HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **24-214, FD1**

RESOLUTION

AUTHORIZING THE EXECUTION OF AN ASSIGNMENT AND EXTENSION OF LEASE, CONSENT, AND AMENDMENT OF LEASE OF CITY PROPERTY; ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT, CONSENT, AND AMENDMENT TO PARKING LICENSE AGREEMENT (163 SPACES); AND ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT, CONSENT, AND AMENDMENT TO PARKING LICENSE AGREEMENT (8 HANDICAPPED SPACES) FOR THE SMITH-BERETANIA APARTMENTS AFFORDABLE HOUSING PROJECT LOCATED AT 1170 NU'UANU AVENUE, HONOLULU, O'AHU, TAX MAP KEY (1) 1-7-004:007.

WHEREAS, Section 38-3.3(a), Revised Ordinances of Honolulu 2021 ("ROH"), permits the leasing of City-owned property to private developers for the purpose of constructing housing and other facilities implementing housing and human services programs, including housing for low- and moderate-income persons; and

WHEREAS, Smith Beretania Bridge LP, a Hawai'i limited partnership, is the lessee of City-owned property located at 1170 Nu'uanu Avenue, Honolulu, O'ahu, and identified as Tax Map Key (1) 1-7-004:007 ("Real Property"); and

WHEREAS, the Real Property is improved with a 164-unit rental housing project known as the Smith-Beretania Apartments ("Project"), which provides affordable rental housing for low- and moderate-income households; and

WHEREAS, the current 75-year term of the lease for the Real Property ("Lease") commenced on September 27, 1982, and will expire on September 26, 2057; and

WHEREAS, the City and Smith Beretania Bridge LP have entered into two parking license agreements, one that provides the Project with access to 163 standard parking spaces at the Kukui Plaza parking garage ("Parking License for 163 Spaces"), and another that provides the Project with access to 8 handicap parking spaces at a public off-street parking facility ("Parking License for 8 Spaces", and together with the Parking License for 163 Spaces, "Parking License Agreements"); and

WHEREAS, the terms of the Parking License Agreements are coterminous with the term of the Lease, and continue without revocation until the expiration of the term of the Lease or the earlier termination thereof; and

RESOLUTION

WHEREAS, Smith Beretania Bridge LP has requested that the City consent to the assignment of the Lease and Parking License Agreements to Smith Beretania Partners LP, a Hawai'i limited partnership ("Proposed Owner"), as part of the sale of the Project to the Proposed Owner; and

WHEREAS, upon acquisition of the Project, the Proposed Owner intends to undertake a comprehensive rehabilitation of the Project to include extensive renovations to residential units, common areas, building systems, security improvements, and accessibility improvements at a cost of approximately $10.7 million; and

WHEREAS, to accommodate the financing of the acquisition and rehabilitation of the Project, the Proposed Owner has requested an extension of the current Lease term to 75 years commencing from the date that the Lease is assigned to the Proposed Owner; and

WHEREAS, the Assignment and Assumption of Parking License Agreement; Consent; and Amendment to Parking License Agreement (163 Spaces) ("Parking License Assignment and Amendment for 163 Spaces") requires the Proposed Owner to pay to the City, on or before September 27, 2057, a one-time parking fee in the amount of $42,000 as additional consideration to reserve the 163 parking spaces from September 27, 2057 through the end of the Lease term; and

WHEREAS, the Parking License Assignment and Amendment for 163 Spaces also requires the City, at least 90 days before September 26, 2057, to request and obtain the written consent of the United States Department of Housing and Urban Development to amend the Parking License for 163 Spaces to require the Project's residential tenants who elect to use parking spaces reserved under the Parking License for 163 spaces, to pay directly to City, starting no earlier than September 27, 2057, a monthly parking fee in an amount established by City in accordance with applicable laws, regulations, and regulatory guidelines; and

WHEREAS, the Assignment and Assumption of Parking License Agreement; Consent; and Amendment to Parking License Agreement (8 Handicapped Spaces) ("Parking License Assignment and Amendment for 8 Spaces") amends the Parking License for 8 Spaces by deleting Exhibit B and replacing it with a new Exhibit B that includes an updated figure to depict the designated location of the 8 parking spaces reserved for the exclusive use of the Project's handicapped tenants; and

RESOLUTION

WHEREAS, with the assignment and amendment of the Lease and Parking License Agreements, and the extension of the Lease term, the Proposed Owners are committed to improving the Project through a rehabilitation program, and continuing to manage and operate the Project as an affordable housing resource for the community for the foreseeable future; and

WHEREAS pursuant to ROH § 38-3.3(j), to support the extension of the Project's Lease, the Department of Community Services has certified that:

1. The City continues to have a public need for the Project's affordable housing, and it is reasonably likely that the City will continue to have this public need throughout the extended Lease term;

2. The 75-year extension of the Lease will support the Proposed Owner's ability to finance necessary rehabilitation and continued upkeep of the Project; and

3. The Proposed Owner has experience in operating, rehabilitating, and owning multifamily rental housing for low- and moderate-income persons; and

WHEREAS, the City Council, having duly considered all of the submittals on the matter, desires to approve the assignment and amendment of the Lease and Parking License Agreements, and the extension of the Lease term, as described in this resolution; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that upon the completion of the ownership transfer of the Smith-Beretania Apartments affordable housing project from Smith Beretania Bridge LP to Smith Beretania Partners LP, the Council approves:

1. The Assignment and Extension of Lease; Consent; and Amendment of Lease, attached hereto as Attachment A, and incorporated by reference herein;

2. The Assignment and Assumption of Parking License Agreement; Consent; and Amendment to Parking License Agreement (163 Spaces), attached hereto as Attachment B, and incorporated by reference herein; and

RESOLUTION

3. The Assignment and Assumption of Parking License Agreement; Consent; and Amendment to Parking License Agreement (8 Handicapped Spaces), attached hereto as Attachment C, and incorporated by reference herein; and

BE IT FURTHER RESOLVED that the Mayor, the Director of Budget and Fiscal Services, or the Director of Community Services is hereby authorized to:

