CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 22-263

RESOLUTION

APPROVING THE USE OF COMPETITIVE SEALED PROPOSALS AND AUTHORIZATION OF A LEASE TO OPERATE AND MANAGE A COMMUNITY CULTURE AND ARTS CENTER UNDER A MASTER LEASE AGREEMENT IN THE CHINATOWN GATEWAY PLAZA (TAX MAP KEY NO. (1) 2-1-02: 038) FOR A TEN-YEAR TERM, WITH THREE FIVE-YEAR OPTIONS TO EXTEND.

WHEREAS, Section 28-2.15(a), Revised Ordinances of Honolulu 1990, as amended ("ROH"), authorizes the City to lease real property by competitive sealed proposals for a cultural, arts, nature, sports, recreational, historical or other similar activities open to the public if (1) the City Council approves of the use of such process by ordinance or resolution in advance of the issuance of the request for proposals, and (2) the Director of the Department of Budget and Fiscal Services ("BFS") determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City; and

WHEREAS, Section 28-4.1, ROH, permits the City Council to authorize the leasing of real property in excess of five (5) years, when such longer period is deemed in the public interest and when the lessee is required by the terms of the proposed contract to expend the sum of $25,000.00 or more for capital assets (as such term is defined in Section 28-4.1(1), ROH) or to provide for any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of $25,000.00, as determined by the City Council; and

WHEREAS, the Department of Land Management ("DLM") is recommending the lease of certain commercial spaces in the Chinatown Gateway Plaza, situated on Tax Map Key No. (1) 2-1-02: 038, for the operation and management of a community culture and arts center (the "Center") for an initial term of ten (10) years, with three (3) five (5)-year options to extend; and

WHEREAS, DLM, by and through BFS, plans to lease the property by competitive sealed proposals to solicit a request for proposals under public advertisement for operation and management of the Center under a master lease agreement; and

WHEREAS, DLM wishes to evaluate the proposals received based upon the consideration of factors, in addition to the financial return to the City, such as the technical and performance capability and the content of the proposal for operation of the Center; and

RESOLUTION

WHEREAS, the Director of BFS has determined in writing that the use of competitive sealed bidding is not advantageous to the City because the City wishes to use other factors, in addition to financial return, when selecting an awardee, such as the technical and performance capability and the content of the proposal for operation of the Center; and

WHEREAS, operation, and management of the Center would enhance the Chinatown Historical District by providing vibrant programming, and would reduce the City's cost in maintaining the building by assuming certain responsibilities relating to the premises; and

WHEREAS, DLM recommends an initial term of ten (10) years, with three (3) five (5)-year options to extend, because operation of the Center would enhance the Chinatown Historical District by providing vibrant programming for the duration of the term, and the term length would be long enough to encourage proposers to bid and make investments into the space; and

WHEREAS, draft copies of the Request for Proposals and form of Lease Agreement are attached hereto as Exhibit "A"; now, therefore,

BE IT RESOLVED by the City Council that the use of competitive sealed proposals for the operation and management of the Center under a master lease agreement is authorized; and

BE IT FURTHER RESOLVED that leasing of certain commercial spaces in Chinatown Gateway Plaza for the Center with a term of ten (10) years, with three (3) five (5)-year options to extend, is deemed necessary in the public interest because it would enhance the Chinatown Historical District by providing vibrant programming for the duration of the term, and the term length would be long enough to encourage proposers to bid and make investments into the space; and

BE IT FURTHER RESOLVED that the Lessee be required to expend the sum of $25,000.00 or more for capital assets or to provide for any capital asset, pursuant to Section 28-4.1(1), ROH; and

BE IT FURTHER RESOLVED that the Request for Proposals and form of Lease Agreement, attached hereto as Exhibit "A" is hereby approved; and

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 22-253

RESOLUTION

BE IT FURTHER RESOLVED that the Director of BFS and/or his designee shall be authorized to sign the lease, and other necessary documents to effectuate the above-described transactions; and

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be and is hereby directed to transmit copies of this Resolution to the Director of DLM and the Director of BFS.

INTRODUCED BY:

Tony Weaver (br)

DATE OF INTRODUCTION:

NOV 10 2022

Honolulu, Hawaii

Councilmembers

Exhibit “A”

SOLICITATION DOCUMENT NO. RFP-DLM-xxxxxxx

NOTICE TO OFFERORS

LEASING OF REAL PROPERTY
REQUEST FOR PROPOSALS

Description: Operation and Management for Commercial Spaces under a Master Lease Agreement for the Community Cultural and Arts Center in Chinatown Gateway Plaza Located at 1041 Nuuanu Avenue, Honolulu, Hawaii 96817.

Request Agency: Department of Land Management, City and County of Honolulu, Hawaii

COMPETITIVE SEALED PROPOSALS shall be received no later than:

Close Time: 3:00 P.M. (HST)

Close Date: xxxxxxxxx, 2022

Location: Division of Purchasing,
Department of Budget and Fiscal Services
530 South King Street, Room 115, City Hall
Honolulu, Hawaii 96813

Questions relating to this solicitation shall be emailed to XXXXXX at bfspurchasing@honolulu.gov.

PAULA A. YOUNGLING
Purchasing Administrator

EXHIBIT A

TABLE OF CONTENTS

NOTICE TO OFFERORS

- Schedule of Events
- Instructions to Offerors
- Evaluation Criteria
- Offeror's Proposal

ATTACHMENT 1: FORM OF LEASE

NOTICE TO OFFERORS - SCHEDULE OF EVENTS

All times indicated are Hawaii Standard Time (HST).

Deadline for Requests - Inspection of Premises	XXXXXXX
Deadline to Submit Request for Clarifications/Substitutions:	XXXXXXX
Last Day to Issue Addenda:	XXXXXXX
Deadline for Competitive Sealed Proposals:	XXXXXXX **15:00 HST**

NOTICE TO OFFERORS – INSTRUCTIONS TO OFFERORS

I. GENERAL INSTRUCTIONS TO OFFERORS FOR THE LEASING OF REAL PROPERTY - CITY AND COUNTY OF HONOLULU

A. REVISED ORDINANCES OF THE CITY AND COUNTY OF HONOLULU 1990, CHAPTER 28, SECTION 28-2.15

The City and County of Honolulu ("City") is soliciting proposals from prospective offerors on such property that will be used for a culture and arts facility open to the public. The soliciting of proposals is pursuant to the Revised Ordinances of the City and County of Honolulu 1990, Chapter 28, Section 28-2.15.

B. SUPPLEMENTAL INSTRUCTIONS OR CHANGES

Any supplemental instructions or changes will be in the form of written addenda to this solicitation. Any addenda are made publicly available to download on or prior to the Deadline for Competitive Sealed Proposals, as amended. It shall be presumed that any addenda issued have been received by an offeror and such addenda shall be incorporated as part of the solicitation.

Offerors are responsible for and shall obtain this solicitation document directly from the Hawaii Awards and Notices Data System https://hands.ehawaii.gov/hands/ under "Bidding Opportunities."

C. PREPARATION OF PROPOSALS

The Offeror shall submit one (1) original and three (3) additional copies. The original proposal shall be clearly marked "original". Offeror shall also provide one (1) digital copy of the entire proposal in searchable, pdf format on a compact disc (CD) or a universal serial bus (USB) flash drive.

The Offeror's proposal shall be letter size, 8-1/2 inch by 11 inch paper, bounded in three (3) ring binders.

If an Offeror believes that any portion of the proposal, specification or correspondence contains information that should be withheld as confidential or proprietary, the proposal section(s) shall be clearly marked "Confidential" or "Proprietary", and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

D. SUBMISSION OF PROPOSALS

Before submittal of a proposal, offerors are responsible to read, examine, and understand all documents made a part of this solicitation (referred to herein as "Solicitation Documents") and made a part hereof. Submission of a proposal shall be deemed verification of such reading, examination, and understanding.

Proposals shall be sealed in an envelope. The solicitation number, offeror's name and address, and proposal due date and time must be printed on the outside of the envelope. The

offeror is responsible for the accuracy of printing the solicitation number and the proposal due date on the outside of the envelope.

The envelope must be time stamped (by the Division of Purchasing time stamp) and deposited at the designated location in the Division of Purchasing, City Hall, 530 South King Street, Room 115, Honolulu, Hawaii 96813, on or before the time and date specified in the NOTICE TO OFFERORS - SCHEDULE OF EVENTS, as amended. All envelopes must bear the Division of Purchasing time stamp mark. Envelopes that are not time stamped or that are time stamped after the specified proposal due date and time shall be rejected. The offeror is responsible for the submission of its proposal on a timely basis.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the City, but to a central mailroom. This may cause a delay in receipt by the Division of Purchasing and the offer may be received after the deadline, resulting in automatic rejection.

A late proposal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the offices of the Division of Purchasing.

An offeror shall submit its proposal under its own name, whether as an individual or sole proprietor, partnership, corporation, limited liability company, non-profit corporation, non-profit organization, or joint venture. An offeror may not submit more than one proposal. Any proposal submitted by an offeror who submits more than one (1) proposal under the same or different name, whether submitted through an agent or not, shall be rejected. For purposes of illustration only, an offeror shall be deemed to have submitted more than one proposal under the following circumstances:

1. An individual or sole proprietor who submits a proposal and who also owns directly or indirectly more than 25% interest in a partnership, corporation, limited liability company, or joint venture that has also submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

2. An individual or sole proprietor who submits a proposal and who is also a member of the board of directors or is an officer of a non-profit corporation or organization that has also submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

3. A partnership, corporation, limited liability company, or joint venture that submits a proposal and any individual who owns directly or indirectly more than a 25% interest in such partnership, corporation, limited liability company, or joint venture who has also submitted a proposal as an individual or sole proprietor shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

4. A partnership, corporation, limited liability company, or joint venture that submits a proposal and any individual who owns directly or indirectly more than a 25% interest in such partnership, corporation, limited liability

company, or joint venture and who also owns more than a 25% interest in another partnership, corporation, limited liability company, or joint venture that has submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

5. A partnership, corporation, limited liability company, or joint venture that submits a proposal and any individual who owns directly or indirectly more than a 25% interest in such partnership, corporation, limited liability company, or joint venture and who is also a member of the board of directors or is an officer of a non-profit corporation or organization that has also submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

6. A non-profit corporation or organization that submits a proposal and an officer or member of the board of directors of such non-profit corporation or organization who also submits a proposal as an individual or sole proprietor shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

7. A non-profit corporation or organization that submits a proposal and an officer or member of the board of director of such non-profit corporation or organization who also owns more than a 25% interest in a partnership, corporation, limited liability company, or joint venture that has also submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

8. A non-profit corporation or organization that submits a proposal and an officer or member of the board of directors of such non-profit corporation or organization who is also an officer or member of the board of director of another non-profit corporation or organization that has also submitted a proposal shall be considered to have submitted more than one proposal. Both proposals shall be rejected.

All costs to prepare and submit a proposal shall be at the offeror's sole expense.

No offeror may withdraw a proposal for a period of ninety (90) days from the Deadline for Competitive Sealed Proposals.

The desired experience and qualifications of the Offeror include:

- At least (10) ten years of experience operating, maintaining and managing space of at least (10,000) ten-thousand square feet for arts, culture and heritage, non-profit organizations in Hawaii including programming, facilities management, leasing, scheduling, developing operating budgets, etc.
- Strong financial capacity, including marketing and a demonstrated history of successful fundraising.
- Experience with capital improvement projects relating to the design and construction of cultural arts facilities.

- Prior successful experience working with other arts, culture and heritage non-profit organizations in Hawaii, and particularly in the Chinatown Historic District.
- Knowledge of Chinatown Historic District's arts and cultural history and key stakeholders.
- Experience developing, curating, and presenting arts and cultural content.
- Prior successful partnerships with underserved artist and cultural practitioners included but not limited to: Black, Indigenous, and people of color (BIPOC); Lesbian, Gay, Lesbian, Bisexual, Transgender & Queer (LGBTQ) and the disabled community.
- Commitment to and experience with cultivating new and emerging arts, culture and heritage non-profit organizations.

E. DISCUSSIONS WITH QUALIFIED OFFERORS AND BEST AND FINAL OFFER

The Director of the Department of Budget and Fiscal Services ("Director") or its designated City representative(s) may enter into discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Qualified offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

Qualified offerors may be afforded an opportunity to revise their proposals and submit a best and final offer, if requested by the City.

The desired proposal for the facility will include:

- A proposal relating to the design, development, and construction of the facility (e.g. the physical build-out); and
- A proposal relating to the management, operation and programming of the facility. Ideal proposals will include mixed-use concept, to include art studios, galleries, arts training and educational facilities, a Chinatown visitor center, and offices for arts, culture and non-profit organizations. Ideal proposals will also include partnership opportunities with the City on arts and culture-related initiatives in the historic Chinatown District.

F. WAIVER OF MINOR DEVIATIONS

The Director reserves the right to waive and/or accept any minor deviations from the specifications and/or terms and conditions, if in the Director's opinion, such waiver is in the best interest of the City and that such waiver shall not affect the standards of performance, operation, capacities or capabilities of the offeror.

G. NO WARRANTY ON INFORMATION PROVIDED

Offerors understand and agree that the City does not represent or warrant the accuracy of any information provided to offerors and that use of any information is at their own risk.

H. INCORPORATION BY REFERENCE OR ATTACHMENTS; ORDER OF PRECEDENCE

Whenever a separate lease, special provision, requirement, specification, exhibit or plan is referred to or attached hereto, they shall be considered a part of this solicitation document as if contained herein. Should the lease, special provision, requirement, specification, exhibit or plan conflict with these general instructions to offerors, said lease, special provision, requirement, specification, exhibit or plan shall govern.

