CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 21-210

RESOLUTION

AUTHORIZING THE ASSIGNMENT AND EXTENSION OF A LEASE OF CITY PROPERTY WITH DET RENTON PARTNERS LP FOR THE DE THOMPSON VILLAGE PROJECT UNDER SECTION 28-3.4(j), REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (ROH)

WHEREAS, Section 28-3.4(j), ROH, permits the extension of the terms of leases for City property used for housing for low- and moderate-income persons by extension of the existing lease; and

WHEREAS, Ewa Housing Foundation, a Hawaii nonprofit corporation, is the lessee of City-owned property located at 91-1295 Renton Road, Ewa, Oahu and identified as Tax Map Key No. (1) 9-1-046: 088 (Real Property); and

WHEREAS, the Real Property is improved with an 84-unit rental housing project known as DE Thompson Village (Project) that provides affordable rental housing for lower income households; and

WHEREAS, the current 65-year term of the lease for the Real Property commenced on July 1, 1990, and will expire on July 1, 2055; and

WHEREAS, Ewa Housing Foundation has agreed to sell the Project to DET Renton Partners LP, a Hawaii limited partnership (Proposed Owner), subject to Honolulu City Council approval; and

WHEREAS, Ewa Housing Foundation will be selling only its leasehold interest as the tenant of the City ground lease, together with the building and improvements; and

WHEREAS, Ewa Housing Foundation has requested an extension of the lease term to 75 years from the date that the lease is extended, to accommodate the financing of the acquisition and rehabilitation of the Project; and

WHEREAS, the Department of Community Services has made the certifications required by Section 28-3.4(j), ROH to support the extension of the lease; and

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WHEREAS, as a result of the assignment and extension of the lease term, ownership of the Project will transition to the Proposed Owner, which is committed to improving the Real Property through a program of rehabilitation, and will continue to operate the Project as an affordable housing resource for the community for the foreseeable future; now, therefore;

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

1) The proposed sale of the Project from Ewa Housing Foundation to DET Renton Partners LP is hereby approved; and

2) The Assignment and Extension of Lease, attached hereto in substantially final form as Attachment A, is hereby approved on the conditions that (a) Ewa Housing Foundation submits payment in full of all federal Community Development Block Grant (CDBG) program income owed to the City (in the City's reasonable determination) in accordance with that certain Subrecipient Agreement by and between the City and Ewa Housing Foundation dated August 18, 1988 and identified as Contract No. F45919, as amended, and/or effectuates a full or partial transfer of such program income to another project in compliance with CDBG requirements and other applicable laws to the satisfaction of the City and the U.S. Department of Housing and Urban Development (HUD); and (b) the above-described sale of the Project is consummated; and

3) The Mayor, the Director of Budget and Fiscal Services, or the Director of the Department of Community Services is hereby authorized to execute the Assignment and Extension of Lease in substantially the form attached hereto, as well as any incidental or related documents to carry out the transactions described above (including, but not limited to, amendments to the lease), as long as such incidental or related documents do not increase either directly or indirectly the financial obligation of the City.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 21-210

RESOLUTION

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk is hereby directed to transmit copies of this Resolution to the Director of Budget and Fiscal Services and the Director of Community Services. Copies of the Resolution shall also be transmitted to DET Renton Partners LP at 157 Makawao Street, Kailua, Hawai'i 96734.

INTRODUCED BY:

(br)

DATE OF INTRODUCTION:

SEP 13 2021
Honolulu, Hawaii

Councilmembers

DCS CBDD RESO_DE Thompson Village_8_2021

Attachment A

LAND COURT REGULAR SYSTEM
AFTER RECORDATION: RETURN BY MAIL ( ) PICK UP ( )

Department of Community Services
City and County of Honolulu
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai'i 96817

Tax Map Key No(s).: 1-9-1-046-088 (This document consists of ____ pages.)

ASSIGNMENT AND EXTENSION OF LEASE

THIS ASSIGNMENT AND EXTENSION OF LEASE, made this _____ day of_____, 2021 (the "**Effective Date**") by and among the CITY AND COUNTY OF HONOLULU, a municipal corporation, whose principal place of business and post office address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813, hereinafter referred to as "**Lessor**," EWA HOUSING FOUNDATION, a Hawai'i nonprofit corporation, whose principal place of business and post office address is 451 Atkinson Drive, Honolulu, Hawai'i 96814 hereinafter referred to as "**Assignor**," and DET RENTON PARTNERS LP, a Hawai'i limited partnership, whose principal place of business and post office address is 157 Makawao Street, Kailua, Hawai'i 96734, hereinafter referred to as "**Assignee**" or "**Lessee**."

WITNESSETH:

WHEREAS, reference is hereby made to that certain Master Lease by and between Lessor and Assignor, commencing July 1, 1990, recorded at the Office of the Assistant Registrar of the Land Court of the State of Hawai'i ("**Land Court**") as Document No. 1771830, as assigned by that certain Assignment

of Lease and Consent and Release dated January 1, 1996, recorded at Land Court as Document No. 2296221 (collectively, the "**Lease**"), with respect to certain real property situated on and commonly known as and by the street address of 91-1295 Renton Road, in Ewa Beach, Oahu, Hawai'i, and described in **Exhibit "A"** attached thereto and incorporated by reference;

WHEREAS, Assignor desires to assign all of its interest in the Lease to Lessee, and Lessee desires to assume all of the rights and obligations of the Lease, according to the terms set forth herein;

WHEREAS, Lessor and Lessee desire to extend the term of the Lease and modify certain terms of the Lease as set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Lease is hereby modified as follows:

1. Defined Terms. Capitalized terms used but not defined herein have the meanings set forth in the Lease.

2. Assignment, Assumption and Consent.

a. Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor in and to the Lease.

b. Assignee hereby accepts the foregoing assignment and the Assignee hereby assumes and agrees to perform all of the covenants and agreements of Assignor under the Lease.

