HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 26-237

RESOLUTION

AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO ENTER INTO A PRE-DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND CENTRE URBAN REAL ESTATE HAWAIʻI, LLC AND ENTER INTO A GROUND LEASE BETWEEN THE CITY AND COUNTY OF HONOLULU AND CARDINAL ALA WAI LLC TO DEVELOP AN AFFORDABLE RENTAL HOUSING PROJECT AT 1615 ALA WAI BOULEVARD, HONOLULU, OʻAHU, HAWAIʻI 96815, AND IDENTIFIED AS TAX MAP KEYS (1) 2-6-011:033 AND 036 (por.).

WHEREAS, the Property located at 1615 Ala Wai Boulevard, Honolulu, Oʻahu, Hawaiʻi, identified as Tax Map Keys (1) 2-6-011:033 and 036 (por.), consisting of Lot 2, as shown on Map 1, filed with Land Court Application No. 1561 of Ling Bros., Ltd. (9.057 square feet) and Lot 3-A-2, shown on Map 19, filed with Land Court Application No. 852 of Bishop Trust Company, Limited (397 square feed) (the "Property"), was acquired by the City through condemnation using Affordable Housing Funds appropriated under Ordinance 22-14 (Project No. 2016001); and

WHEREAS, on January 30, 2025, pursuant to authority under the Tenth Proclamation Related to Affordable Housing issued by the Governor of the State of Hawaiʻi under Chapter 127A, Hawaiʻi Revised Statutes ("HRS"), the Department of Land Management ("DLM") issued Request for Qualifications No. RFQ-DLM-25-01 (the "RFQ") to solicit proposals from qualified entities to design, finance, construct, and operate an affordable rental housing project on the Property (the "Project"); and

WHEREAS, on or before March 21, 2025, developers submitted their development proposals to the City in response to the RFQ; and

WHEREAS, on April 30, 2025, pursuant to the Mayor's executive reorganization authority under Section 4-202 of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended ("Charter"), and with the approval of the City Council through Resolution 25-086, FD1 (2025), the Department of Housing and Land Management ("DHLM") was established, consolidating the housing functions previously administered by the Mayor's Office of Housing and the land management functions previously administered by DLM; and

WHEREAS, the City's cross-departmental evaluation committee evaluated the proposals, and on July 3, 2025, DHLM notified Centre Urban Real Estate Hawaiʻi, LLC ("Centre Urban") that its proposal was identified as the most advantageous to the City based on the criteria set forth in the RFQ; and

ZON

D-647(26)

RESOLUTION

WHEREAS, Centre Urban established a single purpose entity, CARDINAL ALA WAI LLC, a Hawai'i limited liability company (the "Lessee") to lease the Property and develop, own, and operate the improvements comprising the Project; and

WHEREAS, the City and Centre Urban have negotiated and agreed to the terms of the Pre-Development Agreement, and the City and Lessee have negotiated and agreed to the terms of the Lease, for the design, financing, construction, and operation of the Project upon the Property, attached hereto substantially as Attachment 1 and Attachment 2, respectively; and

WHEREAS, the Project involves a six-story tower, consisting of 40 one-bedroom affordable rental units, 7 parking stalls for residents, guests, and persons with disabilities, one loading space, and common areas; and

WHEREAS, the Project will comply with the affordability requirements of its funding sources, and the units will be restricted as follows: 16 units for households earning sixty percent or less of the Area Median Income ("AMI"), and 24 units for households earning between sixty-one percent and one hundred percent of AMI for the first fifteen years following project completion, after which such 24 units shall be for households earning between sixty-one percent and one hundred twenty percent of AMI, in each case as determined by the U.S. Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area, as adjusted for household size; and

WHEREAS, the Lease provides for Base Rent that has been established based on fair market value; provided that if the Lessee maintains at least ninety percent occupancy of the affordable housing units and remains in full compliance with applicable housing program requirements, the Lessee may be eligible for an annual Affordable Rent Credit that reduces the Base Rent to a nominal amount; and

WHEREAS, the City, Centre Urban, and Lessee concurrently seek the Council's authorization for the City to enter into the Pre-Development Agreement with Centre Urban and the Lease with the Lessee pursuant to Section 38-3.3(g), Revised Ordinances of Honolulu ("ROH"); provided that execution of the Lease is conditioned upon satisfaction of the conditions set forth in the Pre-Development Agreement; and

RESOLUTION

WHEREAS, in accordance with Charter Section 6-1803.1 and ROH Section 38-3.3(h)(1), a public hearing was held on Monday, July 27, 2026, regarding the development of the Project pursuant to the Pre-Development Agreement and Lease, and the lease rent; now, therefore,

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

(1) The Pre-Development Agreement is hereby approved in substantially the form attached as Attachment 1.

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

(a) Execute the Pre-Development Agreement in substantially the form attached hereto as Attachment 1, with any amendments recommended by DHLM and 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, so long as such incidental documents do not increase either directly or indirectly the financial obligation of the City.

(3) The Lease is hereby approved in substantially the form attached hereto as Attachment 2.

(4) The Mayor or the Mayor's designee is hereby authorized to:

(a) Upon determination by the DHLM that each and every condition set forth in Article 6 of the Pre-Development Agreement has been satisfied, execute the Lease in substantially the form attached hereto as Attachment 2, with any amendments recommended by DHLM and 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, so long as such incidental or related documents do not increase either directly or indirectly the financial obligation of the City, including without limitation, a Subordination, Non-Disturbance, and Attornment Agreement.

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 26-237

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor; the Director Budget and Fiscal Services; the Director of Housing and Land Management; Centre Urban Real Estate Hawai'i, LLC and Cardinal Ala Wai LLC, the address of all which is 1620 Ala Moana Boulevard, Suite 510, Honolulu, Hawai'i 96815.

INTRODUCED BY:

(br)

DATE OF INTRODUCTION:

OCT 16 2026

Honolulu, Hawai'i

Councilmembers

Attachment 1
Pre-Development Agreement

PRE-DEVELOPMENT AGREEMENT
Name of Project: Cardinal o Ala Wai
Address: 1615 Ala Wai Boulevard, Tax Map Key Nos. (1) 2-6-011:033, 036 (por.)

THIS **PRE-DEVELOPMENT AGREEMENT** ("Agreement") is made as of _____ (the "Effective Date"), by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i, with its principal place of business and mailing address at Honolulu Hale, 650 South King Street, Third Floor, Honolulu, Hawai'i 96813 (the "City"), and **CENTRE URBAN REAL ESTATE HAWAII, LLC**, a Hawai'i limited liability company, with its principal place of business and mailing address at 1620 Ala Moana Boulevard, Suite 510, Honolulu, Hawai'i 96815 (the "Developer").

This Agreement sets forth the terms, covenants, and conditions pursuant to which City will lease to Developer, and Developer will lease from the City that certain real property more particularly described in **Exhibit A-1** attached hereto (the "Property") and generally depicted on the map attached hereto as **Exhibit A-2**. Upon the satisfaction of certain conditions precedent, including, without limitation, the City's approval of Developer's Pre-Development Plan, the closing of financing for the Project, and Developer's compliance with all applicable laws, the parties shall enter into a lease for the Property. Pursuant to such lease, Developer will develop, construct, manage, and operate upon the Property an affordable rental housing project for Qualified Tenants (defined below), together with other components (collectively, the "Project"), which Project is more particularly described and refined in accordance with Article 2 of this Agreement.

BACKGROUND

The City owns the Property and issued a Request for Qualifications identified as Solicitation Document No. RFQ-DLM-25-01 ("RFQ") on January 30, 2025 for the selection of a qualified developer to plan, finance, develop, construct, operate an affordable housing project on the Property through a ground lease of the Property. The City established a committee ("Evaluation Committee") to evaluate all timely submitted statements of qualifications in accordance with the evaluation criteria set forth in the RFQ. Developer submitted a statement of qualifications dated March 21, 2025 ("RFQ Response").

On May 8, 2025 the Evaluation Committee selected Developer and the City issued a Notice of Intent to Award under the RFQ. Following the selection of Developer and the Notice of Intent to Award, the City granted Developer a limited right of entry to undertake early site review and additional due diligence investigations to assess the feasibility of financing and developing the Project (defined below) and to prepare the Pre-Development Plan (as defined herein).

A public hearing on the proposed development and lease transaction was held on July 27, 2026 and by letter dated **[DATE]**, the Department of Housing and Land Management ("DHLM") presented the terms of this transaction to the City Council of the City and County of Honolulu ("City Council"). Resolution _____, authorizing the City's execution of

this Agreement and a lease substantially in the form attached thereto. Resolution _____, CD, FD was adopted by the City Council on **[DATE]**.

The lease is intended to be entered into between the City and an entity managed and controlled by Developer and is substantially in the form attached hereto as **Exhibit "B"**. The final form of lease agreed upon by the parties shall hereinafter be referred to as the **"**Lease Form.**"** The Lease, to be executed by the parties, shall hereinafter be referred to as the "Ground Lease."

Now, therefore, for good and valuable consideration, including the mutual rights and obligations set forth in this Agreement, the City and Developer hereby covenant and agree as follows:

AGREEMENT

The opening paragraphs and Background provisions set forth above, and all Exhibits attached to this Agreement, are hereby incorporated herein and made a part of this Agreement.

The following are specific terms ("Specific Terms") applicable to this Agreement and shall control over any conflicting, inconsistent, or ambiguous provisions contained in the opening paragraphs, Background provisions, or any Exhibit attached to this Agreement. In the event of a conflict between the Specific Terms and any incorporated provision, the Specific Terms shall govern and prevail.

Authority

This Agreement is issued pursuant to the Tenth Proclamation Relating to Affordable Housing, issued by Governor Josh Green, M.D. on December 6, 2024 (as renewed by subsequent proclamations, the "Proclamation"), under the emergency powers conferred by Chapter 127A, Hawai'i Revised Statutes ("HRS").

Pursuant to HRS § 127A-13(a)(3), the Proclamation suspends HRS § 46-1.5, General Powers and Limitation of the Counties, and related county code(s), as applied to the authority to issue agreements, contracts, and leases related to state or county affordable housing projects. Chapter 38, Revised Ordinances of Honolulu ("ROH"), governing the leasing of City real property interests, is a related county code suspended thereby.

This Agreement is accordingly issued in reliance on the Proclamation and without compliance with the suspended provisions of ROH Chapter 38. Pursuant to the Proclamation, this Agreement shall continue in full force and effect following the termination of the disaster emergency relief period to the extent allowed by law.

Property	The Property consists of approximately 9.454 square feet.
Project Name	Cardinal o Ala Wai
Project Description and Requirements	The following requirements and conditions are all as described and defined further in Section 2.2. "Units" (Amount): 40 (residential rental units) (2.2(a)) "Staff Unit" (Amount): none (2.2(a)) "Minimum Unit Amount":40 (2.2(a)) "Minimum Unit Mix": (2.2(b)) Forty (40) 1 Bedroom Units None 2 Bedroom Units 40 Total Units "AMI Restrictions": Years 1-15 [dates to be inserted] 16 units at or below 60 % AMI (2.2(b)) 24 units at or below 100% AMI Years 16-75 [dates to be inserted] 16 units at or below 60 % AMI (2.2(b)) 24 units at or below 120% AMI Minimum Parking Stalls: 7 (2.2(e)) Loading Stall:1 (2.2(e)) Resident Amenities: as determined by Developer from time to time, which may or may not include bike storage and a centralized laundry room. (2.2(f))
Affordability and Income Restrictions	The Project shall include not less than 16 Units for Qualified Tenants with household incomes at or below 60 % of AMI as further described in Section 2.2(d). The remainder of the Units shall be for Qualified Tenants with household incomes at or below 100 or 120% of AMI as specified in the AMI Restrictions above.
Term	2 years, commencing on the Effective Date and ending on _____ ("Termination Date"), unless sooner terminated as described in Section 3.2.

Preliminary Budget	$_____, attached as Exhibit G
Addresses for Notice	Developer's address for notice pursuant to Section 14.19: Centre Urban Real Estate Hawaii, LLC 1620 Ala Moana Boulevard, Suite 510 Honolulu, Hawai'i 96815 Attn: Martin M. Q. Nguyen With a copy to: Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawai'i 96813 Attn: Cori J. Terayama
Modifications to General Terms	The following provisions are intended to modify the general terms of this Agreement and shall control in the event of any conflict.
1.2	Notwithstanding the provisions of Section 1.2, the Developer shall have the right to assign its rights to such lease to Cardinal Ala Wai LLC, a Hawaii limited liability company, provided that Cardinal Ala Wai LLC shall be controlled by, or is under common control with Developer.
2.2(e)	Developer may charge residents and their guests for such use without the prior review and written approval of the City so long as such rates are customary for similar parking stalls in Waikīkī.
4.11	With regard to Section 4.11(b), $500,000 is increased to $1,000,000.

6.7 With regard to Section 6.7, Developer has received letter dated June 17, 2024 from the Department of Planning and Permitting regarding ROH Chapter 32 and Chapter 343, HRS.

11.4 Section 11.4 shall also apply to conveyance taxes and the City agrees to reasonably cooperate with Developer in submitting claims for exemptions from taxes on behalf of the City (if applicable), and/or Developer's contractors, consultants, or assigns as permitted by law following issuance of a Notice to Proceed.

13.3 With regard to Section 13.3, in the event the City approves any extension, no Default shall occur so long as Developer shall commence the curing or the default within the thirty (30) day period and diligently pursues the completion thereof.

13.14 With regard to Section 13.14, in the event a Lease is entered into for the Project, Developer may turn over the Property to Lessee without taking the actions in subsections (a) through (d) upon agreement by Lessee.

Exhibits Each of the following Exhibits (if checked), and the terms and conditions set forth in the Exhibits, shall form a part of and shall be incorporated into this Agreement. To the extent there is any conflict between any provisions of this Agreement and Exhibit C, Exhibit C shall control.

A-1 Property Legal Description	X
A-2 Property Map	X
B Lease	X
C Funding Restrictions	X
D City Documents	X
E Conditions Precedent Schedule	X
F Preliminary Development Schedule	X
G Preliminary Budget	X
H Construction Contract Description	X
I Form of Surety Bond	X

ARTICLE 1. PROPERTY DESCRIPTION, CONDITION AND RESTRICTIONS

1.1 Property. A legal description and map of the Property are attached hereto as **Exhibit A-1** and **Exhibit A-2**, respectively.

1.2 Leasehold Interest. Subject to certain conditions precedent described in this Agreement and Developer's compliance with the requirements of this Agreement including, without limitation, the requirements of Chapter 343 of the Hawai'i Revised Statutes, as amended ("HRS"), the City will lease the Property to Developer, and Developer will lease the Property from the City, for the development, construction, operation, use and maintenance of the Project for a term of seventy-five (75) years, pursuant to and in accordance with the terms of the Lease Form. The execution of the Lease Form in accordance with terms and conditions of this Agreement is referred to herein as the "Lease Closing". No rights in the Property shall vest in Developer unless and until the Lease Closing occurs.

