CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 26-6

RESOLUTION

AUTHORIZING THE EXECUTION OF AN AMENDMENT TO GROUND LEASE, AND SECOND AMENDMENT TO DEVELOPMENT AGREEMENT, RELATING TO THE SENIOR AFFORDABLE RENTAL PROJECT AT THE FORMER 'AIEA SUGAR MILL SITE, 99-385 POHAI PLACE, 'AIEA, O'AHU, HAWAI'I 96701 (TAX MAP KEY: (1) 9-9-078: 006).

WHEREAS, on August 9, 2019, pursuant to Revised Ordinances of Honolulu ("ROH") Section 28-3.4(c)(2) (ROH Chapter 28 was recodified as ROH Chapter 38), by Departmental Communication 571 (2019), the Department of Land Management (now known as the Department of Housing and Land Management) ("**DHLM**") submitted to the City Council a written report selecting the proposal of EAH Inc., a California nonprofit corporation ("**EAH**" or the "**Developer**"), prepared in response to the Request for Proposals (DHLM-1226505) for the development of a senior affordable housing project for low to moderate income households at the former site of the 'Aiea Sugar Mill, located at 99-385 Pohai Place in 'Aiea, and identified as TAX MAP KEY (1) 9-9-078:006 (the "**Property**"); and

WHEREAS, as described in EAH's proposal, the senior affordable housing project to be developed on the Property would consist of approximately 139 affordable studio and one-bedroom rental units that would be available to persons 62 years of age or older, whose household income is 60 percent or below of the area median income for Honolulu (plus one unit for an on-site staff member), and other components (the "**Project**"); and

WHEREAS, pursuant to the authority set forth in Resolution No. 19-194, CD1, adopted by the City Council on October 9, 2019, the City and EAH entered into that certain Development Agreement – 'Aiea Sugar Mill, dated as of November 6, 2019, as amended by that certain First Amendment to Development Agreement dated as of July 18, 2024 (the "**Development Agreement**"), for the development, construction, ownership and operation of the Project; and

WHEREAS, EAH assigned its interest and rights in and to the Development Agreement to Halewilikō Highlands LP, a Hawai'i limited partnership (the "**Project Developer**"), the general partner of which is owned and controlled by HKI, an affiliate of EAH; and

WHEREAS, pursuant to the authority set forth in Resolution No. 23-58, adopted by the City Council on May 17, 2023, the City and the Project Developer entered into that certain Lease dated October 6, 2023 (the "**Ground Lease**"), pursuant to which the Project Developer is leasing the Property from the City at a nominal lease rent of $1.00

per year for a term of 75 years, for the development, construction, ownership, and operation of the Project by the Project Developer; and

WHEREAS, a memorandum of the Ground Lease dated October 6, 2023, is recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-86820518; and

WHEREAS, the Project Developer completed construction of the Project and a certificate of occupancy was issued as of August 13, 2025, with the first residential tenant move-in at the Project occurring on August 19, 2025; and

WHEREAS, the Project Developer has applied commercially reasonable efforts to market and lease the units in the Project to persons 62 years of age or older in accordance with the representations made throughout the solicitation, entitlement, and financing process, and the rental program approved by the City pursuant to Section 18.1.2(e) of the Ground Lease, but despite such efforts, the Project Developer has not achieved stabilized occupancy; and

WHEREAS, such ongoing marketing and leasing efforts include but are not limited to, providing a dedicated website for the Project with application and inquiry portal; paying for social media boosts and placing online advertisements; distributing printed flyers and brochures regarding the Project and events; conducting community-based senior outreach; participating in fairs and other public events; holding property tours, including a staged model unit; and providing proactive support and assistance to applicants, including offering reduced financial requirements and other incentives; and

WHEREAS, to increase the number of persons who may be qualified to reside at the Project, the Project Developer has requested, and the City recommends, changing the age requirement for occupancy of the Project from persons 62 years of age or older to persons 55 years of age or older, provided that their household income is 60 percent or below of the U.S. Department of Housing and Urban Development area median income for Honolulu; and

WHEREAS, such a change in the age requirement for residents of the Project requires the execution of an amendment to the Development Agreement and an amendment to the Ground Lease; and

