



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. **22-199**

RESOLUTION

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

WHEREAS, on February 18 and 21, 2022, the City and County of Honolulu published notice of the issuance of a request for proposals for the lease of three (3) City-owned properties to provide housing or human services for persons with special needs; and

WHEREAS, proposals were received for each of the properties by the April 11, 2022 deadline; and

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

WHEREAS, in accordance with Section 28-3.5, ROH, a public hearing was held on June 29, 2022, regarding the lease of the subject property for nominal rent; and

WHEREAS, in accordance with Section 28-3.5(d), ROH, a written report was submitted to the City Clerk on July 5, 2022, identifying the proposals and selection of the nonprofit agencies for the public record; and

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

WHEREAS, as a result of the request for proposals process, the City selected Hale Kipa, Inc. to be the lessee of City property located at 1828 A Makuahine Street, Honolulu, Hawaii 96817, identified as TMK: (1) 1-6-028:040, to be used as an emergency shelter for youth aged 12 to 19 years; and

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

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

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

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



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property located at 1828 A Makuahine Street, Honolulu, Hawai'i 96817, identified as TMK: (1) 1-6-028:040 for a rent of \$100.00 per month, or \$1,200.00 per year, for a period of four and a half (4.5) years; and

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

3) The Certification for the Record attached as Attachment B; and

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

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to Andrew T. Kawano, Director of Budget and Fiscal Services; Anton C. Krucky, Director of Community Services; and Venus Rosete-Medeiros, Chief Executive Officer, Hale Kipa, Inc., 91-2128 Old Fort Weaver Road, Honolulu, Hawai'i 96706.

INTRODUCED BY:



DATE OF INTRODUCTION:

AUG 18 2022

Honolulu, Hawai'i

Councilmembers

Attachment A

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

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

NO. OF PAGES:

PROPERTY DESCRIPTION

1828 A Makuahine Street
Honolulu, Hawai'i 96817

DOCUMENT NO.

TRANSFER CERTIFICATE OF
TITLE NO:

Land Court () Regular () Double ()

Tax Map Key No. (1) 1-6-028-040

LEASE

THIS LEASE ("Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813, ("City"), and Hale Kipa, Inc., a Hawai'i nonprofit corporation, the principal place of business and mailing address of which is 91-2128 Old Fort Weaver Road, 'Ewa Beach, Hawai'i 96706, ("Lessee").

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

1. **DEMISE AND DESCRIPTION OF PROPERTY.** The City, in consideration of the rent to be paid by Lessee and of the terms stated below to be performed by Lessee, leases to Lessee, and Lessee accepts, all of the real property described in Exhibit A and improvements thereon (the "Property"). Lessee has inspected the Property and finds the Property in good condition and accepts the Property in its present condition, AS IS, WHERE IS AND WITH ALL FAULTS, without warranty, guaranty, liability, or

representation whatsoever, express or implied, oral or written, on the part of the Lessor, or any Person on behalf of Lessor, regarding the Property or matters affecting the Property, including but not limited to the following:

- A. **Physical Condition.** The physical condition of the Property, 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 any other purpose;
- B. **Improvements.** The quality, nature, adequacy and physical condition of existing Improvements, including, without limitation, the structural elements, seismic safety, engineering characteristics, foundation, roof, systems, infrastructure, facilities, appliances, appurtenances, access, landscaping, and/or parking facilities;
- C. **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 Property 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 Property; provided however, that Lessor represents and warrants to Lessee that it owns fee simple title to the Land;
- D. **Compliance.** The development potential of the Property and /or the zoning, land use, or other legal status of the Property, or compliance with any public or private restrictions on the use of the Property, 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 Property with any applicable laws;
- E. **Hazardous Substances.** The presence or removal of Hazardous Substances on, in, under or about the Property or any adjoining or neighboring property;
- F. **Economic Feasibility.** Economic conditions or projections, development potential, market data, or other aspects of the economic feasibility of the Property and/or the business Lessee intends to conduct on the Property;
- G. **Utilities.** The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Property;
- H. **Suitability.** The use, habitability, merchantability, fitness, suitability, value or adequacy of the Property for any particular purpose;
- I. **Boundaries.** The boundaries of the Property, the location of any improvements on the Land and/or the existence of any encroachment onto or from any adjacent lands;
- J. **Access.** Access to the Property, including from or through any particular route; and
- K. **Other matters.** Any matter whatsoever not referenced above that pertains to the Property.