1.3 Existing Condition of Property. Developer shall lease the Property, including any improvements, in its "AS-IS, WHERE-IS AND WITH ALL FAULTS" condition, without any express or implied warranties or representations of any kind whatsoever, whether oral or written, express or implied, from the City or any officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, contained or addressed in any materials. Developer agrees that the City is not responsible for the engineering or construction of any of the existing improvements on the Property.

Developer has or will be been given a reasonable opportunity to inspect the Property and to conduct such investigations as Developer may deem necessary or appropriate. Developer will rely solely on its own investigation of the Property and not on any information provided by the City.

Developer is responsible for conducting its own specific due diligence from sources other than the City and understands that the City has not made, and has no duty to make, any independent investigation or verification of information provided and makes no representations as to the accuracy or completeness of such information.

1.4 Funding Restrictions. The Property is subject to the funding restrictions described in **Exhibit C** attached hereto and made a part hereof (the "Funding Restrictions"). Developer acknowledges and agrees that: (a) the Funding Restrictions run with the land and bind Developer's leasehold interest; (b) the Project must be designed, constructed, operated, and maintained in full compliance with the Funding Restrictions; and (c) compliance with the Funding Restrictions constitutes a Material Obligation of Developer.

ARTICLE 2. PROJECT AND PRE-DEVELOPMENT PLAN, INITIAL TIMELINES

2.1 Project Description. The Project shall include the Minimum Program Requirements set forth in Section 2.2 and shall be effectuated in the Pre-Development Plan prepared

by Developer in accordance with Section 2.3. The Pre-Development Plan shall establish the Project's overall design, program, layout, feasibility, and implementation path. The approved Pre-Development Plan ("Development Plan") shall be the governing basis for final design, permitting, financing, and conditions precedent.

2.2 Minimum Program Requirements. The Project shall, at a minimum, include the components set forth in this Section (collectively, the "Minimum Program Requirements"). These Minimum Program Requirements establish the baseline obligations for the Project and compliance shall constitute a Material Obligation of Developer. Refinements to configuration, design, or amenity programming may occur during the Pre-Development Plan approval process, provided such refinements do not reduce or alter the Minimum Program Requirements. Any reduction to the Minimum Program Requirements shall constitute a Material Deviation as defined below and shall require the City's prior written approval, which may include City Council approval. The City shall have no obligation to approve changes to the Minimum Program Requirements.

(a) Minimum Units Amount and Mix There shall be the number of affordable residential rental units for Qualified Tenants, (the "Units") plus the number of units for an on-site staff member specified in the Specific Terms ("Staff Unit"). The Project shall include, at a minimum, the number of units specified in the Specific Terms (the "Minimum Unit Amount"). The number, bedroom distribution, and internal configuration of Units may be refined during the Pre-Development Plan approval process, provided the Minimum Program Requirements are preserved. The Project shall include, at a minimum, the following mix of Unit types specified in the Specific Terms (collectively, the "Minimum Unit Mix").

(b) Income Restrictions. The Project shall include, at a minimum, the following qualification requirements, based on the Area Median Income ("AMI") set by the U. S. Department of Housing and Urban Development. The AMI requirements are specified in the Specific Terms (collectively, the "AMI Restrictions"). The AMI Restrictions are intended to ensure a baseline level of AMI opportunity and diversity.

(c) Qualified Tenants. Qualified Tenants are individuals and families who meet the income limitations for occupancy set forth in this Agreement. All Units shall be rented exclusively to Qualified Tenants.

(d) Affordability and Income Restrictions. The Units shall be rented to Qualified Tenants in accordance with the following income requirements; provided, however, that (a) the income limits shall be deemed a "ceiling" and (b) there shall be no "floor" for such income limits. The Project shall include not less than the percentage of the Units indicated in the Specific Terms in to be rented to Qualified Tenants with household incomes at or below the specified percentage (in the Specific Terms) of the area median income for the City and County of Honolulu, adjusted for family size ("AMI"), as

determined by the United States Department of Housing and Urban Development ("HUD") and published by the Hawai'i Housing Finance and Development Corporation ("HHFDC"). Annual income shall be determined based on rules for affordable rental housing projects under ROH Chapter 32 and other applicable laws.

(e) Parking and Loading. A parking lot, to include the Minimum Parking Stalls identified in the SpecificTerms, with parking stalls reserved for persons with disabilities in compliance with the Americans with Disabilities Act, as amended ("ADA"), and the number of loading spaces (located on the ground floor) identified in the SpecificTerms, all in compliance with the Land Use Ordinance and any other applicable law(s). Use of the parking stall(s) and loading space designated to serve the residential rental units are restricted to residents, and other approved guests. Developer shall not charge residents and their guests for such use without the prior review and written approval of the City, which the City may withhold in its reasonable discretion. Public parking shall not be allowed, with or without charge, without prior review and written approval of the City, which the City may withhold in its sole and absolute discretion.

(f) Resident Amenities. The amenities available exclusively for residents and their guests shall be identified in the Specific Terms. Final amenity programming may be refined as part of the Pre-Development Plan approval process, subject to Minimum Program Requirements. Any reduction in the nature or scope of amenities that materially affects livability or Project quality may constitute a Material Deviation as defined below.

2.3 Pre-Development Plan.

(a) Requirement. Within 45 days of the Effective Date, Developer shall prepare and submit to the City a complete and detailed Pre-Development Plan for the Project. The Pre-Development Plan shall be based on Developer's due diligence, preliminary design analyses, market and financial feasibility studies, and initial community engagement, and shall demonstrate compliance with: (a) the Minimum Program Requirements, including the Minimum Unit Amount and Minimum Unit Mix. Timely submission of a complete Pre-Development Plan in accordance with this Article constitutes a Material Obligation of Developer.

(b) Content Requirements. At a minimum, the Pre-Development Plan shall include the following programmatic elements:

i. site layout, massing, and building configuration;

ii. circulation, access, and parking strategy;

iii. utility and infrastructure approach;

iv. unit program, including bedroom mix and preliminary square footages;

v. preliminary affordability program;

vi. phasing (if any);

vii. a preliminary development budget and Development Schedule; and

viii. identification of any requested modifications to Minimum Program Requirements consistent with Section 2.7.

(c) Review Process. The City shall review the Pre-Development Plan for completeness and conformance with this Agreement, including the Minimum Program Requirements; applicable laws and regulations; and City policies and development objectives. The City shall provide written comments, if any, within 30 Business Days; provided however, requests related to the aesthetics, look or appearance of the Project shall not be included, except to the extent there may be an economic impact. Developer shall submit revisions responding to City comments within 15 Business Days.

(d) Approval Standard. The Pre-Development Plan shall not be deemed approved unless approved in writing by the City. The City may withhold approval in its sole discretion.

(e) Pre-Development Plan Approval Timeline. The parties shall agree upon the Development Plan within 180 days from the Effective Date. In the event the parties are not able to agree upon the Pre-Development Plan approvals and finalize the Development Plan within 180 days of the Effective Date, either party may terminate this Agreement.

2.4 Development Plan. Upon approval, the Pre-Development Plan becomes the Development Plan and establishes the governing baseline for final design, Construction Plans, permitting, financing, and the Lease Form. The Development Plan supersedes any concepts, plans and budgets in the RFQ Response. Any modifications to the Development Plan must be approved by the City and the City may withhold approval if there are (a) changes to the Minimum Program Requirements or (b) a Material Deviation as defined below.

2.5 Project Name. The Project name is identified in the Specific Terms. Developer shall not change the name by which the Project is known or identified without the prior written approval of the City.

2.6 Modifications; Material Deviations. To ensure the Project remains aligned with evolving laws, funding requirements, technical findings, and community feedback,

Developer may submit a request for the City's approval of modifications to the Minimum Unit Amount, Unit mix, affordability mix, square footage(s), amenities, or mixed-use components ("Modification") by written request from Developer demonstrating that the modification is: (a) necessary or advisable to comply with federal, state, or local law; (b) required to meet funding or financing program requirements, including Low Income Housing Tax Credits ("Tax Credits") or lender/investor requirements; (c) appropriate in light of a change in market conditions, operational considerations, or other circumstances affecting long-term project viability; (d) responsive to feedback from governmental authorities, community groups, or public stakeholders during design, environmental review, or the Pre-Development Plan approval process; or (e) otherwise made in the best interests of the Project's construction, financing and long-term operability. The City's approval of the requested modification shall be in the City's sole discretion. No modification may reduce the total number of income-restricted Units unless expressly approved by the City. Material Deviations include without limitation, changes requiring City Council approval: substantial alteration of the exterior appearance, structural form, building height, building bulk, coverage, or Floor Area Ratio; any change affecting the Minimum Program Requirements. Unit Amount; or any change affecting the Minimum Unit Mix. Modifications must be approved by the City prior to execution of the Lease Form. The City's approval shall not be unreasonably withheld, conditioned, or delayed, provided that the modification is consistent with Minimum Program Requirements and does not materially reduce public benefits.

2.7 City Use of Work Product. Developer shall ensure that all Pre-Development Plan and Development Plan materials, studies, and analyses ("Work Product") may be used or relied upon by the City if the Project is reassigned, re-procured, or otherwise continued by the City.

(a) Intended Users; Reliance by City. All third-party Studies obtained or commissioned by Developer shall, to the extent reasonably practicable and permitted by applicable professional and ethical rules, include the City as an intended user or recipient. Developer's obligations under this Section shall constitute Material Obligations of Developer.

(b) At the City's election, City may elect to pay the cost of the Work Product, upon the condition that the Work Product may be assigned to the City in conformance with funding requirements and other requirements, which may include the following: (a) name both Developer and the City as intended recipients and/or intended users; and (b) be conducted and prepared in a manner that allows the City to use and reasonably rely upon the results for its own planning, environmental review, permitting, financing, procurement, and other governmental purposes in connection with the Property or a project substantially similar to the Project.

2.8 Project Design. Final design shall be consistent with the approved Pre-Development Plan and shall incorporate community design goals consistent with the

neighborhood, to the extent feasible (including financial considerations) and reasonably practicable:

ARTICLE 3.
TERM

3.1 Pre-Lease Period. Upon approval by the City of the Development Plan, the remaining period of this Agreement ("Pre-Lease Period") shall provide Developer the time to conduct due diligence, obtain financing, permitting, and construction-phase activities of Developer to satisfy the Developer's Pre-Lease Obligations and Conditions Precedent to the execution of the Lease Form (both as defined below).

3.2 Term of Agreement. This Agreement shall be effective commencing as of the Effective Date and shall terminate on the earliest to occur of: (a) the execution of the Lease Form and (b) two years from the Effective Date, unless sooner terminated in accordance with the terms and conditions hereof. Any extension of this Agreement shall be agreed upon by the parties and the City shall be under no obligation to extend the term of this Agreement.

ARTICLE 4. DEVELOPER STANDARD OF PERFORMANCE / GENERAL OBLIGATIONS

4.1 Commercially Reasonable Efforts. Commencing as of the Effective Date, Developer shall use commercially reasonable efforts to undertake the planning, due diligence, Pre-Development Plan preparation, and financing of the Project so that the Project may be completed and operational (i.e., all Units available for rental) on or before the Completion Date set forth in the Development Schedule, as amended from time to time in accordance with this Agreement. For purposes of this Agreement, "commercially reasonable efforts" means efforts consistent with those customarily undertaken by prudent affordable housing developers on similar projects in similar markets, and includes the obligation to act diligently, promptly, and without avoidable delay, subject to events of Force Majeure. Developer's obligations under this Section constitute Material Obligations of Developer.

4.2 Development Manager. Developer shall appoint a qualified and experienced development manager ("Development Manager") responsible for managing and facilitating the development of the Project. Any substitution of the Development Manager shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed; provided that substitution with a full-time employee of Developer shall not require City approval if Developer provides at least fifteen (15) days prior written notice. The Development Manager shall serve as Developer's authorized agent for purposes of day-to-day coordination, and the City may reasonably rely on information provided by the Development Manager as if provided directly by Developer.

4.3 Developer Standard of Performance. Developer shall, at all times during the Term, perform all of its obligations under this Agreement (a) in a timely, diligent, efficient, and

professional manner; (b) in accordance with all applicable federal, state, and county laws, ordinances, regulations, permits, approvals, and orders; (c) in accordance with industry standards generally applicable to the planning, financing, design, construction, management, and operation of affordable rental housing projects in the State of Hawai‘i; and (d) using the degree of care, skill, competence, and judgment customarily exercised by experienced developers of high-quality affordable housing projects of similar size and complexity.

Developer shall ensure that all consultants, contractors, subcontractors, architects, engineers, property managers, and other professionals engaged by Developer possess the requisite licenses, experience, financial capacity, and expertise necessary to perform their respective scopes of work, and shall supervise and manage such parties to ensure compliance with this Agreement.

Developer shall maintain, throughout the Term, sufficient organizational capacity, staffing, resources, financial integrity, and managerial oversight to carry out its obligations under this Agreement, to meet all milestones and to complete the Project in accordance with the approved plans, budget and schedule.

Developer’s obligations under this Section shall constitute Material Obligations of Developer.

4.4 Developer’s Cooperation, Response and Notification. Developer shall cooperate in good faith with the City and its departments, agencies, consultants, and representatives in connection with the planning, financing, construction, and operation of the Project. Developer shall:

(a) keep the City reasonably informed as to the status of the Project, including key approvals, anticipated delays, and material issues;

(b) timely respond to reasonable City requests for information;

(c) provide the City with accurate, complete, and non-misleading information in all submissions, applications, certifications, and communications relating to the Project; and

(d) promptly notify the City in writing of any condition, event, or circumstance that materially affects or may materially affect Developer’s ability to perform its obligations under this Agreement or the Ground Lease, including, without limitation, any material changes in Developer’s financial condition, Project financing, ownership or organizational structure, or key personnel responsible for the Project.

4.5 Observance of Laws, Ordinances and Regulations. Developer, and its officers, agents, employees, consultants, contractors, subcontractors, assignees, and any persons acting on its behalf, shall comply with all applicable laws, ordinances, codes, rules, regulations, guidelines, policies, and any orders or directions of any governmental

agency or court relating to the Project, the Property, or Developer's activities under this Agreement. Compliance with all applicable legal requirements under this Section constitutes a Material Obligation of Developer.

4.6 Safe, Sanitary, and Orderly Condition. Developer, and its officers, agents, employees, consultants, contractors, subcontractors, assignees, and any persons acting on its behalf, shall keep the Property and any improvements thereon in a safe, clean, sanitary, and orderly condition, consistent with applicable health, safety, and environmental requirements when Developer, any of its officers, agents, employees, consultants, contractors, subcontractors, assignees and anyother persons acting on its behalf enter onto the Property.

4.7 Assumption of Risk and Liability. Except as otherwise expressly provided in this Agreement, Developer assumes sole risk and responsibility for the development, construction, and operation of the Project, including all costs, liabilities, and obligations arising therefrom. Nothing in this Section shall limit any indemnity or insurance obligations of Developer or any remedies of the City under this Agreement.

