HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **25-74, CD1**

RESOLUTION

AUTHORIZING THE EXECUTION OF A GROUND LEASE WITH KOMOHALE WEST LOCH VENTURE LP, TO DEVELOP AN AFFORDABLE RENTAL HOUSING PROJECT AT 91-1666 RENTON ROAD, ʻEWA BEACH, OʻAHU, HAWAIʻI 96706, TAX MAP KEY NO: (1) 9-1-122:004.

WHEREAS, Section 38-3.3, Revised Ordinances of Honolulu 2021 ("ROH"), authorizes the City Council ("Council") to approve the lease of real property owned by the City and County of Honolulu ("City"); and

WHEREAS, on May 10, 2019, pursuant to Section 28-3.4 of the Revised Ordinances of Honolulu 1990, recodified as ROH Section 38-3.3, the Department of Land Management ("DLM") issued a Request for Proposals (DLM-1288502) (the "RFP") to solicit proposals from qualified entities to design, finance, construct, and operate an affordable housing project on City-owned real property located at 91-1666 Renton Road, ʻEwa Beach, Hawaiʻi, identified as Tax Map Key (1) 9-1-122:004 (the "Property") to provide housing units primarily for households earning 100 percent or below of the area median income for the Honolulu metropolitan area ("AMI"); and

WHEREAS, on or before August 15, 2019, developers submitted their development proposals in response to the RFP; and

WHEREAS, on October 16, 2020, pursuant to ROH Section 38-3.3(c)(2), by Departmental Communication 672 (2020), the DLM submitted to the Council a written report identifying the proposal by Komohale West Loch LLC, as the selected proposal for development of the West Loch Affordable Rental Housing Project (the "Project"), and describing the City's negotiations with Komohale West Loch LLC regarding key elements of its proposal; and

WHEREAS, the Project will include a minimum of 126 one-bedroom, two-bedroom, and three-bedroom dwelling units rented to households earning 60 percent or below of the AMI (except for one unit reserved for an onsite manager), with a minimum of five percent of the total units rented to households earning 30 percent or below of the AMI, in seven multi-story buildings, a surface parking lot with 136 parking spaces (at least nine of which will be reserved for individuals with disabilities), one loading space, a community center building, and an outdoor recreation area for residents and guests; and

RESOLUTION

WHEREAS, on December 9, 2020, the City Council adopted Resolution 20-322, CD1, FD1, which authorized the Mayor or the Mayor's designee to enter into a development contract (the "Development Contract") between the City and Komohale West Loch LLC for the development of the Project; and

WHEREAS, the Development Contract approved by the Council by adoption of Resolution 20-322, CD1, FD1, included a draft form of the ground lease for the Project (the "Lease"), which was intended to be finalized at a later date, subject to the final approval of the Council; and

WHEREAS, Komohale West Loch LLC assigned its interest and rights in and to the Development Contract to an affiliated entity, Komohale West Loch Venture LP (the "Developer"), which is the proposed lessee under the Lease; and

WHEREAS, on October 5, 2022, the Developer obtained entitlements for the Project pursuant to HRS Section 201H-38 by the Council adoption of Resolution 22-226, CD1 (the "Entitlements"), and the Developer obtained commitments to finance the development and construction of the Project from institutional lenders, low-income housing tax credit investors, the State of Hawai'i, and a grant award from the City's Affordable Housing Fund (collectively, the "Financing Commitments"); and

WHEREAS, all conditions precedent to the execution of the Lease, as set forth in the Development Contract, are or will be satisfied by the Developer prior to the execution of the Lease, except for obtaining the Council's approval of execution of the Lease by resolution, which is the final remaining condition precedent to the execution of the Lease; and

WHEREAS, the City and the Developer have now negotiated a final Lease incorporating changes based on the Entitlements, the Financing Commitments, and the final Project plans; and

WHEREAS, the Developer seeks a 75-year term upon mutual agreement with the City to comply with the affordability requirements of the Financing Commitments; and

WHEREAS, in order to permit the Developer to enter into an agreement for more than five years, the Developer is required to expend more than $25,000 for capital assets or for the renovation or maintenance of any capital asset for the term of the

agreement, as outlined in ROH Section 38-4.1(1) and, under the terms of the Lease, the Developer will expend more than $25,000 for capital assets; and

WHEREAS, the Developer will pay the City a net fixed rent of $1 per year; and

WHEREAS, the City and the Developer are seeking the Council's approval and authorization to enter into the Lease with the Developer by way of this resolution pursuant to ROH Section 38-3.3(g); and

WHEREAS, the Council, having duly considered all of the submittals and testimony, desires to accept and approve the terms of the Lease, as set forth in the form attached hereto as Exhibit A; now, therefore,

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

1. The Lease is approved substantially in the form attached hereto as Exhibit A;

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

    a. Execute the Lease in substantially the form attached hereto as Exhibit A, with any amendments recommended by the Department of the Corporation Counsel as necessary or desirable; and

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

3. Moneys received from the payment of the lease rent shall be deposited in the General Fund; and

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 25-74, CD1

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor; the Director of Budget and Fiscal Services; the Director of Land Management; and Komohale West Loch Venture LP, whose address is 1100 Alakea Street, Unit 2700, Honolulu, Hawai'i 96813.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

February 28, 2025
Honolulu, Hawai'i

Councilmembers

LEASE

between

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

"Lessor"

and

Komohale West Loch Venture LP,
a Hawai`i limited partnership

"Lessee"

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HUD Multifamily Lease Addendum
Exhibit A Legal Description and Encumbrances
Exhibit B Additional Permitted Exceptions
Exhibit C Form of Income Certification
Exhibit D Form of Certificate of Continuing Program Compliance
Exhibit E Notice Addresses (Including Required Copy Recipients)
Exhibit F Service of Process

LEASE

This **LEASE** (this "**Lease**") is made and entered into as of _____, 20___ (the "**Commencement Date**"), between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i ("**Lessor**"), and **Komohale West Loch Venture LP**, a Hawai`i limited partnership ("**Lessee**").

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

ARTICLE 1:
DEFINITIONS

The following definitions apply in this Lease:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Consumer Price Index**" means the index published by the United States Department of Labor, Bureau of Labor Statistics, and now known as the Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City average, All Items (or such comparable index as may be utilized in substitution for or as the successor to the stated index). If such index is not published by the United States Bureau of Labor Statistics, or successor agency thereof, at any time during the Term, then the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority and selected by Lessor shall be utilized in lieu of such index.

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

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

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

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

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

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

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

"**Depository**" means a bank or trust company mutually designated by Lessor and Lessee, or if required, designated by any Leasehold Mortgagee, which is qualified under the Laws of the State of Hawai'i.

"**Development Contract**" means that certain Development Contract dated April 13, 2021 by and between Lessor and Komohale West Loch LLC, a Delaware limited liability company, approved by the Honolulu City Council via Resolution No. 20.322, CD1, FD1, the interest of Komohale West Loch, LLC having been assigned to Lessee by that certain unrecorded Assignment and Assumption of Development Contract, by and between Komohale West Loch LLC and Lessee, with the consent of Lessor.

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

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

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

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

"**Equity Investor**" means collectively the Hudson Komohale West LLC, a Delaware limited liability company, as the investment partner, as the successors and/or assigns (the "Investment Partner") and Hudson SLP-J LLC, a Delaware limited liability company, as the special limited partner, and its successors and/or assigns.

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

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

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

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

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

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

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

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

"**Force Majeure**" means a tornado, hurricane, flood, earthquake, or pandemic which directly impacts the Project.

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

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

"**Hazardous Substances**" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the

Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, *et seq.*, as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.* or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source. The term "Hazardous Substances" for purposes of this Lease shall also include any mold, fungus or spores, whether or not the same is defined, listed, or otherwise classified as a "hazardous substance" under any Environmental Laws, if such mold, fungus or spores may pose a risk to human health or the environment or negatively impact the value of the Premises.

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

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

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

"HRS" means the Hawai`i Revised Statutes, as may be amended from time to time.

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

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

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

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

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

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

"**Institutional Lender**" means a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the Laws of the United States or any state thereof or a foreign

insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code, a syndicator or other entity in the business of low-income housing tax credit investment, or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets, security interests or private activity bonds; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; any entity the liabilities of which are insured by a governmental agency, or any combination of Institutional Lenders; or a government-sponsored enterprise, such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac); provided, however, that each of the entities above shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

"**Insubstantial Condemnation**" means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.**"Land"** has the meaning set forth in Section 2.1 of this Lease.

"Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawai`i.

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

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

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

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

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

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

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

"Lessee" means Komohale West Loch Venture LP, a Hawai`i limited partnership and controlled by a joint venture between Stanford Carr Development, LLC and entities comprising Standard Communities.

"**Lessee Principal**" means, individually, Stanford Carr, Jeffrey Jaeger, Scott Alter, and/or one or more trusts for the benefit of the immediate families of any of them.

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

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

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

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

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

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

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

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

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

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

"**Monetary Default**" means Lessee's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease or the Development Contract requires.

"**Nonmonetary Default**" means Lessee's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease or in the Development Contract, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

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

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

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

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

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

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

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

"**Phase I ESA**" means the Phase I Environmental Site Assessment prepared by Ford & Associates, Inc., dated January 31, 2023.

"**Phase II ESA**" means the Phase II Environmental Site Assessment prepared by Ford & Associates, Inc., dated March 27, 2024.

"**Pre-Existing Hazardous Substances Condition"** has the meaning set forth in Section 9.6 of this Lease.

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

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

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

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

"**Property Insurance Proceeds**" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of property insurance, when and as received by Lessor, Lessee,

Depository, or any mortgagee, excluding proceeds of Lessee's business interruption insurance in excess of Rent.

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

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

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

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

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

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

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

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

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

"Request for Proposal" or "RFP" means that certain Request for Proposals issued by the Lessor on May 10, 2019 for the development of the Premises and as a meaning set forth in Section 15.3 of this Lease.

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

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

"SHPD" has the meaning set forth in Section 26.2.2 of this Lease."**State**" means the State of Hawai'i.

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

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

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

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

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

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

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

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

as referred to in clause (b) above shall be deemed a Transfer by Lessee even though Lessee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law; (ii) a transfer of Equity Interests to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a transfer to Equity Interests to any Person that, as of the Commencement Date, holds an Equity Interest, directly or indirectly, in Lessee; (iv) a transfer of Equity Interests to any Person that is managed or controlled, directly or indirectly, by Lessee or a Lessee Principal; (v) a transfer of Lessee's non-managing member interests or (vi) the trading of an Equity Interest in any entity whose capital stock is listed on a nationally recognized stock exchange. In addition, a "Transfer" shall not include any of the foregoing with respect to an assignment or transfer of this Lease or the Leasehold Estate in connection with the creation of two or more tenancy-in-common interests so long as each Person who holds a tenancy-in-common interest in the Leasehold Estate is managed or controlled, directly or indirectly, by a Lessee Principal. In addition, a "Transfer" shall not include Lessee obtaining a Leasehold Mortgage in accordance with the requirements of this Lease."

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

"**Unrelated Hazardous Substance Discharge**" any Hazardous Substance Discharge migrating, entering or leaching onto, above, or beneath the Property at any time subsequent to the Commencement Date from adjacent or nearby property or properties over which Lessee has no control or in which Lessee has no ownership interest.

"**Usury Limit**" means the highest rate of interest, if any, that Law allows under the circumstances.