c. Lessor hereby consents to the foregoing assignment and assumption by and between Assignor and Assignee, and releases Assignor from any and all further obligations and liabilities arising under the Lease after the date hereof, on the express conditions that (i) prior to the foregoing assignment and assumption, Assignor submits payment in full of all federal Community Development Block Grant ("**CDBG**") program income owed to Lessor (in Lessor's reasonable determination) in accordance with that certain Subrecipient Agreement dated August 18, 1988 (the "Subrecipient Agreement"), and/or effectuates a full or partial transfer of such program income to another project in compliance with CDBG requirements and other applicable laws to the satisfaction of the City; and (ii) Lessee's consent shall not be deemed or construed to be a waiver of any term, covenant, condition, or provision of said Lease nor a consent to any other or further assignment or sublease or modification of said Lease, and that all rights of the Lessor under the Lease are hereby reserved.

d. As an inducement to Lessor's consent, Assignee covenants to expend a minimum of $4,000,000.00 (subject to financing and equity availability and approval) to renovate and rehabilitate the Project and to complete said work by no later than 730 calendar days after the start of construction. Assignee acknowledges and agrees that its failure

to perform the renovation and rehabilitation work as covenanted above shall constitute a default under Section 27 of the Lease.

3. Extension of Lease Term. Notwithstanding Section 2 of the Lease and anything in the Lease to the contrary, the term of the Lease shall be for seventy-five (75) years, commencing on the Effective Date herein, and expiring at midnight on _____, 2096; provided that Assignor submits payment in full of all federal CDBG program income owed to Lessor (in Lessor's reasonable determination) in accordance with the Subrecipient Agreement and/or effectuates a full or partial transfer of such program income to another project in compliance with CDBG requirements and other applicable laws to the satisfaction of the City. This provision constitutes amendment of the Lease term end date of Section 2 of the Lease and of the period of duration of covenant on use of Section 11 of the Lease, for all purposes under the Lease.

4. Rent. On the Effective Date until the end of the term of the Lease, annual rent shall be One Dollar ($1.00) (the "**Annual Rent**"), provided the project continues as a government subsidized project (as defined below) or is regulated by federal, state laws or by a political subdivision of the State or agency thereof, as to rents, charges, profits, dividends, development costs and methods of operation. In the event the project ceases to be a government subsidized project or regulated by federal, state laws or by a political subdivision of the State or agency thereof, as to rents, charges, profits, dividends, development costs and methods of operation, the net annual lease rent for the remaining portion thereof shall escalate to the then ongoing market; such net annual rent for the remainder of said term as shall be determined at least ninety (90) days before the commencement of such period and every four (4) years thereafter, by mutual agreement of Lessor and Lessee or, if they fail to reach such agreement, as shall be determined by an appraiser selected by Lessor (the "**Market Rent**"). Annual Rent for the entire term of the Lease shall be prepaid on the Effective Date. If the Market Rent is ever applicable, it shall be paid monthly, on the first business day of each month.

As used herein, the term "**government subsidized project**" means and includes without limitation if the premises is receiving benefits of, or is being assisted through: HUD or United States Department of Agriculture Rural Development ("**USDA RD**") programs, such as those which provide rental assistance; housing finance and development programs which provide tax credits; taxable or non-taxable bond financing; or any other tax incentives or public subsidies to promote public and private investment in the development, improvement, renovation and/or preservation of the Project to provide affordable housing opportunities for persons and families of very low, low and, to the extent permissible by such programs, other income levels; provided that the ownership and operation of the Project shall be regulated as to rents, charges and/or methods of operation.

5. Improvements. Notwithstanding anything in the Lease to the contrary, the Lessor and Lessee hereby acknowledge that the original construction and development of the Project, as contemplated under the Lease, were completed prior to the Effective Date, and that the provisions in the Lease that relate to such original construction have been satisfied in full. Lessor acknowledges that Lessee will rehabilitate the improvements in the Project after the Effective Date (the "**Rehabilitation Work**"). Lessor consents to the Rehabilitation Work.

6. Tenant Rents. Lessor acknowledges that Lessee intends to record against Lessee's leasehold interest in the Premises of a Declaration of Restrictive Covenants for Low Income Housing Credits or similar document (the "**Extended Use Agreement**") that will be entered into between Lessee and the Hawai'i Housing Finance and Development Corporation, a public body and a body corporate and politic duly organized and existing under the laws of the State of Hawai'i ("**HHFDC**") constituting an "extended low-income housing commitment" within the meaning of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"). Lessor's written consent to such recordation shall be required, and shall not be unreasonably withheld. Lessor's consent shall not be required for tenant rents consistent with the requirements of the Extended Use Agreement. In the event that for any reason USDA RD ceases to fund amounts due under the USDA RD Rental Assistance Program contract associated with the Project or such contract terminates, the units at the Project shall be rented in a manner consistent with the requirements of the Extended Use Agreement. In no event shall the annual rent payable by any tenant (excluding the occupant of the "manager's unit" in the Project) exceed the lesser of (i) the rents permitted to be charged under any governmental restrictions then applicable to the Premises; (ii) 30% of 80% of the Honolulu area median income (AMI), as adjusted for household and unit size, as determined by HUD; and (iii) U.S. Department of Housing and Urban Development published fair market rent for Honolulu. The term "rent payable by any tenant" means "the portion of the monthly rent payable by any tenant." Each Tenant's contribution to rent and utilities is limited to 30% of such Tenant's income.

7. Leasing Priorities. In the event of any conflict between the tenant selection priorities in the Lease and the tenant selection priorities of HHFDC or the Code, the tenant selection priorities of HHFDC and the Code shall control, to the extent consistent with applicable laws.

