrogation. The Lessor and Lessee waive all rights against each other and each of their contractors, subcontractors, officers, directors, agents and employees, for recovery of damages caused by fire and other perils to the extent covered by builders risk insurance purchased pursuant to the requirements of this paragraph or any other property insurance applicable to the work.

(b) Boiler and Machinery Insurance. Lessee shall maintain boiler and machinery insurance covering insured objects, including rooftop HVAC units and any separate heating units or boilers which serve the Premises, during installation and testing and until final acceptance, and including mechanical breakdown. Such coverage shall be for the full replacement value without deduction for depreciation. This insurance shall name as insured the Lessor, the Lessee, and all subcontractors in the work.

(c) Lessee shall be responsible for any and all loss or damage to equipment, tools and other personal property, and may at its option purchase insurance to cover such property and equipment.

12.1.8 Insurance Coverage For Operations. Upon final acceptance of the Construction, and termination of the builder's risk insurance required in Section 12.1.7(a) above and prior to the use or occupancy of any of the Improvements, the Lessee shall procure or cause to be procured and maintain all insurance to cover operations under this Lease, that may be required by any Laws, and the following types and amounts of insurance described below:

(a) Commercial Property Insurance. Lessee shall maintain commercial property insurance covering the buildings, fixtures and equipment, with limits equal to the full replacement cost of the improvements. Such insurance shall at minimum, cover the perils against the perils of fire and extended coverage, theft, vandalism, malicious mischief, and collapse, earthquake, flood and windstorm.

(b) Boiler and Machinery Insurance. Lessee shall maintain boiler and machinery insurance covering the buildings, fixtures and equipment from loss or damage caused by an insured peril. Lessee shall be responsible for the amount of any deductible or co-insurance requirements applicable to the policy.

(c) Lessor shall be included as an insured and loss payee under the commercial property insurance and the boiler and machinery policies.

(d) Lessor and Lessee hereby waive any recovery of damages against each other (including their employees, officers, directors, agents or representatives) for loss or damage to the building, fixtures, equipment and any other personal property to the extent covered by the

commercial property insurance or boiler and machinery insurance required herein. If either policy does not expressly allow the insured to waive rights of subrogation prior to loss, Lessor shall cause such policies to be endorsed with a waiver of subrogation as required above.

12.2 **Nature of Insurance Program**. All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A-, VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State. Lessee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

12.3 **Policy Requirements and Endorsements**. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

12.3.1 Contractor insurance. Lessee shall either: (a) include all contractors as insureds under all insurance set forth above, or (b) cause each contractor employed by Lessee to purchase and maintain insurance of the types specified above. When requested by the Lessor, Lessee shall furnish copies of certificates of insurance evidencing coverage for each contractor. Permission is granted for Lessee to secure General Liability and Excess Liability insurance as required under sections 12.1.2 and 12.1.4 under an insurance program commonly referred to as an Owner Controlled Insurance Program (OCIP) covering both the Developer and all enrolled contractors as long as the coverage and limits are substantially the same as what is required above.

12.3.2 Insureds. Insurance policies shall identify Lessor as an "additional insured" using ISO additional insured endorsement form CG 20 10 (or equivalent), and as appropriate CG 20 37 (or equivalent) under the commercial general liability umbrella policy will also be required. Property insurance policies shall name Lessor and Lessee as loss payees as their respective interests may appear, and each mortgagee this Lease allows under a standard noncontributing mortgagee clause. Notwithstanding anything to the contrary, all Property Insurance Proceeds shall be paid and applied as this Lease provides. On all insurance policies where Lessor is named as an additional insured, Lessor shall be an additional insured to the full limits of coverage purchased by Lessee even if those limits are in excess of those required under this Lease.

12.3.3 Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that Lessor may carry, and Lessee's insurers will not seek contribution from other insurance available to Lessor.

12.3.4 Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for Lessee's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Lessee's failure to obtain such contractual liability coverage shall not relieve Lessee from any indemnity obligation under this Lease.

12.3.5 Severability of Interest. Liability Insurance policies shall contain a clause clarifying that, except with respect to coverage limits, the insurance applies separately to each insured and that the policy covers claims or suits by one insured against other, to the extent customarily covered by liability insurance policies.

12.3.6 Notice to Lessor. All policies required hereunder shall be written to provide not less than sixty (60) days prior Notice of cancellation or material change to Lessor.

12.4 **Waiver of Certain Claims**. Notwithstanding anything to the contrary contained in this Lease, Lessee and Lessor each waive any right of recovery against the other party and against any other party maintaining a policy of property insurance with respect to this Lease or the Premises, for any loss or damage sustained by Lessee or Lessor, as the case may be, that is covered by any policy of property insurance maintained (or required to be maintained under this Lease) with respect to the Premises, or the contents of the same or any operation in the Premises, whether or not such loss is caused by the fault or negligence of Lessor or its agents, directors, employees or officers, or is caused by the fault or negligence of Lessee or its agents, directors, employees or officers.

12.5 **Waiver of Subrogation**[6] Lessee agrees to a waiver of any right to subrogation against Lessor and their respective employees and agents by each insurer under each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. Lessee will require of its contractors and consultants, by appropriate written agreements, similar waivers of Lessor. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage, should the Lessee, contractors or consultants enter into such an agreement on a pre-loss basis.

12.6 **Evidence of Insurance.**

12.6.1 Upon execution of the Lease by Lessee, Lessee shall furnish Lessor with current certificate(s) of insurance, executed by a duly authorized representative of each insurer, certifying that at least the minimum coverages required herein are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages will not be cancelled, non-renewed or materially changed by endorsement or through issuance of other policy(ies) of insurance without 60 days advance written notice to Lessor.

12.6.2 Prior to commencing work at the Premises, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 12.1.7 above.

12.6.3 Upon final acceptance of the Construction, and prior to the use or occupancy of any Improvements, Lessee shall furnish Lessor with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 12.1.8 above.

12.6.4 Lessee shall provide certified copies of all insurance policies required above within 10 days of the Lessor's written request for said copies.

12.6.5 Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligations to maintain such insurance.

12.6.6 The acceptance of delivery by Lessor of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the Lessor that the insurance

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[6] This Section is subject to continuing review by Lessee.

requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Lease.

12.7 **Deductibles, Retentions and Co-Insurance.** Lessee is solely responsible for any loss or portion of loss not covered by the insurance required herein by reason of the application of any deductible, self-insured retention or co-insurance provision of the respective policy(ies), or due to policy limits or exclusions.

12.8 **Failure to Maintain Insurance.**

12.8.1 Failure to maintain the required insurance may result in a Default of this Lease at Lessor's option after the giving of written notice to Developer and opportunity to cure of not less than ten (10) Business Days. If Lessor is damaged by the failure of Lessee to maintain insurance as required in this paragraph, then Lessee shall bear all reasonable costs properly attributable to that failure.

12.8.2 Lessor shall have the right, but not the obligation, to prohibit Lessee or any of its contractors from entering the Premises until Lessee has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the Lessor.

12.8.3 If Lessee fails to maintain the insurance as set forth herein, Lessor shall have the right, but not the obligation, to purchase said insurance at Lessee's expense. In no event shall Lessor be liable for payment of premiums due under any policy issued to Lessee by reason of Lessor being added as an 'insured' as required herein.

12.9 **Additional Insurance.** Lessor reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed from time to time. Lessee shall periodically, but not less frequently than once every three (3) years, reevaluate the scope of risks covered and the limits of its insurance and, if commercially reasonable, increase such coverage or limits in order to provide coverage for Lessee's and Lessor's protection for risks and limits that a prudent business person would provide for property being put to uses similar to those of the Premises.

12.10 **No Representation.** Lessor makes no representation that the limits of liability required to be carried by Lessee pursuant to this Article 12 are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee shall obtain such additional insurance coverage as Lessee deems adequate, at Lessee's sole expense. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, or to limit Lessee's contractual obligations and liabilities, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage.

ARTICLE 13:
LOSSES AND LOSS PROCEEDS

13.1 **Notice.** If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

13.2 **Effect of Casualty**.[7] If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Lessee shall Restore with reasonable promptness regardless of cost or the amount of Property Insurance Proceeds subject to terms of this Section 13.2. Lessee shall be responsible, using its own or borrowed funds, to pay for any difference between the estimated cost to Restore the Improvements and the amount of the Property Insurance Proceeds provided that such Property Insurance Proceeds shall be received by Lessee and are approved for use by Leasehold Mortgagee for the Restoration as set forth in Section 13.3 below. If the Casualty occurs within the last ten (10) years of the Term then Lessee shall use commercially reasonable efforts to determine whether such Casualty is a Substantial Casualty within ninety (90) days after the occurrence of such Casualty, or within such additional time as may be reasonably required under the circumstances, and shall promptly Notify Lessor as to whether the Casualty is a Substantial Casualty ("Substantial Casualty Notice"). If (a) the Casualty is a Substantial Casualty, and occurs within the last ten (10) years of the Term, or (b) Leasehold Mortgagee does not approve the use of the Property Insurance Proceeds for the Restoration, then in either case, Lessee may, by Notice to Lessor, terminate this Lease effective thirty (30) days after such Notice. In the event that Lessee elects to terminate the Lease pursuant to this Section 13.2, the Property Insurance Proceeds shall be disbursed in the following order of priority (a) first, to Lessee, to pay the cost of removing the destroyed Improvements and all debris remaining from the Casualty and any other obligations prior to surrender of the Property under this Lease (b) second, to Lessee (subject to the rights of any Leasehold Mortgagees) up to the Market Value of the Leasehold Estate as of the date of the Casualty, , and (c) then, to the extent, if any, of any remaining Property Insurance Proceeds, to Lessee (subject to the rights of any Leasehold Mortgagees) and Lessor, respectively, in the proportion that the duration of the Term remaining at the date of the Substantial Casualty (determined as if the Term were to continue until the Scheduled Expiration Date) bears to the duration of the full Term. For purposes of further clarification, said proportion to Lessee shall be a maximum of one-thirteenth based upon a 75-year term.

13.3 **Adjustment of Claims; Use of Property Insurance Proceeds**. Unless Lessee has validly elected a Casualty Termination, Lessee shall have the sole right and authority to adjust any insurance claim, subject to rights of any Leasehold Mortgagee. The Property Insurance Proceeds shall be disbursed: (a) in the case of an Immaterial Loss, to Lessee, to be held in trust to be applied first for Restoration; and (b) in the case of any other Casualty, to Depository or the first-position Leasehold Mortgagee, if required by such Leasehold Mortgagee, to be released in installments for Restoration. To obtain each such disbursement, Lessee shall deliver to Depository or the first-position Leasehold Mortgagee, if required by such Leasehold Mortgagee:

13.3.1 Architect's Certificate. A certificate of Lessee's licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons for Restoration; (b) Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise satisfactorily; (c) the sum being requested does not exceed the amount then due and payable; (d) except in the case of the final disbursement of Restoration Funds, the remaining Restoration Funds after disbursement are reasonably anticipated to suffice to pay for the remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Lessee has completed Restoration and obtained a temporary certificate of occupancy for the Restoration to the extent required by Law, and delivered (or simultaneously delivers in exchange for payment) final lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration;

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[7] This Section is subject to continuing review by Lessee and its lender.