1. Execute the documents approved by the Council and enumerated above in substantially the forms attached hereto as Attachments A, B, and C, with any amendments recommended by the Department of the Corporation Counsel as necessary or desirable; and

2. Execute any incidental or related agreements or documents necessary to carry out the transactions described above, as recommended by the Department of the Corporation Counsel as necessary or desirable, so long as the incidental or related agreements or documents do not increase either directly or indirectly the financial obligation of the City; and

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **24-214, FD1**

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Director of Budget and Fiscal Services, the Director of Community Services, and Smith Beretania Partners LP, 157 Makawao Street, Kailua, Hawai'i 96734.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

August 23, 2024
Honolulu, Hawai'i

Councilmembers

OCS2024-0793/8/29/2024 8:21 AM

Attachment A

LAND COURT | REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL (XX) PICK UP ( )
Department of Community Services
City and County of Honolulu
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai'i 96817

Tax Map Key No.: (1) 1-7-004:007 (This document consists of _____ pages.)

ASSIGNMENT AND EXTENSION OF LEASE; CONSENT; AND AMENDMENT OF LEASE

(Smith-Beretania Apartments)

THIS ASSIGNMENT AND EXTENSION OF LEASE; CONSENT; AND AMENDMENT OF LEASE (this "**Assignment and Extension of Lease**"), made as of this _____ of _____, 20_____ (the "**Effective Date**") by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, whose principal place of business and post office address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (hereinafter referred to as "**Lessor**"), SMITH BERETANIA BRIDGE LP, a Hawai'i limited partnership, whose principal place of business and post office address is 17782 Sky Park Circle, Irvine, California 92614 (hereinafter referred to as "**Assignor**"), and SMITH BERETANIA PARTNERS LP, a Hawai'i limited partnership, whose principal place of business and post office address is 157 Makawao Street, Kailua, Hawai'i 96734 (hereinafter referred to as "**Assignee**" or "**Lessee**");

WITNESSETH:

WHEREAS, reference is hereby made to that certain Lease (Housing Project) dated September 27, 1982, by and between Lessor and The Honolulu Housing Foundation, Inc., recorded at the Bureau of Conveyances of the State of Hawai'i ("**Bureau**") in Book 16597 at Page 695, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i ("**Land Court**") as Document No. 1133470, as assigned to Smith-Beretania Associates by that certain Assignment of Lease and Consent dated concurrently therewith, recorded at the Bureau in Book 16597 at Page 733, and also filed in the Land Court as Document No. 1133471, as amended by that certain Amendment to Lease made and effective as of May 21, 2013, and recorded at said Bureau as Document No. A-49250869, and also filed in said Land Court as Document No. T-8577427, and as assigned to Assignor by that certain Assignment and Assumption of

Lease (Smith-Beretania Apartments) dated December 21, 2021, recorded at said Bureau as Document No. A-80250454-55 (2), and also filed in said Land Court on as Document No. T-11677141, and consented to by Lessor by that certain Lessor's Consent to Assignment and Assumption of Lease (Smith-Beretania Apartments) dated concurrently therewith, recorded at said Bureau as Document No. A-80250456, and also filed in said Land Court as Document No. T-11677142, both of which are duly noted on Transfer Certificate of Title Nos. 50,802 and 131,131 (the "**Lease**"), demising certain real property located at 1170 Nuuanu Avenue, Honolulu, Oahu, Hawai'i, and described in **Exhibit "A,"** attached thereto and incorporated by reference (the "**Land**"), upon which Land is situated the Smith-Beretania Apartments (the "**Housing Project**"); and

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

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

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

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

2. Assignment, Assumption and Consent.

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

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

   c. Lessor hereby consents to the foregoing assignment and assumption by and between Assignor and Assignee, and releases Assignor from any and all further obligations and liabilities arising under the Lease after the date hereof, on the express condition that this consent shall not be deemed or construed to be a waiver of any term, covenant, condition, or provision of said Lease nor a consent to any other or further assignment or sublease or modification of said Lease, and that all rights of the Lessor under the Lease are hereby reserved.

   d. As an inducement to Lessor's consent, Assignee covenants to expend a minimum of $10,000,000.00 (subject to financing and equity availability and approval) to renovate and rehabilitate the Housing Project and to begin said work by no later than 24 months following the Effective Date. Assignee acknowledges and agrees that its failure to perform the renovation and rehabilitation work as covenanted above shall constitute a default under Section 35 of the Lease.

3. Extension of Lease Term. Notwithstanding Section 3 of the Lease and anything in the Lease to the contrary, the term of the Lease shall be for seventy-five (75) years, commencing on the

Effective Date herein, and expiring at 11:59 p.m. on _____. This provision constitutes amendment of the Lease term end date set forth in Section 3 of the Lease for all purposes under the Lease.

4. Rent. Annual rent for Lot 1-A and Lot 2 (being the parcels of land comprising the Land) shall be as follows:

a. For Lot 1-A

(i) On the Effective Date through September 26, 2057, $15,600.00 per annum;

(ii) On September 27, 2057 through September 26, 2067, $57,200.00 per annum;

(iii) On September 27, 2067, through September 26, 2077, $67,600.00 per annum;

(iv) On September 27, 2077, through September 26, 2087, $78,000.00 per annum; and

(v) On September 27, 2087, through _____, $88,400.00 per annum; and

b. For Lot 2, $1.00 per annum.