I. INSPECTION OF PREMISES

Interested offerors may inspect the conditions of the premises and determine the amount of improvements needed prior to proposal submission. Any inspection by offerors of the premises must be coordinated and approved by the Director, or City's designated representative.

All requests for an inspection of the premises must be sent to bfspurchasing@honolulu.gov prior to the Deadline for Requests – Inspection of Premises.

At the scheduled inspection(s), offerors shall not inquire with City representatives about this solicitation and all questions must be submitted to bfspurchasing@honolulu.gov. Anything verbally stated or intimated shall not constitute any change or commitment unless by issuance of written addenda to this solicitation.

J. OFFEROR'S QUESTIONS

An offeror who has questions regarding this solicitation shall submit questions in writing by email to:

Email: bfspurchasing@honolulu.gov

Questions must be submitted in writing and must be received by the Division of Purchasing no later than the date set in the NOTICE TO OFFERORS - SCHEDULE OF EVENTS, as amended, unless the Director determines that it is in the best interest of the City to accept any inquiry submitted after the deadline. All correspondence and/or questions must reference the proposal solicitation number and the page and section numbers of the proposal solicitation document on which the offeror needs clarification. The City will respond to the questions in a timely manner via written addenda, posted on the same Division of Purchasing website where this solicitation can be downloaded. The City shall not be obligated to respond to questions not received on a timely basis. Questions not relevant to the proposal solicitation, may not receive responses.

II. METHOD OF AWARD

A. AWARD OF CONTRACT, RIGHT TO REJECT PROPOSALS

Award will be made to the highest scoring offeror based upon the Evaluation Criteria as stated in this solicitation. The offeror with the most advantageous proposal to the City and County of Honolulu shall be awarded the lease attached hereto as "Attachment 1".

The Director reserves the right to reject a proposal that is conditioned or a proposal that is contrary to any federal, state or local law, rules, or regulations. A proposal which is conditioned other than as provided for in the solicitation may be deemed not acceptable and rejected.

If the Director determines that there is evidence demonstrating that two (2) or more offerors are in collusion to restrict competition, the proposals of all such offerors shall be rejected and such evidence may be cause for the disqualification of the participants on any future proposals for any contract or lease with the City.

B. HAWAII COMPLIANCE EXPRESS

Prior to the award of the lease, the successful offeror shall be registered as "Compliant" on the State of Hawaii Compliance Express (HCE) system (http://vendors.ehawaii.gov) or submit the required tax clearances from the State Department of Taxation and Internal Revenue Service, the Certificate of Compliance with the State Department of Labor and Industrial Relations, and the Certificate of Good Standing with the Department of Commerce and Consumer Affairs Business Registration Division. The City may reject the offer if the offeror fails to provide proof of compliance within the time permitted by the City. The offeror shall meet all licensing requirements of the solicitation.

The City reserves the right to award to the next highest scored offeror if all certificates and other required documentation are not submitted within ten (10) calendar days of the City's request.

All offerors are encouraged to gain full compliance with this requirement and submit all certificates referenced hereinabove with their proposal, to expedite the award process.

III. FORM OF LEASE

The awarded offeror shall execute the lease substantially in the form attached hereto as ("Attachment 1"). Any questions regarding the terms of the lease shall be submitted prior to the Deadline to Submit Request for Clarifications/Substitutions, as amended. After award is made to the successful offeror, the terms of the lease are non-negotiable between the City and the awarded offeror.

NOTICE TO OFFERORS – EVALUATION CRITERIA

The City will evaluate proposals against the following evaluation criteria and their relative weighting. Evaluation of proposals will be scored based on a total of one hundred (100) available points as follows:

Evaluation Criteria	Points
Statement of Qualifications and Experience	15
Statement of Financial Ability	15
Use Proposal	40
Rent Proposal	20
Statement of Community Benefits	10
Total	**100**

I. Statement of Qualifications and Experience

A. Offeror's organizational structure and proposed statement of qualifications;
B. Experience providing similar services to the community through arts; and
C. Experience working with arts, culture and heritage non-profit organizations in Hawaii, with a preference in the Chinatown's Historic District.

II. Statement of Financial Ability

A. Offeror's current financial status;
B. Ability to pay lease rent;
C. Feasibility of the proposed operating budget for the duration of the lease; and
D. Ability to obtain required finances (or generate income) and complete any proposed improvements of the real property.

III. Use Proposal

A. Offeror's proposed use of the space;
B. Plans to accomplish its proposed use of the space;
C. Engagement of the community through outreach, arts and culture; and
D. Proposed Timeline to accomplish milestone tasks.

IV. Rent Proposal

A. The proposal with the highest cost factor must receive the highest available rating allocated to cost. Each proposal that has a lower cost factor than the highest must have a lower rating for cost. The points allocated to lower-priced proposals must be equal to the lower proposal price divided by the higher proposal price, multiplied by the maximum points available for price.

V. Statement of Community Benefits

A. Proposed level of impact to enhance the historic Chinatown District; and
B. Proposed use to benefit the general public through arts and culture.

NOTICE TO OFFERORS
PROPOSAL FORMAT AND CONTENT

I. Non-Disclosure of Proprietary information.

The City recognizes that a proposal may contain technical, financial, or other information whose public disclosure would cause substantial injury to an Offeror's competitive position. The Offeror should specifically identify those pages of the proposal that contain such information by marking the applicable pages "CONFIDENTIAL" on every copy submitted. The City assumes no liability for disclosure or use of unmarked information for any purpose.

II. Proposal Content.

Offerors are instructed to prepare a written proposal which provides the information requested in this RFP specifically in the order listed below to permit a methodical evaluation.

PROPOSAL FORMAT AND CONTENT

The Offeror shall submit one (1) original and three (3) additional copies. The original proposal shall be clearly marked "original". Offeror shall also provide one (1) digital copy of the entire proposal in searchable, pdf format on a compact disc (CD) or a universal serial bus (USB) flash drive.

The Offeror's proposal shall be letter size, 8-1/2 inch by 11 inch paper, bounded in three (3) ring binders.

If an Offeror believes that any portion of the proposal, specification or correspondence contains information that should be withheld as confidential or proprietary, the proposal section(s) shall be clearly marked "Confidential" or "Proprietary", and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The Offeror's proposal shall be letter size, 8-1/2 inch by 11 inch paper, bounded in three (3) ring binders in the following order:

1. Cover Letter/Executive Summary:

    A. Offeror shall provide a brief narrative explaining the Offeror's thorough understanding of Project requirements with emphasis on cultural arts.

    B. Offeror's acceptance of the solicitation requirements.

2. Proposal (sorted by the following tabs):

    A. Statement of Qualifications and Experience.

        1) List and describe the Offeror's proposed organizational structure, its owners, managing entity, and principal employees who will directly oversee the development, operation, maintenance, and programming of the proposed project. The proposal shall include a statement of qualifications for each such individual, which

discusses the individual's training, experience, or education that relates to the proposed project.

2) Provide the Offeror's experience in similar project(s) to that being proposed.

a) Provide each project's current status and profitability.
b) List the names, addresses, and email/telephone numbers of references that have knowledge of the listed project(s) and the offeror's involvement. The City may ask for supporting documentation substantiating claims of previous experience.

B. Statement of Financial Ability.

1) Provide any and all information to establish the most current financial standing of the offeror (i.e. audited financial statements; a statement of net worth; a profit and loss statement dated within ninety (90) days of the submission of the proposal; disclosure of any bankruptcy, legal proceedings, loan defaults, or any other information material to the financial standing of offeror; and if possible, FICO credit history reports).

a) A proposed budget, which includes a development budget indicating total project costs, including all direct, indirect, and financing costs, including from preconstruction up to, and including, operations for the entire term of the lease.
b) A cash flow analysis, which includes a pro forma forecasting income, costs and debt service, and earnings for the duration of the lease term.
c) A narrative explaining the anticipated financing sources, structures or mechanisms for the proposed project. Please include any marketing or fundraising plans. If financing is anticipated, provide a description of current relationship with lending and/or financial institutions or equity sources which have demonstrated interest in providing financing for the proposed project.
d) A description of any fees taken from the cash flow, and any escalation expected.

C. Use Proposal.

1) Provide a description of the proposed use of the real property. The City prefers proposed uses that will be active both day and night, and will be outward facing and engaging to the public in a dynamic manner.

2) A description of the anticipated project partners, including other arts, culture and heritage non-profit organizations.

3) A description of the program.

4) A description of the construction plan, if applicable.

   a) A timeline that demonstrates the offeror's ability to provide a construction plan for proposed tenant improvements. If planning approvals or permits are needed, the estimated dates for approval should be incorporated into the timeline.
   b) Any graphics or conceptual design sketches, if available.

5) A description of the facilities management plan.

6) A description of the marketing plan, including any community outreach and promotion concepts to generate both community and tourist engagement.

7) A description of how the offeror engages and receives feedback from the public, partners, and other stakeholders and how the offeror plans to inform all stakeholders of its project operations.

D. Rent Proposal.

1) Provide the offeror's monthly rental fee (the "Proposed Fee"), which shall be greater than the City's established minimum upset monthly rental fee of TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00). The Proposed Fee does not include any Operating Expenses (as defined in the Lease, Section 2.2), which shall be assessed against Offeror.

E. Statement of Community Benefits.

1) Include a narrative demonstrating how the project:

   a) will enhance the historic Chinatown District; and
   b) serve the interest of the general public and local community.

NOTICE TO OFFERORS – PROJECT DESCRIPTION AND REQUIREMENTS

I. INTRODUCTION

The City and County of Honolulu ("City") is the owner of that certain parcel of land located at 1041 Nuuanu Avenue. The spaces being offered for lease under this solicitation is more particularly defined in Exhibit 1 ("Premises").

The City has determined that the use of the Premises is to operate and manage commercial spaces on the first (space 1-B and 1-C) and second floors (space 2-A, 2-B, and 2-C) under a master lease agreement, more specifically for the purposes of a community cultural and arts center in Chinatown Gateway Plaza Located at 1041 Nuuanu Avenue, Honolulu, Hawaii 96817.

II. LEASE OF REAL PROPERTY

The lease for the Property shall be offered under the following conditions:

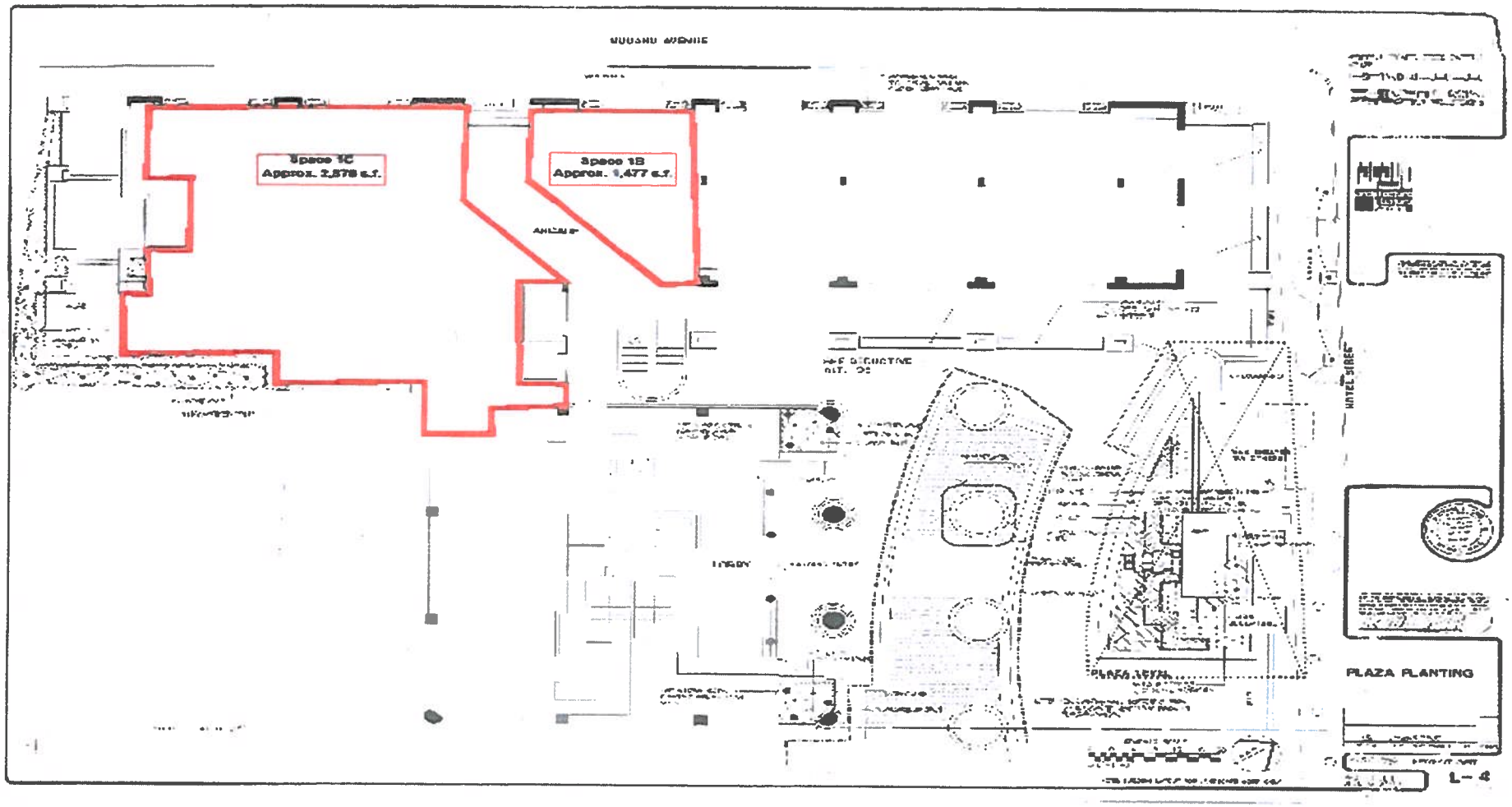
A. Term: Ten (10) years, with up to three (3) options to extend the Term by five (5) years (each, an "Extension Option," and each such (5) five year period an "Extension Term) not to exceed twenty-five (25) years.