8. No HUD Mortgage. Notwithstanding anything in the Lease to the contrary, there shall be no requirement that any Mortgage encumbering Lessee's interest in the Lease ("**Mortgage**") be insured by HUD. All Mortgagee protection rights under the Lease shall apply to the holder of such Mortgage ("**Mortgagee**"), whether or not its Mortgage is insured by HUD. Further, unless the Mortgage is insured by HUD, the Mortgagee protection rights granted to HUD under the Lease shall not apply. The term "Mortgagee" under the Lease shall include Mortgagee and its successors and assigns, as holder of a first priority mortgage lien, provided that Lessor is notified in writing of the Mortgage and the successor Mortgagee.

9. Mortgagee Protections. Section 28 of the Lease is hereby revised in its entirety to read as follows:

a. Mortgagee Notices of Default under Lease. Lessor shall give Mortgagee notice in writing of any defaults by Lessee under the Lease, and Mortgagee shall have sixty (60) days after receipt of such written notice from the Lessor to cure monetary defaults and such other defaults which are reasonably susceptible of cure. Further, as to any non-monetary default not reasonably susceptible of cure within sixty (60) days, Mortgagee shall have one hundred twenty (120) days after receipt of such written notice from the

Lessor, and a reasonable time after the expiration of said one hundred twenty (120) days within which to endeavor to cure such default if: (1) it shall undertake in writing to performing all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such mortgage; (2) Lessor is paid all rent and other charges accruing hereunder as the same become due; (3) Mortgagee shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said one hundred twenty (120)-day period and is diligently prosecuting the same, subject to any stay in any proceedings involving the insolvency of Lessee or other proceeding or injunction (unless, in the meantime, Mortgagee shall acquire Lessee's estate under the Lease, either in its own name or through a nominee, by assignment in lieu of foreclosure); and (4) upon foreclosure sale of this Lease, the time for performance of any obligation of Lessee then in default hereunder other than the payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Notwithstanding any other provision of the Lease, all rights of the Lessor to terminate the Lease upon the default by Lessee are and shall continue to be at all times while Lessee is indebted to Mortgagee, subject to and conditioned upon the Lessor's first having given Mortgagee written notice of such default and Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

b. Mortgagee Rights upon Termination of Lease. If the Lease shall terminate for any reason, the; Lessor agrees that the Mortgagee shall have the right, for a period of thirty (30) days subsequent to such termination, to elect to demand a new lease of the premises, provided that Mortgagee remedies any Lessee defaults that were not cured under the Lease, and assumes and performs all terms, conditions, and covenants of the Lease until the new lease is executed. Said thirty (30)-day period shall commence upon receipt of notice of the termination provided by the Lessor to the Mortgagee. Such new lease shall be for a term commencing on the date of the termination of the Lease, and expiring on the same date stated in the Lease as the fixed date for the expiration thereof. The rental and all the provisions, covenants and conditions of such new lease shall be the same as the rental provisions, covenants and conditions of the Lease. If Mortgagee shall elect to demand such new lease within such period, such Mortgagee shall give written notice to the Lessor of such election. Any such new lease may, subject to Lessor's approval, be issued to a financially responsible nominee of Mortgagee without the Mortgagee assuming the obligations of Lessee under the new lease.

10. Tax Credit Investor Protections. Notwithstanding anything to the contrary in the Lease, the following provisions shall apply:

a. Lessor hereby agrees for purposes of the Lease that the cure of any default made or tendered by any limited partner of Lessee (each, a "**Limited Partner**") shall be deemed to be a cure by the Lessee and shall be accepted or rejected on the same basis as if made or tendered by the Lessee.

b. During the entire term of the Lease, title to the improvements shall be vested in the Lessee, and during the entire term of the Lease, Lessee alone shall be entitled to all of the tax attributes of ownership, including without limitation, the right to claim depreciation or cost recovery deductions and the right to claim tax credits under Section 42 of the Internal Revenue Code and Hawai'i state law.

11. Lessee's Insurance. The provisions of Section 17 of the Lease are hereby amended as to the amounts and types of such insurance policies as follows:

At all times during the Term and until such time as action against Lessee, 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:

a. Workers' Compensation and Employers' Liability Insurance. 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 Lessee; provided that this Section a. shall not be required if Lessee has no employees.

b. Liability Insurance. Lessee shall maintain commercial general liability (CGL) with a limit of not less than **$1,000,000** each occurrence, and **$2,000,000** general aggregate, and. 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). 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.

c. 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.

d. Umbrella/Excess Liability. Lessee shall maintain umbrella/excess liability insurance with limits of not less than **$5,000,000** 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 a. through c., hereinabove, 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 and blanket contractual liability. The amounts of insurance required in Sections a. through d., hereinabove, 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.

e. Insurance Coverage for Operations. 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:

1) 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.

2) 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.

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

f. 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.

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

1. Insured. Insurance policies shall identify Lessor as an "additional insured" using ISO form CG 20 10 (or equivalent), and during any construction activity, the 1 CD 20 37 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.

2. 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.

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

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

5. 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.

h. The City reserves the right to require additional kinds or amounts of insurance.

12. Notices. Notwithstanding any address for notice provided under the Lease to the contrary, notices pursuant to the Lease shall be provided to the parties and addresses specified below:

To Lessor:

CITY AND COUNTY OF HONOLULU
Department of Community Services
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai'i 96813
Attention: Director
Telephone: (808) 768-7760

and

CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
530 South King Street, Room 208
Honolulu, Hawai'i 96813
Attention: Director
Tel: (808) 768-3900
Fax: (808) 768-3179

With copies to:

Department of the Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawai'i 96813
Attention: Corporation Counsel
Tel: (808) 768-5100
Fax: (808) 768-5104
E-mail: COR@honolulu.gov

To Lessee:

157 Makawao Street
Kailua, Hawai'i 96734
Attention: Makani Maeva

mm@ahegroup.com

With copies to:

Rodriguez Wright LLP
Attention: Byron A. Rodriguez
brodriguez@rodriguezwright.com

and:

CREA DE Thompson, LLC
c/o CREA, LLC
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management – DE Thompson Village

With copies to:

Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Sara C. Heskett, Esq.