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

6. Tenant Rents. Lessor acknowledges that Lessee intends to record against Lessee's leasehold interest in the Land (i) Regulatory Agreement and Declaration of Restrictive Covenants that will be entered into between Lessee and the Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic duly organized and existing under the laws of the State of Hawai'i [or City and County of Honolulu] ("**Bond Issuer**"), in connection with the bond financing (the "Bond Regulatory Agreement") and (ii) a Declaration of Restrictive Covenants for Low Income Housing Credits or similar document (the "**Extended Use Agreement**", and together with the Bond Regulatory Agreement, the "Regulatory Agreements") that will be entered into between Lessee and the Hawai'i Housing Finance and Development Corporation, a public body and a body corporate and politic duly organized and existing under the laws of the State of Hawai'i ("**HHFDC**") constituting an "extended low-income housing commitment" within the meaning of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended (the "**Code**"). Lessor's written consent to such recordation shall be required, and shall not be unreasonably withheld. Lessor's consent shall not be required for tenant rents consistent with the requirements of the Regulatory Agreements. In the event that for any reason HUD ceases to fund amounts due under the HUD Housing Assistance Payments Contract associated with the Housing Project or such contract terminates, the units at the Housing Project shall be rented in a manner consistent with the requirements of the Regulatory Agreements. In no event shall the portion of the monthly rent payable by any tenant (excluding the occupant of the "manager's unit" in the Housing Project) exceed the lesser of (i) the rents permitted to be charged under any governmental restrictions then applicable to the Housing Project and (ii) 30% of 80% of the area median income, as adjusted for household and unit size, as determined by HUD. Under the HUD Housing Assistance Payments Contract, all of the units in the Housing Project (other than the Manager's unit and the commercial spaces) are set aside for occupancy

by households earning 50% of AMI or less. Each tenant's contribution to rent and utilities is limited to 30% of such tenant's income.

7. Leasing Priorities. In the event of any conflict between the tenant selection priorities in the Lease, including Sections 18 and 19 thereof, and the tenant selection priorities of HHFDC or the Code, the tenant selection priorities of the Bond Issuer, HHFDC and the Code shall control, to the extent consistent with applicable laws, but shall not control over the tenant selection priorities applicable to the HUD Housing Assistance Payments Contract associated with the Housing Project and the applicable laws, rules, regulations and program requirements of Section 8 of the United States Housing Act of 1937.

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

9. Mortgagee Protections. Section 34 of the Lease is hereby revised in its entirety to read as follows:

a. Mortgagee Notices of Default Under Lease. Lessor shall give Mortgagee notice in writing of any defaults by Lessee under the Lease, and Mortgagee shall have sixty (60) days after receipt of such written notice from the Lessor to cure monetary defaults and such other defaults which are reasonably susceptible of cure. Further, as to any non-monetary default not reasonably susceptible of cure within sixty (60) days, Mortgagee shall have one hundred twenty (120) days after receipt of such written notice from the Lessor, and a reasonable time after the expiration of said one hundred twenty (120) days, within which to endeavor to cure such default if: (1) it shall undertake in writing to performing all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such Mortgage; (2) Lessor is paid all rent and other charges accruing hereunder as the same become due; (3) Mortgagee shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said one hundred twenty (120)-day period and is diligently prosecuting the same, subject to any stay in any proceedings involving the insolvency of Lessee or other proceeding or injunction (unless, in the meantime, Mortgagee shall acquire Lessee's estate under the Lease, either in its own name or through a nominee, by assignment in lieu of foreclosure); and (4) upon foreclosure sale of this Lease, the time for performance of any obligation of Lessee then in default hereunder other than the payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Notwithstanding any other provision of the Lease, all rights of the Lessor to terminate the Lease upon the default by Lessee are and shall continue to be at all times while Lessee is indebted to Mortgagee, subject to and conditioned upon the Lessor's first having given Mortgagee written notice of such default and Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

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

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

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

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

11. Lessee's Insurance. The provisions of Sections 21 and 27 of the Lease are hereby amended as to the amounts and types of such insurance policies as follows:

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

a. Workers' Compensation and Employers' Liability Insurance. The Lessee shall maintain workers' compensation and employers' liability insurance. Workers' compensation coverage shall be in accordance with State statutes. Employers' liability coverage shall provide limits of not less than **$500,000** each accident for bodily injury by accident or **$500,000** each employee, **$500,000** aggregate, for bodily injury by disease. The policy will include a waiver of subrogation in favor of the Lessee.

b. Liability Insurance. Lessee shall maintain a commercial general liability (CGL) policy with a limit of not less than bodily injury and property damage **$1,000,000** each occurrence/**$2,000,000** general aggregate, personal and advertising injury (including but not limited to coverage for mental injury, sexual harassment, sexual molestation or misconduct, invasion of privacy, or wrongful detention) of **$1,000,000** each occurrence, and medical expenses of **$5,000** any one person. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from the Land and Housing Project, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Lessor shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (11/85) (or equivalent), and as appropriate CG 20 37 or equivalent and under the commercial umbrella. Each policy shall contain a waiver of subrogation against Lessor.

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

d. Umbrella/Excess Liability. Lessee shall maintain umbrella/excess liability insurance with limits of not less than **$10,000,000** per occurrence combined single limits and aggregate, with the aggregate to apply per project/per location. Such insurance shall be written on an occurrence basis in excess of the underlying insurance described in Sections a. through c. hereinabove, which is at least as broad as each of the underlying policies, and otherwise including "pay on behalf" wording, concurrency of effective dates with underlying primary coverages, blanket contractual liability, and construction defect coverage. The amounts of insurance required in Sections a. through d. hereinabove, may be satisfied by Lessee purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the total limits required by this Section.

e. Insurance Coverage for Operations. The Lessee shall procure or cause to be procured and maintain all insurance to cover operations under this Lease that may be required by any laws and the following types and amounts of insurance described below in Sections (f) through (h):

f. Commercial Property Insurance. Lessee shall maintain commercial property insurance (including coverage for debris removal) covering the buildings, fixtures and equipment, with limits equal to the full replacement cost of the improvements. Such insurance shall at minimum, cover loss or damage under a "Special" cause of loss form, and shall also cover loss by earthquake, flood

and windstorm. Lessee shall be responsible for the amount of any deductible or co-insurance requirements applicable to the policy.

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

h. Lessor shall be included as an insured and loss payee under the commercial property insurance and the boiler and machinery policies as its interest may appear.

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

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

1. Insureds. Insurance policies shall identify Lessor as an "additional insured" using ISO form CG 20 10 (or equivalent), and during any construction activity, the 1 CD 20 37 will also be required. Property insurance policies shall name Lessor and Lessee as loss payees as their respective interests may appear, and each mortgagee this Lease allows under a standard noncontributing mortgagee clause. Notwithstanding anything to the contrary, all property insurance proceeds shall be paid and applied as this Lease provides. On all insurance policies where Lessor is named as an additional insured, Lessor shall be an additional insured to the full limits of coverage purchased by Lessee even if those limits are in excess of those required under this Lease.