B. Compensation to the City: Offeror to propose the monthly lease rent of the Premises.

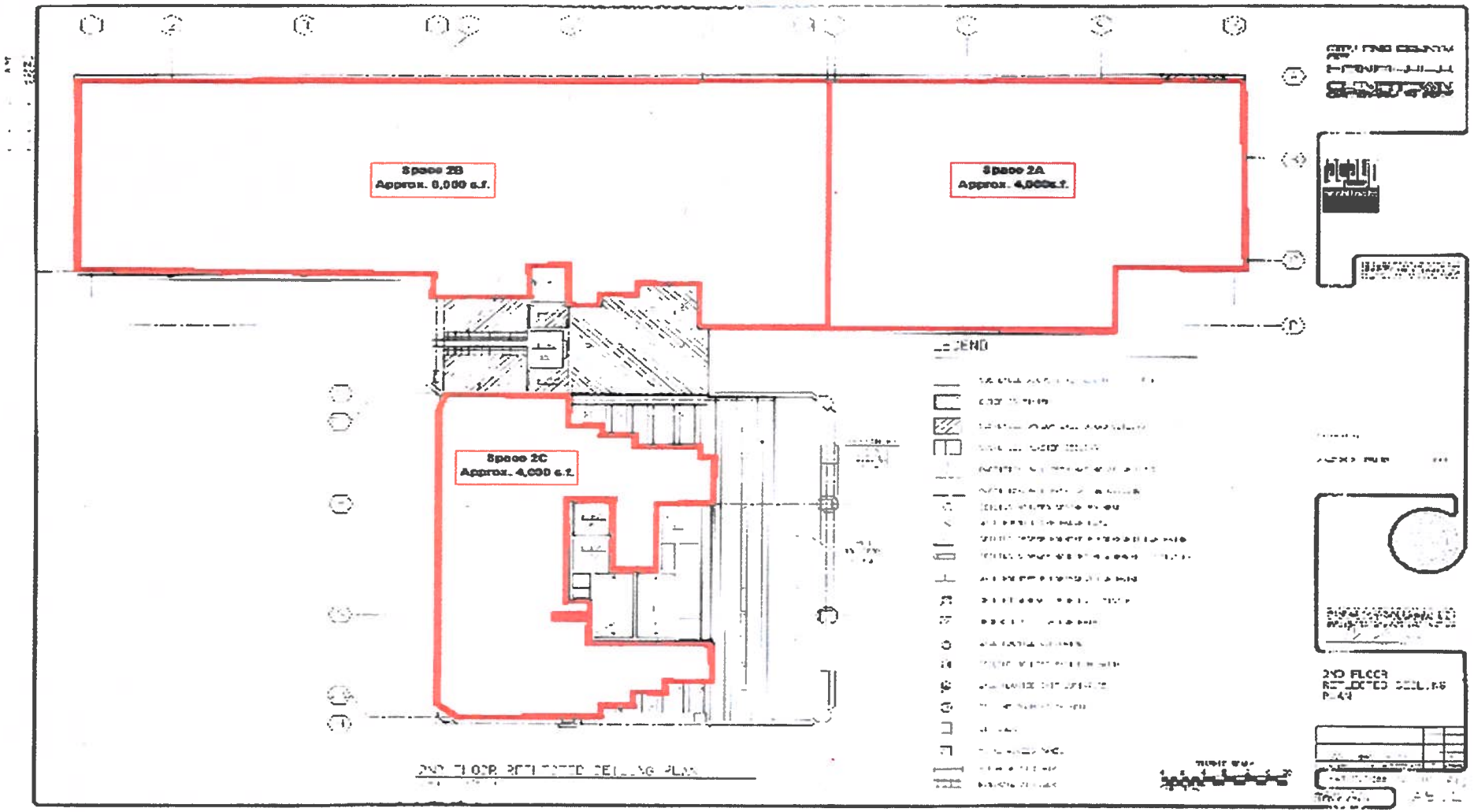
C. Uses: Offeror shall be limited to use of the Premises for the purposes of a culture and arts facility and as prescribed in the offerors proposal.

EXHIBIT 1: MAP

First Floor



Second Floor



THE FOLLOWING PAGES SHALL BE DETACHED FROM THE SOLICITATION DOCUMENT AND SUBMITTED WITH THE OFFEROR'S PROPOSAL.

The offeror shall not include samples or descriptive literature unless expressly requested. Any unsolicited samples, descriptive literature, or attachments will not be examined or tested, and will not be deemed to vary any of the City's provisions or requirements.

ACCEPTANCE OF SOLICITATION REQUIREMENTS

Chinatown Gateway Plaza
1041 Nuuanu Avenue
Honolulu, Hawaii 96817

_____
Name of offeror (Legal Name)

Director of Budget and Fiscal Services
City and County of Honolulu
Honolulu, Hawaii 96813

SOLICITATION NO. RFP-DLM-XXXXXXXX

It is understood and agreed that the undersigned offeror declares that it has thoroughly examined and is familiar with this solicitation and that this proposal is made without collusion with any other person, firm or corporation.

The undersigned offeror agrees that, if awarded this lease, it will enter into a lease agreement with the City and County of Honolulu, without further negotiations, and in accordance with the terms and conditions set forth in this solicitation and form of lease attached herein.

It is understood and agreed upon that the Director reserves the right to accept or reject any or all proposals and to waiver any defects if, in the Director's opinion, such acceptance, rejection or waiver is deemed to be in the best interest of the City and County of Honolulu.

It is understood and agreed that the offeror agrees to submit its offer in accordance with this solicitation.

The undersigned represents: **(Check one only)**

☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii;

OR

☐ A **Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii.

State of Incorporation or Organization: _____

Offeror is: ☐ Sole Proprietor; ☐ Partnership; ☐ Corporation; ☐ Joint Venture;

☐ Other: _____

Respectfully submitted,

_____
Name of offeror

_____
Signature

_____
Print Name and Title of Above

Business address
(Street Address) _____

City, State, Zip Code: _____

Business mailing address
(If other than address above) _____

City, State, Zip Code: _____

Payment mailing address
(If other than address above) _____

City, State, Zip Code: _____

Business Telephone No: _____

Business Cellular No: _____

Business Fax No.: _____

Business E-Mail Address: _____

Person to Contact if Awarded: _____

Name of Hawaii Contact and
Contact Number: _____

State of Hawaii General Excise Tax License Number: _____

Last 4 numbers of Federal Identification No.: XX-XXX _____

- Or - Last 4 numbers of Social Security No. if Sole Proprietor: XXX-XX- _____

CERTIFICATE OF ACCEPTANCE OF SOLICITATION REQUIREMENTS

It is understood and agreed that the undersigned acknowledges the following:

1. The offeror has read this solicitation document including any addenda, in its entirety;

2. The offeror understands and agrees to furnish, deliver, and perform the requirements of the solicitation in strict compliance with the solicitation document as amended, including any specifications, plans, and scope of work descriptions, without any exceptions, if awarded a contract;

3. The offeror understands that **FAILURE TO MEET CONTRACT REQUIREMENTS WILL CONSTITUTE A BREACH OF CONTRACT THAT MAY RESULT IN SUSPENSION OR DEBARMENT, AND THE EXERCISE OF RIGHTS AND REMEDIES AS PROVIDED BY LAW.** Contract requirements include any specifications, plans, and scope of work descriptions;

5. The undersigned is an authorized representative of the offeror and can legally obligate the offeror thereto.

Offeror: _____

Signature: _____

Title: _____

Date: _____

END OF PROPOSAL SUBMITTAL.

ATTACHMENT 1

[FORM OF LEASE]

LEASE AGREEMENT

(NO. LE-DLM-22-____)

between

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

"LANDLORD"

and

[NAME OF TENANT],
a [STATE OF ORGANIZATION] [ENTITY TYPE]

"TENANT"

LEASE AGREEMENT NO. LE-DLM-22-____

THIS LEASE AGREEMENT, dated as of _____, is by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, by and through its Department of Land Management, whose address is 558 South King Street, Honolulu, Hawai'i 96813 (the "**Landlord**"), and [TENANT NAME], a [STATE OF ORGANIZATION] [ENTITY TYPE], whose address is _____ (the "**Tenant**", and together with the Landlord, collectively referred to herein as the "**Parties**").

The Landlord does demise and lease to the Tenant, and the Tenant does accept and lease from the Landlord, upon the terms and conditions set forth in this Lease Agreement and any and all Exhibits attached to this Lease (collectively, this "**Lease**"), those certain **Premises** (hereinafter defined) for the Term (hereinafter defined) and at the Rent (hereinafter defined). Intending to be legally bound hereunder and in consideration of the rents to paid hereunder and other good and valuable consideration, the Landlord and the Tenant hereby agree with each other as follows:

A. SPECIFIC LEASE INFORMATION. The following is a summary of specific lease information applicable to the leasing of the Premises to the Tenant pursuant to this Lease. Each item in this Article A incorporates all of the terms set forth in this Lease pertaining to such item.

Building:	Chinatown Gateway Plaza 1041 Nuuanu Avenue Honolulu, Hawai'i 96817
Land:	The land is described in Exhibit A attached hereto. The Building and the Land are sometimes referred to collectively as the "**Property**."
Premises:	First Floor: Space 1B: 1,477 square foot interior area. Space 1C: 2,878 square foot interior area. Second Floor: Space 2A: 4,000 square foot interior area. Space 2B: 6,000 square foot interior area. Space 2C: 4,000 square foot interior area. The Premises are more particularly described and shown on **Exhibit A**.

Parking:	The Tenant and employees, officers, representatives, agents, invitees, guests, subtenants, and independent contractors shall have access to the parking stalls located in the parking lot located in the Building. The parking lot is managed by the City's Department of Transportation Services through a private company. There are 275 unreserved parking stalls available on a first-come first-served basis at the prevailing rates established by the private company.
Term:	Ten (10) years, with up to three (3) options to extend the Term by five (5) years (each, an "Extension Option", and each such five (5) year period an "**Extension Term**"), not to exceed twenty-five (25) years, commencing on _____, (the "**Commencement Date**") and expiring on _____ (the "**Expiration Date**"), unless sooner terminated as hereinafter provided. To exercise the Extension Option, Tenant must meet all of the following conditions (the "**Extension Conditions**") with respect to each Extension Term: (a) Tenant gives Landlord written notice (the "Extension Notice") at least nine (9) calendar months (but not earlier than twelve (12) calendar months) before the beginning of the applicable Extension Term, that Tenant is exercising the Extension Option. (b) At the date the Extension Option is exercised, and at the beginning of the applicable Extension Term, no Event of Default exists. (c) Tenant delivers to Landlord, promptly upon Landlord's request, detailed audited financial statements for Tenant showing Tenant's current net worth. (d) Tenant shall pay all transfer taxes, if any, imposed in connection with each Extension Term. Each such Extension Term shall commence at the expiration of the prior term. If any Extension Option is not timely exercised or if the Extension Conditions are not met with respect to any Extension Term, such Extension Option or Extension Term and all further Extension Options and Extensions Terms shall be deemed null and void. TIME IS OF THE ESSENCE WITH RESPECT TO THE GIVING OF EACH EXTENSION NOTICE. The Extension Options shall not be severed from this Lease or separately assigned, mortgaged or transferred.
Base Rent:	$_____.00. For each Extension Term, the Base Rent payable shall be an amount equal to the greater of: (i) the annual Base Rent payable immediately before the beginning of the applicable Extension Term; and (ii) the Fair Market Rent.