2. TERM AND RENTAL. To have and to hold the Property together with the rights, easements, tenements, privileges, and appurtenances, unto Lessee for the term of four (4) years and six (6) months commencing on _____ (the "Commencement Date") and expiring on the day prior to four (4) years and six (6) months from the Commencement Date, unless terminated earlier as stated below ("Term"). Lessee will pay the City monthly rent of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) for the Property to be paid on the first day of each month during the Term. If not for a full month, rent shall be prorated accordingly. Lease payment should be payable to the City and County of Honolulu, Division of Treasury, Miscellaneous Receivables Section, 715 South King Street, Suite 502, Honolulu, HI 96813.

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

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

5. USE AND TRANSFER OF PROPERTY. The Property shall be used exclusively as an emergency shelter for youth aged 12 to 19 years ("Project") in accordance with the Request for Proposals as published on February 18 and 21, 2022, and Lessee's proposal dated April 11, 2022, all of which are incorporated herein by reference. Lessee covenants that except as stated in this Lease, it will not, sell, assign, convey, sublease, mortgage, encumber or transfer Lessee's interest in this Lease or relinquish possession of any portion of the Property, without the prior written consent of the City.

In addition to the revision stated in section 32.F. below, if the prior approval of DCS is required by provisions of this instrument, DCS will promptly review the request, will give Lessee specific reasons why as request may be denied and will work with Lessee to attempt to remedy the reasons for a denial.

A. Compliance with Federal Community Development Block Grant (CDBG) Requirements. Lessee shall comply with all CDBG program requirements applicable to Lessee's use of and the activities on the Property, including the regulations set forth in 24 CFR Part 570 and related administrative requirements and authoritative guidance, as the same may from time to time hereafter be amended. It is understood that citations herein to the Code of Federal Regulations shall include any amendments thereto, and any recodified or successor regulations.

1. CDBG Use and Affordability Restrictions. Lessee shall comply with CDBG use and affordability restrictions applicable to Lessee's use of and the activities on the Property. The use of, and activities upon the Property shall at all times meet the criteria for an eligible activity and comply with a national objective pursuant to CDBG requirements.
2. Prohibited Activities. The Property shall not be used for the general conduct of government or for political activities except as authorized by 24 CFR §570.207.
3. Inspections and Monitoring. During normal business hours, all of Lessee's records relating to the Property shall be made available for examination by the City, HUD, and the Comptroller General of the United States and/or their representatives.

4. **Program Income.** Lessee shall comply with CDBG program income requirements applicable to the Property and the Project, including, but not limited to, those set forth at 24 CFR §570.500. Lessee shall report all program income applicable to the Property and the Project to the City, and shall pay all program income that it receives from the Property or the Project to the City within thirty (30) days following the calendar quarter in which the program income is received.
5. **Use Restriction Period.** The obligations set forth in this Section 5.A.1 shall remain in effect for the term of this Lease thereafter (the "Use Restriction Period"). The Use Restriction Period shall be extended for any period of time that the City, with the concurrence of HUD, or HUD determines that the Lessee has not complied with the terms of this Lease. The length of the extension shall correspond to the time period during which the Lessee was found to be noncompliant with the terms of this Lease.
6. **Recordkeeping.** Lessee shall maintain all records applicable to Lessee's use of and the activities on the Property and required to be maintained pursuant to CDBG program requirements, including, to the extent applicable, 24 CFR §570.506 and the following:
 - a. Records demonstrating the activities undertaken on the Property meet one of the National Objectives of the CDBG Program;
 - b. Records required to determine the eligibility of activities, including, but not limited to, documentation of household income eligibility;
 - c. Records required to document the improvement and use of the Property;
 - d. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - e. Financial records required under 24 CFR §570.202 and other applicable law; and
 - f. Other records necessary to document compliance with Subpart K of 24 CFR Part 570 and this Lease.
7. **Record Retention.** Lessee shall maintain all records applicable to Lessee's use of and the activities on the Property required to be maintained pursuant to CDBG program requirements, for the time periods prescribed by such requirements.
8. **Reporting Requirements.** Lessee shall comply with all CDBG program reporting requirements applicable to Lessee's use of activities on the Property, and shall provide any such reports reasonably required by the City in furtherance of the City's compliance with CDBG program requirements.
9. **Environmental Requirements.** Lessee shall comply with all environmental laws, regulations, and review requirements, as may be applicable to Lessee's use of and activities on the Property pursuant to CDBG program requirements.