13.3.2 Lien Waivers. Progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement; and

13.3.3 Other. Such other documents, deliveries, certificates and information as Depository reasonably requires.

13.4 Substantial Condemnation.[8] If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be paid in the following order of priority: (a) first, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive such portion of the Condemnation Award up to the Market Value of the Leasehold Estate condemned at the Condemnation Effective Date, (b) second, Lessor shall receive such portion of the remaining Condemnation Award up to the Market Value of the Fee Estate condemned at the Condemnation Effective Date, and (c) third, to the extent of any remaining Condemnation Award, Lessee (subject to the rights of any Leasehold Mortgagees) shall receive the remaining balance of the Condemnation Award.

13.5 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to Depository to be applied first for Restoration in the same manner as Property Insurance Proceeds. Whether or not the Condemnation Award is adequate, Lessee shall, at its expense, Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be distributed in the same manner as if it arose from a Substantial Condemnation that affected only the part of the Premises taken.

13.6 Temporary Condemnation. A Temporary Condemnation shall not terminate this Lease or excuse Lessee from full performance of its covenants or any other obligations hereunder capable of performance by Lessee during the period of such Temporary Condemnation, but in such case Lessee shall receive any Condemnation Award for the Temporary Condemnation (to the extent applicable to periods within the Term).

13.7 Immaterial Loss. If an Immaterial Loss occurs, then Lessee shall receive any Condemnation Award in trust to be applied first to Restoration. Lessee shall Restore in accordance with this Lease. After Restoration, Lessor shall receive any remaining Condemnation Award

13.8 Surrender. If this Lease is terminated as a result of a Condemnation, Lessee shall surrender the Premises in accordance with the applicable surrender provisions of Article 23, and Lessor and Lessee shall thereafter be relieved of any further obligation under this Lease.

ARTICLE 14:
LESSOR'S RESERVED RIGHTS

14.1 Inspections. Subject to notice requirements that are specifically provided herein, Lessor and its agents, representatives, and designees may enter the Premises in cases of emergency, or upon reasonable Notice during regular business hours, to: (a) ascertain whether Lessee is complying with this Lease (including the review of Lessee's records, contracts and/or Subleases pertaining to the Premises); (b) cure Lessee's Defaults, in accordance with this Lease; (c) inspect the Premises and any Construction; (d) reserved; or (e) post notices of non-responsibility in accordance with the Lease; or (f) as reasonably required in connection with any sale, re-entitlements, or for other reasonable purposes determined by

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[8] This Section is subject to continuing review by Lessee and its lender.

Lessor. In entering the Premises, Lessor and its designees shall not unreasonably interfere with operations on the Premises (provided that any such entry by Lessor into a Residential Rental Unit shall comply with advance written notice requirements under applicable Law) and shall comply with Lessee's reasonable instructions. If Lessor desires to perform such tests, borings, and other analyses as Lessor determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge, or to clean up any Pre-Existing Hazardous Substances Condition, Lessor shall Notify Lessee of such request, and Lessor and Lessee shall work in good faith to agree upon a schedule for Lessor to conduct such tests, borings, and other analyses that shall not adversely interfere with or disrupt Lessee's Construction schedule, or Lessee's Permitted Use of the Premises, including but not limited to, Lessee's tenants and subleases at the Project and upon completion, Lessor shall promptly restore the Premises to the condition existing prior to such tests, borings, and other analyses, as applicable.

14.2 **Other Entries by Lessor**. In addition to Lessor's rights under Section 14.1, Lessor may enter the Premises at any time (a) to take possession due to any breach that has been without cure under any applicable cure period of any Event of Default under this Lease in the manner provided herein, subject to the rights of the Leasehold Mortgagee; and (b) to perform any covenants of Lessee that Lessee fails to perform (subject to any applicable notice and cure periods and the rights of the Leasehold Mortgagee). Lessor may make any such entries hereunder without abatement of Rent, and may take such reasonable steps as required to accomplish the stated purposes. In an emergency, Lessor shall have the right to use any means that Lessor reasonably deems proper to open the doors to the Improvements. Any entry into the Premises by Lessor in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Lessee from any portion of the Premises (provided that any such entry by Lessor into a Residential Rental Unit shall comply with advance written notice requirements under applicable Law). No provision of this Lease shall be construed as obligating Lessor to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Lessor herein.

14.3 **Water, Oil, Gas and Mineral Rights**. Subject to applicable Laws, Lessor reserves to itself the sole and exclusive right to all water, oil, gas, or other hydrocarbon or mineral substances and accompanying fluids, including all geothermal resources, from the Land; but Lessor shall not undertake any extraction of such resources during the Term.

14.4 **Easements**.

14.4.1 Lessor's Right to Grant Licenses, Permits, Encroachments and Easements. Subject to Section 14.4.2 of this Lease, Lessor shall have the right, without payment to or charge from Lessee, to reserve to itself and to grant licenses, permits, encroachments or easements (collectively, "**Easements**") to any Person or Government on, over, under, across and through the Premises, to the extent such Easements are deemed by Lessor to be necessary or convenient for the construction, installation, operation, maintenance, repair and replacement of (a) improvements, (b) underground or overhead lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, (c) rights of way, curbs, pavements and other roadway improvements, and (d) landscaping, whether serving the Premises or other properties of Lessor or any other Person or Government.

14.4.2 Limitations on Lessor's Rights. Notwithstanding anything contained in above, Lessor may only grant or relocate Easements if taking such action will not have a material adverse effect on the design or use and enjoyment of Improvements and outdoor parks and passive recreation areas planned for or existing on the Premises. Further, Lessor shall (or shall cause the grantee of such Easements to): (a) be responsible for payment of all costs in connection with the granting of such Easements and the construction, installation and restoration work in connection therewith; (b) carry out and coordinate such work with Lessee so as to minimize disruption with Lessee's use of the Premises; and (c) following any work relating to any

Easement, restore the Premises to substantially the same condition as existed prior to such work. If Lessor fails to perform its obligations under this Section 14.4.2, Lessee shall first notify Lessor of such non-performance and the parties will negotiate in good faith to mutually agree upon the appropriate restoration work, and upon such agreement, Lessee shall have the right but not the obligation to conduct such work and/or pay such costs and, in such event, Lessor shall promptly reimburse Lessee for all costs so incurred by Lessee not later than sixty (60) days after receipt of written invoice therefor.

14.5 **Development**. Lessee agrees that it will reasonably cooperate with Lessor in the event Lessor desires to develop roads, sidewalks or other public improvements owned by Lessor in the vicinity of the Premises; provided that such cooperation has no material adverse effect on the Premises or Lessee's use of the Premises, and such cooperation is at no cost to Lessee (unless otherwise approved by Lessee).

14.6 **No Light or Air Easement**. Any diminution or shutting off of light or air by any structure now existing or hereafter erected by or on behalf of Lessor or Lessor's Affiliate on lands adjacent to the Premises shall in no way affect this Lease, shall not constitute a constructive eviction or grounds for reduction or abatement of Rent, or otherwise impose any liability on Lessor.

14.7 **General**. In addition to Lessor's right, title and interest as the fee owner in the Land, Lessor also shall have such rights as it may have as grantee, benefitted party or other party other than the fee owner of the Land under any grants of easement, covenants, restrictions, Land Court orders, and other recorded instruments or maps encumbering or affecting the Land (for example and not by way of limitation, rights of Lessor as grantee under sewer or drainage easements on, through or under the Land).

ARTICLE 15:
LESSOR'S TRANSFERS

15.1 **Transfer of Lessor's Interest**. Lessee acknowledges that Lessor has the right to Transfer the Fee Estate in accordance with Section 15.3. Lessee agrees that in the event of any such Transfer, (a) Lessee shall look solely to such transferee for the performance of Lessor's obligations under this Lease after the date of Transfer, and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Lessor after the date of Transfer; and (b) Lessee shall attorn to such transferee. Lessee hereby agrees to cooperate, at no cost to Lessee, with Lessor in connection with any Transfer. Following any such Transfer, Lessor shall deliver to Lessee a copy of the instrument evidencing the transferee's assumption of liabilities and obligations of Lessor under the Lease.

15.2 **Release of Lessor**. Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor automatically shall be freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Lessor after the Transfer, provided that such successor Lessor assumes in writing Lessor's present and future obligations under this Lease. This Lease shall bind Lessor only while Lessor owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

15.3 **No Right of First Refusal/No Option to Purchase**. If Lessor desires to Transfer the Fee Estate during the Term, it shall do so in full compliance with all Laws governing the County's sale of real property including, if applicable, an RFP or other public bidding process. If an RFP or other public bidding process is utilized or required, Lessor shall give Lessee written notice of Lessor's intent to Transfer the Fee Estate at least thirty (30) days prior to issuing such RFP or commencing such public bidding process. Lessee understands and agrees that nothing in this Lease grants Lessee an option or right of first refusal to purchase the Fee Estate from Lessor.

ARTICLE 16:
REGULATORY PROVISIONS

16.1 RESERVED

16.1.1 RESERVED

ARTICLE 17:
LESSEE'S TRANSFERS

17.1 Lessee's Transfer Right. Except as provided in Article 18 and Article 19, Lessee shall not Transfer this Lease or the Leasehold Estate, whether or not to an Affiliate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee agrees, however, that it shall be conclusively presumed to be reasonable for Lessor to withhold its consent unless the following have occurred: (A) Lessor's receipt of reasonably satisfactory evidence that: (i) Lessee is not in Default under this Lease or, if Lessee is in Default, that the transferee undertakes to cure any such Default to the reasonable satisfaction of Lessor; (ii) the continued operation of the Premises after the Transfer shall comply with the provisions of this Lease; (iii) the transferee has the financial capability and resources to operate and maintain the Premises as required by this Lease; (iv) either (a) the transferee or its property manager has the experience, reputation, managerial and operational skills to operate and maintain the Premises, (b) the transferee agrees to retain a property manager with the skills, experience and record described in clause (a) above, effective as of the date of the Transfer, or (c) the transferor Lessee or its property manager will continue to manage the Premises, or another property management company reasonably acceptable to Lessor will manage the Premises, for at least one year following the Transfer; (v) the transferee is not delinquent in any tax payments and does not have pending against it any charges of, and does not have a record of, material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any applicable local, state or federal regulatory agencies; and (vi) the transferee is not in arrears or noncompliance with any obligations to the Government and is in good standing with respect to other Government agreements; (B) the execution by the transferee and delivery to Lessor of an assignment document specifically stating that the Transfer is made subject to all terms, covenants and conditions of this Lease, and all such terms, covenants, and conditions in this Lease shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer; and (C) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee as set forth in this Lease. It is hereby expressly stipulated and agreed that any Transfer in violation of this Section 17.1 shall be null, void and without effect, shall cause a reversion of title to Lessee, and shall be ineffective to relieve Lessee of its obligations under this Lease. The written consent of Lessor to any Transfer of this Lease or the Leasehold Estate shall constitute conclusive evidence that the Transfer is not in violation of this Section 17.1. Upon any Transfer by Lessee that complies with this Lease, Lessee shall be fully released from its obligations hereunder to the extent such obligations have been fully assumed in writing by the transferee except for: (x) any obligation to hold and apply Restoration Funds held by Lessee at the date of the Transfer (unless transferred to the transferee); (y) any unperformed obligations that arose or accrued prior to such Transfer and all Legal Costs of any proceeding relating thereto commenced before such Transfer for which the transferor is liable hereunder (unless specifically assumed in writing by the transferee); and (z) any indemnity obligation under this Lease (unless specifically assumed in writing by the transferee). Lessee shall pay all transfer and other taxes, if any, payable on account of any Transfer by Lessee or any holder of any Equity Interest in Lessee.