WHEREAS, because the Project Developer has completed construction of the Project in accordance with the Development Agreement, the Ground Lease, and all applicable laws, and a final certificate of occupancy has been issued for the Project, the City and the Project Developer would like to amend the Development Agreement to

change the date of termination of the Development Agreement from the first to occur of the full occupancy of the Project or October 1, 2026, to the date of issuance of the certificate of occupancy for the Project; and

WHEREAS, the City and Project Developer are seeking the City Council's approval and authorization to enter into (a) an amendment to the Ground Lease to change the age requirement for the Project to persons 55 years of age or older; and (b) an amendment to the Development Agreement to change the date of termination of the Development Agreement to the date of issuance of the certificate of occupancy for the Project (together, the "**Amendment Documents**"); and

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

BE IT RESOLVED by the City Council that:

1. The First Amendment to Lease and the Second Amendment to the Development Agreement are approved substantially in the form attached hereto as Exhibit "A"; and

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

    a. Execute the First Amendment to Lease and the Second Amendment to the Development Agreement, each in substantially the form attached hereto as Exhibit "A", with any modifications 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, including any consents required to amend State of Hawai'i loan documents to conform to the change in age requirement authorized herein, as long as such incidental or related documents do not increase either directly or indirectly the financial obligation of the City; and

CITY COUNCIL
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No. 26-6

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor; the Director of Department of Budget and Fiscal Services; the Director of Department of Housing and Land Management; and EAH Inc., 733 Bishop Street, Suite 1717, Honolulu, Hawai'i 96813.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

JAN 9 2026
Honolulu, Hawai'i

Councilmembers

EXHIBIT "A"

FIRST AMENDMENT TO LEASE
HALEWILIKŌ HIGHLANDS

THIS FIRST AMENDMENT TO LEASE (the "**Amendment**") is made as of _____, 202__, by and between CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, as "Lessor", and HALEWILIKŌ HIGHLANDS LP, a Hawai'i limited partnership, as "Lessee".

RECITALS.

A. Lessor and Lessee entered into that certain unrecorded Lease dated October 6, 2023 (the "**Lease**"), leasing and demising those certain premises situate at 'Aiea, District of Ewa, City and County of Honolulu, State of Hawai'i, identified by Tax Map Key No. (1) 9-9-078: 006, as more particularly described in the Lease, on the terms and conditions set forth in the Lease. A memorandum of the Lease dated October 6, 2023, was recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-86820518.

B. After applying commercially reasonable marketing and leasing efforts to lease the Residential Rental Units to persons aged 62 years or older in accordance with the terms of the Lease, Lessee has requested, and Lessor has agreed, to amend the age requirement set forth in the definition of "Residential Rental Units" to persons aged 55 years or older, and to conform other provisions of the Lease.

C. Concurrently with seeking an amendment to the Lease, Lessee is seeking an amendment to the Development Agreement to confirm completion of construction of the Project.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants set forth herein, Lessor and Lessee have agreed to the matters set forth below.

AGREEMENT.

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meaning set forth in the Lease.

2. Residential Rental Units. The definition of "Residential Rental Units" in Article 1: Definitions is hereby amended and restated in its entirety to read as follows:

> "**Residential Rental Units**" means those low income residential rental units subject to the Tax Credit Requirements that are designated for occupancy by persons who meet the income qualifications set forth herein and are 55 years of age or older. The Residential Rental Units shall not include the residential unit occupied by the resident staff person.

3. Affordable Residential Rental Units for Seniors. Section 6.1.1 of the Lease is hereby amended and restated in its entirety to read as follows:

> **6.1.1** Affordable Residential Rental Units for Seniors. Lessee shall design, construct, operate and maintain the Residential Rental Units, in the number and of the type described below, for occupancy by persons who meet the income qualifications associated with said Residential Rental Units set forth below and are 55 years of age or older:

No. of units	No. of bedrooms	Income qualifications
8	**studio**	At or below 30% of HUD area median income
5	**1**	At or below 30% of HUD area median income
45	**studio**	At or below 50% of HUD area median income
30	**1**	At or below 50% of HUD area median income
30	**studio**	At or below 60% of HUD area median income
21	**1**	At or below 60% of HUD area median income
1	**2**	Staff unit

Total: 140 residential units; 139 Residential Rental Units

Lessee affirms that the Project is intended to qualify as housing for older persons under applicable law and shall adopt, implement, and enforce written policies and procedures demonstrating such intent. Lessee shall verify and document that the age of all household members for each Residential Rental Unit are 55 years of age or older and shall maintain records sufficient to establish ongoing compliance. Lessee shall provide annual written certification of compliance to Lessor and shall permit Lessor, upon reasonable notice, to review compliance records solely for verification purposes. Failure to maintain compliance with the requirements of this Section shall constitute a material default under this Lease, subject to any applicable cure rights.