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

ARTICLE 2:
PREMISES

2.1 Premises. At the Commencement Date, Lessor owns the following real property (collectively, the "**Premises**"): (a) the land described in **Exhibit A** attached hereto (the "**Land**"); (b) the Improvements existing thereon as of the Commencement Date; (c) the appurtenances and all the estate and rights of Lessor in and to the Land; and (d) all Building Equipment attached or appurtenant to any of the foregoing existing as of the Commencement Date. This Lease is subject to the encumbrances described in **Exhibit A**, the Permitted Exceptions, and any title exceptions resulting from the exercise of the rights reserved to Lessor in this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3:
TERM

3.1 Term. The terms and provisions of this Lease shall be effective as of the Commencement Date. The term of this Lease (the "**Term**") shall be for seventy-five (75) years commencing on the Commencement Date and terminating at 11:59 p.m. on April 1, 2100 (the "**Scheduled Expiration Date**"), unless terminated sooner in accordance with this Lease.

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

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

ARTICLE 4:
RENT

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

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

4.3 Payment - Generally. [RESERVED]

ARTICLE 5:
ADDITIONAL PAYMENTS BY LESSEE; REAL ESTATE TAXES

5.1 Net Lease. This Lease shall constitute an absolute "net" lease. Lessee shall pay as **"Additional Rent"** and discharge, before failure to pay creates a material risk of forfeiture or lien, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or permitted Construction affecting, the Premises. Notwithstanding anything to the contrary in this Lease, Lessee need not pay, Lessee may offset against Rent any sums paid by Lessee on

account of, and Lessor shall Indemnify Lessee against payment of, the following items payable, accrued, or incurred by Lessor: (a) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate; (b) consulting, overhead, accounting, tax preparation, other professional fees, legal and staff costs, and other costs incidental to Lessor's ownership of the Fee Estate and administration and monitoring of this Lease, including such costs Lessor incurs in reviewing anything Lessee delivers under this Lease or determining whether Lessee is in compliance with this Lease, except where this Lease expressly provides otherwise; (c) any costs or expenses that Lessor incurs in or for any litigation, except to the extent that this Lease requires Lessee to pay such costs or expenses; (d) any insurance premiums, utilities, operating expenses, or other costs related to the Premises that accrued before the Commencement Date; (e) any sums payable by Lessor under this Lease or expressly excluded from the definition of Real Estate Taxes; and (f) all other costs or expenses that, by their nature, are personal to Lessor or Lessor's ownership of the Fee Estate.

5.2 Real Estate Taxes. Lessee shall pay and discharge all Real Estate Taxes, if any, payable or accruing for all periods within the Term, before failure to pay creates a material risk to Lessor of forfeiture or penalty, subject however to Lessee's right of Contest as this Lease expressly provides. Lessee shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes. Lessee shall within a reasonable time after Notice from Lessor give Lessor reasonable proof that Lessee has paid any Real Estate Taxes that this Lease requires Lessee to pay, prior to the date when the same shall be due in accordance with the terms of this Section 5.2. Lessee shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions. Lessee shall also have the right to apply for any applicable exemption from Real Estate Taxes applicable to the Premises.

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

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

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

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

5.7 Excise Tax. Lessee shall pay to Lessor, as Additional Rent, the applicable State general excise or surcharge tax on gross income, as the same may be amended, and all other similar applicable taxes,

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

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

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

5.10 Tax Exemptions. Nothing contained herein shall prevent Lessee from applying for any exemptions which may be available to Lessee for its Real Estate Tax, Excise Tax, conveyance tax or other tax obligations; provided however, that it shall be Lessee's sole responsibility to apply for and maintain any such exemptions as and when required by Law. Any such exemptions are subject to all Laws applicable thereto.

5.11 Lessor Expenses. Lessee shall pay to Lessor, within ten (10) Business Days after the date of mailing or personal delivery of statements, all reasonable costs and expenses, including attorneys' fees, paid or incurred by Lessor: (i) required to be paid by Lessee under any covenant in this Lease (including without limitation any indemnity provision), (ii) in enforcing any of Lessee's covenants or obligations in this Lease, (iii) in remedying any breach of this Lease by Lessee, (iv) in recovering possession of the Premises or any part of the Premises, (v) in collecting or causing to be paid any delinquent rent, taxes or other charges payable by Lessee under this Lease, (vi) in connection with any estoppel certificate requested by Lessee, or (vii) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All such costs, expenses and fees shall constitute Additional Rent, and Lessee's obligations under this Section 5.11 shall survive the expiration or earlier termination of the Term.

ARTICLE 6:
USE

6.1 Permitted Use. Subject to all applicable Laws and this Lease, Lessee shall use the Premises only for the following purposes:

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

No. of units	No. of bedrooms	Income qualifications
2	1	At or below 30% of HUD area median income
4	2	At or below 30% of HUD area median income
1	3	At or below 30% of HUD area median income
25	1	At or below 60% of HUD area median income
83	2	At or below 60% of HUD area median income
11	3	At or below 60% of HUD area median income

Total: 126 Residential Rental Units and 1 Manager Unit

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

6.1.2 Parking and Loading. Lessee shall design, construct, operate and maintain a parking lot, to include a total of 136 parking stalls and 1 loading space. Nine (9) of the parking stalls shall be reserved for persons with disabilities in compliance with Public Accommodations Laws. Use of the parking stalls and loading space shall be restricted to residents, visitors, and other approved guests. Lessee shall not charge residents and their guests for such use without the prior review and written approval of the Lessor, which Lessor may withhold in its reasonable discretion. Public parking shall not be allowed, with or without charge, without prior review and written approval of Lessor, which Lessor may withhold in its sole and absolute discretion.

6.1.3 Resident Amenities. Subject to such modifications as may be agreed to by Lessor and Lessee during the entitlement, design and permitting process, Lessee shall design, construct, operate and maintain the following amenities available exclusively for residents and their guests:

(1) A Community Room

(2) A Laundry Room

(3) Accessible Picnic Table and Benches

(4) Tot Lot

(5) Community Garden

(6) Grassed Open Spaces

6.1.4 [RESERVED]

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

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

6.3 Exclusive Ownership of Improvements and Control of Premises. During the Term, Lessee shall be the exclusive owner of the Project Improvements including FF&E. Except as otherwise expressly provided in this Lease, Lessee shall have exclusive control, use, and management of the Premises during the Term. The parties intend that Lessee alone shall be entitled to all of the federal tax attributes of ownership of the Improvements, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code; and that Lessee shall have the right to amortize capital costs and to claim any other federal tax benefits attributable to the Improvements and the equipment therein. Subject to any applicable Laws, Lessee may enter into, terminate, or Modify any existing or future contract for management or operation of the Premises or provision of services to the Premises (provided that as to contracts existing as of the Commencement Date, any such termination or Modification is done in conformity with the terms of such contracts). Lessee shall Indemnify Lessor for any such cancellation or termination. All such contracts shall expire automatically on or before the Scheduled Expiration Date, except for contracts entered into in the ordinary course of maintenance and operation of the Premises, which shall expire no later than one (1) year after the Scheduled Expiration Date. Following the end of the Term, ownership of the Project Improvements shall belong to Lessor and remain with the Premises.

6.4 Compliance with Laws. Lessee shall not use the Premises, or do anything or suffer anything to be done in or about the Premises that will in any way conflict with or constitute a violation of any Laws applicable to the use, condition or occupancy of the Premises. At its sole cost and expense, Lessee shall, in all material respects and subject to Lessee's right of Contest, promptly comply with all such applicable Laws. Lessee shall, at its sole cost and expense, make all alterations to the Premises, and to any adjacent land between the Premises and any public street, that are required to comply with applicable Laws, whether in effect as of the Commencement Date or thereafter. Lessee's obligations under this Section 6.4 shall include the obligation that Lessee, at its sole cost and expense, in accordance with the terms of this Lease, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks, parking areas and other improvements that may be required by Laws to be made, built, maintained and repaired in connection with Lessee's or its Sublessees' use of the Premises or any part of the Premises, whether located on the Premises or on other property.

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

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

6.7 Illegal Activities. Upon Lessor's receipt of actual notice or if Lessor, in its reasonable business judgment, believes or suspects that illegal acts are taking place on the Premises, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises or any portion of the Premises, to any Government, Lessor may Notify Lessee, and Lessor may thereafter take all reasonable and appropriate action as may be necessary to stop such illegal activity, including entry onto the Premises. In such circumstances, Lessor shall have the right to conduct an investigation, including, without limitation, the right of entry to the Premises and a review of Lessee's records. For any entry onto the Premises, Lessor shall (a) provide Lessee with oral or written notice prior to such entry, unless it is an

emergency, (b) meet with Lessee's property manager and/or designated representative, or if neither is present, the individual who is physically present at the Premises on the day of the entry and claims to be Lessee's representative, and (c) have such property manager or representative accompany Lessor during its entry. If such investigation yields any evidence of any illegal activity on the Premises, Lessor may immediately Notify Lessee and Lessor may immediately take all reasonable and appropriate action as may be necessary to stop such illegal activity. If Lessee unreasonably refuses to commence any action to stop such illegal activity within forty-eight (48) hours of receipt of such notice from Lessor, such failure or refusal shall constitute an Event of Default. By having the right to take certain actions in this Section 6.7, Lessor is neither obligated nor required to take any such action, and shall not be liable to Lessee, any Person or any Government if Lessor does not exercise such right.

6.8 Public Accommodations Laws. Without limiting Lessee's obligation to comply generally with all applicable Laws, Lessee, at its sole cost and expense, shall cause the Premises, including all Improvements, and Lessee's use and occupancy of the Premises, and Lessee's performance of its obligations under this Lease, to comply with the requirements of the Public Accommodations Laws, but only to the extent (i) such Public Accommodations Laws would otherwise specifically apply to the Project in the absence of the contractual requirements contained in this Lease and (ii) the foregoing, requirements of this sentence will only require of the Lessee the making of alterations or reasonable accommodations as are necessary for compliance with such Public Accommodation Laws. If Lessee concludes that the Premises fails to comply with the requirements of this Section 6.8, then Lessee shall provide to Lessor a plan for compliance within one hundred twenty (120) days of the date the determination by Lessee of such noncompliance. At minimum, such plan shall identify the work to be done to cause the Premises to be in compliance with the requirements of this Section 6.8 and the timetable for completing such work. Any such work shall be subject to Lessor's reasonable approval, and to the terms and conditions of Article 7 and Article 8 as applicable. The provisions of this Section 6.8 shall be applicable after the Completion Date (as such term is defined in the Development Contract) and for the Term of this Lease thereafter.

6.9 Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee acknowledges its understanding that the Premises may be subject to the provisions of HRS Section 102-14 relating to the placement of certain vending machines and concessions in public buildings for operation by blind or visually handicapped persons. Lessee shall comply with the requirements of Section 102-14 and the rules adopted by the State Department of Human Services, to implement this Section.

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

6.11 Publicity and Project Signage. Lessee shall have sole responsibility for funding the advertising and promotional program for the Project. The advertising and promotional program shall disclose the fact that the Project is being developed by Lessee with assistance from the Lessor. All of Lessee's advertising and promotional program materials shall be submitted to the Lessor for its review and comment no less than fifteen (15) days prior to utilizing such materials and Lessee will consider and implement any comments from Lessor on a reasonable basis. If no comments are timely received, the materials shall be deemed approved.

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

6.13 Notice of Claims. Lessee shall Notify the Lessor immediately when Lessee becomes aware of any demand, litigation, and claim or enforcement action brought or threatened, of any kind, which might subject Lessee or the Lessor to any governmental fines or penalties, or which might subject the Lessor to liability, in any amount.