17.2 No Partial Transfers. Except in the case of a Sublease permitted pursuant to Article 18 or a Leasehold Mortgage permitted pursuant to Article 19, in no event shall Lessee be permitted to Transfer

less than its entire interest in this Lease or the Leasehold Estate, and Lessor may elect in its sole discretion to deny consent to any such partial Transfer.

17.3 **Notice of Transfer**. If Lessee desires Lessor's consent to any Transfer, Lessee shall Notify Lessor in writing, which notice shall include (a) the proposed effective date of the Transfer; (b) the material terms of the proposed Transfer; (c) a copy of the signed purchase and sale agreement or other agreement between Lessee and the proposed transferee; (d) current financial statements of the proposed transferee certified, compiled or reviewed by an independent certified public accountant for the fiscal year most recently ended, and business credit, personal references and business history of the proposed transferee; and (e) such other reasonable information in connection with the proposed Transfer as Lessor shall reasonably request.

17.4 **Expenses**. Within ten (10) days following demand, Lessee shall reimburse Lessor for Lessor's reasonable costs (including attorneys' fees) incurred in reviewing and approving or disapproving, or otherwise consulting with respect to, any Transfer.

ARTICLE 18:
SUBLEASES

18.1 Residential Tenants.

18.1.1 Residential Spaces. Lessee acknowledges and agrees that the Premises are to be primarily held, developed, managed and operated as a "housing project" within the meaning of Section 8-10.20 of the Revised Ordinances of Honolulu (ROH), as amended, in accordance with and subject to the provisions of the Development Agreement and this Lease regarding Residential Rental Units for Qualified Tenants at Affordable Rents and appurtenant facilities.

18.1.2 Representations, Warranties, and Covenants. Lessee further represents, warrants and covenants as follows:

(a) Each Residential Rental Unit shall be a Dwelling Unit as defined in ROH §8-10.20(a). They will be and remain similarly constructed, and each Residential Rental Unit will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which will be and remain an independent living unit complete, separate and distinct from other Residential Rental Units and will include and will continue to include a sleeping area, at least one bathroom, and a single kitchen (as defined in ROH § 8-10.20(a)) equipped with a cooking range, oven, range hood, solar water heater, refrigerator, and sink, provided such solar water heaters may serve multiple Dwelling Units and may be located on a floor of a building instead within each Residential Rental Unit The Premises shall not be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, or rest home, or in any manner in contravention of applicable law.

(b) The Residential Rental Units shall at all times comply with all Federal and State Affordable Housing Requirements applicable thereto, including requirements established by such programs affecting both income limitations and allowable rent levels in respect of such residential units; provided, however that no Qualified Tenant in any Residential Rental Unit shall be required to make a payment toward rent in excess of the limits established by this Lease for such Residential Rental Unit. In the event of a conflict between the requirements of this Lease and any Federal and State Affordable Housing Requirements, the latter shall control. Upon the expiration of any Federal and State Affordable Housing Requirements, the requirements of this Lease

shall remain in place and shall control for the balance of the Term. Nothing in this Lease shall preclude or be interpreted or deemed to prohibit Qualified Tenants from applying for and receiving rent and other subsidies that shall, as applicable under any program concerning such rent or other subsidies, subsidize or be in addition to the Affordable Rents specified in this Lease.

(c) For the Term, subject to any applicable Federal and State Affordable Housing Requirements, all of the Residential Rental Units shall at all times be rented to and occupied by Qualified Tenants at the Affordable Rents specified herein.

(d) Lessee shall establish a system to determine preferences by lot in the event the number of eligible applicants exceeds the number of Residential Rental Units available. The Residential Rental Units shall otherwise be rented or held available for rental, on a first-come first-served basis to members of the general public who are Qualified Tenants, on a continuous basis, and may not be converted to owner-occupied condominium units or other non-rental use. In renting Residential Rental Units to Qualified Tenants, the Lessee will not otherwise give preference to any particular protected class or group except Lessee may grant preferences for the following:

(1) Persons displaced by government action, provided that their tenant application is submitted between (a) the date of the initial displacement notice and (b) six (6) months after the actual displacement action, supported by sufficient documentation of such displacement;

(2) For residential units designated as accessible for persons with mobility, visual, hearing and/or mental impairment, households containing at least one person with such impairment will have first priority for those units. No special priority shall be given among such applicants based upon the specific type(s) of impairment of the household member; and,

(3) As may be required by any applicable Federal and State Affordable Housing Requirements and/or this Lease.

(e) Lessee shall rent the units in accordance with a rental program approved by the Lessor, which rental program may be amended in writing upon mutual agreement of Lessee and the Lessor from time to time, and which shall be incorporated by reference herein and binding upon Lessee. Such rental program shall establish:

(1) Requirements and procedures for reviewing applications, evaluating applicants, determining eligibility as a Qualified Tenant, selecting renters and renting to Qualified Tenants.

(2) A system for determining preferences by lot, in the event the number of Qualified Tenants exceeds the number of Residential Rental Units available.

(3) A description of how the rental program will ensure compliance with all applicable laws and standards relating to the rental of real property.

(4) Affordable Rent for each Residential Rental Unit, based on unit type, household size, and income level.

(5) In establishing the Affordable Rent, the HUD AMI for the following household sizes shall apply, based on the Residential Rental Unit type to be rented:

Unit Type	Household Size
Studio	1-2 persons
1 bedroom	1-3 persons
2 bedroom	2-5 persons
3 bedroom	3-7 persons
4 bedroom	4-8 persons

(f) For the Term, Lessee shall obtain, complete and maintain on file (i) at the time of initial occupancy of any Residential Rental Unit, (ii) upon the vacancy and re-occupancy of any Residential Rental Unit, and (iii) at least once annually, an income certification, in a form approved by the Lessor, an example of which is attached hereto as **Exhibit C,** which shall be subject to independent investigation and verification by the Lessor. Lessee shall verify the information submitted by each Qualified Tenant at the time of submission, including taking, for other than Section 8 of the Housing Act certificate or voucher holders, the following steps as part of the verification process by Lessee: (1) either (A) obtain a federal income tax return for such Qualified Tenant for the most recent tax year; and/or (B) obtain a written verification of employment from such Qualified Tenant's current employer; or (2) if such Qualified Tenant is not employed and has no tax return, obtain other verification of such Qualified Tenant's source of income. Lessee shall file with Lessor a certificate of continuing program compliance in a form approved by the Lessor, an example of which is attached hereto as **Exhibit D,** on or before the first (1st) day of each September during the Term setting forth the required information for the preceding calendar or fiscal year. The books and records of the Lessee pertaining to the incomes of Qualified Tenants must be open to inspection by any authorized representative of the Lessor. During any period that any Federal and State Affordable Housing Requirements are in effect, Lessee shall be deemed to have satisfied the requirements of this subparagraph if Lessee obtains, completes and maintains on file income certification and other forms that comply with the applicable Federal and State Affordable Housing Requirements and that contain substantially the same information, and certifications of compliance with such Federal and State Affordable Housing Requirements that establish compliance with the requirements herein.

(g) All subleases shall be subordinate to this Lease and shall contain clauses, among others, wherein each Qualified Tenant: (i) certifies the accuracy of the statements made regarding household income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such tenant, that such Qualified Tenant will comply promptly with all requests for information with respect thereto from the Lessee, and that the failure to provide accurate income information or refusal to comply with a request for information shall be deemed a violation of a substantial and material obligation of the tenancy of such tenant.

(h) In connection with all subleases of the Residential Rental Units, tenants shall be provided written disclosures of pre-existing uses in the surrounding community, including activities such as:

(1) Cultural and religious events at the nearby Church

18.1.3 Affordable Rents. **"Affordable Rent"** means a monthly rent for a Residential Rental Unit which does not exceed the maximum rent established for persons with the annual income level (as adjusted for household size) necessary to qualify for that Residential Rental Unit, which shall be based upon

guidelines published by the Hawaii Housing Finance and Development Corporation based on income levels and limits established by HUD, adjusted for household income, Unit and family size, and utility allowances. Affordable Rents may either be inclusive of tenant utility payments, or utility charges may be billed separately from rent and paid directly by tenant. Notwithstanding the foregoing, with respect to Qualified Tenants, if any, who are recipients of rent subsidies pursuant to Section 8 of the Housing Act (or any rent subsidy or other HUD, State, or County program), if the contract rent for a Residential Rental Unit under such program is greater than the Affordable Rent, the rent for such Residential Rental Unit may be such contract rent.

18.1.4 Non-discrimination. Lessee shall comply with the provisions of any applicable federal, State or local law prohibiting discrimination in housing on the basis of race, creed, color, sex, familial status, marital status, religion, national origin, age (except as to age, as may be expressly provided herein) or any other prohibited basis. Lessee shall also comply with the provisions of any applicable federal, State or local law prohibiting discrimination on the basis of race, creed, color, sex, familial status, marital status, religion, national origin, age, or any other prohibited basis, in connection with the employment or application for employment of persons for the Construction, operation and management of the Premises. Lessee further agrees not to refuse to lease a Residential Rental Unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a certificate or a voucher under Section 8 of the Housing Act, or any successor legislation.

18.1.5 Condition of the Premises. Lessee agrees that throughout the Term, it shall (1) maintain the Premises in good repair and condition in accordance with applicable County codes, and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G, as amended; (2) maintain and operate the Premises to provide decent, safe and sanitary housing, including the provision of all essential and appropriate services, maintenance and utilities; and (3) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended.

18.1.6 Covenants to Run with the Property -- Termination of Covenants. Lessor and Lessee hereby covenant and agree that the covenants set forth herein that govern the use and occupancy of the Premises shall be and are covenants running with the Land for the Term and shall be binding upon all subsequent lessees of the Premises for such Term, and are not merely personal covenants of Lessor and Lessee. Lessee hereby agrees that any and all requirements of State Laws to be satisfied in order for the provisions of this Lease to constitute restrictions and covenants running with the Land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or, in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Land. For the Term each and every contract, deed or other instrument hereafter executed conveying the Premises or portion thereof shall expressly provide that such conveyance is subject to this Lease; provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Premises or portion thereof provides that such conveyance is subject to this Lease.

18.1.7 Real Property and General Excise Tax Exemptions. Lessee shall be responsible for paying and discharging all real property taxes for the Premises payable or accruing during the Term. Based on the recordation of this Lease, Lessee may file an application or claim for exemption from the assessment and payment of real property taxes, including any claim for exemption subject and pursuant to ROH §8-10.20 and §8-10.21, relating to low-income rental housing, and the County agrees to process such application in the ordinary course subject and pursuant to the requirements of §8-10.20 and §8-10.21. Lessee understands that Lessee must file for such exemption annually and that the County shall not be responsible or liable for Lessee's failure to timely file for such exemption on an annual basis.