To Mortgagee:

FIRST HAWAIIAN BANK
999 Bishop Street, Suite 1100
Honolulu, Hawaii 96813

With copies to:

CADES SCHUTTE
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Attention: Justin Sugiyama
jsugiyama@cades.com

or to such other address or such other person as any party may from time to time hereafter specify to the other parties in a notice delivered in the manner provided above. Any notice to Lessee under the Lease shall be ineffective unless and until all required copies have been served. Whenever in the Lease the giving of notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such notice.

13. Counterparts. This Assignment and Extension of Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute

but one instrument. Executed counterparts of this Assignment and Extension Agreement may be delivered by facsimile or other electronic means, and delivery thereof in such a manner will have the same effect as delivery of ink-signed originals hereof.

14. Applicable Law. This Assignment and Extension of Lease and the rights of the parties hereunder shall be interpreted in accordance with the laws of the state of Hawai'i.

15. Full Force and Effect. Except as and to the extent expressly set forth in this Assignment and Extension of Lease, the parties hereto hereby affirm the terms and provisions of, and affirm the efficacy and primacy of, the Lease. All references to the "Lease" in the Lease and in this Assignment and Extension of Lease shall now refer to the Lease as modified hereby. To the actual knowledge of the Lessor's Director of Community Services, no event of default has occurred and is continuing under the Lease, and no event has occurred and is continuing which, with the passage of time or giving of notice or both, would constitute a default under the Lease. Assignor hereby acknowledges and agrees that, as of the Effective Date, no event of default has occurred and is continuing under the Lease, and no event has occurred and is continuing which, with the passage of time or giving of notice or both, would constitute a default under the Lease. No provision of or transaction effected or contemplated by this Assignment shall be deemed to constitute an event of default under the Lease.

16. Compliance with Developer Agreement. Lessee shall manage the Project and provide services under this Lease pursuant to the terms of the Developer Agreement attached hereto as Appendix A, which shall not be modified without the prior written consent of the Department of Community Services.

- The remainder of this page is intentionally left blank; the next page is the signature page -

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

APPROVED AS TO CONTENTS:

DEPARTMENT OF COMMUNITY FISCAL SERVICES

By _____
Sarah Allen
Its Director

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

By its DEPARTMENT OF BUDGET AND SERVICES

By _____
Andrew T. Kawano
Its Director

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

Lessor

DET RENTON PARTNERS LP,
a Hawai'i limited partnership

By: DET Renton Management LLC,
a Hawai'i limited liability company,
its General Partner

By: _____
Makani Maeva, Manager

Assignee and Lessee

EWA HOUSING FOUNDATION,
a Hawai'i nonprofit corporation

By: _____
[Name, Title]

By: _____
[Name, Title]

Assignor

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, before me personally appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that he / she is the _____ of the City and County of Honolulu, Department of Budget and Fiscal Services, and that the foregoing instrument as it is executed in the name and behalf of said City and County of Honolulu, by and through its Department of Budget and Fiscal Services, by _____ as its _____, and said _____acknowledge said instrument to be the free act and deed of said City and County of Honolulu, by and through its Department of Budget and Fiscal Services by authority of the City Council of the City and County of Honolulu.

_____
Type/Print Name:_____
Notary Public, State of Hawai'i
Commission No.:_____
My commission expires:_____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: ASSIGNMENT AND EXTENSION OF LEASE

Document 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

_____ (Official Stamp or Seal)
Printed Name of Notary

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)

On _____, 2021, 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 document in such capacity.

Document Description:_____
Document Date (if any):_____ #of Pages____
Circuit number where notarial act is performed: _____
Date of Notarization:_____

_____
Type/Print Name:_____
Notary Public, State of Hawai'i, __ Circuit
Commission No.:_____
My commission expires:_____

Exhibit A

The real property in said lease demised being described as follows:

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

Lot 55-D-3-B, area 5.00 acres, more or less, as shown on Map 368, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

NOTE: Lot 55-D-3-B shall have access over Lot 55-D-3-D to a public highway, as set forth by Land Court Order No. 71877, filed November 23, 1984.

Being a portion of the land described in Transfer Certificate of Title No. 265,756 issued to the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii (Fee Owner).

SUBJECT, HOWEVER, TO THE FOLLOWING:

All that certain leasehold estate created by the following:
1.Use Restriction Agreement recorded on January, 29, 2021 in the Office ot the Assistant Registrar, Land Court, State of Hawaii as Document No. T-11351394 CT C
Between the City and County of Honolulu and the Subrecipient Ewa Housing Foundation.

2. LEASE Recorded : October 9, 1990 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1771830
Lessor : CITY AND COUNTY OF HONOLULU, a municipal corporation
Lessee : EWA HOUSING FOUNDATION, a Hawaii non profit corporation
Term : Sixty-Five (65) years commencing on July 1, 1990, and terminating on June 30, 2055
The record beneficial interest under said Lease, as a result of the last recorded assignment thereof is,

Vested In : EWA HOUSING FOUNDATION, a nonprofit Hawaii corporation
By Assignment From : JOANNE KEALOAHA, as trustee for the creditors and members of EWA HOUSING FOUNDATION, a dissolved Hawaii nonprofit corporation
Dated : January 1, 1996
Recorded : March 18, 1996 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2296221
Consent thereto by the CITY AND COUNTY OF HONOLULU, a municipal corporation

3..

DESIGNATION OF EASEMENT "182" (15 ft. wide)

For: pipeline and utility purposes
As shown on Map 16 (amended) and Maps 367 and 368
As set forth by Land Court Order No. 16009, filed February 12, 1958

4.

An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument	:	GRANT
Granted To	:	STANDARD OIL COMPANY OF CALIFORNIA, a corporation
For	:	pipeline and utility purposes
Dated	:	March 13, 1958
Recorded	:	March 31, 1958 in the Bureau of Conveyances, State of Hawaii, in Book 3404, Page 113, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 213791
Affects	:	Easement "182"

Said Grant was assigned to CHEVRON U.S.A. INC., a California corporation by instrument dated February 10, 1978, recorded in the Office of the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 891877, and in the Bureau of Conveyances, State of Hawaii in Book 13072, Page 403.