ARTICLE 7:
MAINTENANCE, REPAIR AND CAPITAL IMPROVEMENTS

7.1 Obligation to Maintain. Lessee, at its sole cost and expense, shall keep and maintain the Premises in good order, condition and repair, reasonable wear and tear excepted, at all times during the Term (which obligation shall include all structural and non-structural, and capital and non-capital, repairs and replacements including, without limitation, plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises). Lessee shall manage and operate the Premises and perform its duties and obligations under this Lease in a manner consistent with the standards followed by institutional quality owners and management companies that are managing comparable projects. Lessee shall cause the Improvements to be inspected periodically by qualified Persons to be certain the repair, maintenance and replacement obligations of Lessee pursuant to the terms of this Lease are being satisfied (including for purposes of ascertaining and curing infestation of the Improvements by termites, rodents and other pests). Lessee shall thereafter take all measures that may be reasonably required to prevent or cure any discovered repair, maintenance and/or replacement item. Lessee expressly acknowledges and agrees that Lessor has no obligation whatsoever for the repair, alteration, maintenance, and replacement of the Premises except as expressly provided herein.

7.2 Capital Improvement Obligations. Lessee shall demolish and clear the Improvements on the Premises existing as of the Commencement Date, and develop the Project on the Premises, all as provided and detailed in the Development Contract. Lessee shall carry out the capital improvements in accordance with the timing, terms, and conditions set forth in the Development Contract subject to extensions and delays as a result of Force Majeure for an additional period of time as reasonably determined by Lessor. Lessee shall thereafter make subsequent capital improvements during the Term as may be required by any Laws, or as may reasonably be required by Lessor as necessary to comply with this Lease.

ARTICLE 8:
CONSTRUCTION

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

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

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

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

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

8.6 Chapter 104, HRS. The provisions of this Section apply to the extent required by applicable law. Lessee shall comply with the provisions of Chapter 104, HRS, relating to prevailing wage rates. Lessee, its contractors and subcontractors shall pay all mechanics and laborers employed on the Project, minimum prevailing wages for the corresponding work classifications as determined by the Director of Labor and Industrial Relations of the State of Hawai`i, pursuant to Chapter 104, HRS. A certified copy of each weekly payroll shall be submitted to the Lessor on a weekly basis beginning no later than twenty-one (21) calendar days after the end of the first weekly payroll period, with certified copies of all prior weekly payrolls included with the initial submittal. Lessee shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates, and that the classifications set forth for each laborer and mechanic conform with the work performed. If certified payrolls are not submitted on a timely basis, or if the Lessor finds that any laborer or mechanic employed on the Project has been or is being paid less than the applicable prevailing wage, or has not received the laborer's or mechanic's full overtime compensation, the Lessor may take appropriate action in accordance with HRS Section 104-21, the Lessor may, by written notice to Lessee, terminate Lessee's right, or the right of any contractor or subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and Lessee and its sureties shall be liable to the Lessor for any excess costs occasioned thereby. The Lessee shall not employ, use or sub-contract any Contractor(s) currently suspended under Chapter 104, HRS, as indicated on the State of Hawai`i - Department of Labor and Industrial Relations website. Notwithstanding any other provision herein to the contrary, Lessor acknowledges and agrees that, from and after the Completion Date (as such term is defined in the Development Contract), Chapter 104, HRS, and the requirements of this Section will not apply to the Lessee or its contractors or subcontractors, except as they may be applicable to any Major Construction.

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

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

8.9 Completion. Upon substantial completion of any Construction: (a) Lessee shall properly publish and file a "Notice of Completion" in the Office of the Clerk of the Circuit Court of the State in the circuit where the Premises are located, a certified "filed" stamped copy of which shall be provided by Lessee to

Lessor, (b) Lessee shall comply with any other applicable requirements of Law with respect to the completion of works of improvement, and (c) Lessee's architect or engineer shall deliver to Lessor a certificate setting forth the total cost of such Construction and, if the Construction is Major Construction, certifying that the Construction has been completed in compliance with the approved plans and specifications for such work. In addition, Lessee shall deliver to Lessor a reproducible copy of the "as built" drawings of all Construction as well as all Approvals and other Government documents, if any, issued in connection with such Construction.

8.10 Submittals to the City Upon Completion of Construction. Notwithstanding other reporting requirements herein, within five (5) Business Days of receipt of each item, Lessee shall submit the following to the Lessor:

8.10.1 A certification by an architect or engineer duly licensed under the laws of the State of Hawai`i that the Project has been completed in accordance with the Project plans and specifications upon the completion of such work.

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

8.10.3 All copies of the Certificates of Occupancy issued for the increment of construction work completed.

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

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

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

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

8.14 Lessee's Covenant. Lessee covenants to keep the Premises free from all Prohibited Liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Lessee shall remove any Prohibited Liens by bond or otherwise within 20 days after Lessee is informed of the existence of such lien or encumbrance, and if Lessee shall fail to do so, Lessor may pay the amount necessary to remove such Prohibited Liens, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without

limitation as to other remedies available to Lessor under this Lease. Nothing contained in this Lease shall be deemed or construed in an way to constitute Lessor's consent or request, express or implied, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any Construction, nor as giving Lessee any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Fee Estate.

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

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

ARTICLE 9:
HAZARDOUS SUBSTANCES

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

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

actual costs and expenses incurred by Lessee in connection with the clean-up of any such Pre-Existing Hazardous Substances Condition and, if Lessor is the responsible party, any Unrelated Hazardous Substance Discharge, in accordance with the requirements under Environmental Law. Lessor's obligations under this Section 9.2 to reimburse Lessee shall not limit Lessee or Lessor's respective rights against third parties whatsoever with respect to any Pre-Existing Hazardous Substances Condition or Unrelated Hazardous Substances Discharge, as applicable.

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

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

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

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

ARTICLE 10:
INDEMNIFICATION; LIABILITY OF LESSOR

10.1 Obligations. Lessee shall Indemnify Lessor against any: (a) wrongful act, wrongful omission, or negligence of Lessee (and anyone claiming by or through Lessee) or its or their partners, members, directors, officers, or employees relating to the Premises or this Lease; (b) breach or default by Lessee under this Lease; or (c) breach of any representation or warranty Lessee makes in this Lease. In addition,

Lessee shall Indemnify Lessor against the following during the Term and so long as Lessee remains in possession after the Expiration Date: (i) any Contest Lessee initiates; (ii) any Application made at Lessee's request; (iii) Lessee's use, occupancy, control, management, operation, and possession of the Premises; (iv) any Construction and any agreements that Lessee (or anyone claiming through Lessee) makes for any Construction; (v) the condition of the Premises; and (vi) any accident, injury or damage whatsoever caused to any person or property in or on or originating from the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall not be required to Indemnify Lessor for claims, liabilities, or losses arising solely from Lessor's and/or its officials, directors, employees, agents and consultants (and anyone claiming by or through Lessor) intentional acts or omissions or negligence.

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

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

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

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

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

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

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

ARTICLE 11:
RIGHT OF CONTEST

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

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

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

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

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

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

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

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

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

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

11.2 Lessor Obligations and Protections. Lessor need not join in any Contest unless Lessee has complied with the Contest Conditions, and such Contest must be initiated or prosecuted in Lessor's name. In such case, Lessor shall cooperate, as Lessee reasonably requests, to permit the Contest to be prosecuted in Lessor's name. Lessor shall give Lessee any documents, deliveries, and information in Lessor's control and reasonably necessary for Lessee to prosecute its Contest. Lessor shall otherwise assist Lessee in such Contest as Lessee reasonably requires. Lessee shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Lessee shall, at Lessor's request, advance (when Lessor incurs them) such reasonable costs and expenses as Lessor incurs or reasonably anticipates incurring, for Lessee's Contest and Lessor's assistance with such Contest.

11.3 Miscellaneous. Lessee shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Lessee), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Lessee concludes Lessee's Contest of any Real Estate Taxes, Lessee shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Lessee's Contest of a Law, Lessee shall comply with such final determination. So long as the Contest Conditions remain satisfied, Lessor (in its role as owner, and not in its role as Government authority) shall enter no objection to any Contest. Lessor may contest any matter for which Lessee is entitled to (but does not) prosecute a Contest, but only if: (a) Lessor Notifies Lessee of Lessor's intention to do so; (b) Lessee fails to commence such Contest within ten (10) Days after receipt of such Notice; and (c) Lessor's contest complies with all conditions and covenants that would apply to a Contest by Lessee transposing references to the parties and their interests as appropriate.

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

ARTICLE 12:
INSURANCE

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

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

12.1.2 Liability Insurance. Lessee shall maintain commercial general liability (CGL) with a limit of not less than **$1,000,000** each occurrence, and **$2,000,000** general aggregate, and **$2,000,000** aggregate for this Project. CGL insurance shall be written on an occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Lessor shall be included as an additional insured under the CGL and, as appropriate, under the commercial umbrella. The policy(ies) shall contain a waiver of subrogation against Lessor.

12.1.3 Business Automobile Liability Insurance. Lessee shall maintain business auto liability insurance with a limit of not less than **$1,000,000** combined single limit bodily injury and property damage 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.

12.1.4 Umbrella/Excess Liability. Lessee shall maintain umbrella/excess liability insurance with limits of not less than **$5,000,000** per occurrence combined single limits and aggregate. Such insurance shall be written on an occurrence basis in excess of the underlying insurance described in Sections 12.1.1 through 12.1.3, which is at least as broad as each of the underlying policies, and otherwise including "pay on behalf" wording, concurrency of effective dates with underlying primary coverages, and blanket contractual liability coverage. The amounts of insurance required in Sections 12.1.1 through 12.1.4 may

be satisfied by Lessee purchasing coverage for the limits specified or by any combination of underlying and umbrella limits.

12.1.5 Professional Liability Insurance. Lessee shall maintain professional liability insurance with limits not less than **$1,000,000** per occurrence/aggregate for liability arising out of errors, omissions, or negligence in the performance of property management services in connection with the Project.

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

(a) Builders Risk Insurance. Lessee shall maintain builders risk insurance covering all risks of physical loss except those specifically excluded in the policy and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, and windstorm. The insurance shall apply on an agreed amount basis. This insurance shall cover the entire work at the site, including all Improvements, materials and equipment, and reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work, materials and equipment located away from the site but intended for use at the site, and shall also cover portions of the work, materials, and equipment in transit. The policy shall cover the cost of removing debris, including demolition. The insurance required shall name as insured, the Lessor, the Lessee and all subcontractors in the work as their interest may appear.

(b) Intentionally Deleted.

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

(a) Commercial Property Insurance. Lessee shall maintain commercial property insurance covering the buildings, fixtures and equipment, with limits equal to the full replacement cost of the improvements. Such insurance shall at minimum, cover loss against the perils typically covered under the ISO "Special" cause of loss form or its equivalent.

(b) Intentionally Deleted.

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

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

12.2 Nature of Insurance Program. All insurance policies this Lease requires shall be issued by carriers that: (a) have a 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.

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

12.3.1 Contractor insurance. Lessee shall cause each contractor employed by Lessee to purchase and maintain insurance of the types specified above. When requested by the Lessor, Lessee shall furnish copies of certificates of insurance evidencing coverage for each contractor.

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

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

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

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

12.3.6 Notice to Lessor. All policies required hereunder shall be written to provide not less than thirty (30) days prior Notice of cancellation (10 days for cancellation due to nonpayment of premium) or material change to Lessor.