4.8 Notice of Claims. Developer shall notify the City in writing immediately upon becoming aware of any written demand, litigation, claim, or enforcement action that:

(a) might subject Developer or the City to any governmental fines or penalties;

(b) might subject the City to liability in any amount; or

(c) relates to the Property or Developer's activities under this Agreement and might subject Developer (but not the City) to liability in an amount in excess of One Hundred Thousand Dollars ($100,000), whether or not covered by insurance.

Developer's obligations under this Section constitute Material Obligations of Developer.

4.9 Public Presentations about the Project. Developer shall be responsible for Project presentations to the applicable Neighborhood Board, City Council, Hawai'i State Legislature and interested community groups, and public officials as reasonably requested by the City (upon no less than seventy-two (72) hour notice) or required by law. Developer shall not schedule, conduct, or participate in any public-facing meetings, presentations, briefings, outreach efforts, or discussions regarding the Project—including without limitation meetings with Neighborhood Boards, elected officials, community organizations, or public agencies—without the City's prior written approval, which approval shall not be unreasonably withheld or delayed.

Developer shall not issue, publish, or disseminate any press releases, media statements, public filings, marketing materials, website postings, social-media communications, or other public communications relating to the Project without the City's prior written approval; provided, however, that factual disclosures required by law, regulation, or binding agreement may be made with prior written notice to the City.

Developer shall ensure that its partners, members, affiliates, contractors, consultants, property managers, and agents comply with the requirements of this Section. Developer's obligations under this Section shall constitute Material Obligations of Developer.

4.10 Ethics and Conflicts of Interest. Developer, and all persons acting on its behalf, shall comply with all applicable federal, state, and county ethics, procurement, and anti-corruption laws, including prohibitions on gifts, conflicts of interest, unlawful influence, and contingent fees. Developer shall promptly disclose to the City any actual or potential conflict of interest relating to the Project or this Agreement. Developer shall not employ or compensate any person who is disqualified under applicable law from participating in matters relating to this Agreement. Developer's obligations under this Section constitute Material Obligations of Developer.

4.11 Related-Party Transactions. Developer shall disclose to the City any contract, subcontract, financing arrangement, or other transaction with an affiliate, partner, member, or related entity (each, a "Related-Party Transaction"). Related-Party Transactions shall require the City's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, with three exceptions below.

(a) Property Management Affiliate Exception. Notwithstanding the foregoing, the City's approval shall not be required for a property management agreement with an affiliate of Developer for management of the Project, if the Developer has provided prior written notice to the City and demonstrated compliance with all of the following:

i. the property manager is identified in the Property Management Plan approved by the City pursuant to this Agreement;

ii. the property management fee and reimbursement structure are consistent with the operating budget and pro forma for the Project approved by the City attached as Exhibit G; and

iii. Developer has provided prior written notice to the City of its intent to enter into such agreement, with evidence of compliance with the exception requirements.

This exception shall not apply in the event there has been change in the ownership structure of the property manager.

(b) Financing Exception. Notwithstanding the foregoing, the City's approval shall not be required for a financing agreement for the Project with an affiliate of Developer for less than $500,000, if that Developer has provided prior written notice to the City and evidence of compliance with all of the following:

i. the transaction terms were negotiated at arm's-length, and are consistent with the applicable market rates and terms;

ii. financing costs do not exceed amounts approved in the Budget;

iii. no fees, compensation, or other economic benefits are paid to an affiliate other than customary and reasonable financing-related costs consistent with market standards, and not duplicative of developer fee, asset management fee, or other compensation payable under the Project Budget;

iv. Developer has not entered into any other financing agreements with an affiliate of Developer; and

v. Developer has provided prior written notice to the City of its intent to enter into such agreement, with evidence of compliance with the exception requirements.

(c) Minor Contract Exception. Notwithstanding the foregoing, the City's approval shall not be required for a contract that has an aggregate value less than the lesser of (1) $250,000 and (2) 1% of the Project costs as determined by the operating budget and pro forma for the Project approved by the City attached as Exhibit G, if the Developer has provided prior written notice to the City and evidence of compliance with all of the following:

i. the transaction terms were negotiated at arm's-length, and are consistent with the applicable market rates and terms;

ii. the contract shall not be one of a number of contracts for similar good or services, it being the intent that the Developer may not use multiple contracts to avoid the requirement to obtain the City's approval; and

iii. Developer has provided prior written notice to the City of its intent to enter into such agreement, with evidence of compliance with the exception requirements.

For the avoidance of doubt, any asset management, development oversight, consulting, administrative, or similar service agreements between Developer and any affiliate shall constitute Related-Party Transactions subject to this Section and shall not be used to circumvent the limitations applicable to property management agreements or other Related-Party Transactions.

For purposes of (b) and (c), Developer may submit a certification from the construction lender or tax credit investor that they have reviewed and determine that the financing agreement or contract reflects applicable market rates and terms.

4.12 Duty to Mitigate Delay. Developer shall take all commercially reasonable actions to avoid, minimize, and mitigate delay in the performance of its obligations hereunder, including delays resulting from Force Majeure events, governmental reviews, supply-

chain disruptions, contractor performance issues, or financing contingencies. The obligation to mitigate delay shall apply at all times throughout the Term and shall be considered when evaluating any requested adjustment to the Development Schedule. Developer's obligations under this Section constitute Material Obligations of Developer.

ARTICLE 5.
DUE DILIGENCE

5.1 Due Diligence; Right of Entry; Studies. Developer shall have the right to perform such due diligence as it deems necessary with respect to the Property and the Project, including environmental, geotechnical, archaeological, survey, title, infrastructure, market, financial, and other feasibility studies and investigations (collectively, the "Studies"). Such due diligence may commence under any right-of-entry ("ROE") or similar authorization issued to Developer pursuant to the RFQ and shall continue under this Agreement to end 180 days from the Effective Date ("Due Diligence Period").

5.2 City Documents; Independent Investigation. The documents and information provided by the City in connection with the solicitation and Developer's due diligence are identified on **Exhibit D** attached hereto (the "City Documents"). In providing such information and the City Documents, City makes no representation or warranty as to the accuracy or completeness of the information provided. Any reliance on this information by Developer shall be entirely at Developer's own risk, and the City shall bear no responsibility or liability therefor provided, however, that Developer shall promptly notify the City in writing if Developer becomes aware of any material discrepancy, inaccuracy, or omission in the City Documents, together with copies of any confirming information or findings from the Studies. Developer acknowledges that it has had, and shall continue to have, the opportunity to conduct such independent investigations of the Property and surrounding areas as Developer deems necessary or appropriate and that Developer is not relying on any representation or warranty of the City regarding the physical, environmental, geotechnical, legal, or regulatory condition of the Property.

5.3 Due Diligence Determinations; Diligence Notice.

(a) Diligence or Objection Notice. On or before the expiration of the Due Diligence Period, Developer shall notify the City in writing of Developer's acceptance of the Property ("Diligence Notice") or its objections to specifically identified conditions of the Property ("Objection Notice"). Failure by Developer to deliver the Diligence Notice shall be deemed an election by Developer to terminate this Agreement as of the expiration of the Due Diligence Period.

(b) City Cure Period. Upon receipt of an Objection Notice, the City shall have forty five (45) calendar days ("City Cure Period") in which to cure, or to agree to cure prior to the Lease Closing, the objectionable conditions specified in the Objection Notice and to notify Developer of such cure or agreement to cure. Alternatively, the City may elect, within the City Cure Period, not to

cure, or elect not to agree to cure, such objectionable conditions within such period by notifying Developer of such election not to cure.

(c) Developer Election. If the City fails to cure or to agree to cure such objectionable conditions within the City Cure Period, Developer shall have ten (10) calendar days following the last day of the City Cure Period either: (a) to terminate this Agreement; or (b) to waive the objectionable conditions and continue to proceed under the terms of this Agreement. If Developer does not respond as specified, Developer shall be deemed to have elected to terminate this Agreement. Any such termination or cancellation of this Agreement by Developer under this Section shall be without liability, penalty, or compensation to either Party, except as otherwise expressly provided in this Agreement.

5.4 Copies of Due Diligence to the City. Within three (3) Business Days of receipt by Developer of each Study, as well as any non-confidential or non-proprietary due diligence documents obtained from sources other than the City (including, without limitation, surveys, property inspection reports, title reports, studies, data, evaluations, and analyses), Developer shall provide one (1) electronic copy to the City. Developer shall also share with the City all non-confidential, non-proprietary due diligence documents relating to the Property or Project obtained by it prior to the Effective Date promptly following Developer's receipt thereof. In the event of termination of this Agreement, whether by mutual consent or otherwise, the City shall have the right to retain copies of all Studies and any data, reports, and materials derived therefrom, and shall be permitted to continue to use and rely on the Studies and results relating to the Property, even if Developer is no longer involved. Developer's obligations under this Section constitute Material Obligations of Developer. Unless the City has provided funding for Studies, any Studies provided by Developer to the City shall be made on an "as-is" basis, and Developer makes no representation as to the accuracy or completeness of any Study.

ARTICLE 6. DEVELOPER'S PRE-LEASE OBLIGATIONS (CONDITIONS PRECEDENT)

6.1 Developer's Pre-Lease Obligations. Developer's pre-lease obligations in this Section shall be conditions precedent to the Ground Lease (each a "Condition Precedent" and collectively, "Conditions Precedent"). During the Pre-Lease Period, Developer shall use its best efforts and all due diligence to complete the Conditions Precedent. Developer shall keep the City informed on a monthly basis of the status of Developer's progress to date and estimated time for completing the Conditions Precedent; a preliminary schedule is attached as **Exhibit E** (Conditions Precedent Schedule). The Conditions Precedent consist of items 6.2 – 6.8 below. Failure to complete the Conditions Precedent prior to the end of the Term shall mean that the City shall have no obligation to enter into the Lease Form with Developer.

6.2 Project Schedule. Developer acknowledges and agrees that there is a critical shortage of affordable housing in the City for Qualified Tenants and that it is a material

and time-sensitive condition of this Agreement for the benefit of the City that Developer develop, construct, complete, manage, operate and maintain the Project in accordance with the development schedule attached hereto as **Exhibit F** (the "Preliminary Development Schedule"), subject to the terms, conditions and contingencies set forth in this Agreement. Upon agreement on the Development Plan, Developer shall submit to the City a revised development schedule reflecting changes in accordance with the Development Plan (the "Initial Development Schedule") for the City's review and approval. The City may request changes or clarifications to the Initial Development Schedule and Developer shall provide appropriate responses or revisions. All references in this Agreement to "Development Schedule" shall mean the Initial Development Schedule, as amended and/or updated with the City's prior written approval. An approved Development Schedule is a Condition Precedent. The Development Schedule shall incorporate a construction commencement date within 60 days of Lease Closing. Developer acknowledges the urgency of affordable housing development and agrees to timely perform in accordance with the Development Schedule. Developer's obligations under this Section shall constitute Material Obligations of Developer. The key items from the Preliminary Development Schedule are identified as Milestones in the Specific Terms and the failure to achieve the Milestone by the Date specified shall be a Developer Default (as later defined).

6.3 Approved Budget; Project Financing. Developer has provided a Proforma Development Budget in the RFQ Response. Developer may update such budget if it estimates that, based on preliminary analyses and findings from early due diligence and Pre-Development Plan preparation, as of the date of Developer's Proposal, the cost to develop and construct and complete the Project has changed, and the updated budget amount is identified in the Specific Terms. The budget relating to the amount stated in the Specific Terms is based on the budget attached hereto as **Exhibit G** ("Preliminary Budget"). Within 180 days from the Effective Date, Developer shall prepare and submit for the City's approval a revised detailed development budget for the Project, including all sources and uses of funds, soft costs, hard costs, financing costs, reserves, contingencies, and projected developer fee (which fee shall not exceed $55,000 per unit, and in no event shall exceed the amount approved by the City in the budget). The City may request clarifications to such budget and Developer shall provide appropriate responses or revisions. All references in this Agreement to "Budget" shall mean the budget, as amended and/or updated with the City's prior written approval. Prior to the Lease Closing, the Budget shall be updated in accordance with Project financing to be obtained in connection with the Lease Closing and shall include supporting documentation sufficient to demonstrate that all sources and uses are identified, verified, and reasonably sufficient to complete the Project. A copy shall be provided to the City together with a summary of all material changes for the City's approval. For the avoidance of doubt, maintaining an accurate, complete, and timely updated Budget shall constitute a Material Obligation of Developer under this Agreement.

(a) Updates to Budget. Developer shall submit proposed amendments to the Budget for the City's review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Any amendment that:

i. cumulatively increases total Project costs by more than ten percent (10%);

ii. re-allocates line items by more than twenty percent (20%); or

iii. reduces funding allocated to contingencies, reserves, or life-safety elements,

shall constitute a Material Modification requiring the City's prior written approval.

(b) Developer Fee Restrictions. Developer's fee shall not exceed the lesser of (a) $55,000 per unit as set forth in Section 6.3, or (b) the amount approved by the City as part of the Budget. No more than twenty-five percent (25%) may be paid prior to completion of construction, and no more than an additional twenty-five percent (25%) may be paid prior to stabilization. The remainder shall not be paid until:

i. construction completion;

ii. receipt of certificates of occupancy;

iii. delivery of all cost certifications; and

iv. City approval of the final sources and uses statement.

(c) Use and Control of Contingency. Developer shall maintain construction and soft-cost contingencies in amounts approved by the City. Contingencies may only be used for unforeseen, reasonable Project costs and may not be used for Developer fees, related-party payments, or affiliate costs. Any use of the contingency line item will require the City's prior written approval under the Ground Lease.

(d) Financing Sources and Commitments. Not less than fifteen (15) Business Days prior to Lease Closing, Developer shall submit to the City a final detailed sources and uses statement, in a form consistent with industry standards and acceptable to the City, showing all committed financing and updated Project costs. Any change thereafter shall require the City's prior written approval. Developer shall secure binding commitments for all debt and equity sources necessary to complete the Project. Copies of all financing commitments, loan documents, partnership agreements, investor agreements, and related documents shall be provided to the City prior to Lease Closing for the City's approval. Developer shall provide evidence reasonably satisfactory to the City that Developer has secured financing, subject to reasonable funding terms and conditions, adequate to cover the Project costs as described in the Budget prior to the Lease Closing. Developer shall provide the City with written notice of material changes to

financing terms. The City's prior written approval shall be required for changes affecting consistency with the Development Plan and Minimum Program Requirements.

The City acknowledges that Developer may: (a) pursue financing sources that may include Tax Credits (federal and/or state), tax-exempt or taxable bonds, and other public or private financing programs, as applicable to the Project; (b) have HHFDC allocate Tax Credits and/or bonds to the Project; and (c) seek other affordable housing loans, grants, subsidies and/or financing for the Project from the City, State, HUD, other Federal agencies, or other affordable housing programs promulgated under City, State or Federal law, rules or regulations. Developer shall be responsible for using commercially reasonable efforts to secure all funding necessary for the development, construction and operation of the Project. This Agreement does not constitute any commitment by the City to lend or grant money for the Project, nor any covenant or guaranty by Developer that Tax Credits, bonds or other financing for the Project will be granted by the City, State, HUD or other Federal agencies.