	For the purposes of this Lease, "Fair Market Rent" shall be determined by Landlord, in its reasonable, good faith discretion based upon: (a) the annual base rental rates then being charged in Honolulu, which comparison land is utilized in a manner comparable to the then-applicable utilization of the Premises; (b) for a lease term commencing on or about the commencement date of the applicable Extension Term and equal in duration to the applicable Extension Term; and (c) taking into consideration: (i) the geographic location of the Premises; (ii) the extent of services to be provided by the Tenant; (iii) the creditworthiness and quality of Tenant; and (iv) any other relevant term or condition in making such evaluation, all as reasonably determined by the City. Landlord shall notify Tenant of Landlord's determination of Fair Market Rent for any Extension Term in writing (the "Base Rent Notice") within six (6) months after receiving the applicable Extension Notice. Tenant shall then have fifteen (15) days after Landlord's delivery of the Base Rent Notice in which to advise Landlord in writing (the "Base Rent Response Notice") whether Tenant: (a) is prepared to accept the Fair Market Rent established by Landlord in the Base Rent Notice and proceed to lease the Premises, during the applicable Extension Term, at the applicable Base Rent; or (b) elects to withdraw and revoke its Extension Notice, whereupon the Extension Option shall automatically be rendered null and void; or (c) elects to contest Landlord's determination of Fair Market Rent and submit the matter to Arbitration. If Tenant does not timely deliver the Base Rent Response Notice, then Tenant shall automatically be deemed to have elected (a) above. Alternatively, if Tenant timely elects (b), then this Lease shall expire on the original Expiration Date of the initial Term or the then current Extension Term, as applicable. If, however, Tenant timely elects (c) above, then the Fair Market Rent shall be determined by Arbitration. The arbitrators shall determine the Fair Market Rate within sixty (60) days from the date the third arbitrator has been selected. If the determination of Fair Market Rent has been submitted to Arbitration and the initial Term or the then-current Extension Term, as applicable, expires and the subject Extension Term commences before the arbitrators render their decision, then from the commencement date of the Extension Term through the date on which the Fair Market Rent is determined (the "Determination Date"), Tenant shall pay monthly Base Rent to Landlord at the most recent rate of monthly Base Rent on the expiration date of the initial Term or the immediately preceding Extension Term, as applicable (the "Temporary Base Rent"). Within fifteen (15) Business Days after the Determination Date, Landlord shall pay to Tenant, or Tenant shall pay to Landlord, depending on whether the Fair Market Rent is less than or greater than the Temporary Base Rent, whatever sum that Landlord or Tenant, as the case may be, owes the other (the "Catch-Up Payment"), based on the Temporary Base Rent actually paid and the Fair Market Rent due (as determined by the arbitrators) during that portion of the Extension Term that elapses before the Catch-Up Payment is paid, in full (together with interest thereon, as provided below). The Catch-Up Payment shall bear interest at the rate of Prime Rate plus two percent (2%) per annum, from the date each

	monthly component of the Catch-Up Payment would have been due, had the Fair Market Rent been determined before the beginning of the applicable Extension Term, through the date on which the Catch-Up Payment is paid, in full (inclusive of interest thereon). "Arbitration" shall mean in such cases where this Lease expressly provides for the settlement of a dispute or question through arbitration, and only in such cases, each party shall promptly appoint a Qualified Appraiser as an arbitrator on its behalf and shall give notice thereof to the other party. The two (2) Qualified Appraisers shall together appoint a third Qualified Appraiser within fifteen (15) days after the appointment of Landlord's and Tenant's Qualified Appraisers, and said three (3) Qualified Appraisers shall, within the applicable time period specified in this Lease, or if no time period is specified, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be a conclusive, final, non-appealable decision binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure, or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of Honolulu, State of Hawaii and, to the extent applicable and consistent with this Lease, shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association or any successor body of similar function. The expenses of Arbitration shall be shared equally by Landlord and Tenant, but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. "Qualified Appraiser" shall mean an arbitrator that: (a) is duly licensed in the jurisdiction in which the Premises is located; (b) has at least ten (10) years' experience, on a full-time basis, leasing commercial space in the same general geographic area as that in which the Premises is located; and (c) is independent and has no then-pending brokerage relationship, formal or informal, oral or written, with any of Landlord, Tenant, or any Affiliates of either or both of Landlord and Tenant, nor has there been any such brokerage relationship at any time during the five (5) year period immediately preceding the designation, by Landlord or Tenant, of the arbitrator as a Qualified Appraiser.
Security Deposit:	
Permitted Use:	[PERMITTED USE DESCRIPTION], and for no other use or purpose.

Tenant's Share:	Seventy-Eight and Twenty-Six One Hundredths percent (78.26%), based upon the ratio of the total rentable square footage of the Premises, which is conclusively agreed to be the rentable square feet shown above, to the total rentable square footage of the Building, which is conclusively agreed to be Eighteen Thousand Three Hundred Fifty-Five (18,355) rentable square feet.
Addresses for Notice:	
Landlord:	CITY AND COUNTY OF HONOLULU Department of Land Management 558 South King Street Honolulu, Hawai'i 96813 Attention: Director Telephone: (808) 768-4286 Email: landmanagement@honolulu.gov
Tenant:	
Special Terms:	In addition to the Specific Lease Information set forth above, the Terms and Conditions contained in **Exhibit B** attached to this Lease, and the provisions of all applicable Exhibits attached to this Lease, the following special terms shall apply to this Lease. A. **Insurance**. In addition to the Tenant's insurance obligations under Section 11 of the Terms and Conditions of **Exhibit B**, on or before the Commencement Date of this Lease, the Tenant shall, at its expense, procure and maintain the following types of insurance coverage for not less than the limits shown: General Liability General Aggregate $2,000,000 Products/Completed Operations Aggregate $2,000,000 Personal/Advertising Injury $1,000,000 Each Occurrence $1,000,000 Excess/Umbrella Liability Each Occurrence $2,000,000 Aggregate $2,000,000 Property and casualty insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril, including, but not limited to, earthquake, flood, hurricane, tsunami, tidal wave, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, explosion, and such other hazards or risks which a prudent business person would insure against (including property coverage for damage caused by war or military action, to the extent available at commercially reasonable cost) and providing business interruption coverage with extended period

	of indemnity coverage for a period of twelve (12) months. Proceeds of the business interruption insurance shall be applied in the following order: (a) payment of Base Rent and Additional Rent under this Lease; and (b) performance of all obligations of the Tenant under this Lease. The Tenant shall also secure coverage for boiler and machinery and such other hazards or risks which a prudent business person would insure against. With respect to commercial general liability insurance, the Tenant shall secure such insurance to comply with the requirements of Section 11.2(a) of **Exhibit B** and such insurance shall: (a) provide blanket contractual coverage, including liabilities assumed by and the obligations of the Tenant under Section 11.1 of **Exhibit B** for bodily injury, death, property damage and/or personal injury; (b) provide liability coverage on all mobile equipment used by the Tenant; and (c) include a cross-liability endorsement (or provision) permitting recovery with respect to claims of one insured against another. The Tenant shall comply with the provisions of Section 11 in obtaining such policies and delivering evidence of the same to the Landlord. B. **Premium**. The Premium (as defined in Section 8.3 of **Exhibit B**) shall not apply to Assignments or Subleases to creative organizations and performing and visual artists in connection with the Tenant's programming and operations. C. **Repairs And Maintenance**. In addition to the repairs and maintenance obligations under Section 5.1 of the Terms and Conditions of **Exhibit B**, the Tenant shall, at its expense according to Revised Ordinances of Honolulu Chapter Section 28 – 4.1(1) expend the sum of $25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the Tenant's expenditure is equal to or in excess of the sum of $25,000.00. The term "capital asset" as used herein shall include not only the construction of improvements but the installation of furniture and fixtures, the cost of which would be depreciable over the Term.	
	EXHIBITS	
	A – Location of Premises	X
	B –Terms and Conditions of Lease	X

B. TERMS AND CONDITIONS. The provisions of the Terms and Conditions of Lease which are attached to this Lease as **Exhibit B**, including various capitalized terms as defined in **Exhibit B**, are incorporated in this Article B by reference and made a part of this Article B for all purposes; provided, however, that in the event of a conflict or any inconsistency between the provisions set forth in Article A (Specific Lease Information) and the provisions set forth in **Exhibit B** (Terms and Conditions of Lease), the provisions set forth in Article A shall prevail.

C. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the Landlord and the Tenant and, without limiting the generality of the foregoing, specifically supersedes any prior drafts of this Lease, offers and counteroffers to lease, and correspondence and discussions between the Landlord and the Tenant.

APPROVED AS TO CONTENTS:

By _____
Scott K. Hayashi, Director
Department of Land Management

APPROVED AS TO FORM
AND LEGALITY:

_____
Deputy Corporation Counsel

CITY AND COUNTY OF HONOLULU,
a municipal corporation

By _____
Andrew T. Kawano, Director
Department of Budget and Fiscal Services

"LANDLORD"

By _____

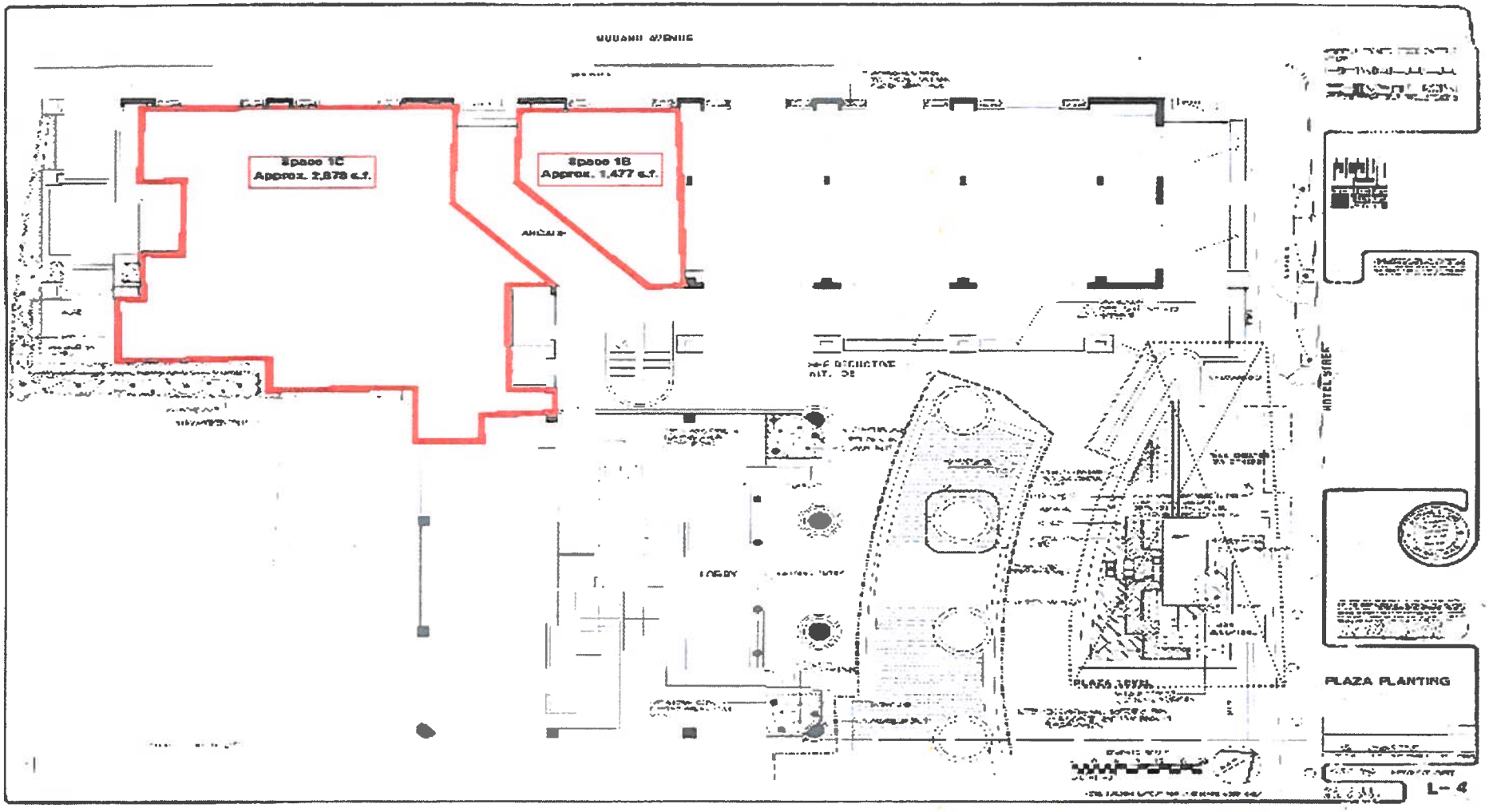
Name: _____

Title: _____

"TENANT"

EXHIBIT A

First Floor



Second Floor

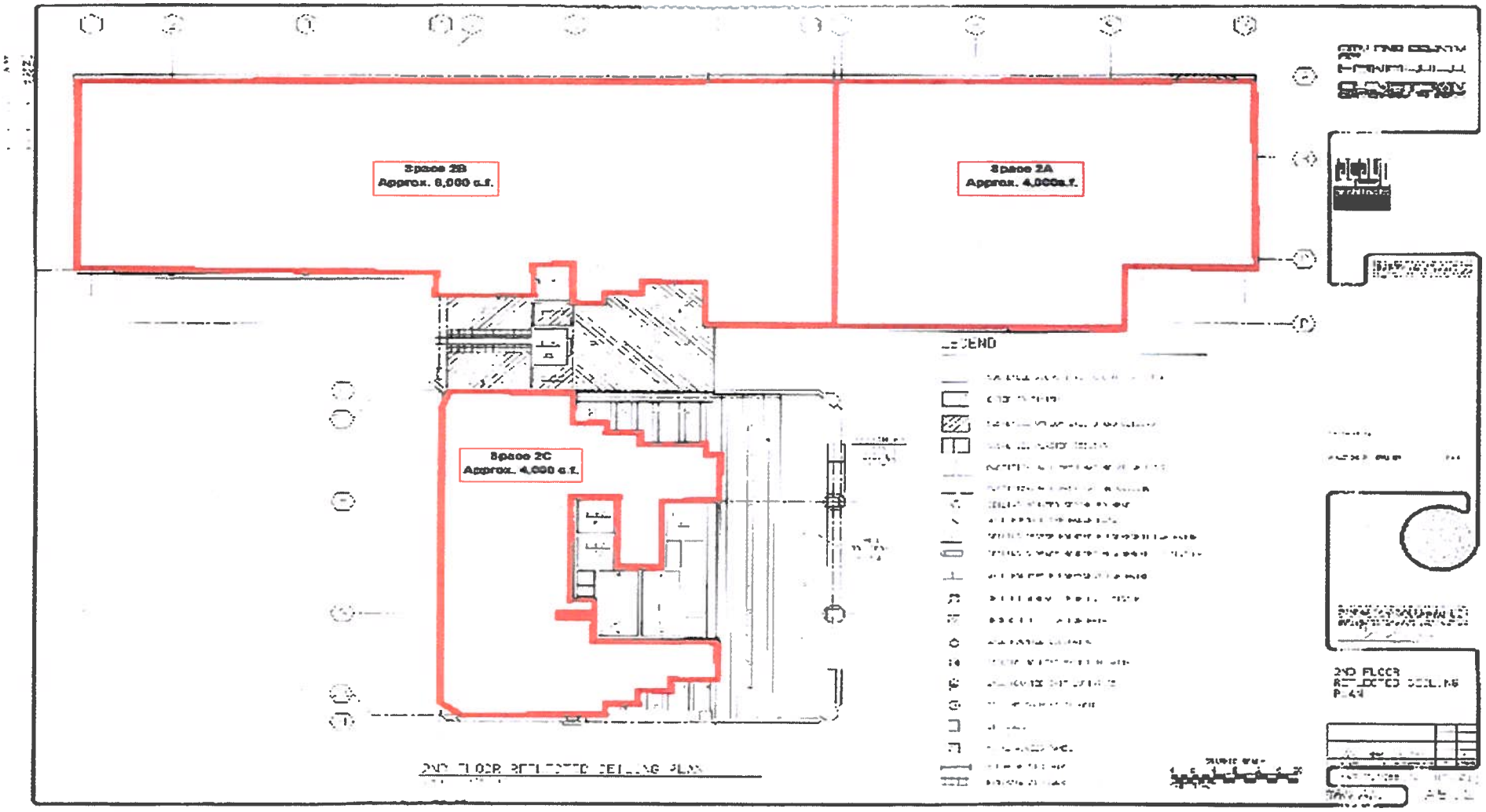


EXHIBIT B

TERMS AND CONDITIONS OF LEASE

1. PREMISES

1.1 Premises. Subject to the terms, covenants, and conditions set forth in this Lease, the Landlord does lease to the Tenant and the Tenant does lease from the Landlord those Premises identified in **Article A** of this Lease (the "***Specific Lease Information***"), which Premises are shown on **Exhibit A** of this Lease, together with the non-exclusive right to use all structural portions of, and systems within the Building, and all driveways, parking areas, landscaping, and exterior portions of the Land, and other improvements located thereon (collectively referred to as the "***Property***"). The Landlord and the Tenant agree that the square footage of the Premises, as specified in the Specific Lease Information, is an approximate but binding and conclusive number. Nonetheless, the Tenant consents and agrees to the square footage for purposes of establishing the Base Rent and the Tenant's Share of Operating Expenses payable hereunder, notwithstanding the fact that an accurate measure of the Premises, the Building, and/or the Property might reflect a different square footage.