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

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

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

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

k. If Lessor reasonably determines that the foregoing insurance is inadequate to protect Lessor's interest in the Land, Lessor reserves the right to reasonably require additional kinds or amounts of insurance adequate for Lessor's protection, upon terms and in amounts reasonably obtainable, with due regard to prevailing prudent business practices for similar properties and uses. Lessor shall inform Lessee of such additional insurance at least sixty (60) days prior to (1) the next date on which the insurance policy to be increased is to be renewed or (2) the next anniversary of the Effective Date for any such additional kind of insurance. Such a requested additional kinds or amounts of insurance by Lessor may occur from time to time, but not more often than once in any one-year period.

12. Notices. Notwithstanding Section 37 of the Lease, notices pursuant to the Lease shall be provided to the parties and addresses specified below:

To Lessor:

CITY AND COUNTY OF HONOLULU
Department of Community Services
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai'i 96817
Attention: Director
Telephone: (808) 768-7760

and

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

With copies to:

Department of the Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawai'i 96813
Attention: Corporation Counsel
Tel: (808) 768-5100

Fax: (808) 768-5104
E-mail: COR@honolulu.gov

To Lessee:

Smith Beretania Partners LP
157 Makawao Street
Kailua, Hawai'i 96734
Attention: Ms. Makani Maeva
Telephone:_____
Fax: _____
Email: _____

With copies to:

_____
_____
_____
Attention: _____
Telephone:_____
Fax: _____

and:

[Federal Tax Credit Investor]
_____
_____
Attention: _____
Telephone:_____
Fax: _____

and

[State Tax Credit Investor]
_____
_____
Attention: _____
Telephone:_____
Fax: _____

and

[Tax Credit Investor's Counsel]
_____
_____
Attention: _____
Telephone:_____
Fax: _____

To Mortgagee:

[Mortgagee]

_____

_____

Attention: _____
Telephone:_____
Fax: _____

With copies to:

[Mortgagee's Counsel]

_____

_____

Attention: _____
Telephone:_____
Fax: _____

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

13. Counterparts. This Assignment and Extension of Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one instrument. Executed counterparts of this Assignment and Extension of Lease may be delivered by facsimile or other electronic means, and delivery thereof in such a manner will have the same effect as delivery of ink signed originals hereof.

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

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

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

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

APPROVED AS TO CONTENTS:

DEPARTMENT OF COMMUNITY SERVICES

By _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

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

By its DEPARTMENT OF BUDGET AND FISCAL SERVICES

By _____
Andrew T. Kawano
Its Director

Lessor

SMITH BERETANIA PARTNERS LP,
a Hawai'i limited partnership

By: Smith Beretania Management LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Makani Maeva
Its Manager

By: _____
Anand Kannan
Its Manager

Date:_____

Assignee and Lessee

SMITH BERETANIA BRIDGE LP,
a Hawai'i limited partnership

By: Smith Beretania Bridge LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Anand Kannan
Its Manager

Date:_____

Assignor

STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU

SS:

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

_____
Notary's Signature (Above)

Print Name: _____
Notary Public, in and for said State

My commission expires:_____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: ASSIGNMENT AND EXTENSION OF LEASE; CONSENT; AND AMENDMENT OF LEASE (Smith-Beretania Apartments)

Document Date: _____ or Undated at time of notarization.

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

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

(Official Stamp or Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

SMITH-BERETANIA APARTMENTS
1170 NUUANU AVENUE
HONOLULU, HAWAI'I 96817

THAT CERTAIN PARCEL OF LAND BEING PART OF THE FOLLOWING:
LOT 1-A, BEING THE WHOLE OF GRANT (P.W.) 18 TO B.P. BISHOP ESTATE AND PORTIONS OF R.P. 293, L.C. AW. 123 & 126 TO A. PAKI FOR KONIA, R.P. 1647, L.C. AW. 585 TO ISAAC LEWIS AND R.P. 642, L.C. AW. 788 TO JAMES ROBINSON, ROBERT HOLT AND ROBERT LAWRENCE
AND LOT 2, BEING A PORTION OF R.P. 642, L.C. AW. 788 TO JAMES ROBINSON, ROBERT HOLT AND ROBERT LAWRENCE

Situated at Honolulu, Oahu, Hawai'i
Tax Map Key: (1st Div.) 1-7-04: 07

Beginning at a point on the West boundary of this parcel of land, being the South corner of Lot A-1, and on the West corner of Lot 2, and also being on the East boundary of Lot 1, Land Court Application No. 145, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 135.50 feet South and 401.62 feet West, thence running by azimuths measured clockwise from True South:

1.	148°	39'	27.40	feet along Lot 1, Land Court Application No. 145;
2.	52°	10'	10.50	feet along same;
3.	138°	37'	26.41	feet along Lots D-1 and D-2-A, Land Court Application 260;
4.	148°	39'	53.78	along Lot 1-B-1, portion R.P. 293, L.C. Aws. 123 & 126 to A. Paki for Konia;
5.	238°	39'	168.31	feet along same;
6.	328°	39'	55.95	feet along same;
7.	58°	39'	5.00	feet along Tax Map Key: 1-7-04: 05;
8.	327°	02'	50.07	feet along same;
9.	327°	02'	30.00	feet along same;
10.	58°	39'	150.54	feet along Nuuanu Avenue;
11.	148°	39'	30.00	feet along Lot 1, Land Court Application No. 145 to the point of beginning and containing an area of 21,670 square feet, more or less.

TOGETHER WITH the following Easements:

As to Lot 1-A:

1. An Easement for access and loading zone and for the construction, reconstruction, maintenance, repair and operation of a driveway over and across Easement 1, as shown on Map 4, affecting Lots A-2-A, A-2-B, A-2-C, D-2-B and D-2-C, as shown on Map 3, said Maps being filed with Land Court Application No. 260, and said Easement and Lots being described in Transfer Certificates of Title Nos. 50,802 and 131,131, and over and across Easement "A-1" affecting Lot 1-B-1.