Said Grant was assigned to IES DOWNSTREAM, LLC, a Delaware limited liability company, by REAL PROPERTY INTEREST ASSIGNMENT AND ASSUMPTION AGREEMENT dated November 1, 2016, recorded June 15, 2017 in the Office of the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-10027049

6.

Terms and provisions as contained in an instrument,

Entitled	:	UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING
Dated	:	September 4, 1984
Recorded	:	September 7, 1984 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1256439

5.

Unrecorded Development Agreement dated July 3, 1972, by and between THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, and HIRANO BROTHERS LIMITED & ASSOCIATES, a Hawaii limited partnership, as set forth in MASTER LEASE dated January 18, 1990, recorded October 9, 1990 in the Office of the Assistant Registrar of the Land Court, as Document No. 1771830.

7.

Unrecorded Development Agreement dated January 2, 1973, by and between THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, and HIRANO BROTHERS LIMITED & ASSOCIATES, a Hawaii limited partnership, as set forth in MASTER LEASE dated January 18, 1990, recorded October 9, 1990 in the Office of the Assistant Registrar of the Land Court, as Document No. 1771830.

8.

Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof, with power of sale and assignment of rents.

Amount	:	$4,712,560.00
Mortgagor	:	EWA HOUSING FOUNDATION
Mortgagee	:	UNITED STATES OF AMERICA (Farmers Home Administration) (U. S. Department of Agriculture) ("FmHA")
Dated	:	March 8, 1991
Recorded	:	March 18, 1991 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1807122

CONSENT thereto:

Recorded	:	March 18, 1991 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1817121
By	:	CITY AND COUNTY OF HONOLULU

Modification/amendment of the terms of said Mortgage, by an instrument

Entitled	:	AMENDMENT OF REAL ESTATE MORTGAGE FOR HAWAII AND AMERICAN SAMOA
Dated	:	June 17, 1991
Recorded	:	June 25, 1991 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1829825

9.

Terms and provisions as contained in an instrument,

Entitled	:	DECLARATION OF RESTRICTIVE COVENANTS (PRIVATE PARK)
Dated	:	June 18, 1911
Recorded	:	June 28, 1991 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 18312570

10.

An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument	:	GRANT OF EASEMENT
Granted To	:	HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, a Hawaii corporation, now know as HAWAIIAN TELCOM, INC.
For	:	right of way for power line
Dated	:	October 23, 1991
Recorded	:	December 19, 1991 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1874488

11.

An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument	:	GRANT OF EASEMENT
Granted To	:	HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation
For	:	right of way for transformer vault
Dated	:	January 21, 1994
Recorded	:	May 18, 1994 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2147148

12.

Terms and provisions as contained in an instrument,

Entitled	:	ENCROACHMENT AGREEMENT (WALLS AND FENCE)
Dated	:	October 14, 1996
Recorded	:	October 24, 1996 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 2343769

13.

Any unrecorded and subsisting leases.

Appendix A

Developer Agreement
Management and Monitoring Requirements
CDBG-Assisted Rental Housing

Developer/Lessee Name: DET RENTON PARTNERS LP

Property Name: DE THOMPSON VILLAGE
Address: 91-1295 Renton Road, Ewa Beach, Hawai'i
TMK: 1-9-1-046-088

A. Project-Specific Requirements:

The Project is that senior (aged 62+) residential property constructed on 91-1295 Renton Road, Ewa Beach, O'ahu, Hawai'i, designated as Tax Map Key Nos. (1) 9-1-046:088.
The Property is designated on the City's Ewa Development Plan Land Use Map for low density apartment. Under the Land Use Ordinance of the City and County of Honolulu, found in Chapter 21, Revised Ordinances of Honolulu 1990, as amended. The Property is presently zoned A-1 low density apartment and the land use is set aside as urban development.

The Project is an existing 84-unit (includes 1-manager's unit, and hereinafter referred to as a "residential units") affordable rental housing facility targeted for elderly households, and constructed in the configuration and materials approved by the City and the US Department of Housing and Urban Development (HUD) on approximately 217,800 square feet of land, such land purchased by the City with CDBG funds. Improvements consist of ten (10) residential buildings (nine (9) 1-story and one (1) two-story buildings) and one (1) community building housing office, laundry and common areas.

The Project has not directly received any Neighborhood Stabilization Program ("NSP") funds.

1. CDBG National Objective

The City and the Developer acknowledge that the Project received CDBG funding as an activity that is described in 24 CFR § 570.201(a) and that meets the CDBG national objective described

in - 24 CFR § 570.208(a)(3), which provides in relevant part as follows:

> "*Housing activities*. An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining 'affordable rents' for this purpose."

No dwelling units shall be used for or be converted to non-housing uses.

2. National Objective Period/Period of Affordability

Pursuant to 24 CFR § 570.505, the Developer shall manage the Project in compliance with the CDBG regulations and this Agreement for the remaining term of the Lease.

The "National Objective Period" is the time period during which the Developer shall comply with the surviving terms and conditions of this Agreement. **The National Objective Period was triggered by the loan to grant conversion of Ewa Housing Foundation recordation with the Bureau of Conveyances on January 29, 2021, and is made part of this Agreement. The National Objective Period shall continue for a period of five (5) years thereafter.** During the National Objective Period, the Developer shall continue to use real or personal property acquired,

constructed or improved, as applicable, with CDBG funds for the purposes described in Section A, Paragraph 1 of this Agreement. The National Objective Period shall be extended for any period of time that the City, with the concurrence of HUD, or HUD determines that the Developer has not complied with the terms of this Agreement. The length of the extension shall correspond to the time period during which the Developer was found to be noncompliant with the terms of this Agreement.