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

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

12.6 Evidence of Insurance.

12.6.1 Upon execution of the Lease by Lessee, Lessee shall furnish Lessor with current certificate(s) of insurance, executed by a duly authorized representative of each insurer, certifying that at least the minimum coverages required herein are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages will not be cancelled, non-renewed or materially changed by endorsement or through issuance of other policy(ies) of insurance without 30 days advance written notice to Lessor (10 days for cancellation due to nonpayment of premium).

12.6.2 Prior to commencing work at the Premises, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 12.1 above.

12.6.3 Upon final acceptance of the Construction, and prior to the use or occupancy of any Improvements, Lessee shall furnish Lessor with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Section 12.1 above.

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

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

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

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

12.8 Failure to Maintain Insurance.

12.8.1 Failure to maintain the required insurance may result in a Default of this Lease at Lessor's option. If the Lessor is damaged by the failure of the Lessee to maintain insurance as required in this paragraph, then the Lessee shall bear all reasonable costs properly attributable to that failure.

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

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

12.9 Additional Insurance. Lessor reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed from time to time. Lessee shall periodically, but not less frequently than once every three (3) years, reevaluate the scope of risks covered and the limits of its insurance and, if commercially reasonable, increase such coverage or limits in order to provide coverage for Lessee's and

Lessor's protection for risks and limits that a prudent business person would provide for property being put to uses similar to those of the Premises.

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

ARTICLE 13:
LOSSES AND LOSS PROCEEDS

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

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

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

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

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

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

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

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

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

13.7 Immaterial Loss. If an Immaterial Loss occurs, then Lessee shall receive any Condemnation Award in trust to be applied first to Restoration. Lessee shall Restore in accordance with this Lease. After Restoration, any remaining Condemnation Award shall be distributed in the same manner as if it arose from a Substantial Condemnation that affected only the part of the Premises taken.

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

ARTICLE 14:
LESSOR'S RESERVED RIGHTS

14.1 Inspections. Subject to notice requirements that are specifically provided herein, Lessor and its agents, representatives, and designees may enter the Premises in cases of emergency, or upon reasonable Notice during regular business hours, to: (a) ascertain whether Lessee is complying with this Lease (including the review of Lessee's records, contracts and/or Subleases pertaining to the Premises); (b) cure Lessee's Defaults, in accordance with this Lease; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Lessor determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) post notices of non-responsibility in accordance with the Lease; or (f) as reasonably required in connection with any sale, re-entitlements, or for other reasonable purposes determined by Lessor. In entering the Premises, Lessor and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Lessee's reasonable instructions.

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

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

14.4 Easements.

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

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

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

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

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

ARTICLE 15:
LESSOR'S TRANSFERS

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

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

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

ARTICLE 16:
REGULATORY PROVISIONS

16.1 [RESERVED]

ARTICLE 17:
LESSEE'S TRANSFERS

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

Notwithstanding anything to the contrary contained herein, the following Transfers are hereby deemed to be expressly permitted hereunder:

1. A transfer by the Investment Partner or the Special Limited Partner of partnership interests in the Lessee to any other entity which is an affiliate of the Investment Partner or the Special Limited Partner or which is controlled by Hudson Housing Capital LLC;

2. A change in the beneficial ownership of the Investment Partner or the Special Limited Partner, so long as such entity remains controlled by Hudson Housing Capital LLC or an affiliate thereof;

3. The pledge and encumbrance of the interests of the Investment Partner or the Special Limited Partner to or for the benefit of any financial institution which enables the Investment Partner to make its capital contributions to the Lessee; and

4. The removal of any general partner of Lessee by the Special Limited Partner pursuant to the terms of the Lesse's partnership agreement and the replacement of such general partner with the Special Limited Partner or an affiliate of the Special Limited Partner.

17.2 No Partial Transfers. Except in the case of a Sublease permitted pursuant to Article 18 or a Leasehold Mortgage permitted pursuant to Article 19, in no event shall Lessee be permitted to Transfer less than its entire interest in this Lease or the Leasehold Estate, and Lessor may elect in its sole discretion to deny consent to any such partial Transfer.

17.3 Notice of Transfer. If Lessee desires Lessor's consent to any Transfer, Lessee shall Notify Lessor in writing, which notice shall include (a) the proposed effective date of the Transfer; (b) the material terms of the proposed Transfer; (c) a copy of the letter of intent, purchase and sale agreement, and other material agreements between Lessee and the proposed transferee; (d) current financial statements of the proposed transferee certified, compiled or reviewed by an independent certified public accountant for the fiscal year most recently ended, and business credit, personal references and business history of the proposed transferee; and (e) such other reasonable information in connection with the proposed Transfer as Lessor shall reasonably request. Lessor shall Notify Lessee whether it consents to a proposed Transfer within thirty (30) Business Days following Lessor's receipt of such information.

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

ARTICLE 18:
SUBLEASES

18.1 Residential Tenants.

18.1.1 Residential Spaces. Lessee acknowledges and agrees that the Premises are to be held, developed, managed and operated as a "housing project" within the meaning of ROH § 8-10.17, in accordance with and subject to the provisions of the Development Contract and this Lease regarding Residential Rental Units for Qualified Tenants at Affordable Rents and appurtenant facilities.

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

(a) Each residential unit shall be a Dwelling Unit as defined in ROH §8-10.17(a). They will be and remain similarly constructed, and each residential unit will contain facilities for

living, sleeping, eating, cooking and sanitation for a single person or a family which will be and remain an independent living unit complete, separate and distinct from other residential units and will include and will continue to include a sleeping area, at least one bathroom, and a single kitchen (as defined in ROH § 8-10.17(a)) equipped with a cooking range, oven, range hood, central water heater refrigerator, and sink. The Premises shall not be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, or rest home, or in any manner in contravention of applicable law.

(b) The residential units shall at all times comply with all Federal and State Affordable Housing Requirements applicable thereto, including requirements established by such programs affecting both income limitations and allowable rent levels in respect of such residential units; provided, however that no Qualified Tenant in any Residential Rental Unit shall be required to make a payment toward rent in excess of the limits established by this Lease for such Residential Rental Unit. In the event of a conflict between the requirements of this Lease and any Federal and State Affordable Housing Requirements, the latter shall control. Upon the expiration of any Federal and State Affordable Housing Requirements, the requirements of this Lease shall remain in place and shall control for the balance of the Term. Nothing in this Lease shall preclude or be interpreted or deemed to prohibit Qualified Tenants from applying for and receiving rent and other subsidies that shall, as applicable under any program concerning such rent or other subsidies, subsidize or be in addition to the Affordable Rents specified in this Lease.

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

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

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

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

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

(e) Lessee shall rent the units in accordance with a rental program approved by the Lessor, in Lessor's reasonable discretion, which rental program may be amended in writing upon mutual agreement of Lessee and the Lessor from time to time, and which shall be

incorporated by reference herein and binding upon Lessee. Such rental program shall establish:

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

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

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

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

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

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

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

(g) All subleases shall be subordinate to this Lease and shall contain clauses, among others, wherein each Qualified Tenant: (i) certifies the accuracy of the statements made regarding household income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such

tenant, that such Qualified Tenant will comply promptly with all requests for information with respect thereto from the Lessee, and that the failure to provide accurate income information or refusal to comply with a request for information shall be deemed a violation of a substantial and material obligation of the tenancy of such tenant.

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

(1) Cultural and religious events at the nearby Church

18.1.3 Affordable Rents. "Affordable Rent" means a monthly rent for a Residential Rental Unit which does not exceed the maximum rent established for persons with the annual income level (as adjusted for household size) necessary to qualify for that Residential Rental Unit, which shall be based upon guidelines published by the Hawai`i Housing Finance and Development Corporation based on income levels and limits established by HUD, adjusted for household income, Unit and family size, and utility allowances. Affordable Rents shall be inclusive of tenant utility payments. Notwithstanding the foregoing, with respect to Qualified Tenants, if any, who are recipients of rent subsidies pursuant to Section 8 of the Housing Act (or any rent subsidy or other HUD, State, or County program), if the contract rent for a Residential Rental Unit under such program is greater than the Affordable Rent, the rent for such Residential Rental Unit may be such contract rent.

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

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

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

18.1.7 Real Property and General Excise Tax Exemptions. Lessee shall be responsible for paying and discharging all real property taxes for the Premises payable or accruing during the Term. Based on the recordation of this Lease, Lessee may file an application or claim for exemption from the assessment and payment of real property taxes, including any claim for exemption subject and pursuant to ROH §8-10.17 and §8-10.18, relating to low-income rental housing, and the County agrees to process such application in the ordinary course subject and pursuant to the requirements of §8-10.17 and §8-10.18. Lessee understands that Lessee must file for such exemption annually and that the County shall not be responsible or liable for Lessee's failure to timely file for such exemption on an annual basis.

Pursuant to Hawai'i Revised Statutes Section 46-15.1, Section 201H-36, and Section 237-29, the County may certify for exemption from general excise taxes any projects which meet the requirements of said statutes. The County will work with Lessee to issue such certifications provided that the requirements under said statutes and applicable laws are met. Lessee understands that Lessee is responsible for preparing and filing any exemption request and that the County shall not be responsible or liable for Lessee's failure to file for such exemptions. Lessee further understands that such exemptions are subject to all laws and rules applicable thereto.

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

18.2 Commercial Spaces. [RESERVED]

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

- access to the books of account for the Premises;
- records pertaining to the Residential Rental Units;
- annual operating statements for the Project;
- audited financial statements for the Project during the first fifteen (15) full fiscal years (as determined by Lessee) of the operation of the Project, and thereafter, Lessee will provide Lessor with copies of the audited or unaudited financial statements as are required of Lessee for compliance with the Low Income Housing Tax Credit program; and
- annual operating budget for the Project.

ARTICLE 19:
LEASEHOLD MORTGAGES

19.1 Leasehold Mortgage. Notwithstanding anything in this Lease to the contrary, Lessee shall have the absolute and unconditional right, without Lessor's consent, to execute and deliver one or more Leasehold Mortgages at any time and from time to time during the Term. The execution and delivery of a Leasehold Mortgage shall not be deemed to constitute such an assignment or Transfer of this Lease as would require either Lessee or the holder or holders of the Leasehold Mortgage, as such, to obtain Lessor's consent. Upon foreclosure thereof (or any bona fide sale or assignment in lieu of foreclosure) the Leasehold Mortgagee may without further consent of Lessor sell and assign this Lease, provided that the purchaser or assignee expressly assumes and agrees to perform all conditions and obligations of the Lease. Any assignee (other than the Leasehold Mortgagee) who has acquired title to this Lease by way of foreclosure or deed in lieu thereof may only assign its rights under this Lease, other than by way of mortgage, in compliance with Article 17. Lessor shall not be required to join in, or "subordinate the Fee Estate to," any Leasehold Mortgage, but shall execute and deliver such estoppel certificates and other certifications as any Leasehold Mortgagee shall reasonably require.

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

19.2.1 Concurrent Notices. Lessor shall, upon serving Lessee with any notice pursuant to the provisions of this Lease, concurrently serve a copy of the notice upon Leasehold Mortgagee and with best efforts to the Equity Investor.

19.2.2 Right to Cure. Leasehold Mortgagee and each Equity Investor shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all Rent due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee under this Lease, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions to prevent termination of this Lease. Any of the foregoing done by Leasehold Mortgagee or the Equity Investor, as applicable, shall be effective to prevent a termination of the Lease as if the same had been done by Lessee and Lessor agrees to accept such performance as though the same had been done or performed by Lessee.