10. Indemnity. Lessee agrees to defend, indemnify, and hold harmless City from any demands, claims, fines, penalties, lawsuits, orders, or other enforcement or administrative actions alleging noncompliance with CDBG requirements, including any demands for repayment of CDBG funds used to acquire the Property, arising from the acts or omissions of Lessee, its employees, officers, directors, agents, contractors, subcontractors or representatives, or from the use of or activities upon the Property during the Term.
11. Lead-Based paint (24 CFR §570.608). Lessee agrees that the Project shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the Property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to the property, paint testing, risk assessment, treatment and/or abatement may be conducted. Lessee further agrees that any repair, renovation or painting that disturb lead-based paint in "target housing", as that term is defined in the Toxic Substances Control Act (TSCA), section 401 or in a "child-occupied facility", as that term is defined in EPA regulations implementing said Act, shall be carried out in strict compliance with those implementing regulations, which are set forth in 40 CFR Part 745, beginning 40 CFR §745.80. These regulations require, among other things, the use of certified renovators, dust sampling technicians, and renovation firms.
12. Nondiscrimination. Lessee shall not discriminate against any Project beneficiary or prospective Project beneficiary on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability or handicap, age, marital/familial status with regard to public assistance. Lessee will take affirmative action to ensure that the Project is free from such discrimination, and shall comply with 24 Code of Federal Regulations, Part 8, relating to "Nondiscrimination Based on Handicap in Federal Assisted Programs and Activities of the Department of Housing and Urban Development".

- B. Compliance with the executed Management Agreement. Lessee shall manage the Project and provide services under this Lease pursuant to the terms of the executed Management Agreement, which shall not be modified without the prior written consent of the Department of Community Services.

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

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

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

Lessee shall comply with all City, State, and Federal laws, rules, and regulations now or hereafter made by any governmental authority which are applicable to the Property and will observe all covenants and restrictions affecting the Property.

9. REPAIR AND MAINTENANCE. Lessee shall at all times during the Term, at its own expense, substantially repair, maintain, and keep the Property in good order and condition. Lessee should expend approximately one percent (1%) of the assessed value of the property on repairs and maintenance of the Property annually. If the Lessee has more than \$3 million combined in assessed valuation of real estate in the State of Hawai'i being used for affordable housing, homelessness and/or special needs housing, the Lessee must have a full-time facilities manager unless waived in writing by the Director of the Department of Community Services.

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

11. CONSTRUCTION OF IMPROVEMENTS. Lessee will not construct any structure or other improvements on the Property with an aggregate value greater than \$1,000.00, alter the Property, or place any signs on the Property, without the prior written consent of the City.

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

13. INSPECTION. The City and its agents may enter and inspect the Property at all reasonable times during the Term. Subject to the provisions of Sections 10 and 11 above, Lessee shall, at its own expense, repair all defects in the Property within thirty (30) days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within thirty (30) days, commence such repair within that time period and act with diligence until the repair is completed. If Lessee shall fail to commence or complete the repairs within the period provided above, the City may make such repairs without prejudice to any remedies available to the City under this Lease or at law for Lessee's default of its obligations under this Lease. If the City makes such repairs, Lessee shall pay to the City the cost thereof plus interest at the rate of twelve percent (12%) per annum on demand. The City shall not be responsible to Lessee for any loss or damage that may be caused to the Property or business of Lessee by reason thereof.

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

15. NEITHER PARTY AGENT, JOINT VENTURER NOR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, nor a joint venturer or partner with, the other party.

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

the construction contract and (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

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

During the Term, subject to the provisions of Sections 10 and 11 above, should any of the buildings now or hereafter erected on the Property, sustain loss or damage, the City shall have the sole discretion to determine whether to repair, rebuild or replace such buildings. The City shall provide written notice to Lessee of such election, at which time Lessee shall, after payment to the City of all accrued rent and unpaid taxes and all other required payments, be relieved of any further obligation hereunder.