As the Property was purchased by the Developer for less than Fair Market Value, the Developer and the City agree that the Developer has additionally assumed Ewa Housing Foundation's National Objective obligations set forth in the Sub-Recipient Agreement dated August 18, 1988 by and between the City and Ewa Housing Foundation and identified as Contract No. F45919, as amended, through January 28, 2026. The CDBG investment remaining in the Property is valued at ONE MILLION FOUR HUNDRED SEVENTY THOUSAND NINE HUNDRED NINETY THREE AND NO/100 DOLLARS ($1,470,993.00) (the "**CDBG Carryover Investment**"), calculated by subtracting the program income already paid to the City ($1,036,007) from the original CDBG investment in the property ($2,507,000). The Developer and the City agree that $1,470,993 will be due and payable to the City in the event the Developer (i) fails to make the promised improvements budgeted at approximately $4,400,000 and including, but not limited to, new counters and cabinets in kitchen and baths, new kitchen and bath fixtures, new flooring and window treatments, repair or replacement of windows, doors and appliances, plumbing and electrical improvements, general repairs to existing structures, and accessibility improvements; or (ii) disposes of the Project, or fails to comply with applicable CDBG requirements for the Project (including, but not limited to, the requirements set forth in this Developer Agreement) on or before January 28, 2026. On January 29, 2026, the City will consider the CDBG Carryover Investment to be a non-reimbursable grant to the Developer.

In furtherance of the CDBG National Objective, the City shall require an extended compliance period as provided under City policy upon completion of the National Objective Period, during which extended period the Project must continue to be operated as if the National Objective Period were still in effect ("**City Compliance Period**"). **The length of the City Compliance Period will cover from the end of the National Objective Period until the expiration or earlier termination of the Lease.**

3. Target Group

Fifty-one (51) percent of the households must be low- and moderate-income households at the time of first occupancy of a rental unit. A low- and moderate-income household is defined as a household, the income of which does not exceed 80% of the median income for Honolulu, adjusted for household size and periodically revised and published HUD.

4. Definition of Income.

The Developer hereby elects to use the following definition of income (check one) when determining, certifying, and recertifying the household incomes of the tenants on the Property:

_X_ Section 8

___ IRS Form 1040

___ U.S. Census long form

B. Property Standards.

1. The Developer shall maintain the Property in accordance with the City's housing and building codes (Codes).

2. The Developer shall inspect dwelling units annually for compliance with the Codes.

3. The Developer shall file the inspection reports, prepared and signed in accordance with the Codes, as evidence that the unit meets the Codes.

C. Tenant Selection Procedures

1. The Developer shall comply with Federal regulations pertaining to affirmative marketing, fair housing, and equal opportunity (24 CFR § 1.4; 24 CFR § 570.506(g); and 24 CFR § 570.602).

a. In general, the Project must serve all persons without regards to race, color, national origin, religion, sex, handicap, or familial status.

b. No person shall be denied the benefits of the Project because of familial status, age, or disability.

c. The HUD Fair Housing logo shall be placed on the Project's housing application forms, brochures, advertisements, and rental agreements. The HUD Fair Housing Poster shall be displayed in the Project's administrative office.

d. The Developer shall provide the City with a completed and updated Form HUD- 935.2A, Affirmative Fair Housing Marketing Plan (Multifamily Housing). The Developer must actively market and reach out to all persons, especially those persons that, for various reasons, are least likely to apply. Special needs housing (e.g., transitional housing for the homeless or disabled) is not exempt from these regulations.

e. The Developer shall annually complete and provide to the City Form HUD-27061, Race and Ethic Data Reporting.

f. The Developer shall maintain and provide to the City records of the number of female single heads of households and the number of male single heads of households that the Project served over its program year.

2. The Developer shall notify prospective clients in writing that the Property is subject to CDBG regulations.

3. The Developer must adopt written tenant selection policies and criteria that:

a. Are consistent with the purpose of providing housing for low- and moderate-income households.

b. Provide for the selection of applicants from a written waiting list in the chronological order of their application, insofar as is practicable.

c. Provide for applications to be date- and time-stamped.

d. Give prompt written notification to any rejected applicant of the grounds for any rejection.

D. Household Income

1. Definition. The Developer shall comply with the regulation stated at 24 CFR § 570.3, Definition of "income," which substantively provides as follows:

"*Income.* For the purpose of determining whether a family or household is low- and moderate-income under subpart C of [24 CFR Part 570], [the Developer] may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of §570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under §570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under §570.208(a)(1)(vi). Activities qualifying under §570.208(a)(1) generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

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

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

(A) Wages, salaries, tips, commissions, etc.;
(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;
(C) Farm self-employment income;
(D) Interest, dividends, net rental income, or income from estates or trusts;
(E) Social Security or railroad retirement;
(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;
(G) Retirement, survivor, or disability pensions; and
(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

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

2. Estimating Annual Income.

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

3. If the household is a minor or person that does not have a personal income, the household income of that household's guardian or parents must not exceed 80 percent of the Honolulu median income.

4. All households, including elderly, abused, homeless, and severely disabled, etc., must be fully income certified to qualify to live in the Property. No households in CDBG-assisted housing may be presumed to be of low- to moderate-income.

   (See 24 CFR § 570.208 (a)(2)(i), which states that the beneficiaries of "activities involving the acquisition, construction or rehabilitation of property for housing" may not be presumed to be of low- and moderate income.)

5. Frequency of full income certification; choice of definitions of income; period of validity of income certification.

   a. Frequency of full income certification.

      The Developer shall determine and certify incomes of tenants initially, upon the tenants' entrance into the Property, and recertify incomes at least annually thereafter.

   b. Documentation of income.