4. Development Completion. A new Section 8.14 is hereby inserted as follows:

8.14. **Development Completion**. Lessee represents, warrants, acknowledges, and agrees that (i) the Project has been completed in accordance with the Development Agreement, the Lease, and all applicable laws; (ii) a final certificate of occupancy has been issued for the Project; (iii) all required permits have been closed; (iv) as of the date of this Amendment, there exists no uncured default by Lessee under the Development Agreement or the Lease, and no event which, with the passage of time or the giving of notice, would constitute a default thereunder; (v) the termination of the Development Agreement does not terminate, waive, or release any obligations expressly surviving such termination, including, without limitation, indemnities, warranties, latent defect obligations, audit rights, and compliance with affordability, senior housing, and fair housing requirements; (vi) the Project is being operated in compliance with all applicable affordability restrictions, income limitations, and senior housing requirements; (vii) Lessee has adopted and implemented written policies and procedures sufficient to maintain such compliance; (viii) Lessee is not relying, and shall not rely in the future, on the termination of the Development Agreement as a basis to assert that any obligation under the Lease or applicable regulatory agreements has been modified, waived, or extinguished; and (ix) Lessee has no existing claims, offsets, defenses, or counterclaims against the City arising out of or relating to the Development Agreement, the termination thereof, or the development of the Project. Lessee shall indemnify, defend, and hold harmless the City from and against any claims, liabilities, or damages arising out of or relating to the development of the Project or any breach of the foregoing representations and warranties.

5. Amendment; Ratification. Except as amended by this Amendment, the Lease is unmodified and in full force and effect. The parties hereto ratify and confirm their respective obligations under the Lease, as amended by this Amendment.

6. Counterpart Execution. This Amendment may be executed in a number of identical original or electronically transmitted counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement; but in making proof of this Amendment, it shall not be necessary to produce or account for more than one such counterpart. Any party hereto may execute this Amendment by means of an electronic or facsimile signature and such electronic or facsimile signature by any party shall be deemed effective as the original signature of such party for all purposes.

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

LESSOR:

Date of execution by Lessor:
_____, 20__

APPROVAL RECOMMENDED:

_____
Kevin D. Auger, Director
Department of Housing and 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: Andrew T. Kawano
Title: Director

LESSEE:

Date of execution by Lessee:
_____, 20__

HALEWILIKŌ HIGHLANDS LP,
a Hawai'i limited partnership

By: HKI Halewilikō LLC,
a Hawai'i limited liability company
Its General Partner

By: Hui Kauhale, Inc.,
a Hawai'i nonprofit corporation
Its Sole Member

By _____
Name: Marian Gushiken
Title: President

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "**Second Amendment**") is executed on _____, 202__, but effective as of August 13, 2025 (the "**Amendment Effective Date**"), by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i (the "**City**"), with its principal place of business and mailing address at Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813, and HALEWILIKŌ HIGHLANDS LP, a Hawai'i limited partnership (the "**Partnership**"), with its principal place of business and mailing address at 733 Bishop Street, Makai Tower, Suite 1717, Honolulu, Hawai'i 96813, as the successor by assignment to EAH Inc., a California nonprofit public benefit corporation formed under the laws of the State of California, pursuant to that certain instrument dated April 7, 2023, with the Consent of the City.

RECITALS.

A. The City and the Partnership are parties to that certain Development Agreement - 'Aiea Sugar Mill, made as of November 6, 2019, relating to the development, construction, ownership, and operation of an affordable residential rental housing with approximately 139 affordable units (plus one resident manager's unit) and other components, to be constructed on leasehold land situate on the Property (as defined therein) (the "**Project**"), as amended by that certain First Amendment to Development Agreement dated as of July 18, 2024, but effective as of October 1, 2023, by and between the City and the Partnership (as amended, the "**Development Agreement**").