(e) City-Funded Pre-Development Costs. If the City elects to reimburse any pre-development or due-diligence costs under Article 8, those costs shall be separately identified in all Budgets, sources and uses statements, and cost certifications, and shall not duplicate any cost reimbursed by another source.

6.4 Construction Contract. Prior to Lease Closing, the Developer shall be prepared to enter into a Construction Contract (as defined in **Exhibit H**) for the Project as described by the Development Plan. Prior to execution of the Lease Form, Developer shall have the Construction Contract executed by Developer and the contractor.

6.5 Surety Bond. Developer shall obtain the "Surety Bond Commitment" in the form shown in as that term is defined in **Exhibit I**.

6.6 Governmental (Land Use and Zoning) Approvals. Developer shall, at its sole cost and expense, obtain all governmental approvals, permits, entitlements, clearances, and determinations necessary for the development, construction, and completion of the Project in accordance with the Minimum Program Requirements, Development Plan, the approved Construction Plans and all applicable federal, state, and local laws (collectively, "Governmental Requirements"). Compliance with this Article shall constitute a Material Obligation of Developer. All Governmental Requirements must be obtained prior to the execution of the Lease Form.

(a) Preparation and Submission of Governmental Applications for Project Development.

i. Form of Submittals. Developer shall prepare all applications for governmental approvals in complete, coordinated, and professionally

prepared form consistent with: (a) the approved Pre-Development Plan; (b) the anticipated or proposed construction plans; and (c) commercially reasonable standards for comparable affordable housing projects.

ii. City Review Prior to Submission. Developer shall submit all draft discretionary applications (including 201H) to the City for review and written approval before filing with any regulatory agency. The City's approval shall not be unreasonably withheld, conditioned, or delayed. No discretionary application may be submitted externally without written City approval.

iii. Response to Agency Comments. Developer shall timely respond to all agency comments, provide supplemental information as required, and provide the City with copies of all agency correspondence.

iv. Coordination. Developer shall keep the City fully informed of permitting progress and shall promptly notify the City of any agency comment, directive, or condition that materially affects the Project, the Pre-Development Plan, the Minimum Program Requirements, or the Budget.

(b) Exemptions. Developer may pursue exemptions pursuant to Section 46-15.1, HRS, Chapter 201H, HRS, and other applicable laws. Developer shall obtain the City's prior written approval before submitting any exemption request, including exemption applications and supporting materials. No exemption application may be filed externally without the City's written approval. City approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall be responsible for all associated costs. Any request for statutory or administrative exemptions authorized by HRS Chapter 201H or HRS §46-15.1, including supporting materials, shall be (a) approved by the City, (b) submitted to Council where required, and (c) approved/accepted by the applicable authority.

(c) Required Approvals Prior to Lease Execution. The following approvals must be obtained in final and non-appealable form prior to execution of the Lease:

i. Zoning and Land Use Approvals. All discretionary zoning and land-use decisions required for the Project, including any variances, conditional uses, LUO compliance confirmations, or similar approvals.

ii. Regulatory Agreements. Any regulatory agreement or affordability covenant required by applicable funding agencies or as required under the Minimum Program Requirements must be in final form acceptable to the City.

iii. Agency Coordination Requirements. All pre-Lease clearances required by federal or State funders or regulators (HUD, State of Hawai‘i Department of Health, HHFDC, etc.) must be obtained.

6.7 Environmental Review and Compliance. Developer will satisfy all applicable environmental review requirements for the Project, as may be required pursuant to Chapter 343, HRS, Chapter 25, Rev. Ord. Honolulu, 40 CFR Part 1500, 24 CFR Part 58, Chapter 205A, HRS, Chapter 6E, HRS, Chapter 174C, HRS, Chapter 195D, HRS, or other applicable Environmental Laws. All costs and responsibilities associated with environmental review and studies, reports, mitigation measures, and other obligations associated therewith shall be the responsibility of Developer. All required environmental permits, approvals, acceptances, determinations, and clearances must be obtained prior to the execution of the Lease Form, and all applicable challenge periods must have expired without a challenge being filed, before the Lease Form can be executed.

6.8 Hazardous Materials Assessments. Developer shall conduct at its own cost, a Hazardous Materials Survey, a Phase 1 environmental site assessment (pursuant to American Society for Testing and Materials E1527-21) and a Phase 2 environmental site assessment if warranted by the Phase 1 environmental assessment and/or requested by any of Developer's lenders and/or investors. The Phase 1 environmental site assessment (and Phase 2 environmental site assessment if conducted, including all reports, surveys and/or studies triggered by the Phase 2 environmental site assessment) shall establish the baseline environmental condition of the Property for purposes of defining Developer's environmental obligations, and shall be submitted to the City and the City Council upon completion. As used herein, "Hazardous Materials Survey" means a hazardous materials survey of asbestos-containing materials, lead-based paint, and other hazardous materials which may be found in an existing building, and which survey may be prepared and submitted as part of a Phase 2 environmental site assessment. If remediation is required for conditions that are Developer's responsibility, Developer shall have obtained all necessary permits and approvals to conduct such remediation.

6.9 Construction Plans. Approval of Construction Drawings shall have been obtained from the State of Hawai‘i Department of Health, Disability and Communication Access Board;

6.10 Project Governmental Approvals. Developer shall have obtained all approvals, determinations, acceptances, and permits required to commence vertical or site-work construction, including without limitation:

(a) confirmation of compliance with Chapter 343, HRS, evidenced by (i) issuance by the accepting authority of a final Environmental Assessment or Finding of No Significant Impact or (ii) Environmental Impact Statement acceptance; and the expiration of all appeal periods without challenge;

(b) necessary LUO determinations or 201H exemptions;

(c) utility and infrastructure availability and approvals required prior to permit issuance; and

(d) any other approval designated in this Article as a Condition Precedent to Lease execution.

6.11 Approval of Rental Program. Developer shall have prepared and submitted a comprehensive rental program to the City for its review and approval ("Rental Program"), which approval shall not be unreasonably withheld, conditioned, or delayed. The Rental Program must comply with all affordability, eligibility, verification, waitlist, nondiscrimination, and tenant-protection requirements applicable to the Project.

6.12 Approval of Property Management Program. Developer shall prepare and submit a Property Management Plan ("PMP") and draft Management Agreement for the City's review and written approval. The City shall have the right to approve the property manager.

6.13 Historic Preservation Compliance. Developer shall have consulted with the State of Hawai‘i Historic Preservation Division (“SHPD”) and provided evidence satisfactory to the City that applicable archaeological and historic-preservation requirements have been addressed. Any required reports, surveys, or plans mandated by SHPD prior to construction shall have been completed and approved.

6.14 Community Engagement Readiness. Developer shall have demonstrated, to the City’s reasonable satisfaction, that it has completed pre-lease community engagement pursuant to Article 4 and established an ongoing engagement process for the Project.

6.15 City Approvals. No Lease shall be executed by the City unless and until each of the conditions set forth in this Section has been satisfied or waived in writing by the City (and, where applicable, the City Council). All Conditions Precedent shall be satisfied at Developer’s sole cost and expense, unless expressly stated otherwise. Developer’s obligations under this Article constitute Material Obligations of Developer.

(a) City Council Approval. This Agreement, the Lease Form and any Material Deviations shall have been approved by the City Council.

(b) Public Hearing. A public hearing shall have been held on the lease rent in accordance with Section 6-1803 of the Revised Charter of the City and County of Honolulu 1973, as amended and ROH § 38-3.3(h)(1).

(c) City Approvals. The Pre-Development Plan and Construction Plans shall have been approved by the City.

6.16 Lease Closing Conditions. Within thirty days of the Lease Closing, Developer shall deliver the following:

(a) Absence of Developer Default. There shall be no uncured Developer Default under this Agreement, after written notice and expiration of applicable cure periods.

(b) Evidence of Committed Financing. Developer shall have provided reasonable evidence that funds are available and committed to pay 100% of Project costs identified in the Budget, including: executed financing commitment letters; investor agreements; bond allocations or reservation notices; pro forma sources and uses; lender underwriting summaries; and evidence that funding conditions precedent are reasonably capable of being satisfied. Developer shall certify that no material adverse change has occurred in the financing package.

(c) Evidence of Insurance. Developer has delivered certificates or other satisfactory evidence that Developer and its Contractor have obtained all insurance required under this Agreement and the Lease Form, effective as of the Lease Closing.

(d) Organizational Documents of Project Entity. Developer has formed the project owner entity and delivered organizational documents; certificates of good standing; evidence of authority to execute the Lease; and all documents required by the City to confirm authority and enforceability.

(e) Title Insurance. Developer has delivered a title commitment for a leasehold title policy acceptable to the City, showing that the leasehold estate will be insured at closing subject only to permitted encumbrances.

(f) No Litigation. There is no pending or threatened litigation, claim, or administrative action that challenges the legality of this Agreement, the Lease, or required governmental approvals; or materially threatens the viability of the Project.

(g) Additional Required Deliverables. Developer has delivered any additional documents, certifications, studies, or confirmations reasonably requested by the City to verify compliance with this Agreement and readiness for Lease Closing.

ARTICLE 7. DEVELOPER'S TERMINATION RIGHTS

7.1 Financing Contingency. At any time prior to the Lease Closing, Developer may terminate this Agreement upon prior written notice to the City if Developer determines that it is unable to receive an award or actually obtain Tax Credits, bonds or other financing acceptable to Developer, in its sole discretion, as Developer determines is necessary or prudent to construct and operate the Project in a timely manner after exercising commercially reasonable efforts and due diligence to secure such financing. If Developer provides such notice after two (2) years from the Effective Date, the City shall receive the Work Product, described in Section 2.7 and the City shall not be required

to pay the cost in Section 2.7(b). Developer shall be responsible for assignment of the Work Product to the City. If Developer properly elects to terminate this Agreement pursuant to this Section, this Agreement and the rights and obligations of the City and Developer shall be cancelled and of no further force or effect, except as otherwise expressly provided.

7.2 Development Contingencies. If Developer determines, in its sole discretion, that a Condition Precedent in Section 6.4 through 6.8 is not or cannot be satisfied by Developer, Developer shall have the right to terminate this Agreement.

7.3 Post-Contingency Alternative Proposals. If Developer, in its sole discretion, determines that it is not able to develop an affordable rental housing facility in accordance with the terms of this Agreement due to any Development Contingency arising under this Article, Developer shall provide to the City its suggestions, if any, for possible changes in facility use or the target populations that could be served by a proposed development at the Property.

ARTICLE 8. PRE-DEVELOPMENT COSTS AND WORK PRODUCT

8.1 Developer Responsibility; No City Commitment. As between the Parties, Developer shall remain primarily responsible, at its sole cost and expense, for all pre-development and due diligence costs and expenses associated with the Project, including without limitation the Studies, environmental review, planning, architectural and engineering work, traffic and infrastructure studies, and other professional services and soft costs, except to the extent the City elects, in its sole and absolute discretion, to reimburse or fund a portion of such costs pursuant to this Section. Nothing in this Agreement shall be construed as a commitment, obligation, or agreement by the City to reimburse or pay any pre-development costs, and any such reimbursement or participation shall be subject to (a) the availability of funds, (b) all applicable legal and budgetary requirements, and (c) such additional terms and conditions as the City may reasonably require.

8.2 No Third-Party Rights; Professional Obligations. Nothing in this Section is intended to (a) create contractual privity between the City and any consultant, contractor, or design professional engaged by Developer, or (b) impair or limit any professional's obligations under applicable law or professional standards. The Parties acknowledge that certain instruments of service may be subject to copyright or licensing restrictions; in such cases, Developer shall use commercially reasonable efforts to obtain the licenses and permissions necessary to enable the City's use and reliance on the Work Product as contemplated herein.

ARTICLE 9. COMPLIANCE WITH LAWS; NOTICES

9.1 Compliance With Future Laws; No Additional City Financial Responsibility. Notwithstanding anything to the contrary in this Agreement, Developer acknowledges and agrees that:

(a) Developer Responsibility. Developer shall, at its sole cost and expense, comply with all statutes, ordinances, rules, regulations, codes, and requirements of any governmental authority that are enacted or amended after the Effective Date, including any changes in tax laws, affordable housing regulations, financing program requirements, or building, health, safety, environmental, or accessibility standards (collectively, "New Legal Requirements"). No change in any New Legal Requirement shall entitle Developer to additional financial assistance, subsidy, compensation, or consideration from the City, nor shall the City have any obligation to modify this Agreement or the Ground Lease to increase or contribute funding to offset Developer's costs of compliance.

(b) Continued Performance. Developer shall continue to be obligated to construct and complete the Project, and to satisfy all Material Obligations, notwithstanding any New Legal Requirements, except where performance is excused solely due to a qualifying event of Force Majeure.

(c) Future Regulations. Developer shall comply with all future City, State, or Federal affordable-housing regulations applicable to projects of the same type, including, without limitation, eligibility standards, income and rent limits, reporting requirements, physical condition standards, tenant protections, and any regulatory changes affecting long-term affordability.

(d) Conforming Amendments. Any amendments to this Agreement that are required solely to conform the Agreement to New Legal Requirements shall be made pursuant to this Section and shall not be deemed a material adverse modification to Developer's rights.

Developer's obligations under this Section constitute Material Obligations of Developer.

9.2 Developer Standard of Performance. Developer shall at all times perform in a timely, diligent, professional manner consistent with industry standards for high-quality affordable rental housing projects in Hawai‘i. Developer shall maintain adequate staffing, resources, expertise, and organizational capacity throughout the Term and shall ensure the competency of all consultants, contractors, and property managers. Developer shall provide prompt written notice of any condition affecting its performance.

9.3 Information, Inspections, and Claims

(a) Quarterly Submissions. Developer shall provide quarterly updates to the Development Schedule and Budget, including progress to date and updated cost estimates.

(b) Notice of Claims. Developer shall immediately notify the City of any written demand, litigation, claim, or enforcement action meeting the thresholds in the Agreement. This is a Material Obligation of Developer.

(c) City Inspection Rights. All records relating to the Project (excluding privileged/confidential materials) shall be available for inspection during normal business hours by the City and regulatory authorities.

ARTICLE 10. GOVERNMENTAL APPROVALS; ENTITLEMENTS; AND PERMITTING

10.1 Compliance with All Laws. Developer shall comply with all applicable laws, including:

(a) building, health, safety, and fire codes;

(b) environmental laws;

(c) accessibility standards under federal and state law;

(d) land-use and zoning laws;

(e) stormwater, wastewater, and utility regulations.

Compliance with all such laws constitutes a Material Obligation.

10.2 Governmental Changes After Effective Date. Developer shall comply with all new or amended legal requirements enacted after the Effective Date ("New Legal Requirements"), provided however: No New Legal Requirement shall obligate the City to provide financial assistance or compensation; and Developer's obligation to comply is subject only to Force Majeure.

10.3 Permit Sequencing and Development Schedule. Developer shall pursue all approvals diligently and in accordance with the Development Schedule. Any request for extension shall follow the applicable procedures.