      The Developer shall place documentation in the tenant files, signed by Developer and applicant, to the effect that the Developer determined, certified, and recertified the applicant's income, including the updated income amount, date of recertification.

c. Choice of definitions of income

i. Rental Rates Based on Income

(A) If the rents in the Property are based on the tenants' ability to pay, that is, if the tenant never pays more than 30 percent of income for rent, then the Developer *must* use the Section 8 definition of income and calculate the tenants' Section 8 *adjusted income* as defined by HUD at various places, including:

https://www.hudexchange.info/incomecalculator/dashboard/?display=login&returnURL=https%3A%2F%2Fwww%2Ehudexchange%2Einfo%2Fincomecalculator%2Fdashboard%2F

https://files.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator_User_Manual.pdf

(B) If the rents in the Property are *not* based on the tenants' ability to pay, then the Developer may choose among three definitions of income stated in 24 CFR § 570.3 "Income."

ii. Using the IRS Definition of Income.

(A) If, and only if, the Developer elects to use the IRS definition of income:

(i) The Developer may use the household income figure shown either on IRS short form 1040EZ or on IRS Form 1040.

(ii) The tax return may be used as proof of income.

(iii) The income certification is valid up to 12 months from the date of income certification.

(B) If the Developer *does not* elect to use the IRS definition of income:

(i) As described in the definition of "income" quoted above, the Developer shall "Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable)...."

(ii) The Developer may not use an applicant's income tax return or other forms of "self-certification" as the sole or primary means of determining income. The Developer shall determine income using documents from third parties and the methodology prescribed in the HOME income calculator, or its equivalent, at the following website

https://www.hudexchange.info/incomecalculator/dashboard/?display=login&returnURL=https%3A%2F%2Fwww%2Ehudexchange%2Einfo%2Fincomecalculator%2Fdashboard%2F

https://files.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator_User_Manual.pdf

(iii) The initial income certification is valid up to 6 months from the date of income certification. Recertifications of income are valid for 12 months from the date of recertification.

6. Over-income households.

Households that are determined to be over-income upon annual income recertification may not be evicted from the Property solely for being over-income. However, the rents that the Property charges to such over-income households need no longer be those that are affordable to low- to moderate-income persons, as such rents are defined below.

7. Relocation, Real Property Acquisition and One-for-One Housing Replacement.

The Developer agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act; and (c) the requirements in 24 CFR § 570.606(d) governing optional relocation policies. The Developer shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Developer also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

E. Rents

1. For those units within the Project that are covered under a project-based rental subsidy, in April 2018 the City adopted new CDBG affordable rent policies.

The policy states "the City and County of Honolulu's published Community Development Block Grant (CDBG) affordable rents will be the US Department of Housing and Urban Development's published fair market rent, except in cases where the CDBG assisted unit receives project-based rental subsidy. In these circumstances, the rent allowable under the project-based rental subsidy program will apply."

2. For those units within the Project that are NOT covered under a project-based rental subsidy, in accordance with 24 CFR § 570.208(a)(3), the City declares that affordable rents that are charged to the Property's target group, namely, low- and moderate-income persons, for the use of dwelling units on the Property may not exceed the current HUD Fair Market Rents appropriate to the units' size as published by HUD. For 2021, the link is as follows: **https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2021_code/2021state_summary.odn**. Such "affordable" rent need not be lower than the HUD Fair Market Rent that was in effect at the time of initial rent-up. This guideline shall not prevent the Developer from complying with other rental guidelines that prescribe a lower rent.

24 CFR 570.208(a)(3) states in pertinent part, "For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining 'affordable rents' for this purpose."

3. There are no restrictions on the rents that may be charged to households, the incomes of which no longer qualify as low- to moderate-income households.

4. The rents that are charged to low- to moderate-income households must include utilities as HUD defines utilities. Low- to moderate-income clients that pay for utilities should be given the appropriate, current Section 8 utility allowance(s), except those addressed in E.2. above, in which utilities shall be included in total rent calculation.

5. Any rent changes must be in accordance with the terms of the Project's project-based USDA 521 rental subsidy agreement.

F. CDBG Program Income

1. Referencing HUD's "NSP Policy Alert! Guidance on Developers, Subrecipients, and Contractors – Updated November 16, 2011": HUD developed guidance to clarify the definitions of Subrecipients, Developers and Contractors, as well as the requirements for NSP grantees which establish relationships with such entities. This guidance consolidates information that has been addressed in previous NSP policy alerts, and offers new guidance regarding developer fees based on more recent questions received from NSP grantees and affiliates.

This circular defined a "developer" to be as follows:

"Developer: A for-profit or private nonprofit individual or entity that the grantee provides NSP assistance to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2) constructing new housing in connection with the redevelopment of demolished or vacant properties. Developers are program beneficiaries and thus distinct from subrecipients, grantee employees, and contractors. Developers may receive NSP funds from either the grantee or a subrecipient. Developer led rehabilitation is undertaken pursuant to 24 CFR 570.202(b)(1). New housing construction is undertaken

pursuant to 24 CFR 570.204, or the NSP notice published on October 6, 2008, as amended.

NSP grantees should note that they may but are not required to treat all third-party development entities as subrecipients. HUD regulations treat developers as private entities entitled to benefit under 570.202(b)(1). This is important in situations where a private for-profit or non-profit organization receiving NSP funds is neither a contractor nor a subrecipient. In such instances, the developer is not an intermediary acting for the grantee, but is receiving assistance itself as a beneficiary under the program.

Examples include a for-profit or nonprofit entity receiving a housing rehabilitation grant or loan to improve property it owns. Public nonprofits such as Housing Authorities or Redevelopment Authorities do not qualify as developers because 570.202(b)(1) requires them to be private entities.

Both grantees and subrecipients can engage developers. However, to be treated as a developer, the entity must demonstrate ownership or control of the property to be rehabilitated or redeveloped. That is, a grantee or a subrecipient cannot designate an entity as a developer if it is simply providing construction services on a property owned by the grantee or subrecipient; such an entity would be classified as a contractor."

In this circumstance, the City recognizes DET Renton Partners LP as a "developer" as defined above, and as such only the rental income under the Lease paid by DET Renton Partners LP to the City will count as program income to the City.