Pursuant to Hawai'i Revised Statutes Section 46-15.1, Section 201H-36, and Section 237-29, the County may certify for exemption from general excise taxes any projects which meet the requirements of said

statutes. The County will work with Lessee to issue such certifications provided that the requirements under said statutes and applicable laws are met. Lessee understands that Lessee is responsible for preparing and filing any exemption request and that the County shall not be responsible or liable for Lessee's failure to file for such exemptions. Lessee further understands that such exemptions are subject to all laws and rules applicable thereto.

The exemptions from real property taxes and general excise taxes currently available are subject to change by legislative or administrative action.

18.2 **Commercial Spaces.** To the extent permitted under Federal, State and Municipal Affordable Housing Requirements, Lessee may designate certain spaces within the Premises for commercial purposes. Lessee, with the consent of Lessor, shall have the right to sublease each such commercial space in the Premises to a commercial tenant at such rents and on such terms as may be determined by Lessee, in its sole discretion; provided that any such commercial sublease shall be subordinate to the terms and conditions of this Lease. Lessee shall have the right to sublease each commercial space in the Premises for any use that is permitted under applicable Laws, including but not limited to, day-care and preschool facilities, retail use, work space, etc.; provided that Lessee makes no representation or warranty regarding any commercial tenant and/or any use that may be available at the Project from time to time.

18.3 **Recordkeeping.** The financial records of the Premises are to be maintained by Lessee in accordance with recognized industry-accepted accounting principles consistently applied. In addition to records and information required to be collected, prepared, maintained, and reported pursuant to federal and State Laws and this Lease, Lessee shall provide the following to Lessor at Lessor's reasonable request:

- access to the books of account for the Premises;
- records pertaining to the Residential Rental Units;
- annual operating statements for the Project;
- certified financial statements for the Project (provided that audited financial statements for the Project will be provided if so required for Lessee to qualify for exemptions under applicable Laws); and
- annual operating budget for the Project.

ARTICLE 19:
LEASEHOLD MORTGAGES

19.1 **Leasehold Mortgage.** Notwithstanding anything in this Lease to the contrary, Lessee shall have the absolute and unconditional right, without Lessor's consent, to execute and deliver a Leasehold Mortgage at any time and from time to time during the Term. The execution and delivery of a Leasehold Mortgage by Lessee shall not be deemed to constitute such an assignment or transfer of this Lease that would require Lessee to obtain Lessor's consent under Article 17 under this Lease. Foreclosure of the Leasehold Mortgage (or any bona fide sale or assignment in lieu of foreclosure), whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, shall not require the consent of Lessor and shall not constitute a breach of any provision or a Default under this Lease. Upon such foreclosure, sale or conveyance, and provided that (a) such purchaser or assignee expressly assumes and agrees to be bound by and to observe and perform all covenants and obligations of the lessee under this Lease from and after the effective date of such conveyance, and (b) a copy of such fully executed assignment and assumption agreement is provided to Lessor, Lessor shall recognize such purchaser or assignee (or Leasehold Mortgagee or its designee) as the lessee hereunder. Any such purchaser or assignee (other than the Leasehold Mortgagee or its designee) who has acquired title to this Lease by way of foreclosure or assignment in lieu thereof may only assign its rights under this Lease, other than by way

of mortgage, in compliance with Article 17 hereof. Lessor shall not be required to join in, or "subordinate the Fee Estate to," or to subordinate Lessor's interest under this Lease to, any Leasehold Mortgage, but shall execute and deliver such estoppel certificates and other certifications as any Leasehold Mortgagee shall reasonably require.

19.2 Protection of Leasehold Mortgagee. In the event Lessee subjects the Leasehold Estate to a Leasehold Mortgage, the provisions of this Article 19 shall apply with respect to such Leasehold Mortgage:

19.2.1 Concurrent Notices. Lessor shall, upon serving Lessee with any Notice pursuant to the provisions of this Lease, or other communication which may adversely affect the security of a Leasehold Mortgagee, including but not limited to, any Notice of Default, concurrently serve a copy of such Notice or other communication upon each Leasehold Mortgagee.

19.2.2 Right to Cure. Each Leasehold Mortgagee and each Equity Investor shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all Rent due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under this Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions of Lessee under this Lease to prevent termination of this Lease; provided that no Leasehold Mortgagee shall have any duty, obligation, or liability under this Lease prior to the time of its entry and physical possession of the Premises or acquisition of the Leasehold Estate. Any of the foregoing done by Leasehold Mortgagee or the Equity Investor, as applicable, shall be effective to satisfy the obligation of Lessee under this Lease, and Lessor shall accept such performance with the same force and effect as if the same had been done by Lessee. No action by Lessee or Lessor to voluntarily cancel or surrender (except in accordance with the terms herein) or materially modify the terms of this Lease or the provisions of this Article 19 shall be binding upon a Leasehold Mortgagee without its prior written consent.

19.2.3 Cure Period. Notwithstanding anything in this Lease to the contrary, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles or purportedly entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless (a) Lessor shall have given written notice to the Leasehold Mortgagee of Lessee's Default and stating Lessor's intent to terminate this Lease; and (b) either (i) in the event of a Monetary Default, the Leasehold Mortgagee shall not have cured such Monetary Default within thirty (30) days after the service of such written notice, or (ii) in the event of any other Default under this Lease susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee fails to commence, within sixty (60) days after the service upon the Leasehold Mortgagee of such written notice, the cure of such Default, and diligently pursue to completion the cure of such Default; provided, however, that in the Event of a Default under this Lease which consists of the existence or nonpayment of a lien, such Default shall be deemed to be cured if, within such 60-day period, the Leasehold Mortgagee shall have commenced foreclosure and shall thereafter diligently pursue such proceedings to completion, or shall have commenced and shall thereafter diligently pursue steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. If any such Default susceptible of being cured by the Leasehold Mortgagee cannot be cured by the Leasehold Mortgagee without the Leasehold Mortgagee first obtaining possession of the Premises or title to the Leasehold Estate or if the Default is not susceptible of being cured by the Leasehold Mortgagee, such Default shall be deemed to be cured if: (A) within sixty (60) days after the receipt by the Leasehold Mortgagee of such written notice, the Leasehold Mortgagee shall have commenced foreclosure and thereafter diligently pursue such proceedings to completion, or (B) the Leasehold Mortgagee commences, within such 60-day period, and thereafter diligently pursues, steps to obtain title to the Leasehold Estate by means of an assignment in lieu of foreclosure. During the course of any such proceedings, such Leasehold Mortgagee shall pay or cause to be paid all Rent as and when the same becomes due and payable under this Lease and shall perform all other obligations of the Lease.

19.2.4 Time Extensions. If the Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, the times specified in Section 19.2.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Leasehold Mortgagee shall have fully cured any Monetary Default and shall continue to pay Rent as and when the same become due, and shall perform all other obligations of the Lease to the extent possible without obtaining possession of the Premises.

19.2.5 New Lease. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, any Default by Lessee or by reason of the disaffirmance or reject hereof by Lessee or any receiver, liquidator, or trustee of Lessee or its property), Lessor, if requested by Leasehold Mortgagee, will enter into a new lease of the Premises ("**New Lease**") with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the Term, at the Rent and upon the same terms, covenants and conditions herein contained and subject to the rights, if any of the parties then in possession of any part of the Premises, provided that: (a) such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written Notice from Lessor that the Lease has been terminated; (b) such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums, including Rent, which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination; (c) such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and (d) the lessee under the new lease shall have the same right, title and interest in and to the Premises as Lessee had under the terminated Lease immediately prior to its termination. Notwithstanding any provision to the contrary in this Lease, any New Lease made pursuant to this Section 19.2.5 shall be prior to any Leasehold Mortgage or other lien, charge or encumbrance on the Premises, to the same extent as the prior Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, lien, change or encumbrance created by Lessor) for a term of years equal to the term of the New Lease, subject to the reversion in favor Lessor upon expiration or sooner termination of the New Lease. The right to a New Lease pursuant to this Section 19.2.5 shall survive the termination of this Lease. If a Leasehold Mortgagee shall elect to demand a New Lease under this Section 19.2.5, Lessor agrees, at the request of, on behalf of, and at the sole cost and expense of Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove Lessee from the Premises, and those sub lessees actually occupying the Premises, or any part thereof, as designated by Leasehold Mortgagee and subject to any non-disturbance agreements with such sublessees actually occupying the Premises, or any part thereof, as designated by Leasehold Mortgagee and subject to any non-disturbance agreements with such sub lessees. Unless and until Lessor has received notice from all Leasehold Mortgagees that the Leasehold Mortgagees elect not to demand a New Lease as provided in this Section 19.2.5, or until therefor has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases (except if, after the giving of written notice to such subtenant and all Leasehold Mortgagees and an opportunity to cure such default as set forth in such sublease, a default has occurred and is continuing beyond any applicable cure period under an existing sublease) nor enter into any new sublease hereunder without the prior written consent of the Leasehold Mortgagees. Notwithstanding the foregoing, nothing herein contained shall require any authorized Leasehold Mortgagee to enter into a new lease pursuant to this Section 19.2.5, nor to cure any Default of Lessee referred to above.

19.2.6 Lessor's Consent. Lessor's written consent, which shall not be unreasonably withheld, is required for any assignment or transfer of the Leasehold Estate by any third party purchaser or assignee

(other than Leasehold Mortgagee or its designee) which acquired its interest in the Leasehold Estate and this Lease pursuant to a foreclosure (whether by judicial proceedings or by virtue of any power of sale contained in any Leasehold Mortgage), or assignment in lieu of foreclosure. Lessor shall execute a written consent to such transfer, or provide a written denial of consent (which will include specific reasons for Lessor's denying consent), within forty-five (45) calendar days of receipt of Leasehold Mortgagee's written request for such consent. If, in connection with Lessee's financing of its interest under this Lease, a prospective lender requests that additional or modified protections be incorporated into this Lease, Lessor shall review and reasonably approve such requests and timely amend this Lease as necessary and appropriate; provided, however, that such additions or modifications requested are generally applicable and utilized in financings of leasehold estates similar to the Leasehold Estate under this Lease, and that such requests do not materially and adversely affect Lessor's rights or materially increase Lessor's obligations.

19.2.7 Liability Limits. In the event any third party or Leasehold Mortgagee acquires the Leasehold Estate upon foreclosure (whether judicial or non-judicial in nature) or by assignment in lieu of foreclosure, or acquires a leasehold estate in the Premises pursuant to the terms of a new lease, such party, as the new lessee, shall be personally liable only for the obligations of the Lessee under this Lease (or, if applicable, the new lease) arising during the period of time that such party holds title to the Leasehold Estate created hereby (or, if applicable, the new lease) and such personal liability shall be limited to such new lessee's interest in the Premises.

19.2.8 Notice to Proceedings. Lessor and Lessee shall give all Leasehold Mortgagees Notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims, as each may relate to the Premises and any Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The Parties hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, such Leasehold Mortgagee shall receive Notice of and a copy of any award or decision made in connection therewith.