1.2 Non-Exclusive Right to Use the Property and Common Area. The Landlord does grant to the Tenant and its officers, employees, agents, contractors, invitees, subtenants and any additional permitted occupants of the Premises (collectively, "***Tenant's Agents***") a non-exclusive license to reasonably use the lobbies, hallways, stairways, elevators, public restrooms, sidewalks, driveways, parking areas, and other amenities of the Building and, as applicable, the Property (the "***Common Area***") during the Term. The Tenant's rights to the Common Area shall be subject to any other applicable provisions of this Lease. The Landlord retains the exclusive right to manage, maintain, and control the Common Area and the Landlord may do the following in exercising this right, in its sole and absolute discretion, provided that, when possible, the Landlord will give the Tenant notice a reasonable time prior to taking the action stated below:

a. Restricted Access. The Landlord and its contracted property management company may restrict access to any portion or all of the Common Area for maintenance, repair, or improvement or for any other reasonable purpose which the Landlord deems appropriate.

b. Alteration. The Landlord may alter, redesignate, or remove any portion or all of the Common Area and its uses for any purpose without compensation or consideration to the Tenant, provided that the Tenant and the Tenant shall not be unreasonably affected.

2. RENT

2.1 Base Rent. The Tenant shall pay the Base Rent as specified in the Specific Lease Information. Base Rent owed for any fractional month will be prorated on the basis of the actual number of days in such month.

2.2 Tenant's Share of all Operating Expenses.

a. The Landlord and the Tenant have determined that the Tenant's Share is as specified in the Specific Lease Information. This determination of the Tenant's Share shall be binding and conclusive on the parties, and their successors and assigns.

b. From and after the Commencement Date, the Tenant shall pay to the Landlord, as Additional Rent, Tenant's Share of all Operating Expenses. Such Operating Expenses are subject to adjustment and reconciliation as provided herein below.

c. The property management company procured by the Landlord shall maintain an account of the Operating Expenses, and payments of those costs. The accounts shall be retained by the property management company for twelve (12) months after the year they were incurred. The Tenant may review the accounts during the property management company's normal business hours upon prior, reasonable advance notice to the Landlord and its property management company.

d. Prior to the Lease Commencement Date, and thereafter prior to the start of each full or partial operating year, the Landlord shall give the Tenant a written estimate of the amount of Tenant's Share of Operating Expenses for the applicable Operating Year. During each month of the Term, on the same date that Base Rent is due, the Tenant shall pay the Landlord an amount equal to 1/12th of Tenant's Share of the estimated annual Operating Expenses. If the Landlord has not furnished its written estimate for any Operating Year by the time set forth above, the Tenant shall continue to pay monthly the estimated Tenant's Share of Operating Expenses in effect during the prior Operating Year; provided that when the new estimate is delivered to the Tenant, the Tenant shall, at the next monthly payment date, pay any accrued estimated Tenant's Share of Operating Expenses based upon the new estimate. The Landlord may from time to time change the Operating Year to reflect a calendar year or a new fiscal year of the City, as applicable, in which event Tenant's Share of Operating Expenses shall be equitably prorated for any partial year. For the purpose of this section, "***Operating Expenses***" means the total cost and expense incurred by the Landlord without limitation for operating, maintaining and repairing the Building's common facilities, including, but not limited to, the building's exterior, foundation, structure, and all capital improvements, the cost of water, sewers, electricity and other utilities not separately metered to the Tenant, the cost of security (including, but not limited to security personnel, cameras), the cost of public liability and property damage insurance covering the Building, maintenance, repairs and painting of the Building's facilities, refuse removal for the common areas, janitorial or yard keeping services for the common areas, purchase and maintenance of refuse containers for the common areas, maintenance and repairs to water, fire alarm, standpipes, sewer, electrical and storm drain lines, sanitary control, professional property management fees and costs, the cost of services contracted out, all taxes and assessments for the common areas, (including, but not limited to, real property taxes and improvement assessments), depreciation on machinery and equipment used in maintenance, the cost of personnel, supplies and small tools to implement all maintenance services. The Tenant shall be responsible for their own refuse collection and removal within the Premises and shall bear the cost of the same.

2.3 Payment of Rent. The Tenant's obligation to pay Rent, including Base Rent and any Additional Rent, shall commence upon the Commencement Date and shall continue throughout the Term. The Tenant shall pay to the Landlord the monthly Base Rent on or before the first day of each month of the Term, in advance, at the address specified for the Landlord in the Specific Lease Information, or at such other place as the Landlord designates in writing, without any prior notice or demand and without any deductions or setoff whatsoever. If the Tenant shall fail to pay Base Rent, Additional Rent, or any other charges payable hereunder, whether or not the same are called Base Rent, Rent, or Additional Rent, the Landlord shall have all remedies provided for in the Lease or at law as in the case of nonpayment of Rent. The Tenant's obligations (accruing during the Term) under this Section shall survive the expiration or earlier termination of this Lease.

2.4 Additional Rent. All sums due from the Tenant to the Landlord or to any third-party under the terms of this Lease, which includes Tenant's Share of Operating Expenses, Tenant's Share of all Taxes, shall be additional rent ("***Additional Rent***"), including, without limitation, all sums incurred by

the Landlord due to the Tenant's failure to perform its obligations under this Lease. All Additional Rent shall be paid with Base Rent, unless otherwise specified by the Landlord. Together, Base Rent and Additional Rent are sometimes collectively referred to in this Lease as "***Rent***."

2.5 General Excise Tax and Other Taxes. The Tenant shall pay to the Landlord as Additional Rent, with Base Rent, Additional Rent, and any other charges required under this Lease to be made by the Tenant to the Landlord to the extent they are subject to State of Hawai'i general excise tax on gross income, as the same may be amended, and all other similar taxes as described below, an amount which when added to such Rent and other charges (whether actually or constructively received by the Landlord) shall yield to the Landlord after deduction of all such tax payable by the Landlord with respect to all such payments a net amount which the Landlord would have realized from such payment had no such tax been imposed. Other similar taxes include taxes imposed upon the Landlord with respect to ownership, leasing, management, control, or operation of the Building or other payments in the nature of a real property taxes, gross receipts tax, sales tax, surcharge, privilege tax or the like, whether imposed by the United States, State of Hawai'i, or City and County of Honolulu, but excluding federal or state net income taxes.

2.6 Late Payment or Insufficient Funds. Any unpaid Rent shall bear interest from the date that is five (5) days after the due date until paid at the rate of one percent (1%) per month (without compounding), or if a lower rate is prescribed by Applicable Laws, then at the maximum rate then allowed (the "***Interest Rate***"). In addition, the Tenant recognizes that late payment of any Rent will result in administrative expense to the Landlord, the extent of which expense is difficult and economically impracticable to determine. Therefore, the Tenant agrees that if the Tenant fails to pay any Rent within ten (10) days after its due date, an additional late charge of five percent (5%) of the sums so overdue shall become immediately due and payable. A payment shall be deemed late if not received by the Landlord within ten (10) days after its due date. This late charge shall be assessed only once for each monthly payment or any other charge that is not received by the Landlord within ten (10) days after its due date. If the Tenant pays any Rent by check and such check is returned for insufficient funds or other reason not the fault of the Landlord, then the Tenant shall pay to the Landlord on demand a processing fee of the lesser of $50 per returned check or the maximum fee permitted by Applicable Laws. The Tenant agrees that each late payment charge or processing fee is a reasonable estimate of the additional administrative costs and detriment that will be incurred by the Landlord as a result of such failure by the Tenant. In the event of nonpayment of interest, late charges on overdue Rent or imposition of a processing fee, the Landlord shall have, in addition to all other rights and remedies, the rights and remedies provided in this Lease and by law for nonpayment of rent.

2.7 Security Deposit. Concurrently with the execution of this Lease, the Tenant shall deliver to the Landlord the Security Deposit described in the Specific Lease Information (the "***Security Deposit***"). In lieu thereof, the Landlord may accept good and sufficient bond for the same amount, naming the Landlord as the obligee, the Tenant as the principal, and a surety company authorized to do business in the State of Hawai'i as the surety. At the Landlord's election, the Security Deposit may from time to time be increased by the same dollar amount as the increase in the sum of the Base Rent, Additional Rent, and the general excise tax applicable to all amounts due. The Security Deposit shall be held by the Landlord as security for the faithful performance of this Lease by the Tenant of all of the terms, covenants, and conditions of this Lease; such deposit is not an advance payment of Rent or a measure of the Landlord's damages for an Event of Default by the Tenant. If there is an Event of Default by the Tenant with respect to any provisions of this Lease, including, but not limited to, the payment of Rent; if the Tenant files a petition in bankruptcy, insolvency, reorganization, dissolution, or liquidation under any law; makes an assignment for the benefit of its creditors; consents to or acquiesces in the appointment of a receiver of itself or the Premises, if a court of competent jurisdiction enters an order or judgment appointing a receiver of the Tenant or the Premises; or if a court of competent jurisdiction

enters an order or judgment approving a petition filed against the Tenant under any bankruptcy, insolvency, or liquidation law, then in any such case the Landlord may, without waiving any of the Landlord's other rights or remedies under this Lease, apply the Security Deposit in whole or in part to remedy any failure by the Tenant to pay any sums due under this Lease, to repair or maintain the Premises, to perform any other terms, covenants, or conditions contained in this Lease, to compensate the Landlord for any loss or damages which the Landlord may suffer as a result thereof, including without limitation any lost rent to which the Landlord is entitled in the event the Lease terminates or is rejected as a result of any of the foregoing. Should the Landlord so apply any portion of the Security Deposit, the Tenant shall replenish the Security Deposit to the original amount plus any increases permitted under this section within five (5) Business Days after written demand by the Landlord. The Landlord shall not be required to keep the Security Deposit separate from its general or other funds, and the Tenant shall not be entitled to interest on the Security Deposit. If the Tenant shall comply with all of the terms, covenants, and conditions of this Lease, the Security Deposit shall be returned to the Tenant after the Expiration Date and after delivery of possession of the Premises to the Landlord in the manner required by this Lease. In the event of any Assignment of this Lease by the Tenant, such Assignment shall be deemed to include an assignment of the Tenant's rights to recover the Security Deposit, and the Landlord's agreement to return the Security Deposit shall run only to the Tenant's assignee and not to the Tenant.

2.8 No Accord and Satisfaction. No payments by the Tenant or receipt by the Landlord of a lesser amount than the Rent stipulated in this Lease shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the Landlord may accept such check or payment without prejudice to the Landlord's right to recover the balance of the Rent due or pursue any other remedy provided in this Lease.

2.9 Tax Clearance. The Tenant shall be registered as "Compliant" on the State of Hawaii Compliance Express (HCE) system (http://vendors.ehawaii.gov), and submit the required tax clearances from the State Department of Taxation and Internal Revenue Service, the Certificate of Compliance with the State Department of Labor and Industrial Relations, and the Certificate of Good Standing with the Department of Commerce and Consumer Affairs Business Registration Division before entering into this Lease with the Landlord, and shall show compliance through HCE throughout the Term. The Tenant must obtain and provide the required clearances when requested by the Purchasing Division, Department of Budget and Fiscal Services. Failure to obtain and provide the tax clearances upon request may result in the rejection of this Lease and award of this Lease to another tenant.

3. USE OF PREMISES AND CONDUCT OF BUSINESS

3.1 Permitted Uses. The Tenant's use of the Premises is limited to the use(s) specified in the Specific Lease Information and shall comply with all applicable laws. The Tenant shall not use the Premises or allow the Premises to be used for any illegal or immoral purpose, or so as to create waste, constitute a private or public nuisance, or disturb other occupants of the Property. The Tenant's use of the Premises shall in all respects comply with all Applicable Laws and shall be subject to all encumbrances of record on or otherwise affecting the Property.