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

19.2.4 Time Extensions. If the Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, the times specified in Section 19.2.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Leasehold Mortgagee shall have fully cured any Monetary Default and shall continue to pay Rent as and when the same become due, and shall perform all other obligations of the Lease.

19.2.5 No Modification or Termination Without Leasehold Mortgagee's Consent. Except as permitted in Section 25.5, for as long as there is any Leasehold Mortgage in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not Modify, amend, restate or surrender this Lease in any way, without the express prior written consent of the applicable Leasehold Mortgagee holding the Leasehold Mortgage and the Equity Investor, and any attempt to take any such action without the applicable Leasehold Mortgagee's consent shall be void at the option of such Leasehold Mortgagee. For so long as there is any Leasehold Mortgage in effect, Lessee and Lessor hereby expressly stipulate and agree that they will not, by mutual agreement, cancel or terminate this Lease without the express prior written consent of the Leasehold Mortgagee holding the Leasehold Mortgage. Lessor agrees for the benefit of any Leasehold Mortgagee holding a Leasehold Mortgage, that this Lease is not terminable by Lessor as a result of status or other defaults of Lessee that by their nature are not capable of being cured by Lender so long as Rent and other obligations which are capable of performance by the Leasehold Mortgagee under this Lease are being paid and/or performed.

19.2.6 Other Rights. A Leasehold Mortgagee or its assigns under a Leasehold Mortgage shall also have the right, at any time during the term of this Lease and the existence of such Leasehold Mortgage, to do any one or more of the following:

(a) Acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in said Leasehold Mortgage, which may limit any exercise of any such right, remedy or privilege;

(b) Rely upon and enforce any provisions of this Lease to the extent that such provisions are for the benefit of a Leasehold Mortgagee;

(c) Perform any of Lessee's obligations under this Lease, or do any such act or thing required of Lessee under this Lease and Lessor agrees to accept the performance by such Leasehold Mortgagee of Lessee's obligations under this Lease and/or any such act or thing done and performed by such Leasehold Mortgagee for and on behalf of Lessee or in the place of Lessee, as if such performance, action or thing were done by Lessee;

(d) Realize on the security afforded by the Leasehold Estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the mortgage;

(e) Transfer, convey, or assign the title of Lessee to the Leasehold Estate created by this Lease (or to cause the trustee under any deed of trust to so transfer, convey or assign) to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Leasehold Mortgage, or to an assignee under an assignment in lieu of foreclosure, or following the Leasehold Mortgagee's acquisition of the Leasehold Estate pursuant to a foreclosure sale or assignment in lieu of foreclosure, transfer, convey, or assign the Leasehold Estate to a subsequent purchaser;

(f) Acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Leasehold Mortgage, or by virtue of an assignment in lieu of foreclosure.

No Leasehold Mortgagee shall, as a condition to the exercise of its rights hereunder, be required to assume personal liability for the payment and performance of the obligations of Lessee hereunder. Any such payment or performance or other act by a Leasehold Mortgagee hereunder shall not be construed

as an agreement by such Leasehold Mortgagee to assume such personal liability except to the extent such mortgagee actually takes possession of the Premises.

19.2.7 New Lease. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, any Default , Lessor, if requested by the Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the Term, at the Rent and upon the same terms, covenants and conditions herein contained (i) are prohibited by virtue of the Leasehold Mortgagee's legal status; (ii) are impossible for the Leasehold Mortgagee to perform; or (iv) are no longer applicable), provided that: (a) such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that the Lease has been or will be terminated; (b) such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums, including Rent, which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination; (c) such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and (d) the lessee under the new lease shall have the same right, title and interest in and to the Premises as Lessee had under the terminated Lease immediately prior to its termination. Notwithstanding the foregoing, nothing herein contained shall require any authorized Leasehold Mortgagee to enter into a new lease pursuant to this Section 19.2.5, nor to cure any Default of Lessee referred to above.

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

19.2.9 Liability Limits. In the event any third party or Leasehold Mortgagee acquires the Leasehold Estate upon foreclosure (whether judicial or non-judicial in nature) or by assignment in lieu of foreclosure, or acquires a leasehold estate in the Premises pursuant to the terms of a new lease, such party, as the new lessee, shall have no liability to Lessor unless and until such party acquires all rights of Lessee under this Lease and such liability shall be limited to the obligations of the Lessee under this Lease (or, if applicable, the new lease) arising during the period of time that such party holds title to the Leasehold Estate created hereby (or, if applicable, the new lease) and to the value of the Leasehold Mortgagee's interest in the Leasehold Estate. All other obligations of Lessee under this Lease are waived with respect to any third party or Leasehold Mortgagee who acquires the Leasehold Estate upon foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating such Leasehold Mortgage.

19.2.10 No Merger of Leasehold and Fee Estates. So long as any Leasehold Mortgage is in existence, unless the Leasehold Mortgagee shall otherwise expressly consent in writing, or unless this Lease has expired, has been terminated in accordance with its terms as a result of a Default under this Lease by Lessee, or has otherwise terminated earlier in accordance with its terms, the fee title to the Premises and the Leasehold Estate of Lessee therein created by this Lease shall not merge but shall

remain separate and distinct, notwithstanding the acquisition of said fee title and/or said leasehold estate by Lessor or by Lessee, or by a third party, by purchase or otherwise.

19.2.11 Subsequent Security Holders. The term "Leasehold Mortgagee" as used in this Lease shall mean not only the party that loaned money to Lessee and is named as beneficiary, mortgagee, secured party, or security holder in a security instrument creating any leasehold encumbrance, but also its affiliates and successors and assigns of record to the lender's interest as beneficiary, mortgagee and/or secured party, as applicable, of the Leasehold Mortgage.

19.2.12 Two or More Lenders. In the event two or more Leasehold Mortgagees each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of lenders, the Leasehold Mortgagee whose leasehold encumbrance would have senior priority in the event of a foreclosure shall prevail.

19.2.13 Extension of Time for Lender Performance. All time periods for a Leasehold Mortgagee's cure of non-monetary defaults under the Lease that require possession of the Premises for such cure and all time periods for a Leasehold Mortgagee's foreclosure or exercise of other remedies for Lessee's default are extended for a period of time equal to any stay, prevention or other delay resulting from bankruptcy, injunction or similar legal action or proceeding.

19.2.14 Additional Lender Assurances. In order to facilitate any financing or refinancing by Lessee which involves the hypothecation of Lessee's Leasehold Estate created by this Lease and rights hereunder, Lessor, if requested so to do by Lessee, agrees to join in executing any instruments, including, without limitation, amendments to this Lease, which legal counsel for any Leasehold Mortgagee which is or may become a lender and the holder of a security instrument may reasonably require in order to grant to the Leasehold Mortgagee or prospective Leasehold Mortgagee the right to act for Lessee in enforcing or exercising any of Lessee's rights or remedies under this Lease, provided that in no event shall Lessor be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the Leasehold Estate of Lessee nor to subordinate the Lessor's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such instrument adversely affect Lessor's rental, Lessee's payment of taxes, assessments, insurance and/or Lessee's payment or performance of other obligations under this Lease or otherwise diminish or reduce Lessor's rights under this Lease (including without limitation, Lessor's rights under this Article), except in a de minimis manner.

19.2.15 Bankruptcy

(a) Affecting Tenant. If Lessee (as debtor in possession) or a trustee in bankruptcy for Lessee rejects this Lease in any Bankruptcy Proceeding affecting Lessee, then such rejection shall be deemed Lessee's assignment of its interest in this Lease and the leasehold estate created by this Lease to a new tenant to be designated in writing by the Leasehold Mortgagee holding the most senior Leasehold Mortgage, in the nature of an assignment in lieu of foreclosure, subject to all security instruments. Upon such deemed assignment, this Lease shall not terminate. Each Leasehold Mortgagee shall continue to have all the rights of a Leasehold Mortgagee as if the Bankruptcy Proceeding had not occurred, unless such Leasehold Mortgagee shall disapprove such deemed assignment by written notice delivered to Lessor within thirty (30) days after such lender receives written notice of the rejection of this Lease in any Bankruptcy Proceeding. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the deemed assignment provided for in place of rejection of this Lease, then each Leasehold Mortgagee shall continue to be entitled to a new lease as provided in this Lease.

(b) Affecting Lessor. If Lessor (as debtor in possession) or a trustee in bankruptcy for Lessor rejects this Lease in any Bankruptcy Proceeding affecting Lessor, then:

(1) Assignment. Lessor and Lessee acknowledge that a Leasehold Mortgagee's collateral includes all rights of Lessee under 11 U.S.C. § 365(h), all of which rights have been validly and effectively assigned to such Leasehold Mortgagee.

(2) Lessee's Election. Lessee's right to elect to treat this Lease as terminated is subject to and conditioned upon each Leasehold Mortgagee's express prior written consent. If Lessee purports, without each Leasehold Mortgagee's express prior written consent, to elect to treat this Lease as terminated, then such election and purported termination shall be null, void, and of no force or effect at the option of Leasehold Mortgagee. Each Leasehold Mortgagee shall have the right, to the exclusion of Lessee, to make any election and exercise any rights of Lessee under 11 U.S.C. § 365(h)(1). Provided that a Leasehold Mortgagee shall have received written notice of Lessor's Bankruptcy Proceeding simultaneously with written notice delivered to Lessee, such Leasehold Mortgagee's rights under the preceding sentence must be exercised, if at all, subject to such time limits and requirements as would apply to Lessee, except that as against a Leasehold Mortgagee, every such time period shall be extended by thirty (30) days.

(3) Continuation of Lease. If Lessee does not, with each Leasehold Mortgagee's express written consent, treat this Lease as terminated, then (notwithstanding any purported election by Lessee to the contrary made without each Lender's express prior written consent) Lessee shall be deemed to have elected to continue this Lease pursuant to 11 U.S.C. § 365(h)(1)(A)(ii). This Lease shall continue in effect without change upon all the terms and conditions set forth in this Lease.

(4) Continuation of Security Instruments. The lien of any security instrument that was in effect before rejection of this Lease shall extend to Lessee's continuing possessory and other rights under 11 U.S.C. § 365(h) in the Premises and this Lease following such rejection, with the same priority as such lien would have enjoyed against the Leasehold Estate created by this Lease had such rejection not taken place.

19.2.16 Mezzanine Protections. Provided Lessee provides to Lessor a notice setting forth the name and address of any lender having a security interest in a direct or indirect equity or other ownership interest in Lessee pursuant to a mezzanine loan (a "**Mezzanine Loan**" and such lender, a "**Mezzanine Lender**"), Lessor shall thereafter deliver to Mezzanine Lender a copy of any notice required to be sent to a Leasehold Mortgagee pursuant to the terms hereof. Mezzanine Lender shall be entitled to exercise any rights granted to a Leasehold Mortgagee herein. Nothing contained herein shall be deemed to impose upon Mezzanine Lender the obligation to perform any obligation hereunder or to remedy any default by Lessee; provided that Lessor shall accept performance by Mezzanine Lender of any covenant, condition or agreement on Lessee's part to be performed hereunder, with the same force and effect as though performed by Lessee. Notwithstanding any provision hereof to the contrary, the rights of Mezzanine Lender shall be subject to the rights of any Leasehold Mortgagee, whose rights shall take priority and precedence vis-à-vis Mezzanine Lender.