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

18. **LIABILITY INSURANCE.** Lessee will procure and maintain at all times during the term of this Lease any and all insurance required under any federal, state or local law, statute, ordinance, or rules and regulations as may be applicable to Lessee's operations and activities hereunder, including but not limited to workers compensation insurance. In addition, Lessee shall procure and maintain (1) Commercial General Liability (CGL) insurance covering claims arising out of Lessee's premises, operations, or independent contractors from bodily injury & property damage, products & completed operations, and personal & advertising injury liability, (2) Excess/Umbrella Liability insurance providing excess limits over the CGL insurance policy, and (3) Professional Liability Errors & Omissions insurance covering claims arising out of errors and omissions in the performance of or failure to perform professional services, with minimum limits of:

General Liability

\$1,000,000	General Aggregate
\$1,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$1,000,000	Each Occurrence
\$5,000	Medical Expenses - Any One Person
\$250,000	Damage to Rented Premises - Each Occurrence

Excess/Umbrella Liability

\$3,000,000	Each Occurrence
\$3,000,000	Aggregate

Professional Liability Errors & Omission

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

All policies of insurance shall contain a waiver of subrogation in favor of the City; shall provide that Lessee's insurance is primary coverage with respect to all insureds/additional insureds; and shall not be cancelled or terminated without sixty (60) days prior written notice to the City. Lessee's CGL and Excess/Umbrella policies of insurance shall name the City, its elected and appointed officials, employees and agents as additional insureds, and shall contain a severability of interest clause providing that the insurance applies separately to each insured and that the policies cover claims or suits by one insured against another. Lessee also acknowledges that the limits outlined above is provided as a matter of convenience and the City does not warrant that these limits are adequate to protect Lessee's or the City's interest or liabilities under the terms of this Lease, and Lessee's liability shall not be limited to these minimum limits.

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

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

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

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

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

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

24. **PROTECTION OF MORTGAGEE.** During the existence of any mortgage of this Lease, to which the City has consented in writing, the City will not terminate this Lease because of any default by

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

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

- A. Failure to Pay Rent. Lessee's failure to pay rent or other charges required to be paid by Lessee under this Lease within ten days of its due date; or
- B. Failure to Comply. Lessee's failure to comply with any other provision of this Lease which Lessee is obligated to comply with within thirty days of written notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within thirty days, then so long as Lessee has commenced the action to comply and diligently prosecutes the same, Lessee shall not be in default; or
- C. Abandonment. Lessee's abandonment of the Property, for a period of thirty (30) consecutive days or more; or
- D. Assignment to Creditors. Lessee's assignment of this Lease for the benefit of creditors; or
- E. Writ of Execution. Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or
- F. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or
- G. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of thirty days after written notice to Lessee; or
- H. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to City concerning the financial condition or credit standing of either Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or City reasonably determines that its position as City is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

26. REMEDIES.

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

- B. Remedies Upon Default. Upon occurrence of any event of default, City may exercise any of the following remedies:
1. Re-entry: Termination. City may elect to terminate this Lease, but only by specific written notice of its election to Lessee, and may terminate the rights of Lessee to this Lease and the Property, and may reenter the Property to take possession of it.
 2. Re-entry: No Termination. Without terminating this Lease, City may reenter the Property and occupy it and may, but is not obligated to, relet any portion or all of the Property for the account of Lessee; provided that City may terminate this Lease at any time after Lessee's default, even if City has relet any portion of the Property for the account of Lessee.
 3. Cure. City may but shall not be obligated to cure any event of default and to charge Lessee for the cost of effecting such cure.
- C. Exercising City's Remedies. Upon City exercising any of its above-listed remedies, Lessee agrees to the following:
1. Removal of Persons and Property. If City reenters the Property, it may remove all persons from the Property by any lawful means available. City may also remove all property of Lessee from the Property, and may enforce its right against that property, or may store the property at the expense of Lessee, or may dispose of the property if Lessee does not reclaim the property within thirty (30) days after City has re-entered the Property.
 2. No Termination. City's re-entry into the Property or its action to obtain possession of the Property shall not be deemed to constitute a termination of this Lease, or a termination of Lessee's obligation to pay rent or any other charge required to be paid by Lessee under this Lease, or a termination of any other liability of Lessee under this Lease including but not limited to Lessee's liability for damages.
 3. Reletting. If City elects to relet the Property to a replacement Lessee, with or without terminating this Lease, City may enter into an agreement with the replacement Lessee for such rent and on such terms as City in its sole discretion deems appropriate. City may repair or alter the Property to suit the purposes of the replacement Lessee or to enable City to relet the Property or any portion of the Property.
 4. Application of Rent. City shall apply the rent and other payments received from the replacement Lessee, in the following order and priority: (1) to the costs incurred by City to recover possession of the Property, including but not limited to reasonable attorney's fees and costs; (2) to the costs incurred by City to relet the Property, including but not limited to the costs of repairs and alterations, and broker's commissions; (3) to the unpaid rent and other payments required to be paid by Lessee under this Lease. If there shall be a surplus, City may retain such surplus to pay subsequent amounts which become due and payable by Lessee under this Lease, and if there shall be any surplus at the expiration of this Lease, City shall pay such surplus to Lessee at the expiration of this Lease. If there shall be any deficiency between the rent and payments received from the replacement Lessee and the amount required to pay the items described

in subparagraphs (1), (2), and (3) of this paragraph, Lessee shall be liable to City for such deficiency.