ARTICLE 20:
EQUIPMENT LIENS

20.1 **Lessee's Rights**. If at any time or from time to time Lessee desires to enter into or grant any Equipment Lien that otherwise complies with this Lease, and provided that no uncured Event of Default has occurred and is continuing, then upon Lessee's request Lessor shall enter into such customary documentation regarding the Financed FF&E as Lessee reasonably requests, providing for matters such as: (a) waiver or subordination of any right to take possession of such Financed FF&E upon an Event of Default; (b) waiver or subordination of any other right, title, or interest in the Financed FF&E; and (c) agreements to enable the holder of such Equipment Lien to repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien.

20.2 **Required Provisions for Equipment Liens**. If Lessee enters into any Equipment Lien, then Lessee shall: (i) not file (or cause or permit to be filed) such Equipment Lien as a lien against the Fee Estate or any part of the Fee Estate, but Lessee shall be permitted to file or cause to be filed a fixture filing attaching to Lessee's interest in the Premises relating to any Financed FF&E; and (ii) cause to be inserted in the documents for such Equipment Lien a provision to the following effect:

Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sales agreement, title retention agreement, or security agreement shall not create or be filed as a lien against the Fee Estate.

ARTICLE 21:
QUIET ENJOYMENT

So long as this Lease has not been terminated, Lessor covenants that Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms, covenants, conditions, provisions and agreements set forth in this Lease, without hindrance or disturbance by or from Lessor or anyone lawfully claiming by or through Lessor, and free of any encumbrance created or suffered by Lessor, except Permitted Exceptions.

ARTICLE 22:
EVENTS OF DEFAULT; REMEDIES

22.1 **Definition of "Event of Default"**. An "**Event of Default**" means the occurrence of any one or more of the following:

22.1.1 Monetary Default. If a Monetary Default occurs and continues for ten (10) days after Notice from Lessor, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

22.1.2 Prohibited Liens. If Lessee fails to comply with any obligation regarding Prohibited Liens and does not begin to remedy such failure within thirty(30) days after Notice from Lessor and, thereafter, diligently pursue such remedy to completion.

22.1.3 Bankruptcy or Insolvency. If Lessee ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Lessee's assets or Lessee's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within ninety (90) days).

22.1.4 Nonmonetary Default. If any other Nonmonetary Default occurs and Lessee does not cure it within thirty (30) days after Notice from Lessor describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessee shall not (a) within thirty (30) days from Lessor's Notice advise Lessor of Lessee's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.1.5 Other Events. The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease, which default is not cured within the time frame described in such other provision, or, if no cure period is described, than within the time frame described in Section 22.1.4.

22.2 **Remedies**. If an Event of Default occurs, then Lessor shall, at Lessor's option (unless prohibited by Law), have any or all of the following remedies, all cumulative (i.e., the exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Lessor's remedies include:

22.2.1 Termination of Lessee's Rights. Lessor may terminate Lessee's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of

termination shall be the Expiration Date, and Lessee shall immediately surrender possession to Lessor. Notwithstanding the foregoing, no re-entry or taking of possession of the Premises by Lessor under Section 22.2.2 shall be construed as an election on Lessor's part to terminate this Lease unless a written Notice that this Lease is terminated is given by Lessor, or an order is secured stating that this Lease is terminated. The effective date of termination of this Lease shall be as of the date set forth or provided in the Notice or order, as the case may be.

22.2.2 Taking Possession. Lessor may re-enter and take possession of the Premises with process of law, whether by summary proceedings (unless prohibited by Law) or otherwise, and remove Lessee (and all property of Lessee), with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Lessor. Except as expressly provided in this Lease or prohibited by Law, Lessee, for and on behalf of itself and all persons claiming by, through or under Lessee, expressly waives any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Lessee is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Lessor or any expiration or termination of this Lease. No re-entry by Lessor, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Lessee from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

22.2.3 Suits Before Expiration Date. Lessor may sue for damages and/or to recover Rent from time to time at Lessor's election; nothing in this Lease requires Lessor to wait until the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

22.2.4 Receipt of Moneys. No receipt of money by Lessor from Lessee after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Lessee, or waive Lessor's right to enforce payment of any Rent payable or later falling due, or Lessor's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of Notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Lessor may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of Lessee's liability.

22.2.5 No Waiver. No failure by Lessor to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no Default, shall be Modified except by a written instrument executed by Lessor. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

22.2.6 Receiver. Lessor shall be entitled as a matter of right, by *ex parte* order or otherwise, to the appointment without bond of a receiver of the Premises, and of the rents, revenues, income and profits generated from the Premises, without regard to the value of the Premises or the solvency of any Person liable for the payment of any monetary obligation under this Lease, and regardless of whether Lessor has an adequate remedy available to Lessor under this Lease or under applicable Laws.

22.2.7 Damages. Lessor may recover from Lessee all damages Lessor incurs by reason of an Event Default that occurs and is continuing beyond any applicable cure period, including reasonable costs of recovering possession, re-letting the Premises, and any and all other damages legally recoverable by

Lessor, and reimbursement of Lessor's reasonable out-of-pocket costs, including Legal Costs. Lessor may recover such damages at any time after the occurrence and continuation of an Event of Default beyond any applicable cure period, including after expiration of the Term. Notwithstanding any Law to the contrary, Lessor need not commence separate actions to enforce Lessee's obligations for each month's accrual of damages for the occurrence and continuation of an Event of Default beyond any applicable cure period, but may bring and prosecute a single combined action for all such Rent and damages.

22.2.8 Injunction of Breaches. Whether or not an Event of Default has occurred, Lessor may obtain a court order enjoining Lessee from continuing any Default or from committing any threatened Default. Lessee specifically and expressly acknowledges that damages may not constitute an adequate remedy for any Nonmonetary Default.

22.2.9 Continue Lease. Lessor may at Lessor's option maintain Lessee's right to possession. In such case, this Lease shall continue and Lessor may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

22.2.10 Restoration Funds. Upon any termination of this Lease resulting from an Event of Default, to the extent that Lessor or Depository then holds any Restoration Funds, such Restoration Funds shall be applied first toward the applicable Restoration with any Restoration Funds remaining after completion of Restoration being applied in the manner set forth in Section 13.2 for the disposition of Property Insurance Proceeds upon a Casualty Termination, subject to any claims for damages resulting from such Event of Default.

22.3 Proceeds of Reletting. Lessor shall apply any proceeds of any re-letting as follows, without duplication, but including Default Interest on all such sums:

22.3.1 Lessor's Costs. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

22.3.2 Preparation for Reletting. Second, to pay to itself the cost and expense reasonably sustained in securing any new lessees and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for re-letting;

22.3.3 Costs of Maintenance and Operation. Third, to the extent that Lessor shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

22.3.4 Residue. Fourth, after payment to itself of any balance remaining on account of Lessee's liability to Lessor, to Lessee or any Leasehold Mortgagee, as applicable.

22.4 Lessee's Late Payments; Late Charges. If Lessee fails to make any payment to Lessor required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Lessor, and without reducing or adversely affecting any of Lessor's other rights and remedies, Lessee shall pay Lessor within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Lessee actually makes such payment. In addition, and without limiting any other rights or remedies of Lessor, Lessee shall pay Lessor, as Additional Rent, an administrative charge equal to five percent (5%) of any payment that Lessee fails to pay within thirty (30) days after such payment is first due and payable. Such administrative charge is intended to compensate Lessor for the inconvenience and staff time incurred by Lessor to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Lessee under this Lease.

22.5 **Lessor's Right to Cure**. If Lessee at any time fails to make any payment or take any action this Lease requires, then Lessor, after twenty (20) Business Days' Notice to Lessee, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Lessee from any obligation or Default and without waiving Lessor's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Lessee shall reimburse Lessor, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Lessor in exercising its cure rights under this Section 22.5; and (b) Default Interest on the amounts in clause (a) above.

22.6 **Holding Over**. If for any reason or no reason Lessee remains in the Premises after the Expiration Date, then Lessor will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Lessee remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Lessor, Lessee shall pay to Lessor, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Lessee holds over after the Expiration Date, a sum equal to twice the then market rental rate for the Premises, plus all Additional Rent otherwise payable under this Lease during the holdover period. Nothing contained in this Section 22.6 shall be construed as consent by Lessor to any holding over by Lessee, and Lessor expressly reserves the right to require Lessee to surrender possession of the Premises to Lessor as provided in this Lease upon the expiration or earlier termination of this Lease.

22.7 **Waivers: Jury Trial, Redemption**. Lessor and Lessee irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Lessor and Lessee regarding the Premises, enforcement of this Lease, Lessee's use or occupancy of the Premises, any claim of injury or damage arising between Lessor and Lessee, or any actions of Lessor in connection with or relating to the enforcement of this Lease. Lessee waives any right of redemption provided for by Law.

22.8 **Accord and Satisfaction; Partial Payments**. No payment by Lessee or receipt by Lessor of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Lessee. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Lessor may accept any such check or payment without prejudice to Lessor's right to recover the balance of such Rent or pursue any other remedy.

22.9 **Lessor's Default**. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after Notice from Lessee describing such breach in reasonable detail, or, in the case of a breach that cannot, with due diligence, be cured within thirty (30) days from such Notice, if Lessor shall not (a) within thirty (30) days from Lessee's Notice advise Lessee of Lessor's intention to take all reasonable steps to cure such default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) days).

22.10 **Miscellaneous**. Lessor and Lessee further agree as follows with respect to any Defaults and Lessor's rights and remedies:

22.10.1 Survival. Termination or expiration of this Lease resulting from a Default shall not relieve any party of any claims against it that arise under this Lease before the Lease expires or is terminated.

22.10.2 No Double Recovery. In no event shall Lessor be entitled, directly or indirectly, to recover twice for the same element of Lessor's damages.

ARTICLE 23:
END OF TERM

Upon any Expiration Date: (a) subject to Section 7.2, all Improvements, FF&E, and Building Equipment shall become Lessor's property; (b) Lessee shall deliver to Lessor possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Lessee to Restore; (c) Lessee shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Lessor reasonably requires; (d) Lessee shall deliver the Premises free and clear of all: Subleases, and liens except (1) Permitted Exceptions existing as of the Commencement Date or consented to by Lessor, (2) Subleases executed pursuant to this Lease or consented to by Lessor, (3) liens that Lessor or any of its agents caused, and (4) Subleases or other agreements required to remain in place due to certain tenants' rights set forth in applicable Law; (e) subject to Section 7.2, Lessee shall assign to Lessor, and give Lessor copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises, along with copies of all operating manuals and similar documentation relating to all Improvements, FF&E, and Building Equipment, and the current year's operating budget for the Premises (including applicable back-up information); (f) the parties shall cooperate to achieve an orderly transition of operations from Lessee to Lessor without interruption, including delivery of such information, books and records (or copies thereof) as Lessor reasonably requires; (g) subject to Section 7.2, if such plans are available, Lessee shall provide Lessor with a complete set of as-built plans and specifications for all Improvements, if any, added to the Premises since the Commencement Date; (h) the parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Lessee shall first be applied to cure any Default); (i) the parties shall terminate the recorded Lease; and (j) subject to Section 7.2, Lessee shall assign to Lessor, and Lessor shall reimburse Lessee for, all utility and other service provider deposits for the Premises.