10.4 No City Liability**.** The City shall not be liable for delays, costs, or impacts caused by governmental agencies, regulatory authorities, utility providers, or third-party reviewers. Developer assumes all risk of delay associated with governmental approvals.

10.5 Material Obligation. Developer's obligations to obtain governmental approvals, maintain compliance, prepare complete applications, and satisfy permitting requirements under this Article constitute Material Obligations of Developer.

ARTICLE 11.
CITY'S OBLIGATIONS; RESERVED RIGHTS

11.1 Cooperation.

(a) The City shall keep the Developer fully informed as to the status of all approvals and delays for which the City is responsible, and shall at all times

act in good faith, reasonably and in full cooperation with the Developer in connection with the entitlement, construction, development, financing and operation of the Project, except where this Agreement provides that a party shall have sole and absolute discretion. Such cooperation shall include, but not be limited to, the following:

i. responding to all requests for review, consent and approval within ten (10) Business Days of the receipt of such request, unless a different time period is expressly required hereunder or mutually agreed to by the parties; provided, however, that if circumstances prevent the City from responding within such time period, the City shall notify Developer, provide Developer with a reasonable estimate of when the City expects to respond, and shall respond within a reasonable time thereafter; provided further that the requests for review shall not include City regulatory agency reviews (e.g., permit applications to be reviewed by the Department of Planning and Permitting) or action before the City Council or any other reviews that are not deemed the responsibility of the City Liaison (as defined below) by the terms of this Agreement.

ii. in connection with any reasonable request by a requesting party hereto for a consent or approval required under this Agreement, not unreasonably conditioning, delaying or withholding such consent or approval, except where this Agreement provides that a receiving party shall have sole and absolute discretion;

iii. expressing support for the Project, and facilitating, supporting and cooperating in various community and public stakeholder meetings and discussion forums, at no cost to the City; and

iv. supporting and assisting Developer with the City Council approval process.

11.2 Appointment of City Liaison. The City hereby appoints DHLM Director or designee as its primary contact person and manager of the Project and the Property on behalf of the City ("City Liaison"). This City Liaison shall only be responsible and able to speak to contractual obligations and issues arising directly under this Agreement and pertaining to the City's proprietary capacity as a party to this Agreement. The City Liaison shall not, under any circumstances, be authorized or available to address or comment on questions of Project entitlements, legality or compliance with City ordinances, codes, rules or other requirements – all such questions being answerable or addressable only by the responsible City departments in the ordinary course of their operations. The City shall have the right to change or substitute said City Liaison at any time, so long as the Developer is notified at least fifteen (15) days in advance, and in writing, of such substitution The City Liaison shall be the authorized agent of the City for purposes of carrying out the City's contractual rights and obligations under this Agreement, and as

limited above, and Developer shall be entitled to receive and rely upon information from the City Liaison as it pertains to rights and obligations under this Agreement, to the same extent as if it were from the City directly. Any information or direction provided by Developer to the City Liaison pertaining to rights and obligations under this Agreement, and as limited above, shall be deemed to have been provided to the City. Furthermore, all approvals required to be considered by the City under this Agreement, and as limited above, shall be directed to and answered by the City Liaison, unless otherwise expressly reserved in this Agreement or applicable law for City Council approval.

11.3 Due Diligence Materials. No later than five (5) Business Days following the Effective Date, the City agrees to provide Developer with the City Documents listed in Exhibit D.

11.4 General Excise Tax and Real Property Tax Exemptions. Upon request by Developer and provided the Project qualifies for an exemption from general excise tax and/or real property tax under applicable laws, ordinances or rules, the City agrees to reasonably cooperate with Developer in submitting claims for exemptions from taxes on behalf of the City (if applicable), and/or Developer's contractors, consultants, or assigns as permitted by law, following execution of the Lease Form and issuance of a Notice to Proceed. Developer shall be responsible for all associated costs.

11.5 Governmental Authority. The City is entering this Agreement in its proprietary capacity. Notwithstanding anything herein to the contrary, nothing in this Agreement limits, waives, or impairs the City's authority to act in its governmental, regulatory, police-power, permitting, enforcement, or legislative capacities. All cooperation obligations in this Article apply solely to the City's proprietary role as owner of the Property and contracting party, and shall not obligate any City agency to issue permits, approvals, or entitlements.

ARTICLE 12.
REPRESENTATIONS AND WARRANTIES

12.1 Developer's Representations and Warranties. Developer represents and warrants to the City, to its actual knowledge and belief as of the Effective Date and as of the date the Lease is executed by Developer, as follows:

(a) Organization and Good Standing. Developer is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation and is authorized to transact business in the State of Hawai‘i. Developer has full power and authority to carry on its business and to perform its obligations under this Agreement.

(b) Authority and Enforceability. Execution of this Agreement on behalf of Developer by the signatory hereto is duly authorized, Developer has the full right and authority to enter into this Agreement and all documents contemplated hereby, and the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this

Agreement by Developer. Upon full execution, this Agreement shall be valid, legally binding and enforceable against Developer according to its terms. Developer further represents and warrants that there are no restrictions, agreements, or limitations on Developer's right or ability to enter into and perform the terms of this Agreement.

(c) Consents. No consents or approvals are required to be obtained from any governmental body or agency for the execution and delivery of this Agreement by Developer or, if required, the same have been obtained.

(d) Tax Compliance. All tax returns and reports of Developer required by law to be filed have been duly filed and all taxes, assessments, contributions, fees and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith) upon Developer's properties or assets or income which are due and payable have been paid, and Developer has submitted applicable state and federal tax clearance certificates prior to execution of this Agreement.

(e) No Conflicting Agreements; No Default. Developer is not in violation of or in default with respect to any term or provision of any mortgage, indenture, contract, agreement or instrument which materially and adversely affects or will materially and adversely affect the business or prospects or condition (financial or other) of Developer or the Project. The execution, delivery, performance of and compliance with this Agreement will not result in any such violation or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien or charge on any of the properties or assets of Developer. There is no term or provision of a mortgage, indenture, contract, agreement or instrument applicable to Developer or by which Developer is bound which materially and adversely affects or will materially and adversely affect the business or prospects or condition (financial or other) of Developer or Developer's properties and assets. Developer further represents that it has not entered into any side agreements, commitments, or understandings that would restrict, limit, or impair its ability to fully perform its obligations under this Agreement.

(f) Litigation. There is no action, suit, proceeding or investigation pending against Developer, and Developer has not received written notice of any threatened action, suit, proceeding or investigation against Developer, or the Project, in any court, or before or by any governmental entity from which any adverse decision might materially affect Developer's ability to observe and perform Developer's obligations under this Agreement. Developer shall promptly notify the City in writing of any such action, suit, proceeding, investigation, claim, or notice that arises after the Effective Date.

(g) Financial Statements. Any financial statements of Developer delivered to the City are true and correct in all material respects, have been prepared in

accordance with generally accepted accounting practices, and fairly represent the financial condition of Developer as of the date of financial statements. No materially adverse change has occurred in Developer's financial condition since the date of the financial statement. Developer has made no additional borrowings since the date of the financial statement, except those approved by the City or contemplated under Section 4.14 of this Agreement.

(h) No Material Misstatements; Full Disclosure. Developer represents and warrants that all information, statements, applications, budgets, schedules, financial submissions, and other materials delivered by Developer to the City in connection with the Project are, to Developer's actual knowledge, true, complete, and accurate in all material respects and do not contain any untrue statement of material fact or omit to state any material fact necessary to make such information not misleading. This representation shall be continuing in nature.

(i) No Debarment or Exclusion. Developer represents and warrants that neither Developer nor any of its principals, members, partners, or affiliates is debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in federally assisted or state-assisted programs, including those administered by HUD, HHFDC, or the City. Developer shall immediately notify the City of any change in this status.

(j) Anti-Corruption; No Contingent Fees. Developer represents and warrants that it has not paid, given, offered, or promised, and shall not pay, give, offer, or promise, any fee, commission, gift, gratuity, or thing of value in violation of federal, state, or county procurement, ethics, or anti-corruption laws in connection with this Agreement or the Project. Developer further represents that no person or entity has been employed or retained to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee.

(k) Non-Reliance on City Representations Regarding Property Condition. Developer acknowledges and agrees that, except as expressly provided in this Agreement, the City has made no representations or warranties regarding the physical, environmental, geotechnical, structural, archaeological, cultural, or other condition of the Property, or its suitability for Developer's intended use. Developer represents that it is relying solely on its own investigations and due diligence and not on any information, statement, or omission by the City.

(l) No Insolvency or Bankruptcy. Developer represents and warrants that it is not insolvent, is not the subject of any bankruptcy, receivership, or insolvency proceeding, and has not made any assignment for the benefit of

creditors. Developer shall promptly notify the City of any event that could reasonably be expected to result in such a proceeding.

(m) Compliance with Fair Housing and Civil Rights Laws. Developer represents and warrants that it is, and shall remain, in compliance with all applicable federal, state, and local fair housing, civil rights, and nondiscrimination laws, including the Fair Housing Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and applicable State of Hawai‘i laws.

(n) Liens. Developer has made no contract or arrangement of any kind, and has taken no action or failed to take any action that would give rise to a lien on the Project, except for, and to the extent, applications for Project financing result in awards, loans or financing which would result in a lien upon the closing of such financing. Developer shall keep the Project free of liens and shall promptly discharge any lien or claim of lien arising from Developer's activities or those of its contractors, consultants, or agents.

(o) Compliance with Law. Developer represents that it has not received any notification that it is not in compliance with all applicable federal, state, and local laws, ordinances, and regulations relating to Developer's business operations, and no violation exists that would materially impair Developer's ability to perform its obligations under this Agreement.

12.2 City's Representations and Warranties. The City represents and warrants to Developer as of the Effective Date and as of the date the Lease is executed by the City, as follows:

(a) Authority and Enforceability. Execution of this Agreement on behalf of the City by the signatory hereto is duly authorized, the City has the full right and authority to enter into this Agreement and all documents contemplated hereby, and the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Agreement by the City. Upon full execution, this Agreement shall be valid, legally binding and enforceable against the City according with its terms.

(b) No Known Violations. To the City Liaison's actual knowledge, without independent investigation, the City has not received written notice of a violation of any law, ordinance, rule or regulation with respect to the Property.

(c) No Known Litigation Affecting the Property. To the City Liaison's actual knowledge, without undertaking any independent investigation, there are no actions, suits, material claims, legal proceedings or any other proceeding pending or threatened before any court or governmental agency, with respect to the Property, including but not limited to eminent domain.

ARTICLE 13.
DEFAULT; TERMINATION

13.1 Definition of Developer Default. A "Developer Default" shall mean the occurrence of any of the following:

(a) any failure by Developer to perform a Material Obligation under this Agreement;

(b) any failure by Developer to comply with the Developer Standard of Performance or any of the obligations in Article 4; or

(c) any of the Developer Default Events listed below.

A "Developer Event of Default" shall occur only upon: the City's written notice of a Developer Default; expiration of the applicable cure period; and Developer's failure to cure within such cure period. Upon the occurrence of a Developer Event of Default, the City shall have the rights and remedies set forth in this Article, and all remedies at law or in equity. For the avoidance of doubt, the exercise by Developer of any express termination right under Article 7 (Development Contingencies and Termination Rights) in accordance with the terms of this Agreement shall not, by itself, constitute a Developer Default or a Developer Event of Default.

13.2 Developer's Default Events. Without limiting the generality of Section 14.1 above, each of the following shall constitute a Developer Default:

(a) Failure to Perform; Failure to Perform Material Obligations. Developer fails to perform any obligation under this Agreement in any material respect or fails to perform any obligation expressly identified as a Material Obligation.

(b) Failure to Use Commercially Reasonable Efforts to Satisfy Development Contingencies. Developer fails to use commercially reasonable efforts to satisfy conditions to Lease execution (Article 6) or Commencement of Construction (Article 7) within the applicable time periods in the Development Schedule, subject to authorized extensions, Force Majeure, and Developer termination rights.

(c) Abandonment or Suspension of Work. Developer abandons or substantially suspends pre-construction work, except as expressly permitted by this Agreement, or as required by law, and fails to resume work within a reasonable time.

(d) Unauthorized Transfer. Developer attempts to transfer any direct or indirect interest in the Property or Project other than as permitted.

The notice, cure periods, and consequences that follow apply to all Developer Defaults listed above or arising under Section 14.1.

13.3 Notice and Cure**.** Upon the occurrence of any Developer Default**,** the City shall provide written notice to Developer describing the default in reasonable detail.

(a) Cure Periods

i. Monetary Defaults**.** Developer shall have twenty (20) calendar days after receipt of written notice to cure any default that may be remedied by the payment of money.

ii. Nonmonetary Defaults**.** Developer shall have forty-five (45) calendar days after receipt of written notice to cure any default that cannot be remedied solely by the payment of money (a **"**Nonmonetary Default**"**). Developer shall immediately commence cure and shall diligently and continuously prosecute such cure to completion.

iii. Extensions for Nonmonetary Defaults**.** If a Nonmonetary Default cannot reasonably be cured within thirty (30) days, Developer may submit a written request to the City for an extension, supported by reasonable justification. Any extension shall be granted only by the City's written approval, in the City's reasonable discretion. No extension shall be implied by silence or inaction.

(b) Developer Obligations. During any cure period or extension, Developer shall: diligently attempt to cure the Default; protect the Property from loss or damage; maintain the Development Schedule to the extent reasonably practicable; and provide written status reports upon the City's request.

13.4 Event of Default; City Remedies. If Developer fails to cure a Developer Default within the applicable cure period (including any approved extensions), a Developer Event of Default shall occur. Upon a Developer Event of Default, the City may exercise any and all remedies available at law, in equity, under this Agreement, including but not limited to: terminating this Agreement; pursuing specific performance; and seeking all damages permitted by applicable law.

13.5 Transfers Prohibited During Default; Approval of Replacement Developer. During the existence of any Developer Default or Developer Event of Default, Developer shall not transfer, assign, encumber, or convey any direct or indirect interest in this Agreement, the Ground Lease, the Project, or the Property without the City's prior written approval, which may be granted or withheld in the City's sole discretion; and any purported transfer in violation of this Section shall be null and void and shall constitute a separate Developer Default. If Developer proposes a replacement developer or operating partner in connection with a cure or assumption, the City may require that the replacement entity meet all qualifications applicable to the original Developer, including financial capacity, experience, affordable housing development qualifications, and good standing with governmental agencies.

13.6 No Injunctive Relief Against the City; Non-Blocking Provision. Developer acknowledges that the timely development of affordable rental housing is a matter of critical public importance. Accordingly, Developer agrees that Developer shall not seek, and shall not be entitled to, any injunction, restraining order, stay, or other equitable relief that would delay, impede, or prevent the City from exercising its rights or performing its obligations under this Agreement or from proceeding with any public project, public purpose, or redevelopment of the Property, and Developer's sole and exclusive remedy for any alleged breach by the City (except as expressly provided otherwise) shall be an action for monetary damages, subject to the limitations set forth in this Agreement. Nothing herein shall be construed to limit the City's rights to injunctive or equitable relief.