19.2.17 Lessor Encumbrances. Lessor shall not cause any liens or encumbrances to be recorded against the Fee Estate without the prior written consent of Lessee and any Leasehold Mortgagee unless there is an express subordination of the fee mortgage to the Leasehold Estate. In addition, Lessee shall not subordinate its interest in the Leasehold Estate or its interests in the Subleases to a subsequent mortgage of the Fee Estate granted by Lessor.

19.2.18 Third Party Beneficiary. Each Leasehold Mortgagee shall be a third party beneficiary of the rights and benefits granted to Leasehold Mortgagees under this Lease and of the provisions contained in this Article. Neither Lessee nor Lessor shall be deemed to be a third party beneficiary of the rights granted hereunder to a Leasehold Mortgagee and no Leasehold Mortgagee shall have any obligation to Lessee or Lessor to account for any decision, action or election it may take or the exercise of its rights hereunder, nor shall any Leasehold Mortgagee have any duty to Lessee or Lessor to exercise any right hereunder in any particular manner or order, other than that which such Leasehold Mortgagee, in its sole discretion (but in any event subject to the terms of this Lease) shall deem appropriate and in its own best interests.

ARTICLE 20:
EQUIPMENT LIENS

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

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

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

ARTICLE 21:
QUIET ENJOYMENT

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

ARTICLE 22:
EVENTS OF DEFAULT; REMEDIES

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

22.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from Lessor, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

22.1.2 Prohibited Liens. If Lessee fails to comply with any obligation regarding Prohibited Liens and does not begin to remedy such failure within fifteen (15) days after Notice from Lessor and, thereafter, diligently pursue such remedy to completion.

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

22.1.4 Nonmonetary Default. If any other Nonmonetary Default occurs and Lessee does not cure it within sixty (60) days after Notice from Lessor describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot, with due diligence, be cured within sixty (60) days from such Notice, if Lessee shall not (a) within sixty (60) days from Lessor's Notice advise Lessor of Lessee's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to sixty (60) days).

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

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

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

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

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

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

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

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

22.2.7 Damages. Lessor may recover from Lessee all damages Lessor incurs by reason of Lessee's Default, including reasonable costs of recovering possession, re-letting the Premises, and any and all other damages legally recoverable by Lessor, and reimbursement of Lessor's reasonable out-of-pocket costs, including Legal Costs. Lessor may recover such damages at any time after Lessee's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, Lessor need not commence separate actions to enforce Lessee's obligations for each month's accrual of damages for Lessee's Default, but may bring and prosecute a single combined action for all such Rent and damages.

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

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

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

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

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

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

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

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

22.4 Lessee's Late Payments. If Lessee fails to make any payment to Lessor required under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Lessor, and without reducing or adversely affecting any of Lessor's other rights and remedies, Lessee shall pay Lessor within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Lessee actually makes such payment.

22.5 Lessor's Right to Cure. If Lessee at any time fails to make any payment or take any action this Lease requires, then Lessor, after twenty (20) Business Days' Notice to Lessee, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Lessee from any obligation or Default and without waiving Lessor's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Lessee shall reimburse Lessor, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Lessor in exercising its cure rights under this Section 22.5; and (b) Default Interest on the amounts in clause (a) above. Except for an emergency, Lessor shall not exercise any of its remedies hereunder without having first given written notice of the Event of Default or such notice as reasonably practicable under the emergency circumstance to the Equity Investor and provide the Equity Investor with the opportunity to cure such Event of Default. The Equity Investor shall have the same cure period after the giving of a notice as provided to Lessee, plus an additional period of 15 days for any Monetary Default and an additional 30 days for any Non-Monetary Default. Such cure period shall run concurrently with Lessee's cure period. If the Equity Investor elects to cure the Event of Default (and nothing hereunder binds the Equity Investor to do so), Equity Investor shall notify Lessor of its election to cure and Lessor agrees to accept such performance as though the same had been done or performed by Lessee, and if the Equity Investor needs a longer period in which to effect cure of a Non-Monetary Default, the Equity Investor is hereby granted such longer period of time as is reasonably necessary so long as the Equity Investor has notified Lessor and has commenced to cure the Event of Default and such cure cannot be reasonably completed within the original cure period.

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

reserves the right to require Lessee to surrender possession of the Premises to Lessor as provided in this Lease upon the expiration or earlier termination of this Lease.

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

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

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

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

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

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

ARTICLE 23:
END OF TERM

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

of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Lessee shall first be applied to cure any Default); (i) the parties shall terminate the recorded Lease memorandum; and (j) Lessee shall assign to Lessor, and Lessor shall reimburse Lessee for, all utility and other service provider deposits for the Premises.

ARTICLE 24:
NOTICES

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

ARTICLE 25:
ADDITIONAL DELIVERIES; THIRD PARTIES

25.1 Estoppel Certificates. As often as may be necessary, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four (4) original counterparts of an estoppel certificate in such form as may be reasonably required by the Requesting Party, indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by the Requesting Party. The Certifying Party shall sign, acknowledge, and return such estoppel certificate within fifteen (15) days after request, even if the Requesting Party is in Default. Any estoppel certificate may be relied upon by the Requesting Party (and any Person on behalf of whom the Requesting Party requested such estoppel certificate) and shall bind the Certifying Party.

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

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

25.4 Modification. Any Modification of this Lease must be in writing signed both Lessor and Lessee to be binding on the parties.

25.5 Lessor's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, Lessor reserves the right, at any time, to amend this Lease in order to assure compliance with all applicable subsequently enacted HUD, County, State and other federal statutes, laws, and regulations, which would otherwise be applicable to the Premises. This Lease shall not be amended to require compliance with statutes, laws, and regulations with respect to which the Premises would be eligible to be "grandfathered" so as not to require compliance. All such amendments shall be within the general scope of this Lease. Lessor shall provide all such amendments in writing to the Lessee with a courtesy copy to Equity Investor. The Lessee agrees that it shall, within a commercially-reasonable period of time, take any and all reasonable steps to comply with such amendments as required by law.

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

ARTICLE 26:
CULTURAL AND ARCHEOLOGICAL

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

26.2 Human Remains; Artifacts; Historical Items.

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

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

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

26.2.4 Studies by Lessee. In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Lessee or anyone acting by or through Lessee,

Lessee shall provide a complete copy of the results of such studies to Lessor promptly upon completion thereof.

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

ARTICLE 27:
MISCELLANEOUS

27.1 Due Authorization and Execution. Lessor represents and warrants that Lessor has full right, title, authority and capacity to execute and perform this Lease and any other agreements and documents to which Lessor is a party and referred to or required by this Lease (collectively, the "**Lease-Related Documents**"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Lessor; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Lessor; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Lessor's organizational documents), contract, or other restriction to which Lessor is a party or is bound. Lessee makes to Lessor representations and warranties reciprocal to those in the preceding sentence and, in addition, represents and warrants that Lessee is qualified to do business in the State. Both parties' representations and warranties in this Section 27.2 shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

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

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

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

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

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

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

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

27.9 Service of Process. Lessee and every assignee shall either be domiciled in the State or shall, effective upon the date of this Lease (for the original Lessee) or upon the date of said assignment (for an assignee), designate in writing an agent who is domiciled in the State upon whom service of notice or process may be made at all times (if applicable, Lessee's first such agent for service of process is designated in **Exhibit F**). Service of summons or other legal process upon said agent shall be conclusively deemed to be complete upon Lessee and shall authorize the court from which such summons or legal process has issued to proceed in all respects as in the case of service personally made upon an individual. In the event Lessee fails to designate said agent for the service of process, or upon the death or absence of said agent, unless a successor shall be promptly named, the Director of Commerce and Consumer Affairs of the State shall be deemed Lessee's or assignee's agent for service of notice and process, and any notice or process served upon said designee or said Director of Commerce and Consumer Affairs shall have the force and effect of personal service upon Lessee or said assignee in all matters respecting this Lease and the enforcement thereof. Lessee and every assignee shall be duly qualified by the Director of Commerce and Consumer Affairs to do business in the State.

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

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

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

ARTICLE 28:
INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

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

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

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

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

28.5 Governing Law and Venue. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws. Any legal action hereunder shall be filed in the Hawai'i judicial system only, and Lessor and Lessee hereby unconditionally submit themselves to the jurisdiction of the courts of the State in the circuit where the Premises are located, and the United States District Court for the District of Hawai'i, and waive the right to assert that such courts are in an inconvenient forum.

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

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

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

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

28.10 Joint and Several. If there is more than one Person comprising Lessee, the obligations imposed upon such Persons under this Lease shall be joint and several.

28.11 Relationship Between Lease and Development Contract. In the event of any conflict or inconsistency between this Lease and the Development Contract, this Lease shall control.

28.12 **HUD Addendum**. That certain Lease Addendum – Multifamily ("**Addendum**") is attached hereto and hereby amends and/or supplements the Lease. Lessor hereby acknowledges and agrees that the indemnity obligations of Lessee under Sections 6.3, 9.2, 10.1 and 27.8 of this Lease shall not be assumed by HUD (as defined in the Addendum) in the event HUD becomes lessee under this Lease.

[SIGNATURES APPEAR ON NEXT PAGE]

IN TESTIMONY WHEREOF, Lessor and Lessee have caused this Lease to be signed as of the day and year first above written.

LESSOR:

Date of execution by Lessor:
_____, 2025

APPROVAL RECOMMENDED:

_____
Catherine A. Taschner, Director
Department of Land Management

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel
Department of the Corporation Counsel

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

By: Department of Budget and Fiscal Services

By: _____
Name:
Title:

LESSEE:

Date of execution by Lessee:
_____, 2025

KOMOHALE WEST LOCH VENTURE LP,
a Hawaii limited partnership

By: **KOMOHALE WEST LOCH MANAGER LLC**, a Delaware limited liability company,
Its General Partner

By: **KOMOHALE WEST LOCH GP LLC**,
a Delaware limited liability company,
Its Sole Member

By: _____
Bradley C. Martinson
Authorized Representative

By: _____
Stanford S. Carr
Authorized Representative

Lease Addendum - Multifamily

U.S. Department of Housing and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

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Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Project Name: Kaleima`o Village
HUD Project No: 140-35122

[Drafting Note: This Lease Addendum is subject to HUD review and any changes and comments HUD may have.]

THIS **LEASE ADDENDUM** is attached to and made part of that certain lease agreement entered into on the ___ day of _____, 2025, between **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai`i (**"Landlord"**) and Komohale West Loch Venture LP, a Hawai`i limited partnership, (**"Tenant"**) (collectively, the **"Parties"**) (the **"Ground Lease"**).

The Lease Addendum is required in connection with a mortgage loan insured by the U.S. Department of Housing and Urban Development (**"HUD"**) for multifamily projects pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* (**"Act"**), and made by the following HUD-approved lender, PNC BANK, N.A., a national banking association **("Lender")**. The insured loan is secured by a Security Instrument on the leasehold estate set forth in the Ground Lease

The definition of any capitalized term or word used in this Lease Addendum and not otherwise defined can be found in the Security Instrument and/or Note between Lender and Tenant; or the Regulatory Agreement between Tenant and HUD. The terms "HUD" and "Lender" as used in the Lease Addendum shall also include their successors and assigns, and the Tenant is the same legal entity as the Borrower under the Security Instrument. All references to "days" in this Lease Addendum shall mean calendar days.

Notwithstanding anything else in the Ground Lease to which this Lease Addendum is attached, and for valuable consideration, the receipt and sufficiency of which the Parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to the Tenant described in the Security Instrument, and to induce HUD to insure said Loan, so long as this leasehold estate is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property is acquired and held by HUD because of a default under the Security Instrument, Landlord and Tenant acknowledge and agree to the following provisions.