5. **Legal Action.** City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease, even though such action is initiated prior to termination of this Lease or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.
6. **Additional Remedies.** If City terminates this Lease, then in addition to any other remedy available to City, City may recover from Lessee either (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.
7. **Remedies Cumulative.** The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.
8. **Costs and Attorney's Fees.** City shall be entitled to recover from Lessee all costs incurred by City in enforcing any provision of this Lease which Lessee is required to comply with, including but not limited to reasonable attorney's fees and costs.

27. **SURRENDER: HOLDING OVER.**

- A. **Surrender.** Upon expiration or earlier termination of this Lease, Lessee shall immediately vacate and surrender the Property to City, together with all improvements, additions and fixtures then on the Property, whether installed by City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; and free and clear of all encumbrances (including, but not limited to, all claims, liens, charges or liabilities); provided that City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease within seven days following the expiration or earlier termination of this Lease. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.
- B. **Failure to Restore.** If Lessee fails to complete the removal and the restoration in the manner and within the time specified, City may complete such removal and restoration in which event Lessee shall be liable to City for all costs incurred by City which amount shall be immediately due and payable after notice to Lessee by City of the amount due.

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

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

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

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

31. **SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY.** All entities having a contract with the City (referred to in this Section as a "Contractor") must comply with the Revised Ordinances of Honolulu 1990, Chapter 1, Article 18 ("Article 18") on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual

harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the Contractor's business and includes the following:

- A. Prohibitions against an officer's or employee's sexual harassment of the following:
 - (1) Another officer or employee of the employer;
 - (2) An individual under consideration for employment with the employer; or
 - (3) An individual doing business with the employer;
- B. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Subdivision a of the ordinance;
- C. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- D. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
- E. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- F. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- G. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard";
- H. Disciplinary action which may be imposed on an officer or employee who committed a prohibited act; and
- I. For a Contractor with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

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

All entities must also have a Language Access Plan and comply with Title VI of the Civil Rights Act of 1964, which includes taking reasonable steps to provide equal access to persons who are Limited English Proficient. All entities must also comply with the Violence Against Women Act and any subsequent reauthorizations.

32. MISCELLANEOUS PROVISIONS.

- A. Amendment. The provisions of this Lease may be amended only by each party executing a subsequent written agreement which states each amended provision.
- B. Applicable Law. The provisions of this Lease shall be interpreted in accordance with the law of the State of Hawai'i as that law is construed and amended from time to time.
- C. Authorization. Each party warrants to each other party that the individuals executing this Lease are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Lease.
- D. Binding Effect. Upon its execution by each party, this Lease 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 Lease, 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 Lease shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- E. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Lease, the City reserves the right, at any time, to amend this Lease in order to assure compliance with all HUD, City and County of Honolulu, State of Hawai'i and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Lease. The City shall provide all such amendments in writing to the Lessee. The Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments.
- F. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Lease is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- G. Construction. Each party named in this Lease acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Lease; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Lease; and (v) each party has agreed to be bound by the terms stated in this Lease following its review and obtaining advice.
- H. Counterparts. This Lease may be executed by the parties in counterparts. The counterparts executed by the parties named in this Lease and properly acknowledged, if necessary, taken together, shall constitute a single Lease.
- I. Dates. If any dates stated in this Lease fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- J. Defined Terms. Certain terms where they initially are used in this Lease are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Lease, unless otherwise specifically stated or clearly inappropriate in the context.
- K. Force Majeure. If any party is prevented from performing its obligations stated in this Lease by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act

of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Lease. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Lease by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Lease shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

- L. Gender: Number. In this Lease, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.
- M. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- N. Integration. This Lease contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Lease. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Lease which is not included as a provision in it.
- O. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Lease, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.
- P. No Drafter. No party shall be deemed to have drafted this Lease. No provision stated in this Lease shall be construed against any party as its drafter.
- Q. No Offer. The provisions stated in this Lease shall not bind any party until each party has executed it. The mere delivery of this Lease is not an offer.
- R. No Obligations to Third Parties. Unless there is a provision stated in this Lease to the contrary, the execution and delivery of this Lease shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.
- S. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.
- T. Notice. Any notice required or permitted by the provisions of this Lease to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.