13.7 No Compensation or Damages Upon Termination for Developer Default. If this Agreement is terminated by the City due to a Developer Event of Default, Developer shall not be entitled to any compensation, reimbursement, payment for improvements, lost profits, expectation damages, or any other monetary or non-monetary relief except as expressly provided herein. Developer expressly waives any claims for restitution, unjust enrichment, quantum meruit, or reliance damages arising from or relating to such termination.

13.8 Survival of Certain Obligations. Termination of this Agreement shall not relieve Developer of any obligations that expressly survive or that, by their nature, are intended to survive, including, without limitation:

(a) indemnification;

(b) confidentiality;

(c) insurance obligations until all risk of loss is transferred;

(d) environmental remediation, monitoring, or reporting obligations; and

(e) audit, inspection, and record-retention obligations.

13.9 Accrued Obligations Unaffected. Termination of this Agreement for any reason shall not discharge any obligation, liability, or duty of Developer that accrued prior to the effective date of termination.

13.10 City's Default and Consequences. In the event the City fails to perform in a timely manner any of its obligations stated in this Agreement, Developer shall notify the City in writing of its default. If the default is not cured within thirty (30) calendar days of the written notice, or, if not reasonably curable within such 30-day period, cured within such further period of time as may be reasonably requested by City in writing and approved by Developer, so long as the City continuously and diligently attempts to cure the default, then, Developer may terminate this Agreement and the Lease, as applicable, upon written notice to the City, and/or exercise all rights and remedies available at law or in equity.

13.11 No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

13.12 Termination for Illegal Purposes. At any time during the term of this Agreement, the City shall have the right to terminate this Agreement if the Property, or any part of the Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime by Developer.

13.13 Cumulative Remedies; Recovery of Costs**.** The rights and remedies of the City set forth in this Agreement shall be cumulative and in addition to, and not in limitation of, any other rights and remedies available to the City at law or in equity. Developer shall be liable to the City for all actual, reasonable, out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by the City in connection with the enforcement of this Agreement following a Developer default. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof, and no waiver shall be effective unless in writing executed by the City.

13.14 Immediate Surrender of Possession. Upon termination of this Agreement, Developer shall immediately:

(a) vacate and surrender possession of the Property to the City;

(b) remove all personnel, contractors, vendors, and equipment;

(c) cease all operations except those expressly permitted by the City; and

(d) execute all documents necessary to evidence the surrender of all leasehold or possessory rights.

Developer shall have no right to remain in possession for any "wind-down" period unless expressly permitted in writing by the City, which permission may be granted or withheld in the City's sole discretion.

13.15 Survival of Indemnities; No Limitation. All indemnification obligations of Developer under this Agreement shall survive termination, expiration, or cancellation of this Agreement for any reason and shall apply to all claims, liabilities, losses, or damages arising from events occurring prior to termination or resulting from Developer's activities on or relating to the Property. No limitation on Developer's liability (contractual or otherwise) shall apply to Developer's indemnification obligations unless expressly stated.

13.16 Limitation on Damages Against the City. Notwithstanding anything to the contrary contained in this Agreement, the City shall not be liable to Developer for any

consequential, special, incidental, exemplary, or punitive damages, including lost profits, loss of business opportunity, loss of financing, diminution in value, or similar damages; and Developer's remedies against the City are limited to actual, direct damages, subject to all other limitations and requirements stated in this Agreement.

13.17 Mitigation of Damages Not Required. Because this Agreement concerns the development of affordable rental housing and other essential public purposes, the City shall have no obligation to mitigate damages following a Developer Default or Developer Event of Default. Developer shall not assert failure to mitigate as a defense to any claim brought by the City under this Agreement.

ARTICLE 14.
MISCELLANEOUS.

14.1 Amendment. This Agreement may be amended only by a written instrument executed by both parties. No amendment, modification, waiver, or consent shall be effective unless in writing and signed by the party against whom enforcement is sought. No course of dealing, conduct, delay, or correspondence shall constitute a modification or waiver of any provision of this Agreement. Amendments that require City Council approval under applicable law shall not be effective unless such approval is obtained.

14.2 Applicable Law; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i. Any action arising out of or relating to this Agreement shall be brought exclusively in the Circuit Court of the First Circuit, State of Hawai'i. Each party knowingly and voluntarily waives the right to trial by jury in any action or proceeding arising out of or relating to this Agreement to the fullest extent permitted by law.

14.3 Confidentiality. Developer shall not disclose, release, or disseminate any non-public information, documents, analyses, communications, or materials received from the City in connection with the Project, except: (a) to Developer's employees, consultants, attorneys, lenders, investors, and advisors who have a need to know and are bound by confidentiality obligations; (b) as required by law; or (c) with the City's prior written approval. Developer acknowledges that the City is subject to the Uniform Information Practices Act (HRS Chapter 92F) and agrees to cooperate with the City in responding to any public-records request. Developer's obligations under this Section constitute Material Obligations of Developer.

14.4 Approvals. Any approvals obtained by Developer from the City pursuant to this Agreement shall be for the purposes of this Agreement only. Such approvals shall not be construed to relieve or absolve Developer of compliance with any laws or regulations. Nor shall any such approvals serve as a substitute for, or excuse Developer from obtaining, any required approvals from federal, state, and City agencies. No approval shall be implied by silence, and only written approval issued by the City shall constitute approval.

14.5 Assignment. Neither this Agreement nor any interest herein may be assigned by a party without the prior written consent of the other party, which, in the case of the City, may be withheld in its sole and absolute discretion, except as expressly provided below.

(a) Permitted Developer Assignments. Developer may, with the City's prior written consent (which shall not be unreasonably withheld or delayed):

i. assign this Agreement prior to or concurrently with the Lease Closing to an entity controlled by Developer or a Developer affiliate; or
ii. collaterally assign its rights under this Agreement to a Project lender or investor as security for the construction financing of the Project.

(b) Conditions. Any assignment shall require:

i. the proposed assignee to assume all of Developer's obligations under this Agreement in writing;
ii. no outstanding Developer Default or Event of Default; and
iii. written notice to the City accompanied by true copies of the proposed assignment instruments.

Any assignment in violation of this Section is void.

14.6 Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

14.7 City's Right to Amend. The City may, at any time, require amendments to this Agreement to ensure compliance with applicable City, State, or federal laws, regulations, funding conditions, or programmatic requirements; provided that any such amendment shall remain within the general scope of this Agreement. The City shall provide the proposed amendment to Developer for review. Developer shall cooperate in good faith to evaluate and implement such amendment. If the proposed amendment would materially increase the cost to Developer or materially reduce Developer's rights, Developer may request reasonable modifications to address such impacts, or may exercise any termination right available under this Agreement. No amendment is effective unless executed in writing by both parties (and, where required, approved by the City Council).

14.8 No Party Deemed Drafter. Each party to this Agreement acknowledges and agrees that each party (a) is of equal bargaining strength; (b) has actively participated in the negotiation and preparation of this Agreement; (c) has consulted with its respective legal counsel and other professional advisors as each party has deemed appropriate with respect to this Agreement; and (d) agrees that neither party shall be deemed the drafter

of this Agreement and, therefore, no provision stated in this Agreement shall be construed against any party as its drafter.

14.9 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one instrument. Electronic signatures, including those provided via DocuSign or similar services, shall be deemed original signatures for all purposes.

14.10 Business Days. If any date stated in this Agreement falls on a Saturday, Sunday, or legal holiday observed by the City, State or federal government, such date shall be the following Business Day. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or a day that is observed as a legal holiday by the City, State or Federal government, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Hawai‘i Standard Time.

14.11 Defined Terms. Defined Terms. Capitalized terms used in this Agreement have the meanings given to them in this Agreement, including those set forth in the introductory paragraphs, in the sections in which they first appear, and in any definitions section or article, unless otherwise stated or clearly inappropriate in context. Certain terms, where they are initially used in this Agreement, are set off by quotation marks enclosed in parentheses. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in context.

14.12 Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the control of that party, including, but not limited to, an act of God, natural disasters, civil unrest, riots, earthquakes, volcanic eruptions, tsunamis, floods, public enemy, acts of terrorism, invasion, rebellion, revolution, act of foreign enemies, war, fire, nuclear event, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component, an act or failure to act of a government entity (except on the part of the City if the City is claiming an event of Force Majeure), unavailability of materials due to a national or local strike, actions by or against labor unions, or pandemic (each an event of “Force Majeure”), such party shall not be in default in the performance of its obligations stated in this Agreement; PROVIDED, HOWEVER, that any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten (10) Business Days following the event. If such written notice is provided, the time to perform the obligations stated in this Agreement shall be extended by the number of calendar days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

14.13 Gender; Number. The use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.

14.14 Independent Contractor/Non-Agency. There is no partnership, joint venture, employer and employee, master and servant or other agency relationship between the City and Developer, including guarantors. The City is not a developer of the Project or the operator and manager of the Project. Developer, inclusive of any person acting by, through, under or for the benefit of Developer such as, for example, any real estate property manager, shall not represent or hold itself out as being a partner, joint venture, employee, servant or agent of the City. Developer, inclusive of any person acting by, through, under or for the benefit of Developer, does not have the authority to bind, act for or represent the City in any respect.

14.15 Entire Agreement; Integration. This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and supersedes all prior negotiations, representations, RFQs, and agreements, whether written or oral.

14.16 Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, including attorneys' fees and costs.

14.17 Memorandum. Concurrently with the execution, a memorandum of this Agreement shall be executed by the parties with the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances of the State and/or filed with the Office of the Assistant Registrar of the Land Court of the State, as applicable (collectively, the "Bureau"). Upon termiantion or expiratoin of this Agreement, Developer and City agree to record a release of this Agreement. Developer shall be responsible for all recording costs.

14.18 No Third-Party Beneficiaries. The execution and delivery of this Agreement shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except the other party.

14.19 Notices. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be in writing and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to the other party at the address and to the person designated by each party as follows:

If to the City:

CITY AND COUNTY OF HONOLULU
Department of Housing and Land Management
650 S. King Street, Third Floor
Honolulu, Hawai'i 96813
Attention: Director

With a copy to:

The Department of the Corporation Counsel
1001 Bishop Street, Suite 2020
Honolulu, Hawai'i 96813
Attn.: Corporation Counsel

If to Developer: as shown in the Specific Terms.

14.20 Headings. The headings of articles, sections and paragraphs in this Agreement are included for convenience only and shall not be considered in the construction of this Agreement.

14.21 Required Actions by the Parties. Each party named in this Agreement agrees to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.

14.22 Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

14.23 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement). Any successor or assignee of Developer must assume all of Developer's obligations under this Agreement in writing.

14.24 Survival. The following provisions, to the extent applicable, shall survive the expiration or earlier termination of this Agreement: 4.11.5 (Impact on Waters), 4.11.12 (Chapter 104, HRS), 4.13 (Publicity and Project Signage), 4.18 (Observation of Laws, Ordinances and Regulations), 4.21 (Notice of Claims), 4.23 (Hazardous Materials), 4.24 (Compliance with Funding Restrictions), 8.3 (Submittals to the City Upon Completion of Construction), 9.1 (Indemnity), 9.2.9 (Failure to Maintain Insurance).

14.25 Time is of the Essence. Time is of the essence with respect to the performance of the parties' obligations under this Agreement. Developer's obligations to perform within the time periods required under this Agreement shall constitute Material Obligations of Developer.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

THE CITY:

APPROVED AS TO CONTENT: CITY AND COUNTY OF HONOLULU

_____
Director
Department of Housing and Land Management

APPROVED AS TO FORM
AND LEGALITY:

_____
Deputy Corporation Counsel

_____
By
Its

DEVELOPER:

_____
a Hawai‘i limited liability company

By: _____,
a Hawai‘i limited liability company,
Its Managing Member

By _____
Name:
Its

STATE OF HAWAI‘I)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 20___, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawai‘i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

STATE OF HAWAI‘I)
) ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20___, before me appeared _____ to me personally known, who, being by me duly sworn, did say that ____ is the _____ of _____, that instrument was signed on behalf of the City and County of Honolulu by authority of its City Council and the said _____ acknowledged the instrument to be the free act of said the City and County of Honolulu.

_____
Notary Public, State of Hawai‘i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

_____

_____

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____Circuit
(in which notarial act is performed)

_____
Signature of Notary

Date of Notarization and Certification Statement

_____
Printed Name of Notary

EXHIBIT A-1
Legal Description

Exhibit A-2
Property Map

Exhibit B
Lease Form

Exhibit C
Funding Restrictions

Exhibit D
City Documents

Exhibit E
Conditions Precedent Schedule

Exhibit F
Preliminary Development Schedule

Exhibit G
Prelimininary Budget

Exhibit H
Construction Contract Description

EXHIBIT A -1

Property Legal Description

PARCEL FIRST:

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

LOT 2, area 9,057 square feet, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1561 of Ling Bros., Ltd.

PARCEL SECOND:

An undivided 1/6 interest in and a right of way for ingress and egress across Lot 8, area 7,654 square feet, more or less, as shown on Map 1 of Land Court Application No. 1561 of Ling Bros., Ltd.;

AS TO PARCELS FIRST AND SECOND:

Together with a right of way for all underground utility purposes including sewer, under and within Easement A affecting Lots 5, 6, 7-A, 7-B and 8 as shown on Map 1 of said Land Court Application No. 1561.

PARCEL THIRD:

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

LOT 3-A-2, area 397 square feet, more or less, as shown on Map 19, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited.

AS TO ALL PARCELS:

Together with a right and easement for sewer purposes under and across (1) Easement 19 across Lot 73 as shown on Map 20 of Land Court Application No. 852, and (2) Lot 97 as shown on Map 15 of Land Court Application No. 852, as granted by instrument dated July 30, 1948, filed as Land Court Document No. 104558, as corrected by Land Court Document No. 104559; subject to the terms and provisions contained therein.