3.2 Prohibited Uses. The Tenant shall not use the Premises or allow the Premises to be used for any illegal or immoral purpose, or so as to create waste, constitute a private or public nuisance, or disturb other occupants of the Property. The Tenant shall not place any loads upon the floors, walls, or ceiling which endanger the structure, or place any harmful fluids or other materials in the drainage system of the Building, or overload existing electrical or other mechanical systems. The Tenant shall not use any machinery or equipment which causes any substantial noise or vibration. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or outside of the Premises

except in trash containers designated for that purpose or inside of the Premises. No explosives or firearms shall be brought into the Premises.

3.3 Illegal Activities.

3.3.1 Upon the Landlord's receipt of actual notice that illegal acts are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Property, to any governmental authority, the Landlord may so notify the Tenant, and the Landlord may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. Except in the case of emergency, the Landlord shall provide the Tenant oral or written notice prior to such entry. If the Tenant does not or refuses to take any action to cause the cessation of such illegal activity within seventy-two (72) hours of receipt of notice from the Landlord, then such failure or refusal shall constitute an Event of Default.

3.3.2 If the Landlord has a strong belief or a reason to suspect that illegal activities are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Premises, to any governmental authority, the Landlord shall have the right to conduct an investigation, including, without limitation, the immediate right of entry to the Premises. Except in the case of emergency, the Landlord shall provide the Tenant oral or written notice prior to such entry. If the Tenant does not or refuses to take any action to cause the cessation of such illegal activity within seventy-two (72) hours of receipt of notice from the Landlord, then such failure or refusal shall constitute an Event of Default. If such investigation yields any evidence of any illegal activity on the Premises, the Landlord may immediately notify the Tenant and the Landlord may immediately take all reasonable and appropriate action as may be necessary to stop such illegal activity. If the Tenant does not or refuses to take any action within seventy-two (72) hours of receipt of such notice from the Landlord, such failure or refusal shall constitute an Event of Default.

3.3.3 The Landlord, by having the right to take certain actions in this Section, is neither obligated nor required to take any such action, and shall not be liable to the Tenant, any other Person, or any governmental authority if the Landlord does not exercise such right.

3.4 Hazardous Materials. The Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored, or disposed of in or about the Premises, the Building, or the Property; provided, however, the Tenant may use and store reasonable quantities of cleaning and office supplies and other similar materials as may be reasonably necessary for the Tenant to conduct normal business operations in the Premises. The Tenant shall indemnify and hold the Landlord, its employees, and agents, harmless from and against any damage, injury, loss, liability, charge, demand, or claim based on or arising out of the presence or removal of, of failure to remove, Hazardous Materials generated, used, released, stored, or disposed of by the Tenant or any Tenant Party in or about the Premises, the Building, or the Property, whether before or after the Lease Commencement Date. As used in this Lease: (i) "***Hazardous Materials***" shall mean any chemical, compound, material, substance, or other matter that: (A) is defined as a hazardous substance, hazardous material, or waste, or toxic substance under any Environmental Law; (B) is regulated, controlled, or governed by any Environmental Law or other Laws; (C) is petroleum or a petroleum product; or (D) is asbestos, formaldehyde, radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials); and (ii) "***Environmental Laws***" shall mean any and all federal, state, or local laws, ordinances, rules, decrees, orders, regulations, or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Premises, the Building, or the Property, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the

Resource Conservation and Recovery Act (RCRA), the Hazardous Materials Transportation Act, any other law or legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing.

4. UTILITIES

4.1 Utilities. From and after the Lease Commencement Date and thereafter throughout the Term, provided no Event of Default exists under this Lease, the Landlord agrees to furnish the Premises with the utilities and services described in this Section 4.1. The Landlord shall include the costs of services as a component of Operating Expenses except as stated otherwise in this Section 4.1.

a. Electricity. The Landlord shall supply electric service reasonably sufficient for lighting and for the operation of lighting, computers, facsimile machines, scanners, and other business equipment, exclusive of the operation of the Building HVAC Systems that serve the Premises. Electric service shall be separately metered, and the Tenant shall pay the amounts charged for electric service by the utility provider directly to the utility provider on or before the due dates. The Tenant shall be responsible for all costs associated with the installation, maintenance, repair, and replacement of all meters and submeters serving the Premises. The Landlord shall have the right to change the electric and other utility provider to the Building or the Property at any time. The Landlord is hereby authorized to request, on behalf of the Tenant, the Tenant's utility consumption data from the applicable utility provider.

b. Water. The Landlord shall furnish hot and cold, running, potable water and sewer service to the Premises in quantities reasonably adequate for the Tenant's lavatory, cleaning, drinking, and standard office pantry purposes. If the Tenant requires, uses or consumes water for any other purposes, the Landlord, at the Tenant's expense, may install and maintain a meter or meters to measure the Tenant's water consumption. The Tenant shall reimburse the Landlord for the costs of all water consumed for such other purposes as measured by said meter or meters.

c. Elevators. The Landlord shall provide: (a) full non-exclusive passenger elevator service for the Building, which shall service the Premises during Business Hours, with not less than one passenger elevator providing non-exclusive service at all other times; and (b) freight elevator service (on a non-exclusive, first-come, first-served basis) to the Premises during Business Hours. If the Tenant shall request freight elevator service outside of Business Hours, then the Tenant shall pay for such service at the Landlord's Market Service Rate within seven (7) days after written demand.

d. HVAC. The Landlord shall provide heating, ventilation, and air conditioning service during Business Hours. If the Tenant shall request HVAC service outside of Business Hours, then the Tenant shall pay for such service at the Landlord's Market Service Rate within seven (7) days after written demand.

e. Access and Security.

(i) Subject to the Landlord's reasonable maintenance and security requirements, Force Majeure, and applicable Laws, the Tenant shall have access to the Premises and the parking areas twenty-four (24) hours per day, seven (7) days per week.

(ii) The Landlord currently provides security for the Building twenty-four (24) hours a day, seven (7) days a week utilizing personnel, equipment, systems, and procedures. The Landlord shall not be liable to the Tenant for any failure of such security. At any time and from time to

time during the term of this Lease, the Landlord may modify its security procedures without notice to (or the consent of) the Tenant.

f. **Service Interruptions.** The Landlord shall not be liable to the Tenant in any respect for the inadequacy, stoppage, interruption, or discontinuance of any utility or service due to labor disputes, breakdown, accident, repair, or any other cause, including events of Force Majeure. Any interruption or discontinuance of service shall not be deemed an eviction or disturbance of the Tenant's use and possession of the Premises, or any part thereof, nor shall it render the Landlord liable to the Tenant for any injury, loss, or damage, by abatement of rent or otherwise, nor shall it relieve the Tenant from performance of the Tenant's obligations under this Lease.

4.2 Utility Costs. Utility charges for the Premises shall be based upon meters and submeters installed in and exclusively measuring consumption in the Premises, and/or a share allocated to the Tenant of the square footage served by the specific submeter for such utility. Common Areas are separately metered and utility charges for the Common Areas shall be included in Operating Expenses. The Landlord shall have the right to estimate the utility charge but shall be required to reconcile on an annual basis based on invoices received for such period. The Landlord shall not be liable for any interruption or delay in electric or any other utility service for any reason. The Landlord shall have the right to change the electric and other utility provider to the Building or the Property at any time. The Landlord is hereby authorized to request, on behalf of the Tenant, the Tenant's utility consumption data from the applicable utility provider. The Tenant shall be responsible for all costs of the Tenant's appropriate share (based on the square footage served by the specific submeter) of the costs associated with the installation, maintenance, repair, and replacement of all submeters and meters serving the Premises.

5. REPAIRS AND MAINTENANCE

5.1 Landlord's Obligations. The Landlord shall maintain the foundation of the Premises, the roof of the Building and the structural soundness of concrete floors and exterior walls of the Premises, (excluding doors, door frames, storefronts, windows, frames, and glass), in good order, repair, and condition; provided, however, that the Tenant shall give the Landlord notice of the need for such maintenance and the Landlord shall have a reasonable time to respond; and provided further that the Landlord shall not be responsible for maintenance which arises out of or results from the negligence or intentional misconduct of the Tenant, its agents, concessionaires, officers, employees, licensees, customers, invitees, or contractors, in which case such maintenance shall be performed by the Tenant or, at the Landlord's option, by the Landlord at the Tenant's sole cost and expense and the Landlord shall be reimbursed therefor upon demand. The Landlord shall be under no liability for repair, maintenance, or alteration with respect to the Premises or any part thereof, or any plumbing, electrical, or other mechanical installations therein, or any cleaning or painting thereof, except as may be expressly set out in this Lease.

5.2 Tenant's Obligations.

a. The Tenant shall, at the Tenant's sole cost and expense, throughout the Term of this Lease and at no expense whatsoever to the Landlord, take good care of the Premises and shall not do or suffer any waste with respect thereto, and, except as expressly set forth in Section 5.1 hereof as being an obligation of the Landlord, the Tenant shall promptly make all repairs to the Premises of every kind and nature, ordinary as well as extraordinary, foreseen as well as unforeseen, whether necessitated by wear, tear, obsolescence, or defects, latent or otherwise, necessary to keep the Premises in good order and condition as an office building. The Tenant shall keep and maintain all portions of the Premises, including, without limitation, the fixtures and equipment thereof and the bathrooms and lavatory facilities

contained therein, if any, in a clean and orderly condition, free of accumulation of dirt, rubbish, and other obstructions, and the Tenant shall not permit or suffer any overloading of the floors of the Building. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Building and Building Systems, or to its fixtures, equipment, and appurtenances, whether requiring structural or non-structural repairs, caused by or resulting from carelessness, omission, neglect, or improper conduct of, or Alterations made by, the Tenant, or any of the Tenant's employees, servants, licensees, subtenants, assignees, contractors, heirs, successors, legatees, and devisees (collectively, "***Tenant's Agents***"), shall be repaired at the Tenant's sole cost and expense, by the Tenant to the reasonable satisfaction of the Landlord (if the required repairs are non-structural in nature and do not affect any Building System), or by the Landlord (if the required repairs are structural in nature or affect any Building System).

b. When used in this Article, the term "repairs" shall include replacements, restorations and/or renewals when necessary. The necessity for and adequacy of repairs pursuant to this Article shall be measured by the standard which is adopted by the Landlord for the Building. All repairs made by the Tenant shall be substantially equal in quality and workmanship to the original work. If the Tenant fails after fifteen (15) notice (or such shorter period as the Landlord may be permitted pursuant to any master lease or mortgage, or such shorter period as may be required due to an emergency) to proceed with due diligence to make repairs required to be made by the Tenant, the same may be made by the Landlord at the expense of the Tenant, and the expenses thereof incurred by the Landlord, with interest thereon at a rate of two percent (2%), shall be forthwith paid to the Landlord as Additional Rent after rendition of a bill or statement therefor. The Tenant shall give the Landlord prompt notice of any defective condition in the Building or in any Building System, located in, servicing, or passing through the Premises.

c. The Tenant shall give notice to the Landlord promptly after the Tenant learns of: (i) any accident in or about the Premises for which the Landlord might be liable; (ii) all fires in the Premises; (iii) all damages to or defects in the Premises, including the fixtures, equipment, and appurtenances thereof, for the repair of which the Landlord might be responsible; and (iv) all damage to or defects in any parts or appurtenances of the Building Systems located in or passing through the Premises or any part thereof.

5.3 Landlord's Access. The Landlord shall use its reasonable efforts to minimize interference with the Tenant's use and occupancy of the Premises in making any repairs, alterations, additions, or improvements; provided, however, that there shall be no Rent abatement or allowance to the Tenant for a diminution of rental value, no actual or constructive eviction of the Tenant, in whole or in part, no relief from any of the Tenant's other obligations under this Lease, and no liability on the part of the Landlord, by reason of inconvenience, annoyance, or injury to business arising from the performance of any such repairs, alterations, additions, or improvements or the storage of any materials in the Premises or in any hallways in connection therewith, and the Landlord shall have no obligation to employ contractors or labor at so called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever.

5.4 Emergency Repairs. If, in an emergency, it shall become necessary to make any repairs or replacements otherwise required to be made by the Tenant, the Landlord may enter the Premises, and proceed to make or cause such repairs or replacements to be made at its expense. The Landlord shall give the Tenant such notice of such emergency as shall be practicable under the circumstances. Within fifteen (15) days after the Landlord renders a bill for such repairs or replacements, the Tenant shall reimburse the Landlord for the cost of making such repairs.

6. ACCEPTANCE

Prior to entering into this Lease, the Tenant has made a thorough and independent examination of the Premises, the Building, and the Property and all matters related to the Tenant's decision to enter into this Lease including, without limitation, building codes, zoning and other land use restrictions, and other Applicable Laws applicable to the Premises, the Building, and the Property. The Tenant is thoroughly familiar with all aspects of the Premises, the Building, and the Property and is satisfied that they are in an acceptable condition and meet the Tenant's needs. The Tenant does not rely on, and the Landlord does not make, any express or implied representations or warranties as to any matters including, without limitation, (a) the physical condition of the Premises, the Building, the Building Structure, the Building Systems, the Property, or the Common Area, (b) the existence, quality, adequacy or availability of utilities serving the Premises, the Building, and/or the Property, (c) the use, habitability, merchantability, fitness or suitability of the Premises for the Tenant's intended use, (d) the likelihood of deriving business from the Tenant's location or the economic feasibility of the Tenant's business, (e) Hazardous Materials in the Premises, the Building, or on, in, under, or around the Property, (f) zoning, entitlements or any Applicable Laws which may apply to the Tenant's use of the Premises or business operations, or (g) any other matter relating to the Premises, the Building, the Common Area, or the Property. The Tenant hereby acknowledges and agrees that the Landlord has no obligation to the Tenant whatsoever, pursuant to this Lease or otherwise, with respect to the obtaining or maintaining of any governmental approvals, consents, licenses, permits, certificates of occupancy, or other certificates (collectively, the "***Governmental Authorizations***") necessary or desirable in connection with the use and occupancy of the Premises by the Tenant pursuant to this Lease and that any and all such Governmental Authorizations are to be obtained by the Tenant, at the Tenant's sole cost and expense. The Tenant has thoroughly inspected the Premises, the Building, the Common Area, and the Property, and has satisfied itself as to such suitability and other pertinent matters by the Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. The Tenant understands and acknowledges that there may be concealed substances that may have an impact on health such as molds, fungus, and bacteria. The Tenant assumes all responsibility for identifying and remediating any such substances in the Premises.