The leasehold estate consists of the ground (land) only; all buildings, improvements, alterations and fixtures now or in the future located thereon are owned in fee simple by the Tenant. As such, the term **"Property"**means the legally described land subject to the Ground Lease **except** the buildings, improvements, alterations and fixtures now or in the future located on the land.

1. **Compliance with HUD Requirements**. Pursuant to the Act, the following provisions may not be waived under any circumstances, whether for a new ground lease or an existing ground lease:

   (a) the term of the Ground Lease and all other Ground Lease provisions comply with the section of the Act and related federal regulations under which the Note is endorsed for mortgage insurance;
   (b) the Landlord owns the Property in fee simple, and the leasehold estate is granted directly by the Landlord to the Tenant;
   (c) the leasehold estate underlying the Ground Lease constitutes a mortgageable real property interest under state law;
   (d) the Ground Lease and related Ground Lease documents do not conflict with any Program Obligations[1] promulgated by HUD with respect to such mortgage insurance; and
   (e) all ground rent amounts have prior written approval by HUD.

2. **Modifications.** The Ground Lease and this Lease Addendum shall not be modified without the written consent of HUD and Lender. Modifications of the Ground Lease and this Lease Addendum that are not authorized in writing by HUD and Lender are void and unenforceable.

3. **Conflict Provision.** The provisions of this Lease Addendum benefit Lender and HUD and are specifically declared to be enforceable against the parties to the Ground Lease and all other persons by Lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of the Ground Lease, the provisions of this Lease Addendum shall prevail and control.

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[1] **"Program Obligations"** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at www.hud.gov.

4. **Recording.** The full Ground Lease agreement and incorporated HUD Lease Addendum, or a memorandum of ground lease (if permitted under state law), must be recorded in the applicable land records office. If a memorandum of ground lease or a short form ground lease is to be recorded, it must set forth the following information, in addition to compliance with state law requirements:

   (a) names of the Parties;
   (b) legal description;
   (c) term and renewals;
   (d) reference to the HUD Lease Addendum; and
   (e) specific reference to HUD's option to purchase in Section 7 (unless Section 7 is expressly waived in writing by HUD in accordance with Program Obligations).

5. **Estoppel Certificate**. As a condition of HUD's acceptance of a ground lease transaction, an estoppel certificate identifying the Ground Lease documents and signed by the Landlord, dated within thirty (30) days of the Note endorsement, must be provided to Lender and HUD at closing. The Landlord must confirm in writing to Lender and HUD that the Security Instrument is authorized, the Ground Lease is in full force and effect, there are no defaults or pending defaults under the Ground Lease or conditions that would give rise to defaults given the passage of time, and that the legal description of the Property is correct. The document must provide the language required by 24 CFR Section 200.62, and also include the "Warning" language found at the beginning of this Lease Addendum.

   Upon a reasonable request from Tenant, Lender, or HUD, Landlord further agrees to promply provide from time to time an estoppel certificate to confirm the terms of, and no default under, the Ground Lease.

6. **Consent for Mortgage**. Landlord agrees that the Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by the Security Instrument on this leasehold estate and the Improvements. The Tenant is further authorized to execute all documents necessary as determined by Lender or HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.

7. **Intentionally Omitted.**

8. **Conveyance by Tenant.** If approved in writing by HUD in advance, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property without the need for approval or consent by any other person or entity.

9. **Insurance.**

(a) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by Lender and HUD in accordance with Program Obligations.

(b) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to Lender. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant to Lender.

10. Condemnation.

(a) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the leasehold estate or damage to the Improvements or the Tenant's interest in the leasehold estate shall be paid to Lender or otherwise disposed of as may be provided in the Security Instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the Landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in Section 7 of this Lease Addendum.

(b) In the event of a negotiated sale of all or a portion of the Property and/or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation above, but the approval of HUD and Lender shall be required as to the amount and division of the payments to be received.

11. Tenant Default on Ground Lease; Cure Rights; Termination. The Landlord may terminate the Ground Lease prior to the expiration day of the full term of this Ground Lease (**"Expiration Date"**) after a Tenant default under this Ground Lease (**"Ground Lease Event of Default"**), but only under the following circumstances and procedures.

(a) If any Ground Lease Event of Default shall occur, then and in any such event, the Landlord shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) (**"Notice of Default"**) to the Tenant, Lender, and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is incurable. If the Ground Lease Event of Default is a failure to pay money, the Landlord shall specify

and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default.

(b) Within sixty (60) days from the date of giving the Notice of Default to the Tenant, the Tenant must cure a monetary default by paying the Landlord all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period.

(c) During the period of one hundred-eighty (180) days commencing upon the date Notice of Default received by Lender and HUD, Lender or HUD may:

(1) cure any Ground Lease Event of Default; and
(2) commence foreclosure proceedings or institute other state or federal procedures to enforce Lender's or HUD's rights with respect to the Property or the Tenant Improvements.

(d) If HUD or Lender commences foreclosure or other enforcement action within such one hundred-eighty (180) days, then its cure period shall be extended during the period of the foreclosure or other action and for ninety (90) days after the ownership of the Tenant's rights under the Ground Lease is established in or assigned to HUD or such Lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the Tenant's rights under the Ground Lease to Lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable Ground Lease Event of Default and such terminated Ground Lease Event of Default shall not give the Landlord any right to terminate the Ground Lease. Such purchaser may cure a curable Ground Lease Event of Default within said ninety (90) days.

(e) If the Tenant, Lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the Landlord shall grant such further reasonable time as is necessary to complete such cure. If, after the expiration of all of the foregoing cure periods, no cure, or termination of an existing Ground Lease Event of Default has been achieved as aforesaid, then and in that event, the Ground Lease shall terminate, and, on such date, the term of this Ground Lease shall expire and terminate and all rights of the Tenant under the Ground Lease shall cease and the Improvements, subject to the Security Instrument and the rights of Lender thereunder, shall be and become the property of the Landlord. All costs and expenses incurred by or on behalf of the Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the Tenant under this Ground Lease

shall constitute additional rent hereunder. The Landlord shall have no right to terminate this Ground Lease except as provided in this Section 11.

12. Lender/HUD Option for New Ground Lease.

(a) Upon termination of this Ground Lease pursuant to Section 11 above, the Landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the Landlord shall notify HUD and Lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as Tenant, a new ground lease on the Property and on the Improvements.

(b) Such new ground lease shall have a term equal to the unexpired portion of the term of this Ground Lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this Ground Lease, including without limitation, the option to purchase set forth under Section 7 above, except that Lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such ground lease. The Landlord shall tender such new ground lease to Lender or HUD within thirty (30) days after a request for such ground lease and shall deliver possession of the Property and Improvements immediately upon execution of the new ground lease.

(c) Upon executing a new ground lease, Lender or HUD shall pay to the Landlord any unpaid ground rent due or that would have become due under this Ground Lease to the date of the execution of the new ground lease, including any taxes which were liens on the Property or the Improvements and which were paid by the Landlord, less any net rentals or other income which the Landlord may have received on account of the Property and Improvements since the date of default under this Ground Lease. [Drafting Note to Lessor: HUD may require Lessee indemnification obligations in Section 6.3, 9.2, 10.1 and 27.8 to be carved out from the obligations that HUD will assume.]

13. Landlord Cooperation for Needed Authorizations. The Landlord agrees that within ten (10) days after receipt of written request from the Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority in connection with any work which the Tenant may do hereunder and will also join in any grants for easements for electric, telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and for that purpose, the Landlord hereby irrevocably appoints the Tenant as its

attorney-in-fact to execute such papers on behalf of the Landlord, only to the extent that a public body as Landlord may do so within the exercise of its municipal powers and responsibilities.

14. **Taxes.** Nothing in this Ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Tenant under this Ground Lease.

15. **Notices.** All notices, demands and requests which are required to be given by the Landlord, Tenant, Lender or HUD in connection with the Ground Lease and this Lease Addendum shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices shall be addressed as follows:

If to Lender:
PNC Bank, N.A.
201 Mission Stret, Suite 2500
San Francisco, CA 94105
Attn: Kathy J. Ratliff, Sr. VP
Email: kathy.ratliff@pnc.com

If to HUD:
_____
_____
_____
_____

If to Tenant:
Komohale West Loch Venture LP
1100 Alakea Street, Unit 2700
Honolulu, Hawai`i 96813
Attention: Stanford S. Carr
Email: scarr@stanfordcarr.com

And to:
Stanford Carr Development, LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawai`i 96813
Attn: Stanford S. Carr
Email: scarr@stanfordcarr.com

And to:
Standard Communities
1901 Avenue of the Stars, Suite 395
Los Angeles, CA 90067
Attn: Jeffrey Jaeger
Email: jjaeger@standard-companies.com

And to:	RFP & Partnerships Standard Communities 570 Lexington Avenue, 43rd Floor New York, NY 10022 Attn: Steven Kahn Email: skahn@standard-companies.com
And to:	Hudson Housing Capital LLC 630 Fifth Avenue, 28th Floor New York, New York 10111 Attention: Joseph A. Macari Fax No.: (212) 218-4467
With copies to:	Bocarsly Emden 4800 Hampden Lane, Suite 200 Bethesda, Maryland 20814 Attention: Craig A. Emden Fax No.: (213) 559-0747
And to:	MPC HI Kaleima`o Village, LLC 3414 Peachtree Road, Suite 825 Atlanta, GA 30326 Attention: Robin Delmer Email: _____
If to Landlord:	CITY AND COUNTY OF HONOLULU Department of Budget and Fiscal Services 530 South King Street Honolulu, Hawai`i 96813 Attention: Director
And to:	CITY AND COUNTY OF HONOLULU Department of Land Management 650 South King Street, 3rd Floor Honolulu, Hawai`i 96813 Attention: Director
And to:	CITY AND COUNTY OF HONOLULU Department of Corporation Counsel 530 South King Street, Room 110 Honolulu, Hawai`i 96813 Attention: Corporation Counsel

16. **No Merger.** There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with the fee estate of the Property or of the Improvements or any interest therein by reason of the fact that the same person or entity may acquire or hold, directly or indirectly, this Ground Lease or the leasehold estate hereby created or any interest therein and the fee estate of the Property or of the Improvements. No such merger shall occur unless and until HUD specifically consents and agrees in writing to such merger.

Each signatory below hereby certifies that each of their statements and representations contained in Ground Lease and this Lease Addendum and all their supporting documentation thereto are true, accurate, and complete. This Lease Addendum has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Addendum as of the day and year first written above.

LESSOR:

Date of execution by Lessor:
_____, 2025

APPROVAL RECOMMENDED:

_____
Catherine A. Taschner, Director
Department of Land Management

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel
Department of the Corporation Counsel

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

By: Department of Budget and Fiscal Services

By: _____
Name:
Title:

LESSEE:

Date of execution by Lessee:
_____, 2025

KOMOHALE WEST LOCH VENTURE LP,
a Hawaii limited partnership

By: **KOMOHALE WEST LOCH MANAGER LLC**, a Delaware limited liability company,
Its General Partner

By: **KOMOHALE WEST LOCH GP LLC,**
a Delaware limited liability company,
Its Sole Member

By: _____
Bradley C. Martinson
Authorized Representative

By: _____
Stanford S. Carr
Authorized Representative

EXHIBIT A

LEGAL DESCRIPTION AND ENCUMBRANCES

All that certain parcel of land situate at Honolulu, ʻEwa, District of ʻEwa, City and County of Honolulu, State of Hawaiʻi, described as follows:

Lot 13964, area 3.704 acres, or 161,341 square feet, more or less, as shown on Map 1059, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaiʻi with Land Court Application No. 1069 of Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the property described in and covered by Transfer Certificate of Title No. 609,035, issued to the CITY AND COUNTY OF HONOLULU, a municipal corporation.