ARTICLE 24:
NOTICES

All Notices shall be in writing and addressed to Lessor and Lessee (and their designated copy recipients), as applicable, as set forth in **Exhibit E** attached hereto. Notices (including any required copies as set forth in **Exhibit E**) shall be delivered by (a) United States certified or registered mail, postage prepaid, return receipt requested, or (b) a nationally recognized overnight courier service, to the addresses set forth in **Exhibit E**. Notices shall be deemed delivered (a) three (3) Business Days after the date it is posted if sent by U.S. Mail (provided no postal strike or other disruption of postal service is then in effect), or (b) the date the overnight courier delivery is made (or when delivery has been attempted, as evidenced by the written report of the courier service) to such address(es). Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

ARTICLE 25:
ADDITIONAL DELIVERIES; THIRD PARTIES

25.1 **Estoppel Certificates**. As often as may be necessary, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four (4) original counterparts of an estoppel certificate in such form as may be reasonably required by the Requesting Party, indicating therein any

exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by the Requesting Party. The Certifying Party shall sign, acknowledge, and return such estoppel certificate within fifteen (15) days after request, even if the Requesting Party is in Default. Any estoppel certificate may be relied upon by the Requesting Party (and any Person on behalf of whom the Requesting Party requested such estoppel certificate) and shall bind the Certifying Party.

25.2 **Further Assurances**. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

25.3 **Memorandum of Lease**. This Lease shall not be recorded; provided, however, that either Lessor or Lessee may elect to have a memorandum of this Lease recorded in the Bureau of Conveyances of the State of Hawai`i or Land Court, as appropriate. Such memorandum shall be sufficient to give constructive notice of the tenancy hereby created and setting forth a description of the Premises, the term of this Lease and any other provisions agreed to by the parties hereto (or required by a Leasehold Mortgagee), and shall be executed by the parties hereto. If the parties amend this Lease, then the parties shall record a memorandum of such amendment. Notwithstanding the foregoing, this Lease shall be recorded if such recordation is required by a Leasehold Mortgagee or a prospective Leasehold Mortgagee.

25.4 **Modification**. Any Modification of this Lease must be in writing signed by the party to be bound.

25.5 **Lessor's Right to Amend**. Any provision herein to the contrary notwithstanding, during the term of this Agreement, Lessor reserves the right, at any time, to amend this Lease in order to assure compliance with all applicable HUD, County, State and other federal statutes, laws, and regulations. All such amendments shall be within the general scope of this Lease, provided that any such amendment shall not materially enlarge, expand, limit, reduce or other modify Lessee's rights, covenants, duties and/or obligations under this Lease (generally, a "**Material Modification**") and shall be subject to the prior written consent of Lessee and each Leasehold Mortgagee and Equity Investor; provided further that if such amendment would result in a Material Modification that would render the continued operation of the Project to be economically infeasible, as determined by Lessee, in its sole discretion, or in the event that Lessee, any Leasehold Mortgagee or Equity Investor, objects to such amendment that is intended to assure compliance with applicable Law as contemplated under this Section 25.5, Lessor shall negotiate in good faith with Lessee to appease the situation. If the parties are unable to reach a mutual agreement with respect to the terms of such amendment, then Lessee shall have the right to terminate this Lease, upon written notice to Lessor. Lessor shall provide all such amendments in writing to Lessee. Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments as required by Law from and after the effective date of such amendment.

25.6 **Successors and Assigns**. This Lease shall bind and benefit Lessor and Lessee and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Lessor, Lessee, and any Leasehold Mortgagees) any right to insist upon, or to enforce against Lessor or Lessee, the performance or observance by either party of its obligations under this Lease.

ARTICLE 26:
CULTURAL AND ARCHEOLOGICAL

26.1 **Native Hawaiian Rights**. Lessee shall respect and recognize any and all rights of native Hawaiians to exercise traditional rights, customs, practices, prerogatives, privileges and usufructs on the Premises, if any, subject to and in accordance with applicable Laws.

26.2 **Human Remains; Artifacts; Historical Items**.

26.2.1 Discovery. In the event any human remains, traditional cultural items, artifacts or historical items (collectively "**Historic Items**") are discovered on the Premises, Lessee shall immediately report such discovery to Lessor. Upon such discovery and subject to Lessor's approval and if required by applicable Laws, Lessee shall, at Lessee's sole expense: (a) cause all excavation or other activity in the immediate area that may damage the Historic Items or the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Historic Items against damage, theft, or both; and (c) cause the Historic Items to be left untouched so that their cultural, archaeological or historical context may be accurately documented and to honor cultural sensitivities related to the Historic Items; provided, however, that if artifacts or historical items are found without human remains, and if leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, Lessee shall cause such Historic Items to be removed and safeguarded elsewhere.

26.2.2 Human Remains. In the event Lessee discovers human remains, Lessee shall, at Lessee's sole expense and in addition to the duties set forth in Section 26.2.1, (a) report the discovery as soon as possible to Lessor, the Historic Preservation Division of the Department of Land and Natural Resources of the State ("**SHPD**"), the appropriate medical examiner or coroner, and the appropriate police department, and (b) cause to be prepared, by an archeologist reasonably acceptable to Lessor, a mitigation and/or burial treatment plan reasonably acceptable to Lessor and to SHPD or the burial council having jurisdiction over such matters. Lessor and Lessee shall comply with all Laws applicable to the handling of such human remains, and shall work together to formulate and carry out such mitigation or burial treatment plan.

26.2.3 Lessor's Reservation. If any Historic Items are discovered, then Lessor shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Historic Items for preservation as permitted by Law.

26.2.4 Studies by Lessee. In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Lessee or anyone acting by or through Lessee, Lessee shall provide a complete copy of the results of such studies to Lessor promptly upon completion thereof.

26.2.5 Lessor's Right to Historic Items; No Liability. Lessee shall have no right, title or interest whatsoever with respect to any Historic Items discovered on or about the Premises. As between Lessor and Lessee, Lessor shall retain ownership of any Historic Items discovered on or about the Premises to the extent private ownership of the Historic Items by Lessor is permitted under applicable Laws, and in any event, Lessor shall retain the exclusive right to act as, and to exercise all rights of, the landowner under applicable Laws. Lessor shall not be responsible for any damages or other liabilities that may result from cessation of excavation or construction, or from Lessee's compliance with provisions of this Article 26 and applicable Laws.

ARTICLE 27:
MISCELLANEOUS

27.1 **Due Authorization and Execution**. Lessor represents and warrants that Lessor has full right, title, authority and capacity to execute and perform this Lease and any other agreements and documents to which Lessor is a party and referred to or required by this Lease (collectively, the "**Lease-Related Documents**"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Lessor; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Lessor; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Lessor's organizational documents), contract, or other restriction to which Lessor is a party or is bound. Lessee makes to Lessor representations and warranties reciprocal to those in the preceding sentence and, in addition, represents and warrants that

Lessee is qualified to do business in the State. Both parties' representations and warranties in this Section 27.1 shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

27.2 **Costs and Expenses; Legal Costs**. In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the Lessor-Lessee relationship under this Lease, or Lessor's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

27.3 **No Consequential Damages**. Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Lessor nor Lessee shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise, except as otherwise expressly permitted by this Lease. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

27.4 **No Waiver by Silence**. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

27.5 **Performance Under Protest**. If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation.

27.6 **Survival**. All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

27.7 **Unavoidable Delay**. Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

27.8 **Broker**. Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease, and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation.

27.9 **Service of Process**. Lessee and every assignee shall either be domiciled in the State or shall, effective upon the date of this Lease (for the original Lessee) or upon the date of said assignment (for an assignee), designate in writing an agent who is domiciled in the State upon whom service of notice or process may be made at all times (if applicable, Lessee's first such agent for service of process is designated in **Exhibit F)**. Service of summons or other legal process upon said agent shall be conclusively deemed to be complete upon Lessee and shall authorize the court from which such summons or legal

process has issued to proceed in all respects as in the case of service personally made upon an individual. In the event Lessee fails to designate said agent for the service of process, or upon the death or absence of said agent, unless a successor shall be promptly named, the Director of Commerce and Consumer Affairs of the State shall be deemed Lessee's or assignee's agent for service of notice and process, and any notice or process served upon said designee or said Director of Commerce and Consumer Affairs shall have the force and effect of personal service upon Lessee or said assignee in all matters respecting this Lease and the enforcement thereof. Lessee and every assignee shall be duly qualified by the Director of Commerce and Consumer Affairs to do business in the State.

27.10 **Sexual Harassment Policy**. At all times during the Term, Lessee shall have and enforce a policy prohibiting sexual harassment in accordance with Article 18 of Chapter 1 of the Revised Ordinances of Honolulu 1990. Lessee may obtain a copy of said Article at the Office of the City Clerk, Honolulu Hale, 530 South King Street, Honolulu, Hawai'i.

27.11 **Non-Discrimination Policy**. Lessee shall not discriminate against any employee or applicant for employment based on race, color, national origin, religion, sex, sexual orientation, familial status, or disability, and Lessee shall comply with the provisions included in any agreement with the County pertaining to discrimination.

27.12 **Neither Party Agent, Joint Venturer or Partner of the Other**. Neither party hereto shall be construed to be an agent of, or a joint venture or partner with, the other party.

ARTICLE 28:
INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

28.1 **Captions**. The captions of Articles, Sections, items and paragraphs are for convenience and reference only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles, Sections, items and paragraphs.

28.2 **Counterparts**. This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease document.

28.3 **Delivery of Drafts**. Neither party shall be bound by this Lease unless and until such party shall have executed and delivered this Lease. The submission of draft(s) or comment(s) on drafts shall not bind the parties, nor shall such draft(s) and comment(s) be considered in interpreting this Lease.

28.4 **Entire Agreement**. This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Lessee's use or occupancy of, or any interest of Lessee in, the Premises except for any agreements referenced in this Lease, and except for any provisions from the Development Agreement that, by their terms are applicable to the Premises and intended to survive the closing of this leasing transaction (in which case such provision shall not be deemed legally merged into this Lease but, instead, shall be deemed incorporated into this Lease to the extent applicable).

28.5 **Governing Law and Venue**. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws. Any legal action hereunder shall be filed in the Hawai'i judicial system only, and Lessor and Lessee hereby unconditionally submit themselves to the jurisdiction of the courts of the State in the circuit where

the Premises are located, and the United States District Court for the District of Hawai'i, and waive the right to assert that such courts are in an inconvenient forum.

28.6 **Partial Invalidity**. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

28.7 **Principles of Interpretation**. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Lessor's option, any Modification that violates this Lease), and includes all exhibits, schedules and riders to such document.

28.8 **Time of the Essence**. Except as otherwise expressly provided in this Lease, time is of the essence with respect to all provisions of this Lease.

28.9 **Computation of Deadlines**. If a due date determined under this Lease falls on a Saturday, Sunday or official State, County or federal holiday, such due date will be deemed to be the next Business Day.

28.10 **Joint and Several**. If there is more than one Person comprising Lessee, the obligations imposed upon such Persons under this Lease shall be joint and several.