2. An Easement for electric transformer vault purposes over, under and across Easement "B-1" affecting Lot 1-B-1.

3. An Easement for electric transmission line purposes over, under and across Easement "B-2" affecting Lot 1-B-1.

4. An Easement for drainage purposes over, under and across Easement "C" affecting Lot 2.

5. An Easement for access and utility purposes over, under and across Easement "D" affecting Lot 2.

6. An Easement for drainage purposes over, under and across Easement "E" affecting Lot 2.

[END OF EXHIBIT "A"]

Attachment B

ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT; CONSENT; AND AMENDMENT TO PARKING LICENSE AGREEMENT
(163 SPACES)
(Smith-Beretania Apartments)

THIS ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT; CONSENT; AND AMENDMENT TO PARKING LICENSE AGREEMENT (this "**Assignment and Amendment**") is made as of _____, 2024 (the "**Effective Date**"), by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, whose principal place of business and post office address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (hereinafter referred to as "**Licensor**"), **SMITH BERETANIA BRIDGE LP**, a Hawai'i limited partnership, together with its successors and assigns, whose address is 17782 Sky Park Circle, Irvine, California 92614 (hereinafter referred to as "**Assignor**"), and **SMITH BERETANIA PARTNERS LP**, a Hawai'i limited partnership, whose principal place of business and post office address is 157 Makawao Street, Kailua, Hawai'i 96734 (hereinafter referred to as "**Assignee**").

WITNESSETH:

WHEREAS, Licensor and Assignor are parties to that certain Parking License Agreement (163 Spaces) dated September 28, 1982 ("**Original Parking License**"), as amended by that certain Amendment to Parking License Agreement made and effective as of May 21, 2013 ("**Parking License Amendment**" and together with the Original Parking License, the "**Parking License**"), as assigned to Assignor by that certain Assignment and Assumption of Parking License (163 Spaces) (Smith-Beretania Apartments) made December 21, 2021, reserving 163 parking spaces in the Kukui Plaza parking facility, as designated in Exhibit B attached to the Original Parking License (the "**Parking Spaces**"), for the exclusive use of the residential tenants of the Smith-Beretania Apartments (the "**Project**"), as described in the Original Parking License; and

WHEREAS, the term of the Parking License continues without revocation until the expiration of the term of that certain Lease (Housing Project) dated September 27, 1982, recorded at the Bureau of Conveyances of the State of Hawai'i ("**Bureau**") in Liber 16597 at Page 695, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i ("**Land Court**") as Document No. 1133470, and also noted on Transfer Certificate of Title Nos. 50,802 and 131,131 ("**Original Lease**"); as assigned to Smith-Beretania Associates, by that certain Assignment of Lease and Consent dated September 27, 1982, filed in said Land Court as Document No 1133472, and also recorded at said Bureau in Book 16597 at Page 733; as amended to extend the term of the Original Lease to and including September 26, 2057, by Amendment to Lease dated May 21, 2013, filed in said Land Court as Document No. T-8577427 and recorded at said Bureau as Document No. A-49250869; as assigned to Assignor by that certain Assignment and Assumption of Lease (Smith-Beretania Apartments) dated December 21, 2021, recorded at said Bureau as Document No. A-80250454-55 (2), and also filed in said Land Court on as Document No. T-11677141, and consented to by the City and County of Honolulu, a municipal corporation of the State of Hawai'i, as Lessor, by that certain Lessor's Consent to Assignment and Assumption of Lease (Smith-Beretania Apartments) dated concurrently therewith, recorded at said Bureau as Document No. A-80250456, and also filed in said Land Court as Document No. T-11677142, both

of which are duly noted on Transfer Certificate of Title Nos. 50,802 and 131,131; and assigned to Assignee and amended to extend the term of the Original Lease to and including _____, by way of that Certain Assignment and Extension of Lease; Consent; and Amendment of Lease dated concurrently herewith and filed in said Land Court as Document No. _____ and recorded at said Bureau as Document No. _____, (collectively, the "**Lease**"), which demises those certain premises located at 1170 Nuuanu Avenue, Honolulu, Hawai'i 96817, more particularly described in said Lease, upon which premises is located the Smith-Beretania Apartments; and

WHEREAS, in accordance with the terms of the Parking License, the Assignor is required to pay Licensor, on or before September 27, 2037, a one-time parking fee in the amount of $181,054.00 covering the Parking Spaces for the extended term of the Lease to and including September 26, 2057 ("**One-Time Parking Fee**"); and

WHEREAS, Licensor and Assignor affirm that payment of the One-Time Parking Fee is not yet due and that the One-Time Parking Fee has not been paid as of the Effective Date; and

WHEREAS, Assignor and Assignee have agreed that Assignor shall transfer and assign to Assignee all right, title, and interest of Assignor in and to the Parking License (the "**License Assignment**"); and

WHEREAS, Assignor and Assignee have further agreed that Assignee shall expressly assume all of the obligations of Assignor arising under the Parking License from and after the Effective Date of this Assignment and Amendment; and

WHEREAS, Licensor has agreed to consent to the License Assignment; and

WHEREAS, Paragraph 2 of the Original Parking License states that "the term during which the said 163 parking spaces in the Kukui Plaza parking facility shall be reserved for the exclusive use of the Project's residential tenants ... shall continue without revocation until the expiration of the term of the Lease [dated September 27, 1982 demising the Project land] or sooner termination thereof"; and

WHEREAS, since the term of said Lease dated September 27, 1982, demising the Project land is extended to _____ by way of the Assignment and Extension of Lease; Consent; and Amendment of Lease made by the parties hereto concurrently herewith, the term of the Parking License is extended to _____ in accordance with Paragraph 2 of the Original Parking License until the expiration of the term of the Lease, as extended, or sooner termination thereof; and

WHEREAS, Licensor and Assignee desire to amend the Parking License to require the Licensee to pay a parking fee as consideration for the use of the Parking Spaces from September 27, 2057 to _____, as such term may be extended in accordance with Paragraph 2 of the Original Parking License;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Transfer and Assignment. Assignor hereby sells, transfers, assigns, delivers, and conveys to Assignee, its successors and assigns, all right, title, and interest of Assignor in, to, and under the Parking License, subject, however, to the terms and provisions thereof, as amended herein.