EXHIBIT A -2

Property Map

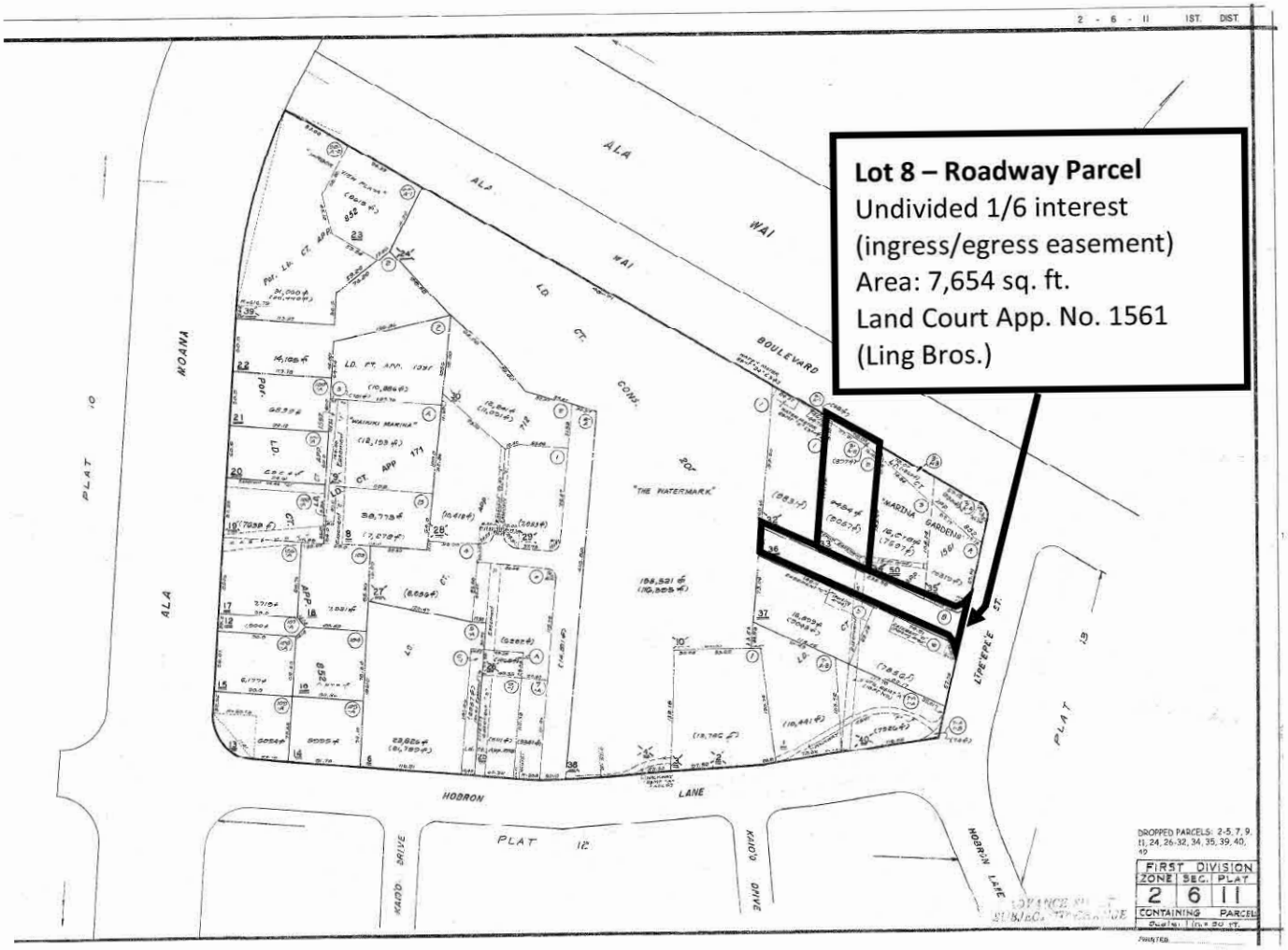


EXHIBIT B

Form of Ground Lease

EXHIBIT C

Funding Restrictions

Investment Allocation:

The Property was acquired in 2021 using FY 2020, FY 2021, and FY 2023 Affordable Housing Fund ("AHF") funds totaling $3,850,000.00; FY 2022 General Improvement Bond Funds totaling $372,836.29 were used for other related acquisition costs and appraisal; FY 2025 AHF funds totaling $506,500.00 were used to demolish the existing structure. To date, Project costs associated with the Property are approximately $4,729,336.29.

The City intends to reimburse and replace the $3,850,000.00 of AHF funds previously used for acquisition of the Property with Capital Improvements Program ("CIP") funds, including funds appropriated for Affordable Housing Mixed-Use Development. Upon completion of such reimbursement and replacement, the $3,850,000.00 acquisition cost shall, for purposes of this Exhibit, be treated as funded with CIP funds rather than AHF funds, and AHF requirements attributable solely to such acquisition funding shall no longer apply.

The foregoing replacement does not include the $506,500.00 of FY 2025 AHF funds used for demolition of the existing structure, which shall remain subject to any applicable AHF requirements.

This Exhibit identifies City funding sources used for the acquisition, demolition, improvement, or other costs associated with the Property, and summarizes funding-related restrictions that may apply to the Property or the Project. The parties acknowledge that the City is reviewing and will determine the affordability, use, compliance, and other restrictions applicable to the AHF funds remaining invested in the Property or Project following completion of the foregoing funding replacement.

The specific number, type, affordability level, duration, and documentation of any required restricted units or other project restrictions shall be determined by the City, in consultation with Corporation Counsel and applicable City agencies, and shall be reflected in the applicable regulatory agreement, declaration, lease provision, or other Project document required by the City.

All capitalized terms used but not otherwise defined in this Exhibit shall have the meanings ascribed to them in the Pre-Development Agreement.

1. Capital Improvements Program ("CIP"):

City and County of Honolulu General Improvement Bond Funds and other applicable CIP funds have been, or are contemplated to be, used in connection with the acquisition, appraisal and/or related costs associated with the Property. This includes the contemplated reimbursement and replacement of $3,850,000.00 of AHF funds previously used for acquisition of the Property with FY26 CIP Project 2026004 funds. Upon completion of such reimbursement and replacement, the applicable CIP requirements shall govern the City's $3,850,000.00 acquisition investment.

A. General Compliance. The Developer shall comply with all applicable legal requirements relating to the City's use of General Improvement Bond Funds and applicable CIP appropriations with respect to the Property and the Project, including the appropriation language, budget restrictions, bond counsel requirements, or other requirements applicable to such funds.

B. Further Assurances. Developer shall fully cooperate with the City to achieve compliance with all applicable CIP requirements. Developer shall execute and deliver such additional documents and instruments, and perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform any requirements applicable to such funds.

C. Conflict. In the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in the Pre-Development Agreement or the Lease, the terms and conditions set forth in this Exhibit C shall prevail.

2. Affordable Housing Fund ("AHF"):

AHF funds have been used in connection with the Property and Project, including $3,850,000.00 previously used for acquisition of the Property and $506,500.00 used for demolition of the existing structure. As described above, the City intends to reimburse and replace the $3,850,000.00 of AHF acquisition funding with CIP funds. Upon completion of such reimbursement and replacement, the AHF requirements described in this Section shall apply to AHF funds remaining invested in the Property or Project and shall not arise solely by reason of the replaced $3,850,000.00 acquisition funding.

The Developer acknowledges that AHF funds remaining invested in the Property or Project may impose continuing affordability, use, compliance, reporting, and/or restrictive covenant requirements.

A. General Compliance. Developer shall cooperate with the City in determining, documenting, and implementing all applicable AHF requirements, including any requirements arising under Section 9-204 of the Revised Charter of the City and County of Honolulu 1973, as amended, Chapter 6, Article 63 of the Revised Ordinances of Honolulu 2021, as amended, applicable appropriation language, and any other applicable City requirements.

   Moneys in the AHF shall be used to provide affordable rental housing for persons earning sixty percent or less of the median household income in the city for the following purposes: provision and expansion of affordable rental housing and suitable living environments in projects, which may include mixed-use, mixed-income projects, having residential units that are principally for persons of low and moderate income through land acquisition for, development of, construction of, and/or capital improvements or

rehabilitation to such housing, provided that the funded housing remains affordable for at least sixty years.

General AHF Requirements:

(i) AHF Qualified Units. The AHF Qualified Units are restricted to residents earning sixty percent (60%) or less of the area median income, as determined by the United States Department of Housing and Urban Development ("HUD") on an annual basis and published by the State of Hawaii Housing Finance and Development Corporation ("HHFDC"), for a minimum of sixty (60) years.

The AHF Qualified Units may be designated as floating units; provided, however, that the total number of AHF Qualified Units shall remain unchanged unless otherwise approved in writing by the City. Rent Limits. Rent limits for AHF Qualified Units shall be determined in accordance with applicable AHF requirements and the applicable income and rent limits published from time to time by the United States Department of Housing and Urban Development ("HUD"), the Hawaii Housing Finance and Development Corporation ("HHFDC"), or such other governmental entity or methodology designated by the City. Rents shall be adjusted for tenant-paid utilities and other required charges in accordance with the applicable utility allowance or other methodology required by law or applicable program requirements. No mandatory fee or surcharge shall be imposed on an AHF Qualified Unit if such fee or surcharge would cause the total tenant housing cost to exceed the applicable maximum rent or otherwise violate applicable AHF requirements.

(ii) Rent Increases. Rents for AHF Qualified Units may be adjusted from time to time, subject to applicable federal, State, and City laws, rules, regulations, AHF requirements, and the applicable Project documents. In no event shall the rent charged for an AHF Qualified Unit exceed the applicable maximum rent for the designated income level and unit type, after adjustment for tenant-paid utilities and other amounts required to be included in the calculation of maximum rent.

(iii) Any proposed rent increase for an AHF Qualified Unit shall be submitted to the City for review and written approval at least thirty (30) days prior to the date on which notice of the proposed rent increase is required to be provided to the tenant under applicable law. The City's review shall be limited to determining compliance with applicable AHF requirements, applicable income and rent limits, utility allowance requirements, tenant notice requirements, and other applicable legal or regulatory requirements. Any rent increase shall comply with all applicable tenant notice, lease, and other requirements of law. Tenant Certification. An income certification from the proposed tenant(s) of each AHF Qualified Unit shall be obtained prior to such tenant(s)' initial occupancy. Thereafter, household income shall be re-certified as required by applicable law, applicable AHF requirements, or the

applicable Project documents. The City may require additional income certifications as reasonably necessary to verify continued compliance with applicable AHF requirements.

Tenant Eligibility Review. Income examinations for tenant eligibility and rent determination shall be completed by property management staff or another qualified person with appropriate training or experience in affordable housing income certification and rent determination. The City may require such reviewer to hold a recognized affordable housing compliance certification, including a Certified Occupancy Specialist ("COS") designation or equivalent credential, if reasonably necessary for administration of the applicable affordability requirements.

(iv) A second review of each file shall be completed by the Declarant's property manager, designated staff, or other qualified reviewer. The Developer/Owner shall maintain documentation sufficient to demonstrate that required eligibility and rent determinations have been reviewed and approved in accordance with applicable law and AHF requirements. Tenant Selection. The Developer/Owner shall cause the Property Manager to conduct tenant screening and selection in accordance with applicable law, applicable AHF requirements, the approved tenant selection policy, and the applicable Project documents. Tenant screening may include employment and income verification, rent-check inquiry, prior/present landlord reference check, other reference checks, credit report review, criminal background checks, and such other screening criteria as may be permitted by applicable law and approved under the tenant selection policy.

Affirmative fair housing marketing practices shall be used in soliciting renters, determining eligibility, and concluding all transactions. The Developer/Owner shall cause the Property Manager to implement such practices and shall provide, or cause the Property Manager to provide, evidence of compliance to the City upon request.

(v) The Developer/Owner shall cause the Property Manager to market the residential units and to interview, screen, and select tenants in accordance with the applicable tenant selection policy, applicable law, and applicable AHF requirements. The Developer/Owner shall remain responsible for ensuring compliance with the requirements of this Section notwithstanding any delegation of such functions to the Property Manager. Reporting Requirements. Annual reports shall be due to the City each year during the Affordability Period. Reporting requirements may include the annual submittal of rental-rates evaluation, including recommendations, revisions, and supporting data to the City.

(vi) Record Retention. All records related to compliance with the Declaration shall be saved for a minimum of six (6) years after termination of the Affordability Period.

(vii) Tenant Rules and Enforcement. The Developer/Owner shall cause the Property Manager to administer and enforce the Project's house rules and lease requirements in accordance with applicable law and applicable AHF requirements. The Developer/Owner shall remain responsible for ensuring compliance with this Section notwithstanding any delegation of such functions to the Property Manager.

House rules may be revised from time to time as reasonably necessary for the operation and management of the Project, subject to applicable law. The City shall be provided written notice of any material changes to such house rules.

B. Declaration of Restrictive Covenants. The Developer shall execute and record, or cause the applicable property owner or ground lessee to execute and record a Declaration of Restrictive Covenants for Affordable Housing (Affordable Housing Fund, RCH, Section 9-204.3) ("Declaration") – or such other regulatory agreement, lease covenant, memorandum, or other restrictive instrument required by the City to document applicable AHF requirements – against the fee simple or leasehold interest in the land underlying the Project. In the Declaration, the Developer agrees to develop, operate, and manage the Project according to the terms of this Declaration for the duration of the Affordability Period.

Any such instrument may include, without limitation:

(i) the number and type of AHF Qualified Units;
(ii) applicable income and rent restrictions;
(iii) the required Affordability Period;
(iv) compliance monitoring, reporting, and recordkeeping requirements;
(v) remedies for noncompliance;
(vi) priority, subordination, and mortgagee protection provisions; and
(vii) such other terms as may be required by the City to ensure compliance with AHF.

C. Declaration Priority and Subordination. Unless otherwise approved by the City in writing, the Declaration, lease covenant, or any other document restricting affordability relating to AHF Qualified Units shall be recorded in priority position, or as the City determines necessary to protect the City's interest and ensure compliance with applicable AHF requirements.

As such, recordation requirements shall be as follows:

(i) The Declaration is recorded as a senior encumbrance on the Property prior to any mortgage lien;
(ii) City agrees to subordinate only the Repayment Obligation in the Declaration to mortgage liens as consented by the City in writing. All other terms of the

Declaration have priority over any liens or encumbrances affecting the Property;

(iii) In the event the Developer acquires title or otherwise assumes possession of the Property subject to the Declaration, the Developer shall ensure that the Property (or AHF Qualified Units) complies with the terms of the Declaration including curing any Event of Default in existence at the time of Developer's acquisition or possession;

(iv) In the event Developer fails to cure or causes an Event of Default, City maintains the right under the Declaration to pursue its legal remedies including specific performance, injunctive relief, or enforcement of the Repayment Obligation.

All other covenants, regulatory agreements, lease covenants, or other affordability restrictions shall be subject to the Declaration, unless otherwise approved by the City in writing.

The City may consider requests to subordinate monetary Repayment Obligations or other specific remedies to a first mortgage or other financing essential to the Project. However, unless expressly approved by the City in writing, the underlying affordability, use, and compliance restrictions shall not be extinguished, cancelled, or rendered unenforceable by foreclosure, transfer, assignment, or other enforcement action by a lender or other third party.

D. Further Assurances. Developer, and following completion of the Project, Owner, shall fully cooperate with the City to achieve compliance with all AHF requirements. Developer and owner, as applicable, shall execute and deliver such additional documents and instruments and perform such additional acts as may be reasonably necessary or appropriate to determine, document, implement, and enforce all applicable AHF requirements.

E. Effect of Funding Replacement. The parties acknowledge that the reimbursement and replacement of the $3,850,000.00 of AHF acquisition funding with CIP funding may occur after execution of the Pre-Development Agreement or the Lease. Until such replacement is completed, the City reserves all rights and requirements applicable to such AHF funds. Upon written confirmation by the City that such replacement has been completed, this Exhibit shall automatically be deemed to reflect the replacement of the $3,850,000.00 of AHF acquisition funding with CIP funding, without the need for further amendment to the Pre-Development Agreement or Lease.

3. No Limitation on City Review or Approval:

Nothing in this Exhibit shall be construed as City approval of the Project, the Development Plan, the financing plan, the final affordability structure, the number or type of restricted units, any requested land use entitlement, or any permit, license, exemption, or governmental approval.