B. A certificate of occupancy was issued for the Project on August 13, 2025, and the first resident move-in occurred on August 19, 2025. The Partnership is continuing to use commercially reasonable efforts to market and lease the Project in accordance with the terms and conditions of that certain Lease dated October 6, 2023, by and between the City and the Partnership, a memorandum of which is recorded in the Bureau of Conveyances of the State of Hawai'i (the "**Bureau**") as Document No. A-86820518, as amended by that certain First Amendment to Lease dated concurrently herewith, by and between the City and the Partnership, a memorandum of which is recorded in the Bureau concurrently herewith (as amended, the "**Lease**").

C. The parties have agreed to amend Section 3.1 of the Development Agreement with respect to the term of the Development Agreement.

AGREEMENT.

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed to the following.

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meaning set forth in the Development Agreement.

2. Amendment.

a. The first sentence of Section 3.1 of the Development Agreement (Term of Development Agreement) is hereby amended in its entirety to read as follows:

> "This Agreement shall be effective commencing as of the Effective Date and shall terminate on the earlier to occur of: (a) the date of issuance of a certificate of occupancy for the Project; and (b) the earlier termination of this Agreement pursuant to the terms and conditions hereof."

3. Representations and Warranties. As a material condition to the City's consent to this Second Amendment, the Partnership hereby represents, warrants, acknowledges, and agrees as follows:

a. The Project has been completed in accordance with the Development Agreement and the Lease, a final certificate of occupancy has been issued, and all required permits have been or will be closed.
b. All construction work required under the Development Agreement has been completed, except for warranty and latent defect obligations.
c. All contractors, subcontractors, and suppliers for work completed as of the date of issuance of the final certificate of occupancy have been paid in full in accordance with the applicable contracts, and there are no outstanding claims, disputes, stop notices, or mechanics' liens relating to such completed work, except for payments or retainage associated with post-certificate-of-occupancy punch list, including playground installation, affecting the Project.
d. There exists no uncured default by the Partnership under the Lease, and no event has occurred which, with the passage of time or the giving of notice, would constitute a default thereunder.
e. The termination of the Development Agreement does not terminate, waive, or release any obligations expressly surviving such termination as set forth therein.
f. The Project is being operated in compliance with all applicable affordability restrictions, income limitations, and senior housing requirements, and the Partnership has adopted written policies and procedures sufficient to maintain such compliance.
g. The Partnership is not relying on the termination of the Development Agreement as a basis to assert any waiver, modification, or extinguishment of its obligations under the Lease or applicable regulatory agreements.
h. The Partnership has no claims, offsets, or defenses against the City arising out of or relating to the Development Agreement, the termination thereof, or the development of the Project.

i. The Partnership shall indemnify, defend, and hold harmless the City from and against any claims arising out of any breach of the foregoing representations and warranties pursuant to Section 9.1 of the Development Agreement.

4. Ratification. Except as amended by this Second Amendment, the Development Agreement is unmodified. The Development Agreement, as amended by this Second Amendment, is hereby ratified and confirmed in all respects.

5. Counterparts. This Second Amendment may be executed by the parties in counterparts, and the counterparts executed by the parties taken together shall constitute a single agreement. The parties agree that this Second Amendment may be executed (whether by original ("wet-ink") signature or an electronic signature (including through e-sign services providers such as DocuSign)) and the signature pages transmitted by facsimile, electronic image scan transmission (such as emailing a "pdf" file), or other electronic transmission. The delivery of such signature pages via facsimile, electronic image scan transmission, or other electronic transmission shall constitute effective execution and delivery hereof.

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IN WITNESS WHEREOF, the City and the Partnership have executed this Second Amendment as of the date first above written but effective as of the Amendment Effective Date.

THE CITY:

APPROVED AS TO CONTENT:

CITY AND COUNTY OF HONOLULU

By Department of Budget and Fiscal Services

_____
Kevin D. Auger, Director
Department of Housing and Land Management

_____
By: Andrew T. Kawano
Its: Director

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel
Department of the Corporation Counsel

PARTNERSHIP:

HALEWILIKŌ HIGHLANDS LP,
a Hawai'i limited partnership

By: HKI Halewilikō LLC,
a Hawai'i limited liability company
Its General Partner

By: Hui Kauhale, Inc.,
a Hawai'i nonprofit corporation
Its Sole Member

By: _____
Marian Gushiken
Its President