2. Assumption of Obligations. Notwithstanding anything in the Parking License to the contrary:

(a) Assignee hereby assumes, and agrees to perform, all of the terms, covenants and conditions of the Parking License on the part of Licensee therein required to be performed arising from and after the Effective Date hereof. Assignee covenants and agrees to discharge any and all obligations and duties of the Licensee under the Parking License arising on or after the Effective Date hereof.

(b) Assignee hereby agrees to indemnify and hold harmless Assignor from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignee's failure, **from and after** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period from and after the Effective Date of this Assignment and Amendment.

(c) Assignor hereby agrees to indemnify and hold harmless Assignee from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignor's failure, **prior to** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period prior to the Effective Date of this Assignment and Amendment.

(d) Assignee and Assignor, or either of them, hereby agree to indemnify and hold harmless Licensor from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignor's failure, **prior to** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period prior to the Effective Date of this Assignment and Amendment.

3. Consent of Licensor. Subject to the amendments, terms and conditions set forth in this Assignment and Amendment, Licensor hereby consents to the assignment and assumption of

the Parking License, assigning Assignor's interest in the Parking License to Assignee, and does hereby release Assignor from further payment of license fees and observance and performance of the covenants and conditions contained in said Parking License from and after the Effective Date.

4. Amendment to Term of Parking License. Licensor and Assignee confirm and ratify that in accordance with Paragraph 2 of the Original Parking License, the term of the Parking License is extended until 11:59 p.m. on _____ (the "Extended Term"), for a period to be coterminous with the term of the Lease, as extended by that certain Assignment and Extension of Lease; Consent; and Amendment of Lease of even date herewith made by the parties hereto, and that the Parking License shall continue without revocation until the expiration of the term of the Lease, as extended, or sooner termination thereof.

5. Confirmation of One-Time Payment. Licensor hereby confirms its receipt of the sums of $213,800.00 and $284,100.00 paid by Licensee in accordance with Paragraph 3 of the Parking License. Assignee hereby confirms, and assumes, sole responsibility to pay to Licensor, on or before September 27, 2037, a one-time parking fee in the amount of $181,054.00 as additional consideration for the use of the 163 parking spaces reserved under said Parking License for the period from September 27, 2037 to September 26, 2057.

6. Agreement to Pay Additional Fee to Reserve Parking Spaces. Paragraph 3 of the Parking License is hereby amended to provide that Assignee shall pay to Licensor, on or before September 27, 2057, a one-time fee in the amount of $42,000.00 as additional consideration to reserve the 163 parking spaces for the period from September 27, 2057 to _____.

7. Payment of Monthly Parking Fees by Residents. Licensor shall, at any time at least ninety (90) days before September 26, 2057, request and obtain the written consent of the Department of Housing and Urban Development ("**HUD**") to an amendment of Paragraph 3 of the Original Parking License to allow Licensor to require the Project's residential tenants who elect to use parking spaces reserved under the Parking License to pay directly to Licensor, starting no earlier than September 27, 2057, a monthly parking fee in an amount established by Licensor in accordance with applicable laws, regulations, and regulatory guidance ("**Monthly Parking Fee**"). Notwithstanding the foregoing or anything contained herein to the contrary, Licensor expressly acknowledges and agrees that because the Parking License, and the Project's residential tenants' right to exclusive use of the reserved parking spaces granted thereunder, is expressly irrevocable, being coupled with an interest, Licensee and Assignee make no representations or warranties that HUD will consent to any such monthly parking fee charged directly to the Project's residential tenants. Accordingly, if Licensor does not request or obtain the aforesaid consents in a timely manner as set forth above (which timeliness shall be of the essence), it shall not be a basis for Licensor to withhold or delay its consent (which shall be deemed to be unreasonable) to any assignment of the Parking License or any assignment of the Lease.

8. Governing Law. This Assignment and Amendment shall be construed and enforced in accordance with and governed by the laws of the State of Hawai'i without reference to conflict of laws principles.

9. Binding Effect. This Assignment and Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors, and assigns.

10. Counterparts. This Assignment and Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Licensor, Assignor and Assignee have executed this Assignment and Amendment as of the day and year first above written.

LICENSOR:

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

By:_____
Name:
Title:

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

ASSIGNOR:

SMITH BERETANIA BRIDGE LP,
a Hawai'i limited partnership

By: Smith Beretania Bridge LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Anand Kannan
Its Manager

ASSIGNEE:

SMITH BERETANIA PARTNERS LP,
a Hawai'i limited partnership

By: Smith Beretania Management LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Makani Maeva
Its Manager

By: _____
Anand Kannan
Its Manager

Attachment C

ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT; CONSENT; AND AMENDMENT TO PARKING LICENSE AGREEMENT
(8 HANDICAPPED SPACES)
(Smith-Beretania Apartments)

THIS ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT; CONSENT; AND AMENDMENT TO PARKING LICENSE AGREEMENT (this "**Assignment and Amendment**") is made as of _____, 2024 (the "**Effective Date**"), by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, whose principal place of business and post office address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (hereinafter referred to as "**Licensor**"), **SMITH BERETANIA BRIDGE LP**, a Hawai'i limited partnership, together with its successors and assigns, whose address is 17782 Sky Park Circle, Irvine, California 92614 (hereinafter referred to as "**Assignor**"), and **SMITH BERETANIA PARTNERS LP**, a Hawai'i limited partnership, whose principal place of business and post office address is 157 Makawao Street, Kailua, Hawai'i 96734 (hereinafter referred to as "**Assignee**").