2. The City and the Developer acknowledge that the Developer has not received any additional CDBG funds for the Project. However, should future HUD CPD funds be invested into this project or property, Program Income requirements pursuant to 24 CFR § 570.504(c) will apply.

G. Reserve Accounts

1. Replacement reserves **shall not** be funded with CDBG program income.

(See 2 CFR Part 200. Subpart E – Cost Principles, "General Provisions for Selected Items of Cost") 2 CFR § 200.433(c) states:

"Payments made by the Federal awarding agency to the non-Federal entity's 'contingency reserve' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§200.431 Compensation – fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.477 Insurance and indemnification."

To finance capital improvements to the project, including the removal of architectural barriers, the Developer shall seek other sources of funding including private loans.

2. Residual receipts reserves shall not be funded with CDBG program income. Residual receipts are CDBG program income and should be returned to the City's CDBG program, except as otherwise allowed herein.

3. Operating or maintenance reserves may be funded with the CDBG portion of the gross income.

   a. The maximum level of funding in these reserves shall not exceed the greater of:

      i. One year's worth of allowable maintenance and repair costs, defined as the average of the last two years maintenance and repair costs; or

      ii The number of rental units in the project multiplied by $2,000.

   b. With the prior approval of the implementing agency and the Federal Grants Branch, these amounts may be adjusted to accommodate normal increases in operating costs.

   c. The amounts in any reserves that are funded with the non-CDBG portion of the Property's gross income are not subject to this Agreement.

H. Reports

1. The Developer shall maintain a Rental Project Compliance Report using an Excel spreadsheet. This report should contain the information listed below. The Developer shall transmit this Report to the City annually. It should show all the tenants that the Property

served over the Property's fiscal year, not just those tenants that are currently occupying the units.

1. Time period covered by report
2. Unit Number
3. Number. of bedrooms in unit
4. Tenant Name
5. Number of people in household
6. Is this a Section 8 tenant or other subsidized tenant
7. Date of last Income Recertification
8. Household Income at Date of Last Recertification
9. Household % of Median Income at Date of Last Recertification
10. Move-in Date
11. Household Income at Move-In Date
12. Household % of Median at Move-In Date
13. Current Rent of Unit
14. Amount of Utility Allowance

2. The Developer shall complete and annually transmit to the City Form HUD-27061, Race and Ethnic Data Reporting Form.

3. Pursuant to 24 CFR § 570.506(g)(2), the Developer shall annually transmit to the City a report on the number of single-headed and female-headed households that the Property served.

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

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

6. The Developer shall annual transmit to the City current copies of insurance certificates evidencing coverage of the Project

I. Files and records

1. The Property's tenant files shall contain:

   a. Evidence that the unit was inspected in accordance with the City's building codes.

   b. Evidence that the incomes of each unit's successive tenants were calculated, certified, and annually recertified.

   c. Documentation as to each unit's rent.

   d. Copy of each client's rental agreement.

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

2. The Developer shall keep on file:

   a. Evidence that the Property filed Form HUD-935.2A. Affirmative Fair Housing Marketing Plan (Multifamily Housing); and evidence that the plan was reviewed every five years.

   b. Evidence of marketing and outreach to the Property's target groups.

   c. Copies of Form HUD-27061, Race and Ethnic Reporting Form for each year.

   d. Records of the number of single-headed households and female-headed households for each year.

   e. Copy of the tenant selection policy and procedures, including policy and procedures for administering waitlists.

   f. Copies of any brochures and handouts that the managing agent distributes to applicants. These materials should:

      i. Disclose and explain the CDBG rules that directly affect the tenants.

      ii. Display the HUD Fair Housing logo.

g. Copies of the Rental Project Compliance Report for each year.

h. Copies of any insurance certificates evidencing coverage of the Project.

Certification Pursuant to Section 28-3.4(j),
Revised Ordinances of Honolulu 1990, as amended (ROH)

Project Name:	DE Thompson Village
Address:	91-1295 Renton Road, Ewa Beach, Hawaii 96706
TMK:	(1) 9-1-046: 088

Current Lessee:	Ewa Housing Foundation
Future Lessee:	DET Renton Partners LP
Current Lease Term:	65 Years Commencing on July 1, 1990
Extension Requested:	75 Years Commencing from the Date of Execution of the Assignment and Extension of Lease

The Department of Community Services hereby certifies that the Lease extension requested by the above-named parties fulfills the requirements of Section 28-3.4(j), ROH.

(1) The City and County of Honolulu continues to have a need for the affordable housing located on the leased land and is reasonably likely to continue to have such public need for the period for which the Lease is being extended;

(2) The 75-year Lease extension will support the Future Lessee's ability to finance any necessary rehabilitation and continued upkeep of the affordable units; and

(3) The Future Lessee has experience operating, rehabilitating and owning or leasing multifamily housing for low-moderate income persons.

Certified on _____, 2021, Honolulu, Hawaii

By:

Joy Barua

FOR **Sarah Allen**
Director, Department of Community Services

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 21-210

Introduced: 09/13/21 By: TOMMY WATERS - BY REQUEST Committee: HOUSING AND THE ECONOMY (HECON)

Title: AUTHORIZING THE ASSIGNMENT AND EXTENSION OF A LEASE OF CITY PROPERTY WITH DET RENTON PARTNERS LP FOR THE DE THOMPSON VILLAGE PROJECT UNDER SECTION 28-3.4(j), REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED (ROH).

Voting Legend: * = Aye w/Reservations

09/13/21	INTRO	Introduced.
09/21/21	HECON	Reported out for adoption. CR-272 5 AYES: CORDERO, KIA'ĀINA, SAY, TULBA, TUPOLA
10/06/21	CCL	Committee report and Resolution were adopted. 8 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TULBA, TUPOLA, WATERS 1 ABSENT: TSUNEYOSHI

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

GLEN I. TAKAHASHI, CITY CLERK

TOMMY WATERS, CHAIR AND PRESIDING OFFICER