28.11 **Relationship Between Lease and Development Agreement**. In the event of any conflict or inconsistency between this Lease and the Development Agreement, this Lease shall control.

[SIGNATURES APPEAR ON NEXT PAGE]

DRAFT

IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be signed as of the day and year first above written.

LESSOR:

Date of execution by Lessor:
_____, 20__

APPROVAL RECOMMENDED:

_____
Sandra S. Pfund
Department of Land Management

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel
Department of the Corporation Counsel

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

By Department of Budget and Fiscal Services

By _____
Name:
Title:

DRAFT

LESSEE:

Date of execution by Lessee:
_____, 20__

KG KAPOLEI PARKWAY, LLC,
a Hawaii limited liability company

By Kobayashi Group, LLC,
a Hawaii limited liability company
Its Manager

By _____
Name:_____
Title:_____

DRAFT

EXHIBIT A

LEGAL DESCRIPTION AND ENCUMBRANCES

[TO BE ATTACHED: LEGAL DESCRIPTION AND LIST OF ALL ENCUMBRANCES OF RECORD]

DRAFT

EXHIBIT B

ADDITIONAL PERMITTED EXCEPTIONS

Permitted Exceptions shall include all of the following, as they existed on the Commencement Date:

1. All leases, Subleases, tenancies and rights of occupancy affecting the Premises caused or permitted by Lessee or by anyone claiming by, through, or under Lessee;

2. All rights, if any, for electricity, gas, telephone, water, cable television, and any other utilities to maintain and operate lines, cables, poles, and distribution boxes in, over, and upon the Premises;

3. Possible projections or encroachments of retaining walls, foundations, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, casings, ledges, water tables, lintels, porticos, keystones, windows, hedges, copings, sidewalk elevators, fences, fire escapes, and the like, or similar projections or objects upon, under, or above any adjoining buildings or streets or avenues or those belonging to adjoining premises which encroach upon the Premises or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges, and the like;

4. Variations between the tax map and the record description of the Land;

5. Zoning, environmental, municipal, building, and all other laws, regulations or similar matters imposed by any federal, state, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises or any portion thereof;

6. All notes or notices of any violation of law or municipal ordinances, orders, or requirements noted in or issued by any Government having or asserting jurisdiction, now or hereafter affecting the Premises; and

7. The lien for all taxes, charges, rents, assessments, and any other governmental charges which are not yet due and payable.

8. [RESERVED – all exceptions (including encroachments identified on applicable ALTA Survey) accepted or deemed accepted by Lessee as a result of its due diligence investigation.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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EXHIBIT C

FORM OF INCOME CERTIFICATION

VERIFICATION OF INCOME

RE: Project Name
Address

Apartment Number: _____. Initial Occupancy Date: _____.

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

A. Name of Members of the Household	**B.** Relationship to Head of Household	**C.** Age	**D.** Social Security Number	**E.** Place of Employment
	Head of Household			
	Spouse			

1. The anticipated income of all the above persons during the 12-month period beginning this date, including income described in Item 1(a) below, but excluding all income described in sub item (b) below, is $_____.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions;

(ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

(iii) interest and dividends (include all income from assets as set forth in Item 2(b) below);

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(vi) the maximum amount of public assistance available to the above persons;

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) casual, sporadic or irregular gifts;

(ii) amounts which are specifically for or in reimbursement of medical expenses;

(iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;

(v) hazardous duty to a member of the household in the armed forces who is away from home and exposed to hostile fire;

(vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(vii) income from employment of children (including foster children) under the age of 18 years;

(viii) foster child care payments;

(ix) the value of coupon allotments under the Food Stamp Act of 1977;

(x) payments to volunteers under the Domestic Volunteer Service Act of 1973;

(xi) payments received under the Alaska Native Claims Settlement Act;

(xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(xiii) payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(xiv) payments received from the Job Partnership Training Act;

(xv) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(xvi) the first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

2. If any of the persons described in Column A in the table above (or any person whose income or contributions were included in Item 1 above) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

(a) the total value of all such assets owned by all such persons: $_____, and

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: $_____

3. (a) Will all of the persons listed in Column A above be, or have they been, full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____ No _____

(b) (Complete only if the answer to Item 3(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____ No _____

DRAFT

We acknowledge that all of the foregoing information is relevant to verification of our status as Tenants of a Regulated Unit and compliance with City affordable housing policies and ordinances and HUD affordable housing program requirements. We consent to the disclosure of such information by the City to HUD and other third-parties involved in the audit, monitoring or enforcement of such policies or programs.

We declare under penalty of perjury that the foregoing is true and correct.

Date: _____

_____
Head of Household

_____
Spouse

DRAFT

FOR COMPLETION BY PROJECT LESSEE ONLY:

I. Calculation of eligible income:

(A) Enter amount entered for entire household from Item 1 above: $_____

(B) Is the amount entered in Item 2(a) above is greater than $5,000? **Yes / No**

If the answer to Item I(B) is "Yes," please complete sub items (i)-(iii) below:

(i) The product of the amount entered in Item 2(a) above and the current passbook savings rate as determined by HUD: $_____.

(ii) The amount entered in Item 2(b) above: $_____.

(iii) Item I(i) minus Item I(ii) (if less than $0, enter $0): $_____.

(C) TOTAL ELIGIBLE INCOME (Item I(A) plus, if applicable, Item I(B)(iii)): $_____.

II. Income Qualification:

(A) Is the amount entered in Item I(C) less than or equal to thirty percent (30%) of median income for the Area? **Yes / No**

(B) Is the amount entered in Item I(C) less than or equal to sixty percent (60%) of median income for the Area? **Yes / No**

(C) Is the amount entered in Item I(C) less than or equal to eighty percent (80%) of median income for the Area? **Yes / No**

III. Number of apartment unit assigned: _____ (enter here and on page one)

_____
Lessee

DRAFT

EXHIBIT D

[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Capitalized terms not otherwise defined in this Certificate of Continuing Program Compliance shall have the meanings set forth in that certain Lease dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawaii (the "City"), and _____, a _____ (the "Lessee"), with respect to the below-referenced Project (such agreement, the "Agreement").

Witnesseth that on this _____ day of _____, the undersigned, having leased from the City that certain affordable senior rental housing development known as Kapolei Parkway (the "Project"), does hereby certify that during the preceding year (i) such Project was continually in compliance with the Lease; (ii) _____ of the residential units in the Project were occupied by Qualified Tenants at Affordable Rents; (iii) and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Set forth below are the names of the Qualified Tenants who commenced or terminated occupancy during the preceding year.

Commenced Occupancy	Terminated Occupancy
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

Attached is a separate sheet listing the number of each residential unit and indicating which residential units are occupied by Qualified Tenants, the size, the number of bedrooms of such residential units and the respective number of Qualified Tenants who commenced occupancy of residential units during the preceding year.

Unit No.	Class of Unit	No. of Bedrooms	Rent	Total Eligible Income	Size (Sq. Ft.)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Units: _____

Number of Lower Income Tenants commencing occupancy this year: _____

EXHIBIT E

NOTICE ADDRESSEES
(INCUDING REQUIRED COPY RECIPIENTS

LESSOR: _____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

With a copy to:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
Email: _____

LESSEE: Kobayashi Group.
1288 Ala Moana Blvd. Suite 201
Honolulu, Hawaii 96814
Attn: Alana Kobayashi Pakkala
Name, Title
Telephone: (808) 216-6810
Facsimile: (808) 524-0766
Email: Alana@kobayashi-group.com

With a copy to:

Schneider Tanaka Radovich Andrew & Tanaka
1100 Alakea Street, Suite 2100
Honolulu, Hawaii 96813
Attn: Tracy Tanaka
Telephone: (808) 792-4207
Facsimile: (808) 792-3920
Email: Tracy.tanaka@stratlaw.com

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EXHIBIT F

SERVICE OF PROCESS

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EXHIBIT D

Kapolei Parkway Mixed Use Development
Development Schedule

A.	Right to negotiate a Development Agreement	September 15, 2019
B.	Due Diligence & Execution of Development Agreement/Lease	Sep 2019 - Feb 2020
C.	Financing (apply 2/20, award 8/20, close 2/21)	Oct 2019 – Feb 2021
D.	Entitlement 201H	Sep 2019 – Apr 2020
E.	Design	Sep 2019 – Sep 2020
F.	Permitting	Jul 2020 – Apr 2021
G.	Construction (25 month)	Apr 2021 – Aug 2023
H.	Occupancy	Aug 2022 – Aug 2023

II. Honolulu County 2019 Affordable Guidelines
20 units will be rented at 30% median while 383 units will be rented at 60% of Median.

Honolulu County
2019 Affordable Guidelines

	30% of Median	60% of Median
Affordable Rent Guidelines (30% of income)		
Studio	$633	$1,266
1 Bedroom	$678	$1,356
2 Bedroom	$813	$1,628
3 Bedroom	$940	$1,880
4 Bedroom	$1,048	$2,097
Income Schedule by Family Size		
1 Person	$25,320	$50,640
2 Person	$28,920	$57,840
3 Person	$32,550	$65,100
4 Person	$36,150	$72,300
5 Person	$39,060	$78,120
6 Person	$41,940	$83,880

EXHIBIT E

Budget

Kapolei Parkway RFP
Budget

	#Units
Studios + 1 Ba	76
1-Bedroom, 1 Ba	109
2-Bedroom, 1Ba	154
3-Bedroom, 1.5Ba	41
4-Bedroom, 2Ba	24
Manager's Units	1
Total	405

Net Residential Area	250,500
Residential GSF	305,488
Other Resi. spaces - Lobby, mail, laundry, mgr offc GSF	10,438
Pre-School 1	2,037
Commercial + Pre-School 2	4,571
Total GSF	322,534
Loading Stalls	9
Parking for Retail	46
Parking for Residential	592
Land area (SF)	446,359

	Quantity	Units	Unit Rate	Total
Land Costs				
Land - Purchase Price (County Land)	446,359	sq.ft.	$0	$65
Land - Real Property Taxes (Waived for affordable)			1.240%	$2,400
Total Land Costs				$2,465
HARD Costs				
Construction Costs (escalated to a 2021 construction start)				
Wakea Street Escalated 6%	1	Unit	$2,061,709	$2,061,709
Lot 6 Grading/Fill Escalated 6%	1	Unit	$112,160	$112,160
Manawai Street Escalated 6%	1	Unit	$1,841,498	$1,841,498
Lot 7 Grading/Fill Escalated 6%	1	Unit	$429,952	$429,952
Residential Construction Construction	305,488	gsf	$276	$84,314,634
Other : Pre-School 1, Rec. Ctr, mail, laundry, mgr off	12,475	gsf	$276	$3,443,046
Commercial + Pre-School 2 GSF	4,571	gsf	$276	$1,261,596
Sitework includes on-site drainage	10.247	acres	$920,000	$9,835,605
Landscaping	189,430	LS	$15	$2,841,450
Parking for Commercial & Pre-school 2	46	stalls	$15,650	$719,900
Parking for rentals & Daycare	601	stalls	$15,650	$9,405,650
Contractor Contingency			15.00%	$17,440,080
OCIP/CCIP/Builder's Risk			1.60%	$2,139,316
RESI OFOI - FF&E, Drapes, Playground				$1,250,000
Signage				$300,000
Total Hard Costs				$137,396,597
SOFT COSTS				
Permits & Fees				
Building Permit & Plan Review -Retail			1.07%	$23,889
Ewa Highway Impact Fee - Retail	4,571	st	$4.053	$18,526
Board of Water Supply Fees	2	per Unit	$5,000	$10,000
Sewer Fees - Commercial	2	per Unit	$6,250	$12,500
Ewa Highway Impact Fee - Residential	405	per Unit	$1,245	$504,225
Board of Water Supply Fees - Residential	405	per Unit	$1,742	$705,670
Education Impact Fees - Residential Only	405	per Unit	$4,334	$1,755,270
HECO Fee (Est.)				$300,000
DCAB Fee				$27,853
Other Fees - NPDES, LEED,(Est.)				$20,000
Total Fees				$3,377,933