W I T N E S S E T H:

WHEREAS, Licensor and Assignor are parties to that certain Parking License Agreement (8 Handicapped Spaces) dated September 28, 1982 ("**Parking License**"), as assigned to Assignor by that certain Assignment and Assumption of Parking License (8 Handicapped Spaces) (Smith-Beretania Apartments) made December 21, 2021, reserving 8 handicapped parking spaces in Licensor's public off-street parking facility, as designated in Exhibit B attached to the Parking License (the "**Parking Spaces**"), for the exclusive use of the residential handicapped tenants of the Smith-Beretania Apartments, as described in the Parking License; and

WHEREAS, in accordance with the terms of the Parking License, the Assignor is required to pay Licensor $25.00 per stall per month, or $2,400.00 total per year ("**Parking Fee**"); and

WHEREAS, the Assignor affirms that as of the Effective Date the payment of the Parking Fee is current; and

WHEREAS, Assignor and Assignee have agreed that Assignor shall transfer and assign to Assignee all right, title, and interest of Assignor in and to the Parking License; and

WHEREAS, Assignor and Assignee have further agreed that Assignee shall expressly assume all of the obligations of Assignor arising under the Parking License from and after the Effective Date of this Assignment and Amendment;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Transfer and Assignment. Assignor hereby sells, transfers, assigns, delivers, and conveys to Assignee, its successors and assigns, all right, title, and interest of Assignor in, to, and under the Parking License, subject, however, to the terms and provisions thereof.

2. Assumption of Obligations.

(a) Assignee hereby assumes, and agrees to perform, all of the terms, covenants and conditions of the Parking License on the part of Licensee therein required to be performed arising from and after the Effective Date hereof. Assignee covenants and agrees to discharge any and all obligations and duties of the Licensee under the Parking License arising on or after the Effective Date hereof.

(b) Assignee hereby agrees to indemnify and hold harmless Assignor from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignee's failure, **from and after** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period from and after the Effective Date of this Assignment and Amendment.

(c) Assignor hereby agrees to indemnify and hold harmless Assignee from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignor's failure, **prior to** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period prior to the Effective Date of this Assignment and Amendment.

(d) Assignee and Assignor, or either of them, hereby agree to indemnify and hold harmless Licensor from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of, or in connection with Assignor's failure, **prior to** the Effective Date of this Assignment and Amendment, to observe, perform, and discharge each and every one of the covenants, obligations, duties and liabilities of the Licensee under the Parking License to be observed, performed, or discharged on, or relating to, or accruing with respect to the period prior to the Effective Date of this Assignment and Amendment.

3. Consent. Subject to the terms and conditions set forth in this Assignment and Amendment, Licensor hereby consents to the assignment and assumption of the Parking License, assigning Assignor's interest in the Parking License to Assignee, and does hereby release Assignor from further payment of license fees and observance and performance of the covenants and conditions contained in said Parking license from and after the date hereof.

4. Confirmation of Parking License. Licensor and Assignee confirm and ratify that the Parking License is hereby extended until 11:59 p.m. on _____ (the

"**Extended Term**"), for a period to be coterminous with the term of the Lease, as extended by that certain Assignment and Extension of Lease; Consent; and Amendment of Lease, of even date herewith made by the parties hereto, and that the Parking License shall continue without revocation until the expiration of the term of the Lease, as extended, or sooner termination thereof.

5. Location of Designated Parking Spaces. Licensor confirms and ratifies that it shall reserve eight (8) parking spaces in accordance with Paragraph 1 of the Parking License. Exhibit B attached to the Parking License, which depicts the location of the eight (8) parking spaces reserved for the exclusive use of the Project's handicapped tenants, is deleted and replaced by Exhibit B attached to this Assignment and Amendment.

6. Governing Law. This Assignment and Amendment shall be construed and enforced in accordance with and governed by the laws of the State of Hawai'i without reference to conflict of laws principles.

7. Binding Effect. This Assignment and Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors, and assigns.

8. Counterparts. This Assignment and Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Licensor, Assignor and Assignee have executed this Assignment as of the day and year first above written.

LICENSOR:

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

By:_____
Name:
Title:

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

ASSIGNOR:

SMITH BERETANIA BRIDGE LP,
a Hawai'i limited partnership

By: Smith Beretania Bridge LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Anand Kannan
Its Manager

ASSIGNEE:

SMITH BERETANIA PARTNERS LP,
a Hawai'i limited partnership

By: Smith Beretania Management LLC,
a Hawai'i limited liability company
Its General Partner

By: _____
Makani Maeva
Its Manager

By: _____
Anand Kannan
Its Manager

Exhibit B
Smith-Beretania Apartments Handicapped Parking (8 Stalls)

[Figure depicting the designated location of the eight (8) parking spaces reserved for the exclusive use of the Project's handicapped tenants shall be inserted prior to execution of this Assignment and Amendment.]

Certification Pursuant to Section 38-3.3(a),
Revised Ordinances of Honolulu 2021 (ROH)

Project Name:	Smith-Beretania Apartments
Address:	1170 Nuuanu Avenue, Honolulu, Hawaii 96817
TMK:	(1) 1-7-004:007

Current Lessee:	Smith Beretania Bridge LP
Future Lessee:	Smith Beretania Partners LP
Current Lease Term:	75 Years Commencing on September 27, 1982
Extension Requested:	75 Years Commencing from the Date of Execution of the Assignment and Extension of Lease

The Department of Community Services hereby certifies that the Lease extension requested by the above-named parties fulfills the requirements of Section 38-3.3(a), ROH.

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

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

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

Certified on _____, Honolulu, Hawaii

By:

Anton C. Krucky
Director, Department of Community Services

FACT SHEET

Smith-Beretania Apartments
(As of April 15, 2024)

Project Information

Address:	1170 Nu'uanu Avenue, Honolulu, HI 96817
Tax Map Key:	(1) 1-7-004:007
Land Area:	21,670 Square Feet
Ownership:	Smith Beretania Bridge LP (current Lessee) Smith Beretania Partners LP (future Lessee) City and County of Honolulu (Lessor)
Improvements:	22-story Apartment Building 164 rental units: 82 1-Bedroom, 81 2-Bedroom, one 2-Bedroom manager's unit 163 parking stalls reserved in Kukui Plaza parking structure
Project Use:	Affordable rentals (project has a Section 8 contract)
Assessed Value:	Land - $8,668,000 Improvements – $16,320,500 Total Value - $24,988,500
Surrounding Uses:	Commercial