The Tenant (i) accepts the Premises, the Building, and the Property in their existing "As-Is" condition, subject to all encumbrances of record, (ii) agrees that the Landlord shall have no responsibility or obligation for making any improvements in or additions to the Premises, the Building, or the Property, and (iii) assumes all risks with respect to the condition of the Premises, the Building, and the Property. The Tenant shall, by entering into and occupying the Premises, be deemed to have accepted the Premises, the Building, and the Property and to have acknowledged that the same are in good order, condition, and repair.

7. IMPROVEMENTS; ALTERATIONS; REPAIR; MAINTENANCE

7.1 Improvements; Alterations. No alterations or physical additions in or to the Premises or Building may be made without the Landlord's prior written consent, which consent may be withheld in the Landlord's sole and absolute discretion. The Tenant shall not paint or install lighting or decorations, signs, window or door lettering, or advertising media of any type visible from the exterior of the Premises without the prior written consent of the Landlord, which consent may be withheld in the Landlord's sole and absolute discretion. All alterations, additions, and improvements shall be constructed, maintained, and used by the Tenant, at its risk and expense, in accordance with all Laws; the Landlord's consent to or approval of any alterations, additions, or improvements (or the plans therefor) shall not constitute a representation or warranty by the Landlord, nor the Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, and the Tenant shall be solely responsible for ensuring all such compliance.

7.2 **Repairs; Maintenance.** The Tenant shall maintain the Premises in a clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises.

7.3 **Bond.** Prior to the commencement of any alteration to, or construction of, any improvement in the Premises, and any repair of the Premises which is estimated to exceed $5,000.00, the Tenant shall deposit with the Landlord a performance bond issued by a surety company authorized to do business in the State of Hawai'i in the full amount of the cost of such alteration, construction or repair, naming the Landlord as an additional obligee, to guarantee complete performance of the contract for the project and to guarantee completion of the project free of any mechanics and materialmen's liens. The Tenant shall also deposit with the Landlord a payment bond issued by a surety company authorized to do business in the State of Hawai'i in the full amount of the cost of materials, labor and supplies for such alteration, construction or repair, naming the Landlord as an additional obligee, to guarantee full payment to all materialmen and laborers for the project and to guarantee completion of the project free of any mechanics' and materialmen's liens. In lieu of a bond, the Landlord, at its sole option, may require the Tenant to submit evidence satisfactory to the Landlord that the Tenant has sufficient funds to pay the total contract cost of the project.

7.4 **Indemnification.** The Tenant shall indemnify and hold the Landlord harmless from and against all claims, including but not limited to claims for personal injury or property damage, arising out of any alteration to, or construction of, any improvement in the Premises, including reasonable attorneys' fees and costs.

7.5 **Plans and Specifications.** If the cost of the alteration to, or construction of any improvement in the Premises, or if the cost of any repair to the Premises, is estimated to exceed $5,000.00 then prior to its commencement and in addition to the Landlord's prior written approval required above, the Tenant shall provide plans and specifications prepared by a licensed architect or engineer for the project for such the Landlord's approval.

8. ASSIGNMENT AND SUBLETTING

8.1 **Transfers.** The Tenant shall not, without the prior written consent of the Landlord which the Landlord may withhold its consent in its sole discretion, assign, transfer, or encumber this Lease or any estate or interest herein (collectively, an "Assignment").

8.2 **Subletting.** The Tenant shall not, without the prior written consent of the Landlord which the Landlord may withhold its consent in its sole discretion, grant any license, concession, or other right of occupancy of any portion of the Premises, or permit the use of the Premises by any parties other than the Tenant (collectively, a "***Sublease***").

8.3 **Premium.** If the Landlord approves of any Assignment or Sublease, then as a condition precedent to the effectiveness of the Landlord's consent to any Assignment or Sublease, the Tenant shall pay to the Landlord as Additional Rent, a premium (the "***Premium***"). The Sublet Premium shall be equal to fifty percent (50%) of the aggregate income due under such Assignment or Sublease.

8.4 **Effect.** Any Assignment or Sublease that is not in compliance with this Section 8 shall be void. The acceptance of rental payments by the Landlord from a proposed assignee, sublessee, or occupant of the Premises shall not constitute consent to such Assignment or Sublease by the Landlord.

8.5 **Request for Assignment or Sublease.** Any request by the Tenant for the Landlord's consent to a specific Assignment or Sublease shall include:

8.5.1 The identity of the proposed assignee, sublessee, or occupant;

8.5.2 The nature of the proposed assignee's, sublessee's, or occupant's business to be carried on in the Premises;

8.5.3 A copy of the proposed Assignment or Sublease agreement; and

8.5.4 Such other information as the Landlord may request concerning the proposed assignee, sublessee, or occupant or its business, including (in the event of an Assignment) financial information about the proposed assignee.

8.6 Tenant Remains Liable. No consent by the Landlord to any Assignment or Sublease by the Tenant, and no specification in this Lease of a right of the Tenant to make any Assignment or Sublease, shall relieve the Tenant of any obligation to be performed by the Tenant under this Lease, whether arising before or after: (a) the Assignment or Sublease; or (b) any extension of the Term (pursuant to exercise of any option granted in this Lease). The consent by the Landlord to any Assignment or Sublease shall not relieve the Tenant or any successor of the Tenant from the obligation to obtain the Landlord's express written consent to any other Assignment or Sublease. No Assignment or Sublease shall be valid or effective unless the assignee or sublessee or the Tenant shall deliver to the Landlord a fully-executed counterpart of the Assignment or Sublease and an instrument that contains a covenant of assumption by the assignee or agreement of the sublessee, reasonably satisfactory in substance and form to the Landlord.

9. LIENS

The Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligations incurred by or for the Tenant. The Tenant shall, within ten (10) days after notice of the imposition of any such lien, cause the lien to be released by payment or posting of a proper bond.

10. COMPLIANCE WITH LAWS

The Tenant, at the Tenant's cost and expense, shall comply with all applicable laws, statutes, codes, ordinances, orders, rules, regulations, conditions of approval, and requirements, of all federal, state, county, municipal and other governmental authorities, and the departments, commissions, boards, bureaus, instrumentalities, and officers of such departments, commissions, boards, bureaus, instrumentalities, and all administrative or judicial orders or decrees and all permits, licenses, approvals and other entitlements issued by governmental entities, and rules of common law, whether now existing or hereafter enacted (collectively, "***Applicable Laws***"), relating to or affecting the Tenant's use or occupancy of the Premises, the Building, the Property, or any Tenant Improvements or Alterations. Without limiting the foregoing, the Tenant shall be solely responsible for compliance with and shall make or cause to be made all improvements and alterations to and within the Premises and the Property (including, without limitation, removing barriers and providing alternative services) as shall be required to comply with all Applicable Laws relating to public accommodations, including the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (the "***ADA***"), and the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.*, the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 *et seq.*, as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. §§ 790 *et seq.*, the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same may be amended from time to

time, or any similar or successor laws, ordinances and regulations, now or hereafter adopted. The Tenant's liability shall be primary, and the Tenant shall indemnify the Landlord in accordance with Section B in the event of any failure or alleged failure of the Tenant to comply with Applicable Laws. The Tenant shall deliver to the Landlord within five (5) Business Days after receipt a copy of any notice from any governmental authority relating to any violation or alleged violation of any Applicable Laws pertaining to the Premises of the Tenant's activities in, on, or about the Premises or the Property.

11. INDEMNITY AND INSURANCE

11.1 Indemnity. Excluding the gross negligence or willful or criminal misconduct of the Landlord and the Landlord's Agents, the Tenant shall indemnify, defend (by counsel reasonably acceptable to the Landlord), release, protect, save and hold harmless the Landlord and the Landlord's Agents from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages) and expenses, including, without limitation, reasonable attorneys' fees and costs (including the Landlord's in-house counsel), and investigation costs, incurred in connection with or arising from: (a) any default by the Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on the Tenant's part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the Premises, the Building, and the Property by the Tenant and the Tenant's Agents, (c) the condition of the Premises, (d) any occurrence on or about the Premises, or any occurrence on or about any other portion of the Building, the Common Area, or the Property which is under the Tenant's authority or control, from any cause whatsoever, except to the extent caused by the gross negligence or willful or criminal misconduct of the Landlord or the Landlord's Agents, and (e) any acts or omissions or negligence of the Tenant or any of the Tenant's Agents, in, on, or about the Premises, the Building, the Common Area, or the Property. In case any action or proceeding be brought, made, or initiated against the Landlord relating to any matter covered by the Tenant's indemnification obligations under this Section, the Tenant, upon notice from the Landlord, shall at its sole cost and expense, resist or defend such claim, action, or proceeding by counsel approved by the Landlord. Notwithstanding the foregoing, the Landlord may retain its own counsel to defend or assist in defending any claim, action, or proceeding at the Landlord's sole cost. The Tenant's indemnification shall become effective on the date the Tenant is delivered the Premises. The Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

11.2 Insurance. The Tenant shall procure at its sole cost and expense and keep in effect during the Term:

(a) commercial general liability insurance covering the Tenant's operations in the Premises, and the Property and the Tenant's use and occupancy of all or any part of the Premises, the Building, and the Property. Such insurance shall include broad form contractual liability insurance coverage insuring the Tenant's obligations under this Lease. Such coverage shall be written on an "occurrence" form and shall have limits of liability not less than those set forth in the Specific Lease Information. The Tenant's policy shall be written to apply to all bodily injury, property damage, personal injury, and other covered loss (however occasioned) occurring during the policy term, with coverage at least equal to Insurance Services Office (ISO) General Liability form ISO CG 00 01 04 13 in effect as of the Effective Date;

(b) commercial property insurance covering the Premises, the Building, any Alterations, and the Property, including sprinkler leakage, vandalism and malicious mischief and plate glass damage covering all the items specified as the Tenant's Property, and all other property of every description, including stock-in-trade, furniture, fittings, installations, alterations, additions, partitions and fixtures, or anything in the nature of a leasehold improvement made or installed by or on behalf of the Tenant in an amount of not less than one hundred percent (100%) of the full replacement cost of the

Tenant's Property, and such other property, as shall from time to time be determined by the Tenant, in form satisfactory to the Landlord;

(c) workers' compensation insurance in the amounts and coverages required under worker's compensation, disability, and similar employee benefit laws applicable to the Tenant and/or the Premises from time to time, and Employer's Liability Insurance, with limits of not less than those set forth in the Specific Lease Information, or such higher amounts as may be required by law;

(d) business income interruption insurance with rental value insurance (with an endorsement that the distribution proceeds be payable to the Landlord) and extra expense insurance in an amount sufficient to insure payment of Rent for a period of not less than the period set forth in the Specific Lease Information during any interruption of the Tenant's business by reason of the Premises or the Tenant's Property being damaged by casualty; and

(e) any other form or forms of insurance (i) as may be specified in the Specific Lease Information, or (ii) as the Landlord may reasonably require from time to time in amounts and for insurable risks against which a prudent tenant would protect itself, to the extent landlords of comparable buildings in the vicinity of the Building require their tenants to carry such other form(s) of insurance, if available at commercially reasonable cost.

11.3 Policies. The minimum limits of policies of insurance required of the Tenant under this Lease shall in no event limit the liability of the Tenant under this Lease. Such insurance shall (i) name the Landlord, and any other party the Landlord so specifies, as an additional insured as to liability policies and additional loss payee as to property insurance; (ii) specifically cover the liability assumed by the Tenant under this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to the Landlord and licensed to do business in the State of Hawai'i; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by the Landlord is excess and is non-contributing with any insurance requirement of the Tenant; (v) be in form and content reasonably acceptable to the Landlord; and (vi) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to the Landlord and any mortgagee of the Landlord. In connection with item (i) above, the policy shall provide the following: "if the insurer denies the Tenant's claim because of the Tenant's acts or because the Tenant has failed to comply with the terms of the policy, the additional insured or additional loss payee, as applicable, will still have the right to receive loss payment if the additional insured or additional loss payee, as applicable: (a) pays any premium with respect to the Premises due under the policy at the insurer's request if the Tenant has failed to do so; (b) submits a signed, sworn statement of loss within sixty (60) days after receiving notice from the insurer of the Tenant's failure to do so; and (c) has notified the insurer of any change in ownership, occupancy or substantial change in risk known to the additional insured or additional loss payee, as applicable." No policy shall have a deductible in excess of Five Thousand Dollars ($5,000.00) for any one occurrence. Under no circumstances is the Tenant to enter into possession of the Premises until all insurance required by this Lease to be carried by the Tenant is in effect. The Tenant's inability to enter into possession for this reason shall not affect the Commencement Date, which shall nevertheless be the date on which the Landlord delivers possession of the Premises to the Tenant.