Kapolei Parkway RFP
Budget

	Quantity	Units	Unit Rate	Total
Entitlements				
201H Entitlement Process (RMTC Kurahashi)			No EA	$300,000
Preliminary Engineering Report			None	
Traffic Study			Included with 201H	
Flora/Fauna			None	
Air Quality Study			None	
Acoustical Study			None	
Wind Study for EA			None	
Archaeologcial Inventory Survey			Included with 201H	
Cultural Consultant			Included with 201H	
Cultural Impact Assessment (CSH)			None	
Cultural Monitoring (Kahanoi'i through Aerotek)			None	
Burial Treatment Plan (CSH)			None	
Data Recovery Plan (CSH)			None	
Data Recovery Field Work (CSH)			None	
Preservation Plan (CSH)			None	
Monitoring Plan (CSH)			Included with EA	
Monitoring Work during earthwork activities (CSH+CD) (Est.)			Included with EA	
Total Entitlement Costs				$300,000
Architectural and Engineering				
Architect + ID (DPI)			4.1%	$5,533,603
Civil (Sato and Associates)			Included above	
Structural Engineer (SAG)			Included above	
Mechanical (MEI)			Included above	
Electrical (Ron Ho)			Included above	
Fire Protection (Coffman)			Included above	
Landscaping (WKM)			Included above	
Acoustical (DLA)			Included above	
Elevator (Elevations Inc.)			Included above	
Total Local Architect				$5,533,603
Owner Hired A&E				
Third Party Permit (Palekana.)				$160,000
Geotechnical Investigation/report (Geolabs)				$60,000
Geotechnical Soil Test (Geolabs) (Est.)				$120,000
Overseas QA/QC Coordinator (Est.)				$100,000
Low Voltage Design				$100,000
Topo survey & Subdivision Mapping & ALTA survey				$50,000
Third Party Inspector/Special Inspection (Est.)				$150,000
Pre-Construction with General Contractor (Est.)				$150,000
Estimating/Predevelopment				$140,000
Design Peer Review (Est.)				$30,000
Fire Sprinkler Special Inspections (Est.)				$20,000
OCIP Wrap Administrator				$40,000
Lender construction inspection fees				$150,000
Reimbursables & Reproduction + Mainland GET (Est.)				$50,000
Total Owner Hired A&E				$1,320,000

Kapolei Parkway RFP
Budget

	Quantity	Units	Unit Rate	Total
Legal & Accounting				
Legal - Subdivision				$70,000
Legal - Agreements & Other STRAT				$100,000
Legal - Financing HM Bond Counsel				$125,000
Legal - Financing BOH Counsel				$100,000
Legal - Financing HHFDC Counsel				$150,000
Legal - Financing STRAT				$200,000
Legal - Financing Cox, Castle				$200,000
Legal - Financing Syndicator - In-Eligible				$75,000
Cost Certification - CPAs - In-Eligible				$16,000
Accounting - CPAs				$68,000
Total				$1,104,000
Construction Management		28 months	$50,000	$1,400,000
Project Manager Overhead				$2,300,000
Development Management Fee				$11,500,000
LIHTC Consultant (AHDH)				$130,000
				$0
Marketing/Leasing				$130,000
Marketing Study				$16,000
Working Capital				$100,000
Reserve - Operating Expenses				$1,100,000
Reserve - Debt Service				$1,300,000
Contingency - Eligible			5.00%	$8,224,730
				$0
TOTAL PROJECT COSTS				$175,235,328
Loans Cost During Construction				
HHMF Bond Fee - Eligible				$100,000
HHFDC LITHC Fee				$727,663
Lender Bond Fee	$94,389,986		0.50%	$472,000
Lender Annual Servicing Fee	$94,389,986		0.25%	$236,000
Misc. Closing Costs				$100,000
Title, Escrow, Recording				$80,000
Hula Mae Bond Interest				$3,700,000
Hula Mae Bond Interest	$94,389,986			
Total Financing				$5,415,663
TOTAL PROJECT COSTS				**$180,650,991**

EXHIBIT F

City's Sexual Harassment Policy

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_1_.pdf

Article 18. Sexual Harassment Policy for Employer Having a Contract with the City.

EXHIBIT G

Form of Performance and Payment Bond

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as CONTRACTOR, hereinafter called Principal, and _____

_____,
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

_____, to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on _____, for the following project:

_____

_____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____ ,

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) S.S.
_____ COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____, and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____of _____ the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

_____
(Signature)

_____
(Print name)

(Notary Stamp or Seal)

Notary Public, State of _____

My Commission Expires:_____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description:_____
_____
_____
_____
_____

Doc. Date: _____ No. of Pages:_____ Jurisdiction:

_____
Signature of Notary Date of Certificate

(Notary Stamp or Seal)

_____
Printed Name of Notary

(Acknowl2.frm)

SURETY ACKNOWLEDGMENT
[FOR USE BY SURETY]

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, 20___, before me personally

came_____

to me known, who, being by me duly sworn, did depose and say that_____

resides in _____; that _____ is the Attorney-in-Fact of _____,

the corporation described in and which executed the attached instrument; that _____ is duly appointed under power of attorney, dated_____, which said power of attorney is attached hereto, is now in force and effect; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that signed ____ name thereto by like order.

(Notary Seal)

Notary Public _____

State of _____

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

_____

_____

_____

_____

LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as CONTRACTOR, hereinafter called Principal, and _____

_____
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

_____, to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on _____, for the following project:

_____

_____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____ , _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) S.S.
_____ COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____, and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____of _____ the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

_____
(signature)

_____
(Print name)

(Notary Stamp or Seal)

Notary Public, State of _____

My Commission Expires:_____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description:_____
_____
_____
_____
_____

Doc. Date: _____ No. of Pages:_____ Jurisdiction:

_____
Signature of Notary Date of Certificate

(Notary Stamp or Seal)

_____
Printed Name of Notary

(Acknowl2.frm)

SURETY ACKNOWLEDGMENT
[FOR USE BY SURETY]

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, 20___, before me personally

came_____

to me known, who, being by me duly sworn, did depose and say that_____

resides in _____; that _____ is the Attorney-in-Fact of

, the corporation described in and which executed the attached instrument; that _____ is duly

appointed under power of attorney, dated_____, which said power of attorney is attached

hereto, is now in force and effect; that _____ knows corporate seal of the said corporation; that

the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of

the Board of Directors of the said corporation; and that ____ signed ____ name thereto by like

order.

_____

(Notary Seal) Notary Public

State of

_____

My commission expires:

_____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

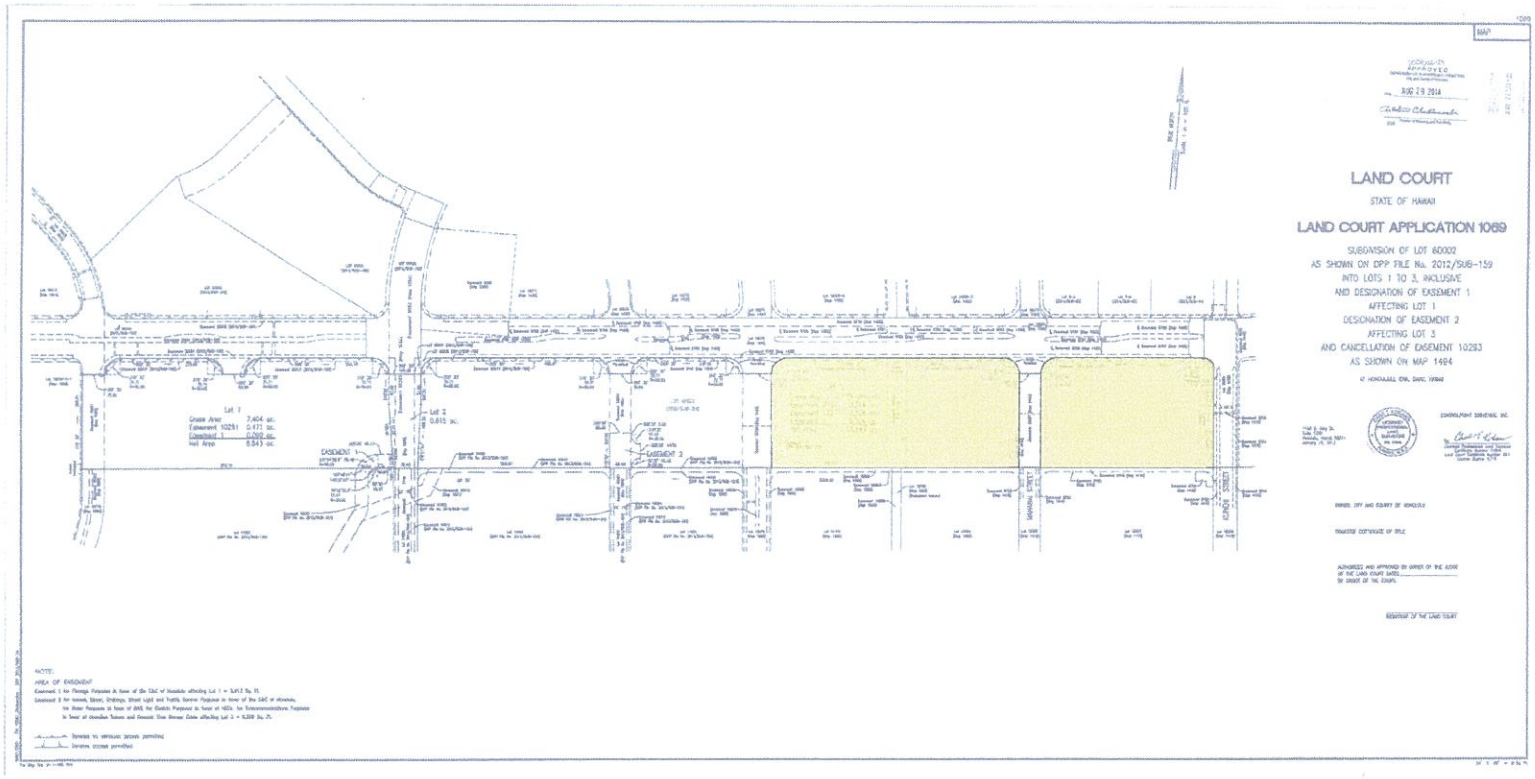
Document Identification or Description: _____

_____

_____

_____

_____

EXHIBIT H

[Proposed Subdivision Map]