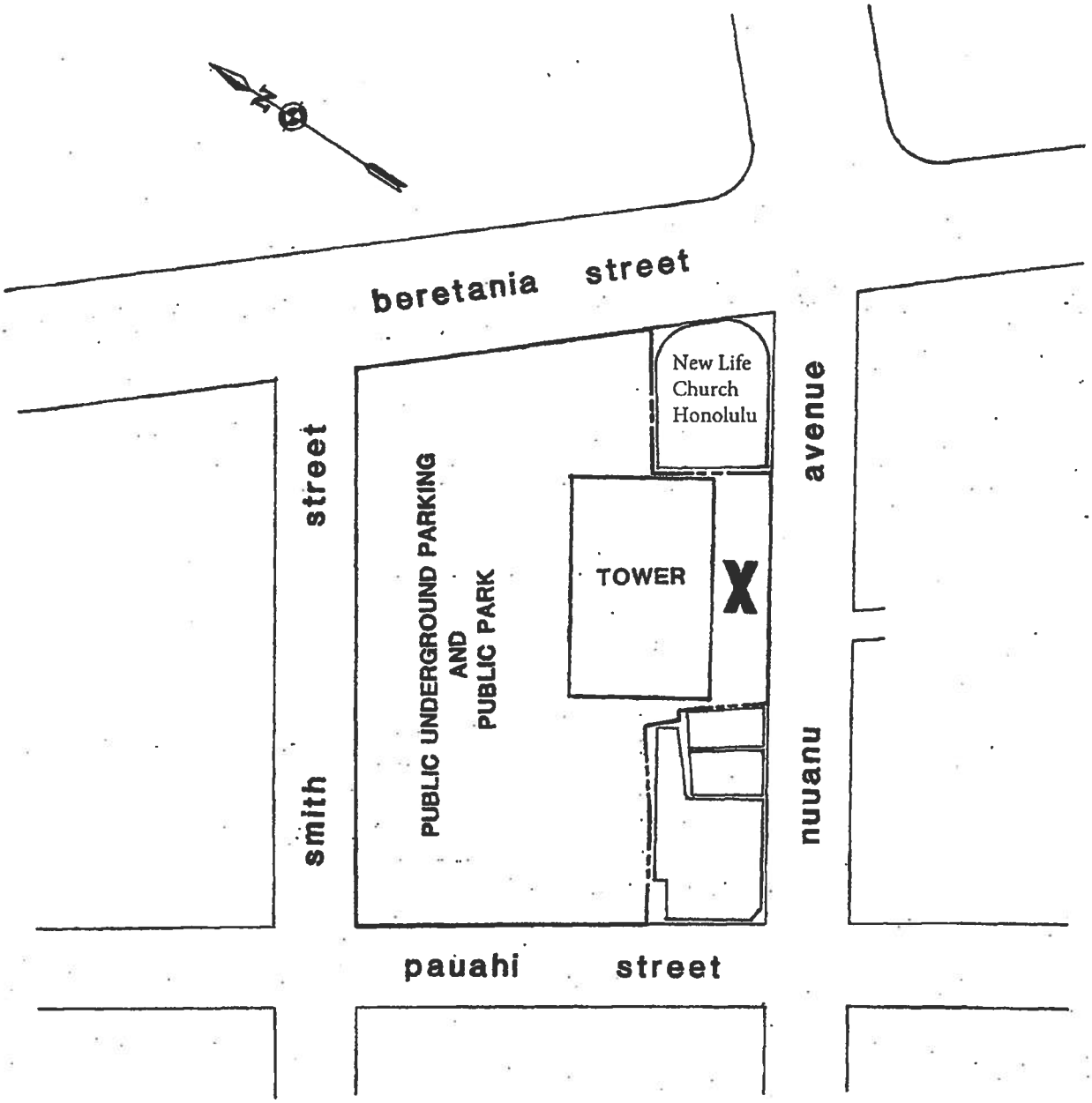
Land Use Information

Zoning:	BMX-4, central business mixed use district
State Land Use:	Urban District
Flood Zone:	Zone X, Area of Minimal Flood Hazard
SMA:	Not in Special Management Area

Proposed Project

Smith Beretania Bridge LP intends to assign its leasehold interest in the Smith-Beretania Apartments to Smith Beretania Partners LP. The intent is to extend the land lease term another 75 years till 2099, the parking license for 163 spaces and a parking license for 8 handicapped spaces.

DCS is not aware of any monies imposing restrictions on the property other than Section 8 subsidies. CDBG funds were used to acquire 163 parking stalls for the project at another location. CDBG regulations apply only to those stalls.



SMITH-BERETANIA APARTMENTS

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 24-214, FD1

Introduced: 08/23/24 By: TOMMY WATERS Committee: COUNCIL (CCL)

Title: AUTHORIZING THE EXECUTION OF AN ASSIGNMENT AND EXTENSION OF LEASE, CONSENT, AND AMENDMENT OF LEASE OF CITY PROPERTY; ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT, CONSENT, AND AMENDMENT TO PARKING LICENSE AGREEMENT (163 SPACES); AND ASSIGNMENT AND ASSUMPTION OF PARKING LICENSE AGREEMENT, CONSENT, AND AMENDMENT TO PARKING LICENSE AGREEMENT (8 HANDICAPPED SPACES) FOR THE SMITHBERETANIA APARTMENTS AFFORDABLE HOUSING PROJECT LOCATED AT 1170 NU'UANU AVENUE, HONOLULU, O'AHU, TAX MAP KEY (1) 1-7-004:007.

Voting Legend: * = Aye w/Reservations

08/23/24	INTRO	Introduced.
09/04/24	CCL	Amended to FD1. OCS2024-0793/8/29/2024 8:21 AM 8 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, OKIMOTO, TULBA, TUPOLA, WATERS, WEYER 1 ABSENT: SAY
09/04/24	CCL	Adopted. 8 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, OKIMOTO, TULBA, TUPOLA, WATERS, WEYER 1 ABSENT: SAY

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

GLEN I. TAKAHASHI, CITY CLERK

TOMMY WATERS, CHAIR AND PRESIDING OFFICER