(1) CITY AND COUNTY OF HONOLULU:

Department of Community Services
Community-Based Development Division
925 Dillingham Boulevard, Room 200
Honolulu, Hawai'i 96817
Attention: Director Anton C. Krucky

(2) Hale Kipa, Inc.
91-2128 Old Fort Weaver Road
'Ewa Beach, Hawai'i 96706
Attention: Ms. Venus Rosete-Medeiros, Chief Executive Officer

- U. Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee shall ensure that any vending facilities on the Property, including but not limited to vending machines, shall be placed in compliance with Hawai'i Revised Statutes Section 102-14 and the rules adopted by the State of Hawai'i Department of Human Services to implement such statute.
- V. Paragraph Titles. The titles of provisions stated in this Lease are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Lease.
- W. Required Actions by the Parties. Each party named in this Lease agrees to execute the Leases and to diligently undertake the acts necessary to consummate the transaction contemplated by this Lease. Each party shall use its best efforts to consummate the transaction contemplated by this Lease.
- X. Severability. If any provision stated in this Lease 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 Lease unless that effect is made impossible by the absence of the omitted provision.
- Y. Survival. Any representation and warranty stated in this Lease made by a party shall survive the termination of the agreement stated in this Lease, unless otherwise specifically stated.
- Z. Time is of the Essence. Time is of the essence with respect to Lessee's obligations under this Lease.

THE PARTIES have executed this Lease on _____.

APPROVED AS TO FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU

By _____
Deputy Corporation Counsel
City and County of Honolulu

By _____
Director, Department of Budget and
Fiscal Services

APPROVAL RECOMMENDED:

HALE KIPA, INC.

By _____
Director, Department of Community Services

By _____
Its

Print Title: _____

Print Name: _____

)
) SS.
)

corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council, and said _____ acknowledged the instrument to be the free act and deed of said municipal corporation.

Printed Name _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: LEASE

Document Date: _____ or Undated at time of notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit _____
(in which notarial act is performed)

(Official Stamp or Seal)

Printed Name of Notary

ACKNOWLEDGMENT

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

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

Notary Public, State of Hawai'i
Printed Name _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: 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

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A

The land referred to in this policy is described as follows:

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

LOT 436, area 8,414.0 square feet, of Section "J", as shown on Map 131, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 750 of the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased;

Being the land(s) described in Transfer Certificate of Title No. 354,633 issued to CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, acting by and through the Department of Housing and Community Development.

Exhibit B

CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

Lessee Name: Hale Kipa, Inc.

Property Name: 1828 A Makuahine Street, Honolulu, HI 96817

Property Description: A one-story, duplex dwelling with 2,280 square feet of living space consisting of one four (4) bedroom, two (2) bathroom residence and a one two (2) bedroom and one (1) bathroom residence, enclosed lanai and an open carport on an 8,414 square feet parcel (Built in 1962).

TMK: (1) 1-6-028-040

A. Project-Specific Requirements:

1. CDBG National Objective

Subject to additional and stricter income and use restrictions that may be found in the Lease the entire Property shall be used exclusively to benefit low- and moderate-income persons consistent with 24 CFR § 570.208(a) and to provide temporary housing for low- and moderate-income households consistent with 24 CFR § 570.208(a)(3). The Lessee will be required to individually certify the incomes of its clients. No dwelling units shall be used for or be converted to non-housing uses.

2. National Objective Period/Period of Affordability

The Lessee shall manage the Property in compliance with the CDBG regulations, any CDBG agreements with the City, and the relevant guidelines for the term of the Lease.

3. Target Group

At least fifty-one percent (51%) 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 eighty percent (80%) of the median income for Honolulu, adjusted for household size and periodically revised and published by the U. S. Department of Housing and Urban Development (HUD).

4. Definition of Income.

The Lessee 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

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CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

___ U.S. Census long form

___ IRS Form 1040

B. Property Standards.

1. The Lessee shall maintain the Property in accordance with the City's housing and building codes.
2. The Lessee shall inspect dwelling units annually for compliance with the codes.
3. The Lessee shall file the inspection reports, signed by tenants and inspector, as evidence that the unit meets the codes.