Tax Map Key No. (1) 9-1-122:004

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Real estate taxes and assessments, general and special, for the fiscal year 2024-2025, a lien not yet due and payable:

   Tax Map Key: 1-9-1-122-004

2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. Terms and provisions as contained in an instrument,

Entitled	:	CONDITIONS
Executed By	:	CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, by its DEPARTMENT OF GENERAL PLANNING
Dated	:	November 3, 1989
Recorded	:	November 20,1989 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1684310

   Which, among other things, provides: the List of Conditions imposed with the terms of Section 15-15-92, Land Use Commission Rules.

4. Easement "7267" (8,053 sq. ft.), for access purposes , as shown on Map 1059, as disclosed in Land Court Order recorded April 18, 2002 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 145624.

5. Easement "7276" (22,768 sq. ft.), for drainage purposes, as shown on Map 1059, as disclosed in Land Court Order recorded April 18, 2002 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 145624.

6. Easement "7281" (2,149 sq. ft.), for sanitary sewer purposes, as shown on Map 1059, as disclosed in Land Court Order recorded April 18, 2002 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 145624.

7. Easement "7282" (48 sq. ft.), for telephone line purposes,as shown on Map 1059, as disclosed in Land Court Order recorded April 18, 2002 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 145624.

8. The following matters shown on the ALTA/NSPS Land Title Survey made by Ryan M. Suzuki, Licensed Professional Land Surveyor, Certificate No. 10059, of R. M. Towill Corporation, dated October 10, 2024, Ref. No. 1-24424-0-S, as follows:

   A. A portion of a concrete path along the north boundary of the subject property crosses from Lot 13963 for a maximum distance of 0.2 ft. and a maximum length of 5.9 ft.

   B. A portion of an aluminum fence meanders along the north and northeast boundary of the subject property, crosses from Lot 13963 for a maximum distance of 2.6 feet and maximum length of 151.1 ft.

   C. A portion of a CRM wall along the west boundary of the subject property crosses into Lot 13965 or a maximum distance of 0.8 ft and a maximum length of 2.2 feet.

9. Unrecorded Communications Site Lease Agreement between the City and County of Honolulu a municipal corporation of the State of Hawaii and Cellco Partnership dba Verizon Wireless dated March 7, 2010.

10. Unrecorded Non-Exclusive License Agreement between the City and County of Honolulu a municipal corporation of the State of Hawaii and Cellco Partnership dba Verizon Wireless dated July 1, 2012.

EXHIBIT B

ADDITIONAL PERMITTED EXCEPTIONS

Permitted Exceptions shall include all of the following, as they existed on the Commencement Date:

1. All leases, Subleases, tenancies and rights of occupancy affecting the Premises caused or permitted by Lessee or by anyone claiming by, through, or under Lessee;

2. All rights, if any, for electricity, gas, telephone, water, cable television, and any other utilities to maintain and operate lines, cables, poles, and distribution boxes in, over, and upon the Premises;

3. Possible projections or encroachments of retaining walls, foundations, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, casings, ledges, water tables, lintels, porticos, keystones, windows, hedges, copings, sidewalk elevators, fences, fire escapes, and the like, or similar projections or objects upon, under, or above any adjoining buildings or streets or avenues or those belonging to adjoining premises which encroach upon the Premises or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges, and the like;

4. Variations between the tax map and the record description of the Land;

5. Zoning, environmental, municipal, building, and all other laws, regulations or similar matters imposed by any federal, state, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises or any portion thereof;

6. All notes or notices of any violation of law or municipal ordinances, orders, or requirements noted in or issued by any Government having or asserting jurisdiction, now or hereafter affecting the Premises; and

7. The lien for all taxes, charges, rents, assessments, and any other governmental charges which are not yet due and payable.

8. [RESERVED – all exceptions (including encroachments identified on applicable ALTA Survey) accepted or deemed accepted by Lessee as a result of its due diligence investigation.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT C

FORM OF INCOME CERTIFICATION

VERIFICATION OF INCOME

RE: Project Name
Address

Apartment Number: _____. Initial Occupancy Date: _____.

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

A. Name of Members of the Household	**B.** Relationship to Head of Household	**C.** Age	**D.** Social Security Number	**E.** Place of Employment
	Head of Household			
	Spouse			

1. The anticipated income of all the above persons during the 12-month period beginning this date, including income described in Item 1(a) below, but excluding all income described in subitem (b) below, is $_____.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions;

(ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

(iii) interest and dividends (include all income from assets as set forth in Item 2(b) below);

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(vi) the maximum amount of public assistance available to the above persons;

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) casual, sporadic or irregular gifts;

(ii) amounts which are specifically for or in reimbursement of medical expenses;

(iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

(iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;

(v) hazardous duty to a member of the household in the armed forces who is away from home and exposed to hostile fire;

(vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(vii) income from employment of children (including foster children) under the age of 18 years;

(viii) foster child care payments;

(ix) the value of coupon allotments under the Food Stamp Act of 1977;

(x) payments to volunteers under the Domestic Volunteer Service Act of 1973;

(xi) payments received under the Alaska Native Claims Settlement Act;

(xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(xiii) payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(xiv) payments received from the Job Partnership Training Act;

(xv) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(xvi) the first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

2. If any of the persons described in Column A in the table above (or any person whose income or contributions were included in Item 1 above) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

(a) the total value of all such assets owned by all such persons: $_____, and

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: $_____

3. (a) Will all of the persons listed in Column A above be, or have they been, full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____ No _____

(b) (Complete only if the answer to Item 3(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____ No _____

We acknowledge that all of the foregoing information is relevant to verification of our status as Tenants of a Regulated Unit and compliance with City affordable housing policies and ordinances and HUD affordable housing program requirements. We consent to the disclosure of such information by the City to HUD and other third-parties involved in the audit, monitoring or enforcement of such policies or programs.

We declare under penalty of perjury that the foregoing is true and correct.

Date: _____

_____
Head of Household

_____
Spouse

FOR COMPLETION BY PROJECT LESSEE ONLY:

I. Calculation of eligible income:

(A) Enter amount entered for entire household from Item 1 above:
$_____

(B) Is the amount entered in Item 2(a) above is greater than $5,000? **Yes / No**

If the answer to Item I(B) is "Yes," please complete subitems (i)-(iii) below:

(i) The product of the amount entered in Item 2(a) above and the current passbook savings rate as determined by HUD: $_____.

(ii) The amount entered in Item 2(b) above: $_____.

(iii) Item I(i) minus Item I(ii) (if less than $0, enter $0): $_____.

(C) TOTAL ELIGIBLE INCOME (Item I(A) plus, if applicable, Item I(B)(iii)):
$_____.

II. Income Qualification:

(A) Is the amount entered in Item I(C) less than or equal to thirty percent (30%) of median income for the Area? **Yes / No**

(B) Is the amount entered in Item I(C) less than or equal to sixty percent (60%) of median income for the Area? **Yes / No**

(C) Is the amount entered in Item I(C) less than or equal to eighty percent (80%) of median income for the Area? **Yes / No**

III. Number of apartment unit assigned: _____ (enter here and on page one)

_____
Lessee

EXHIBIT D

[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Capitalized terms not otherwise defined in this Certificate of Continuing Program Compliance shall have the meanings set forth in that certain Lease dated _____, by and between the City and County of Honolulu, a municipal corporation of the State of Hawai`i (the "City"), and _____, a _____ (the "Lessee"), with respect to the below-referenced Project (such agreement, the "Agreement").

Witnesseth that on this _____ day of _____, the undersigned, having leased from the City that certain affordable rental housing development known as West Loch Project (the "Project"), does hereby certify that during the preceding year (i) such Project was continually in compliance with the Lease; (ii) _____of the residential units in the Project were occupied by Qualified Tenants at Affordable Rents; (iii) and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Set forth below are the names of the Qualified Tenants who commenced or terminated occupancy during the preceding year.

Commenced Occupancy	Terminated Occupancy
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

Attached is a separate sheet listing the number of each residential unit and indicating which residential units are occupied by Qualified Tenants, the size, the number of bedrooms of such residential units and the respective number of Qualified Tenants who commenced occupancy of residential units during the preceding year.

Unit No.	Class of Unit	No. of Bedrooms	Rent	Total Eligible Income	Size (Sq. Ft.)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Units: _____

Number of Lower Income Tenants commencing occupancy this year: _____

EXHIBIT E

NOTICE ADDRESSEES
(INCLUDING REQUIRED COPY RECIPIENTS)

LESSOR:

CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
530 South King Street
Honolulu, Hawai`i 96813
Attention: Director

And to: CITY AND COUNTY OF HONOLULU
Department of Land Management
650 South King Street, 3rd Floor
Honolulu, Hawai`i 96813
Attention: Director

And to: CITY AND COUNTY OF HONOLULU
Department of Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawai`i 96813
Attention: Corporation Counsel

LESSEE:

Komohale West Loch Venture LP
1100 Alakea Street, Unit 2700
Honolulu, Hawai`i 96813
Attention: Stanford S. Carr

And to: Stanford Carr Development, LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawai`i 96813
Attn: Stanford S. Carr
Email: scarr@stanfordcarr.com

And to: Standard Communities
1901 Avenue of the Stars, Suite 395
Los Angeles, CA 90067
Attn: Jeffrey Jaeger
Email: jjaeger@standard-companies.com

And to: RFP & Partnerships
Standard Communities
570 Lexington Avenue, 43rd Floor
New York, NY 10022
Attn: Steven Kahn
Email: skahn@standard-companies.com

And to: Hudson Housing Capital LLC
630 Fifth Avenue, 28th Floor
New York, New York 10111
Attention: Joseph A. Macari
Fax No.: (212) 218-4467

With copies to: Bocarsly Emden
4800 Hampden Lane, Suite 200
Bethesda, Maryland 20814
Attention: Craig A. Emden
Fax No.: (213) 559-0747

And to:

MPC HI Kaleima`o Village, LLC
3414 Peachtree Road, Suite 825
Atlanta, GA 30326
Attention: Robin Delmer
Email: _____

EXHIBIT F

SERVICE OF PROCESS

Registered Agent Solutions, Inc.
1188 Bishop Street, Suite 2212
Honolulu, Hawai`i 96813

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 25-74, CD1

Introduced: 02/28/25 By: TOMMY WATERS - BY REQUEST Committee: BUDGET (BUD)

Title: AUTHORIZING THE EXECUTION OF A GROUND LEASE WITH KOMOHALE WEST LOCH VENTURE LP, TO DEVELOP AN AFFORDABLE RENTAL HOUSING PROJECT AT 91-1666 RENTON ROAD, 'EWA BEACH, OAHU, HAWAI'I 96706, TAX MAP KEY NO: (1) 9-1-122:004.

Voting Legend: * = Aye w/Reservations

02/28/25	INTRO	Introduced.
03/13/25	BUD	Reported out for adoption as amended in CD1 form. CR-98 5 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, NISHIMOTO, WEYER
03/19/25	CCL	Committee report and Resolution as amended were adopted. 8 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, NISHIMOTO, OKIMOTO, TULBA, WATERS, WEYER 1 ABSENT: TUPOLA

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