11.4 Certificates of Insurance; Insurance Policy. The Tenant shall deliver to the Landlord (a) duly executed certificates of insurance evidencing the existence and amount of each insurance policy required under this Lease at least ten (10) Business Days prior to the Commencement Date and annually thereafter, and (b) duly executed certificates of insurance evidencing renewals or new policies of insurance at least thirty (30) days prior to the scheduled expiration of the respective policies. Certificates of insurance shall include an endorsement for each policy showing that the Landlord and the Landlord's

Agents are included as additional insured's on liability policies and that the Landlord is an additional loss payee for property insurance. Further, the certificates must include an endorsement for each policy whereby the insurer agrees not to cancel, non-renew, or reduce the coverage under the policy without at least thirty (30) days' prior written notice to the Landlord. All certificates of insurance must state that "the issuing company will mail thirty (30) days' written notice of cancellation to the certificate holder." The words "endeavor to" and "failure to mail such notice shall impose no obligation for liability" are unacceptable; these two phrases must not be included.

11.5 Landlord's Rights. In the event that (a) the Tenant fails to provide evidence of insurance required to be provided by the Tenant under this Lease within the time periods as set forth in this Section or such insurance is not approved by the Landlord, and (b) the Tenant fails to rectify the situation within ten (10) Business Days after written notice from the Landlord to the Tenant, the Landlord shall have the right, but shall not be required, to purchase such insurance at the sole cost of the Tenant, and all costs incurred by the Landlord shall be immediately payable to the Landlord by the Tenant as Additional Rent and without prejudice to any other rights and remedies of the Landlord under this Lease.

11.6 Waiver of Subrogation. Notwithstanding anything to the contrary contained in this Lease, the Tenant does waive any right of recovery against the Landlord and the Landlord's Agents and against any other party maintaining a policy of insurance with respect to the Property, or any portion of the Property, or the contents of the Premises or the Building, for any loss or damage sustained by the Tenant that is covered by any policy of property insurance maintained (or required to be maintained under this Lease) with respect to the Premises, the Building, or the Property, or any portion of the Premises, the Building, or the Property, or the contents of the same or any operation in the Premises, the Building, or the Property, whether or not such loss is caused by the fault or negligence of the Landlord, the Landlord's Agents, or any such other party. If the Tenant's policy of insurance relating to this Lease or to the Premises or the Property does not permit the foregoing waiver, or if the coverage under such policy would be invalidated as a result of such waiver, the Tenant shall obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against the Landlord in connection with any claim, loss, or damage covered by such policy.

11.7 No Liability of Landlord. The Tenant assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers or any failure of the Tenant to maintain the insurance required under this Lease.

12. DEFAULT; REMEDIES

12.1 Default by Tenant. In the event the Tenant fails or refuses to perform any of the provisions, covenants, or conditions of this Lease on the Tenant's part to be kept or performed, it is agreed that the Landlord, prior to exercising any right or remedy the Landlord may have against the Tenant on account of such failure or refusal, shall give thirty (30) days' written notice to the Tenant specifying the default with which the Tenant is charged. In the event the Tenant fails or refuses to perform after such notice, the Landlord may bring any action afforded by equity or law.

12.2 Default by Landlord. In the event the Landlord fails or refuses to perform any of the provisions, covenants, or conditions of this Lease on the Landlord's part to be kept or performed, it is agreed that the Tenant, prior to exercising any right or remedy the Tenant may have against the Landlord on account of such failure or refusal, shall give thirty (30) days' written notice to the Landlord specifying the default with which the Landlord is charged.

12.3 Remedies. Upon the occurrence of an Event of Default, the Landlord shall have the following rights and remedies:

(a) The right to terminate this Lease upon written notice to the Tenant, in which event the Tenant shall immediately surrender possession of the Premises in accordance with Section 13, and if the Tenant fails to do so, the Landlord may, without prejudice to any other remedy which the Landlord may have for omission or arrearages in Rent, enter upon and take possession of the Premises and expel or remove the Tenant and the Tenant's Agents or any other person who may be occupying the Premises, without being deemed guilty of any trespass or becoming liable for prosecution or any claim of any loss or damage occasioned by such entry and possession, and without prejudice to any other right or remedy or other action.

(b) The right to bring a summary action or other action for possession of the Premises.

(c) The right to recover from the Tenant (i) all Rent due through the date this Lease terminates (with interest at the Interest Rate until paid); plus (ii) any amount necessary to compensate the Landlord for the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom which shall include, without limitation: (A) court and all other costs and reasonable attorneys' fees for services in connection with an Event of Default, in recovering possession, for prosecuting any action or proceeding against the Tenant, and for representing the Landlord in connection with any bankruptcy, insolvency, or other creditors' rights proceeding of or relating to the Tenant, (B) all costs and expenses of any re-letting, including, without limitation, all costs of alterations and repairs, dividing and subdividing of the Premises in connection therewith, and (C) the value of any tenant allowance for Tenant Improvements less depreciation calculated on a "straight line" basis amortized over the number of years in the Term beginning from the Commencement Date of this Lease, provided, however, such payment shall not be deemed liquidated damages to the Landlord for the Tenant's default under this Lease, (D) all brokerage commissions or other similar expenses of the Landlord in connection with such re-letting; plus (iii) at the option of the Landlord, the present worth at the time of termination of this Lease of the excess, if any, of the total Rent reserved in this Lease for the remainder of the Term, over the then-reasonable rental value of the Premises for the same period. All of the foregoing amounts shall be immediately due and payable by the Tenant to the Landlord upon demand.

(d) The right to continue this Lease in effect and to enforce all of the Landlord's rights and remedies under this Lease, including the right to recover Base Rent, Additional Rent, and other charges payable under this Lease as they become due. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon the Landlord's initiative to protect its interest under this Lease, shall not constitute a termination of the Tenant's right to possession.

(e) The right to alter all locks and other security devices at the Premises without terminating this Lease or to use self-help in reentering the Premises and taking possession of the Premises without such reentering being deemed a cancellation or termination of this Lease.

12.4 Cumulative Remedies. The various rights and remedies reserved to the Landlord, including those not specifically described in this Lease, shall, to the extent that the exercise of such right and/or remedy does not result in a duplicative recovery, be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity, and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights and remedies.

12.5 Waiver of Redemption by Tenant. The Tenant does waive any right to redeem, by order or judgment of any court or by any legal process or writ, the Tenant's right of occupancy of the Premises after any termination of this Lease.

13. DESTRUCTION

13.1 Loss or Damage. In every case of loss or damage to Property, the Tenant shall with all reasonable speed, rebuild, repair or otherwise reinstate the same in accordance with the original plans or such modified plans conforming to Applicable Laws then in effect as approved in writing by the Landlord. All proceeds of the Tenant's property insurance shall be used for such purpose, and the Tenant shall make up any deficiency in the insurance proceeds with its own funds. Any such restoration or reconstruction shall require that the Tenant comply with the requirements of Section 8 of **Exhibit B**.

13.2 Tenant's Certification. In the event the Landlord reasonably believes that there is a risk that the Tenant may fail to undertake the restoration as required hereunder, the Landlord may by written notice to the Tenant demand written certification from the Tenant that the Tenant will undertake such restoration, and reasonable evidence that the Tenant has funds necessary to do so. If required by the Landlord, the Tenant will deposit the insurance proceeds and any deficiency in the insurance proceeds with a bank or trust company mutually designated by the Landlord and the Tenant, which is qualified under the law of the State of Hawai'i and having its principal office in Honolulu, Hawai'i (the "***Insurance Trustee***").

13.3 Repair and Restoration. The Insurance Trustee shall hold all insurance proceeds from the Tenant's property insurance in excess of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00), which shall be applied to the cost of restoration in accordance with the following:

13.3.1 At the end of each month, or from time to time as may be agreed upon, and upon the written request of the Tenant after compliance with any conditions, the Insurance Trustee shall pay out of such proceeds to the Tenant's architect, contractors, and material men for the account of the Tenant, ninety percent (90%) of the amount stated to be due, it being understood and agreed that until completion of the restoration in full, an amount equal to ten percent (10%) of the amount stated to be due shall be withheld, and the amount so withheld shall be paid upon completion of the restoration, to the extent of and as required in order actually to complete the payment of restoration costs.

13.3.2 The Tenant shall submit a request for payment on the Standard A.I.A. Document G702 (Application and Certification for Payment), as amended (or if such form is discontinued or replaced, then a comparable form shall be substituted therefor), together with:

(a) A certificate signed by the Tenant and the Tenant's architect not more than thirty (30) days prior to such request for advance: (i) that the cost, as estimated by the persons signing such certificate, of the restoration required to be done subsequent to the date of such certificate in order to complete the same, does not exceed the insurance proceeds, plus any amount deposited by the Tenant to defray such costs and remaining in the hands of the Insurance Trustee after payment of the sum requested in such certificate; (ii) that, except for the amount stated in the request to be due for services or materials (and the sum of ten percent (10%) of the cost of restoration to be withheld until completion), there is no indebtedness known, after due inquiry, which is then due and payable for work, labor, services, or materialmen's statutory or other similar lien on the Property; and (iii) that all of the work or restoration so far completed is proper and in accordance with the plans and specifications therefor; and

(b) A certificate of a title company licensed to do business in the State of Hawai'i showing that there has not been filed against the Property or any part thereof any vendor's,

mechanic's, laborer's, materialmen's, or other similar lien, which has not been discharged of record except such as will be discharged by payment or bonding of the amount then requested, subject to the Tenant's rights to contest.

13.4 Lease Termination. Notwithstanding anything above to the contrary, the Tenant may elect not to restore the Property by notifying the Landlord in writing of the Tenant's election to terminate this Lease within sixty (60) days after the date of discovery of the damage (the "***Termination Notice***"), but the Tenant may so elect only if (i) the damage to the Building exceeds fifty percent (50%) of the replacement cost of the Building, and (ii) the Tenant assigns to the Landlord all insurance proceeds received by the Tenant for damage to the Building and Common Areas plus the deductible amount of the Tenant's property insurance coverage for the Building and Common Areas. The Tenant agrees to seek insurance coverage from the Tenant's insurer for the replacement cost as reasonably determined by the Landlord from year to year.

14. EMINENT DOMAIN

If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu of condemnation, this Lease shall terminate, at the Landlord's option, as of the date of (a) possession by the condemning authority, (b) acquisition of title by the condemning authority, or (c) recordation of the final order of condemnation, whichever is earliest.

15 SURRENDER

15.1 Surrender. The Tenant shall surrender the Premises to the Landlord in good order and condition, broom clean, except for reasonable wear and tear. The Tenant shall deliver to the Landlord all keys to the Premises provided by the Landlord at the beginning of the Term. The Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by the Tenant. All items not so removed shall, at the Landlord's option, be deemed to have been abandoned by the Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by the Landlord.

15.2 Holding Over. Any holding over after the expiration of the Term with the consent of the Landlord shall be construed to automatically extend the Term on a month-to-month basis subject to the terms and conditions of this Lease. Any holding over after the expiration of the Term or without the consent of the Landlord shall be construed to automatically extend the Term on a month-to-month basis at the then-current Base Rent.

16. NOTICES

Notices or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by certified mail with a return receipt requested, sent by facsimile, or delivered in person or by reputable overnight courier at the addresses set forth in the Specific Lease Information. Any such notice or other communication shall be deemed to have been rendered or given five (5) days after the date mailed, if sent by certified mail, upon electronic confirmation of receipt if sent by facsimile, or upon the date of delivery in person or by courier, or when delivery is attempted but refused.

17. QUIET ENJOYMENT

The Landlord covenants that so long as an Event of Default by Tenant is not in existence, upon paying the Base Rent and Additional Rent and performing all of its obligations under this Lease, the

Tenant shall peaceably and quietly enjoy the Premises against interference by the Landlord or any person or entity claiming by, through, or under the Landlord, subject to the terms and provisions of this Lease.

18. ENTIRE AGREEMENT

This Lease, including the exhibits which are incorporated in this Lease and made a part of this Lease, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Lease.

19. NO WAIVER

The failure by the Landlord or the Tenant to insist upon the strict performance of any obligation of the Tenant or the Landlord under this Lease or to exercise any right, power, or remedy consequent upon a breach of this Lease shall not constitute a waiver of any such breach or of such term, covenant, or condition or operate as a surrender of this Lease.

20. SUCCESSORS AND ASSIGNS

The terms, covenants, and conditions contained in this Lease shall bind and inure to the benefit of the Landlord and the Tenant and their respective personal representatives, successors, successors in trust, and assigns.

21. VALIDITY

If any provision of this Lease or the application of the provisions of this Lease to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall be valid and be enforced to the full extent permitted by law.

22. JURISDICTION

This Lease shall be construed and enforced in accordance with the laws of the State of Hawai'i.

23. WAIVER OF JURY TRIAL

The Landlord and the Tenant each voluntarily and knowingly waive and relinquish their right to a trial by jury in any action, proceeding, or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of the Landlord with the Tenant, or the Tenant's use or occupancy of the Premises, including any claim of injury or damage, and any emergency and other statutory remedy with respect to this Lease, the relationship of the Landlord with the Tenant, or the Tenant's use or occupancy of the Premises.

24. CONSTRUCTION

This Lease has been negotiated extensively by the Landlord and the Tenant with and upon the advice of their respective legal counsel, all of whom have participated in the drafting of this Lease. Consequently, the Landlord and the Tenant agree that no party shall be deemed to be the drafter of this Lease, and in the event this Lease is ever construed by a court of law, such court shall not construe this Lease or any provision of this Lease against any party as the drafter of this Lease.

25. SURVIVAL

The obligations of this Lease shall survive the expiration of the Term to the extent necessary to implement any requirement for the performance of obligations or forbearance of an act by either party to this Lease which has not been completed prior to the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent of this Lease, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant, or condition. Notwithstanding the foregoing, in the event a specific term, covenant, or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over the foregoing general provision of this Lease.

26. COUNTERPARTS

This Lease may be executed in as many counterparts as may be deemed necessary or convenient, and by the Landlord and the Tenant on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.