C. Tenant Selection Procedures

1. The Lessee 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 Property 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 Property because of familial status, age, or disability.
 - c. The HUD Fair Housing logo shall be placed on the Property'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 Lessee shall provide the City with a completed and updated HUD Form 935.2A Affirmative Fair Housing Marketing Plan. The Lessee 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 Lessee shall annually complete and provide to the City HUD Form 27061 Race and Ethnic Data Reporting Form.
 - f. The Lessee shall maintain and provide to the City records of the number of female single-heads of household and the number of male single-heads of household that the Project served over its program year.
2. The Lessee shall notify prospective clients in writing that the Property is subject to CDBG regulations.
3. The Lessee must adopt written tenant selection policies and criteria that:

Exhibit B

CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

- 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 Lessee shall comply with the regulation stated at 24 CFR § 570.3, Definition of "income," which says:

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

- a. The three (3) definitions are as follows:
 - i. Section 8. "Annual income" as defined under the Section 8 Housing Assistance Payments program at 24 CFR § 5.609 (except that if the CDBG assistance being provided is Lessee rehabilitation under Sec. 570.202, the value of the Lessee's primary residence may be excluded from any calculation of Net Family Assets); or
 - ii. Census. 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

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CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

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

(3) IRS 1040. 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 member 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 (80%) 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)(A), 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 Lessee 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 Lessee shall place documentation in the tenant files, signed by Lessee and applicant, to the effect that the Lessee determined, certified, and recertified the applicant's income, including the updated income amount and 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

Exhibit B

CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

thirty percent (30%) of income for rent, then the Lessee *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/>

- (B) If the rents in the Property are *not* based on the tenants' ability to pay, then the Lessee 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 Lessee elects to use the IRS definition of income:
 - (i) The Lessee 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 twelve (12) months from the date of income certification.
- (B) If the Lessee *does not* elect to use the IRS definition of income:

- (i) As described in the definition of "income" quoted above, the Lessee 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 Lessee 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 Lessee 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/>

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

Exhibit B

CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

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.

E. Rents

1. 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. 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 Lessee from complying with other rental guidelines that prescribe a lower rent.

(24 CFR § 570.208(a)(3) states, "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."

2. An affordable rent for a bedroom in a Group Home is the current HUD Fair Market Rent for a single-family dwelling unit with the same number of bedrooms as the group home, divided equally between the number of bedrooms in the group home.

For example the rent for one bedroom in a 6-bedroom group home, for which the 2005 HUD Fair Market Rent is \$2,295, will be \$2,295 divided by 6, or \$383. Such affordable rent need not ever be lower than the HUD Fair Market Rent that was in effect at the time of initial rent-up. Using this same example, if a bedroom in the group home is occupied by a resident manager or otherwise not occupied by a client, the rent will be determined using the Fair Market Rent of a 5-bedroom dwelling unit.

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).
5. Any rent changes must be in accordance with the terms of the Project's rental agreement.

F. CDBG Program Income

1. The Lessee shall calculate and return CDBG program income to the City at least annually in the form of a cashier's check made out to the City and County of

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Honolulu. The City retains the exclusive right to the use and disposition of CDBG program income.

2. CDBG program income is the gross income from rents derived by the Lessee, less the costs incidental to the generation of the income.

(See 24 CFR § 570.500(a)(1)(iii and iv), which states,

Program income includes, but is not limited to, the following:...(iii) Gross income from the use or rental of real...property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income; (iv) gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income....)

3. "Gross income" is defined as the total annual income of the Property from all sources, including, but not limited to, apartment rents, laundry, vending machines, parking stall rents, interest income, or subsidies (e.g., Section 8 housing payments and Section 236 interest subsidies). "Gross income" does not include private or government grants secured by the Lessee or program fees that the Lessee charges to its clients, specifically to provide non-housing services such as counseling to its clients on the Property.
4. "Costs incidental to the generation of such income" means the expenses involved in operating and maintaining the property, including such expenses as salaries for operating and maintenance staff, utilities, janitorial supplies, repairs, and costs collecting fees and charges.
5. "Costs incidental to the generation of income" also include:
 - a. Cost of insurance.
 - b. Cost of maintenance.
 - c. Reasonable management fees.
 - d. Cost of security.
 - e. Deposits into operating or maintenance reserves, as limited below.
6. Costs incidental to the generation of income do not include:
 - a. Depreciation. Depreciation, while actually deemed an allowable operating cost, must always equal \$0.00 when calculating program income in the Property.
 - b. Debt service payments.

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- c. Any costs that are deemed unallowable in 2 CFR § 200.420 – 200.475. Unallowable costs are not considered costs incidental to the generation of income.
- d. The salaries of staff that perform non-housing, non-maintenance related duties on the Property.
- e. Other costs deemed ineligible, in the sole discretion of the City.

G. Reserve Accounts

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

(See 2 CFR § 200.420 – 200.475.) 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 200.447 Insurance and indemnification.”

To finance capital improvements to the project, including the removal of architectural barriers, the Lessee shall seek other sources of funding including private loans or applications for CDBG funding to the City.

- 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.
- 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 or non-HOME portion of the Property’s gross income are not subject to these guidelines.

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H. Reports

1. The Lessee shall maintain a Rental Project Compliance Report using an Excel-compatible spreadsheet. This report should contain the information listed below. The Lessee 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 #
 3. No. of bedrooms in Unit
 4. Tenant Name
 5. No. 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
 12. Household % of Median Income at Move-In
 13. Current Rent of Unit
 14. Amount of Utility Allowance
2. The Lessee shall annually provide to the City a report showing the calculation of any CDBG program income due to the City, accompanied by a cashier's check for any amount due.
3. The Lessee shall complete and annually transmit to the City HUD form 27061, Race and Ethnicity reporting.
4. Pursuant to 24 CFR § 570.506(g)(2), the Lessee shall annually transmit to the City a report on the number of female single-heads of household and the number of male single-heads of household that the Property served.
5. The Lessee shall annually transmit to the City the results of any third party audit of the Property. If the audit does not break out the Property separately, the Lessee shall also transmit the Property's unaudited financial statements in addition to the audited statements. The financial statements should enable the monitoring agent to determine the amounts in the Property's reserve accounts.
6. The Lessee shall annually transmit to the City an annual program report in a form specified by the City.
7. The Lessee shall annually transmit to the City any other documents that are required by the agreements between the Lessee and the City, e.g., insurance certificates.

I. Files and records

1. The Property's tenant files should contain:

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- 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 Lessee should keep on file:
- a. Copies of any agreements with the City pertaining to the CDBG assistance that the City provided to the Property.
 - b. Evidence that the Property filed **Form HUD-935.2A** Affirmative Fair Housing Marketing Plan; and evidence that the plan was reviewed every five (5) years.
 - c. Evidence of marketing and outreach to the Property's target groups.
 - d. Copies of Form HUD 27061 Race and Ethnicity Reporting for each year.
 - e. Records of the number of female single-heads of household and the number of male single-heads of household for each year.
 - f. Copy of the tenant selection policy and procedures, including policy and procedures for administering waitlists.
 - g. 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 fair housing logo.
 - h. Copies of the Rental Project Compliance Report for each year.
 - i. Copies of any insurance certificates required by agreements between the Lessee and the City.

By: _____

Its: _____

Printed Name: _____

Date: _____

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CDBG Management Agreement Management and Monitoring Requirements CDBG-Assisted Rental Housing

Attachment B

CERTIFICATION FOR THE RECORD

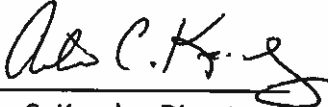
The City and County of Honolulu's Department of Community Services, in accordance with Section 28-3.5 of the Revised Ordinances of Honolulu, as amended (ROH), certifies and attests to the following:

- (1) A public hearing was held on June 29, 2022, for the leasing of the following City-owned property for nominal rent:

1828 A Makuahine Street, Honolulu, Hawai'i 96817
Tax Map Key: (1) 1-6-028-040

- (2) There is a compelling public need for the housing to be provided;
- (3) A suitable and reasonably priced private facility is not available;
- (4) Hale Kipa Inc. has demonstrated financial need for the nominal lease rent; and
- (5) The proposed lease complies with the restrictions specified in ROH Section 28-4.2.

CERTIFIED:



Anton C. Krucky, Director
Department of Community Services

JUL 29 2022

Date

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 22-199

Introduced: 08/18/22 By: TOMMY WATERS - BY REQUEST Committee: BUDGET (BUD)

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

Voting Legend: * = Aye w/Reservations

08/18/22	INTRO	Introduced.
08/24/22	BUD	Reported out for adoption. CR-222 5 AYES: CORDERO, ELEFANTE, KIA'ĀINA, SAY, TUPOLA 1 EXCUSED: TSUNEYOSHI
09/07/22	CCL	Committee report and Resolution were adopted. 9 AYES: CORDERO, ELEFANTE, FUKUNAGA, KIA'ĀINA, SAY, TSUNEYOSHI, TULBA, TUPOLA, WATERS

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