All such matters remain subject to review and approval by the City and any applicable governmental agency in accordance with applicable law, the Pre-Development Agreement, the Lease, and other applicable Project documents.

4. Conflict with Mandatory Funding Requirements:

In the event of any conflict or inconsistency between this Exhibit and the Pre-Development Agreement or Lease, the parties shall interpret the documents to give effect to all applicable funding requirements.

To the extent a funding requirement is mandatory under applicable law, appropriation language, bond requirements, AHF requirements, or City policy, such mandatory requirement shall control. Otherwise, this Exhibit shall be read together with the Pre-Development Agreement and Lease and shall not be construed to expand Developer's obligations beyond those required by applicable funding restrictions, unless expressly stated in the Pre-Development Agreement, Lease, or other written agreement approved by the City.

EXHIBIT D

City Documents

The following documents have been provided or made available by the City for informational and due diligence purposes. Inclusion of a document in this Exhibit does not constitute a representation or warranty by the City as to its accuracy, completeness, current applicability, or suitability for Developer's intended use.

List of City Provided Due Diligence Documents:

1. Building Plans and building renovation permits for 1615 Ala Wai Boulevard, Tax Map Key No. (1) 2-6-011:033, approved by City & County of Honolulu.

2. Building Plans for adjacent parcel identified as 1551 Ala Wai Boulevard, Tax Map Key No. (1) 2-6-011:001, prepared by JTG, LLC, Martin V. Cooper, Architect.

3. Building Plans for adjacent parcel identified as 1627 Ala Wai Boulevard, Tax Map Key No. (1) 2-6-011:050, prepared by Roy K. Yamamoto Architect, AIA, Inc.

4. Memo of Recommendations for the DLM Ala Wai Housing Project, dated June 21, 2023, prepared by FAI Architects.

5. Due Diligence Report, dated May 7, 2024, prepared by Group 70 International, Inc. (civil engineering assessment prepared by Engineering Dynamics; structural engineering assessment prepared by Kai Hawaii; mechanical and electrical engineering assessments prepared by WSP).

6. Preliminary Geotechnical Report, dated June 20, 2024, prepared by Geolabs, Inc., prepared for Group 70 International, Inc.

7. Archaeological Literature Review and Field Inspection In Support of Affordable Housing Study at 1615 Ala Wai, Waikīkī Ahupua'a, Honolulu (Kona) District, O'ahu Island, dated April 2024, prepared by Honua Consulting, Christopher M. Monahan, Ph.D, and Trisha K. Watson, Ph.D., prepared for Group 70 International, Inc.

8. Limited HAZMAT Sampling and Analysis, dated October 11, 2022, prepared by ENPRO Environmental (Project No. 2209-00249-HAZ), prepared for Group 70 International, Inc.

9. Topographic Survey (PDF and DWG) prepared by KN Surveying, LLC dated October 17, 2022.

10. HRS Chapter 6E Transmittal Letter from DLM to SHPD dated November 27, 2024.

11. HRS Chapter 6E-8 and 6E-42 Historic Preservation Review Response Letter from SHPD to DLM and DPP dated February 10, 2025.

12. Final Order of Condemnation for 1615 Ala Wai Boulevard, Tax Map Key Nos. (1) 2-6-011:033 and (1) 2-6-011:036, Document No. 12420121, dated January 3, 2024, filed with the Bureau of Conveyance.

13. Reconnaissance Level Survey for 1615 Ala Wai, dated March 19, 2024, prepared by FAI Architects, prepared for Group 70 International, Inc. and City and County of Honolulu.

14. Appraisal Report to Determine the Market Value of Tax Ma Key (1) 2-6-011:033, 1615 Ala Wai Boulevard, Honolulu, Island of Oahu, State of Hawaii, dated February 11, 2022, prepared by ACM Consultants, Inc., prepared for City and County of Honolulu.

15. Alternatives Studies, Comprehensive Feasibility Analysis for 1615 Ala Wai affordable housing project, dated June 6, 2024.

EXHIBIT E

Conditions Precedent Schedule
Effective Date: 10/30/2026
Lease Closing, Termination Date: 6/30/2027

Condition Precedent / Milestone	Target Date
§6.2 — PROJECT SCHEDULE	
Submit Initial Development Schedule for City review and approval	**62 days from Effective Date December 31, 2026**
Prepare draft Development Schedule for internal review	*31 days from Effective Date November 30, 2026*
Submit Development Schedule to City	*62 days from Effective Date December 31, 2026*
Construction Commencement	**15 days post Lease Closing; Termination Date: July 15, 2027**
Construction bid/award complete	*124 days prior to Lease Closing Date February 26, 2027*
Contractor mobilization	*15 days prior to Lease Closing Date June 15, 2027*
§6.3 — APPROVED BUDGET & PROJECT FINANCING	
Financing Closing (all debt and equity documents executed)	**Prior to Lease Closing; Termination Date: June 30, 2027**
HHFDC DURF Interim Loan Application	*211 days prior to Lease Closing Date December 1, 2026*
Commitments received	*152 days prior to Lease Closing Date January 29, 2027*
Partnership/equity closing documents in final form	*91 days prior to Lease Closing Date March 31, 2027*
All financing documents executed and delivered to City	*30 days prior to Lease Closing Date May 31, 2027*
§6.4 — CONSTRUCTION CONTRACT	
Construction Contract executed by Developer and contractor	**Prior to Lease Closing; Termination Date: June 30, 2027**
Construction bid/award process initiated	*170 days prior to Lease Closing Date January 11, 2027*

Draft Construction Contract delivered to City for review	*107 days prior to Lease Closing Date March 15, 2027*
§6.5 — SURETY BOND	
Payment and Performance Bond executed and delivered to City	**15 days prior to Lease Closing; Termination Date: June 15, 2027**
§6.6 — GOVERNMENTAL APPROVALS (Land Use and Zoning)	
Building Permit Application processed and approved by Department of Planning and Permitting	**Prior to Lease Closing; Termination Date: June 30, 2027**
Preliminary concept design completed and delivered to City	*364 days prior to Effective Date October 31, 2025*
Neighborhood Board presentation of preliminary concept design	*360 days prior to Effective Date November 4, 2025*
City public hearing presentation of preliminary concept design	*95 days prior to Effective Date July 27, 2026*
Engage architectural and engineering consultants (prerequisite: geotechnical report, phase I ESA)	*0 days prior to Effective Date October 30, 2026*
Project construction documents completed; Building permit application submitted to DPP	*91 days from Effective Date January 29, 2027*
Submit Declaration of Restrictive Covenants per ROH Chapter 32 to DPP	*91 days from Effective Date January 29, 2027*
DPP approval of Special Assignment Inspection (SAI) permit (prerequisite: SHPD approval)	*182 days from Effective Date April 30, 2027*
DPP approval of building permit	*253 days from Effective Date June 30, 2027*
§6.7 — ENVIRONMENTAL REVIEW & COMPLIANCE	
All required historical and archeological review and compliance actions via SHPD per HRS Chapter 6E	**152 days prior to Lease Closing; Termination Date: March 31, 2027**
Engage archaeological consultants	*30 days prior to Effective Date September 30, 2026*
Submit 6E consultation request to SHPD	*30 days prior to Effective Date September 30, 2026*

Initiate Archeological Inventory Survey (AIS), if required by SHPD	*31 days from Effective Date November 30, 2026*
Submit Archeological Inventory Survey (AIS), if required by SHPD	*62 days from Effective Date December 31, 2026*
SHPD approval of AIS	*91 days from Effective Date January 29, 2027*
Initiate Archeological Monitoring Plan (AMP), if required by SHPD	*91 days from Effective Date January 29, 2027*
Submit Archeological Monitoring Plan (AMP), if required by SHPD	*119 days from Effective Date February 26, 2027*
SHPD approval of AMP; receipt of final determination letter and notice to proceed	*152 days from Effective Date March 31, 2027*
All required environmental review and compliance actions completed under HRS Chapter 343	**119 days prior to Lease Closing; Termination Date: February 26, 2027**
Engage HHFDC planning division (prerequisites: phase I ESA, geotechnical report, project building permit plans, AIS (if required))	*32 days from Effective Date December 1, 2026*
Draft EA Exemption Notice prepared and submitted for public review	*62 days from Effective Date December 31, 2026*
30-day public agency response period	*94 days from Effective Date February 1, 2027*
Final EA Exemption Notice published in The Environmental Review	*119 days from Effective Date February 26, 2027*
§6.8 — SITE ASSESSMENTS	
Geotechnical Engineering Report	**21 days from Effective Date: November 20, 2026**
Geotechnical engineering vendor engaged	*15 days prior to Effective Date October 15, 2026*
Geotechnical engineering report completed and delivered to City	*21 days from Effective Date November 20, 2026*
Phase 1 ESA (per ASTM E1527-21) and Hazardous Materials Survey	**31 days from Effective Date: November 30, 2026**
Phase 1 ESA vendor engaged	*30 days prior to Effective Date September 30, 2026*
Phase 1 ESA completed and delivered to City	*31 days from Effective Date*

	November 30, 2026
Hazardous Materials Survey completed and delivered to City, if required	*31 days from Effective Date November 30, 2026*
Phase 2 ESA if warranted; all remediation complete	**119 days from Effective Date: February 26, 2027**
Phase 2 ESA scope determined based on Phase 1 findings	*46 days prior to Effective Date December 15, 2026*
Phase 2 ESA field work and report delivered to City	*77 days from Effective Date January 15, 2027*
Remediation plan approved and all permits obtained, if required	*119 days from Effective Date February 26, 2027*
MONTHLY REPORTING	
Developer shall submit a written monthly status report to the City by the 15th of each calendar month beginning 30 days after the Effective Date and continuing through Lease Closing. Each report shall identify: (i) milestones achieved in the prior month; (ii) milestones at risk of slippage; (iii) proposed corrective measures for any slippage; and (iv) updated projected dates for any milestone not yet achieved.	
Monthly status reports due to City	**15th of each month from 30 days after Effective Date through Lease Closing**

Exhibit F

Preliminary Development Schedule

Exhibit G

Preliminary Budget

EXHIBIT H

1. Form of Construction Contract

Standard Form of Agreement Between Owner and Contractor. Acceptable Forms of Construction of Contract include but are not limited to the following:

- A101-2017
- A102-2017

In each case, AIA Document A201-2017, General Conditions of the Contract for Construction, shall be incorporated by reference or attached as an exhibit to the Construction Contract. Any departure from the foregoing forms requires the prior written consent of the City.

2. Definitions

"Construction Contract" means any contract entered into by Developer for the demolition, rehabilitation, or construction of improvements for the Project, including all material amendments, change orders, and related documents thereto.

"Project Contracts" means collectively: (a) any Construction Contract; (b) any owner-architect agreement; (c) any engineering agreement (including civil, structural, mechanical, electrical, plumbing, and related disciplines); and (d) any other material agreement entered into by Developer for the design, development, or construction of the Project, as reasonably determined by the City.

3. Delivery of Project Contracts

Developer shall deliver to the City a true and complete copy of each Project Contract promptly following execution, and in no event later than ten (10) days after execution, together with all material amendments, change orders, and related documents. Developer shall similarly deliver all material amendments, change orders, and related documents within ten (10) days of execution. All Project Contracts shall be maintained in Developer's records and made available to the City upon request.

4. No Material Modification Without Consent

Developer shall not materially amend, terminate, assign, or waive any material provision of any Project Contract without the prior written consent of the City, to the extent required under this Agreement and the Ground Lease. For purposes of this Exhibit, a "material" amendment or waiver includes any change that: (a) increases the contract sum by more than the threshold established in the Ground Lease, or absent such threshold, by more than ten percent (10%) of the original contract sum; (b) extends the substantial completion date by more than sixty (60) days in the aggregate; (c) modifies the scope of work in a manner inconsistent with the Development Plan; or (d) alters or diminishes the City's rights under this Exhibit.

5. Contractor and Consultant Acknowledgment

Developer shall cause each Project Contract to include provisions whereby the applicable contractor or consultant:

a. acknowledges that the City is the fee owner of the Project site and that Developer has no interest in the Project site except as provided under the Pre-Development Agreement and, following Lease Closing, the leasehold interest granted pursuant to the Ground Lease.;
b. agrees that its rights and interests under the Project Contract are subject and subordinate to the Ground Lease;
c. agrees that, upon written notice from the City following an Event of Default (as defined in the Pre-Development Agreement or the Ground Lease), the City or its designee may assume control of the Project and exercise Developer's rights under such Project Contract;
d. agrees to continue performance upon such direction, subject to payment for services performed from and after the date of such assumption; and
e. agrees that no mechanic's lien, materialman's lien, or other encumbrance arising out of the Project Contract shall attach to or encumber the City's fee interest in the Project site, and that any such lien shall attach solely to Developer's leasehold interest. Developer shall include in each Project Contract a notice consistent with HRS Chapter 507 regarding the nature of Developer's interest.

6. Lien Protection and Evidence of Payment

Developer shall keep the Property, the Project, and the City's fee interest free and clear of any mechanics', materialmen's, laborers', or similar liens or claims arising from work performed, labor furnished, or materials supplied by or through Developer in connection with the Project. Developer shall promptly notify the City of any such lien or claim and shall, within the time required under the Pre-Development Agreement or Ground Lease, cause such lien or claim to be released, discharged, bonded around, or otherwise resolved in accordance with applicable law.

During construction, Developer shall provide to the City, not less frequently than monthly and upon the City's reasonable request, reasonable evidence that amounts then due for labor, materials, and services furnished to the Project have been paid or otherwise appropriately accounted for. Such evidence may include contractor payment certifications, conditional or unconditional lien releases or waivers, statements of amounts paid and remaining due, or other documentation reasonably acceptable to the City.

As a condition to Final Completion of the Project, Developer shall provide the City with final unconditional lien releases or waivers from the general contractor and material subcontractors and suppliers, together with such other reasonable evidence requested by the City demonstrating that all amounts then due for labor, materials, and services incorporated into the Project have been paid or otherwise satisfactorily resolved.

7. Step-In Rights

Upon the occurrence of an Event of Default under the Pre-Development Agreement or the Ground Lease, and following any applicable notice and cure periods set forth therein, the City shall have the right, but not the obligation, to:

f. enter the Project site and take possession of the improvements and work in place;
g. assume control of and complete the Project, either directly or through a third-party developer, contractor, or manager designated by the City; and
h. exercise any and all rights of Developer under any Project Contract.

The City's exercise of step-in rights under this Section shall not constitute an assumption of Developer's obligations under any Project Contract unless the City expressly agrees to such assumption in writing pursuant to Section 8 below.

8. Assignment of Project Contracts

Upon request by the City following an Event of Default, Developer shall promptly assign to the City or its designee all of Developer's right, title, and interest in and to any or all Project Contracts designated by the City. Developer shall cause each contractor or consultant to acknowledge and consent to such assignment in writing, in form and substance reasonably acceptable to the City, prior to or concurrently with execution of the applicable Project Contract.

The City may assign any Project Contract to a successor developer or other third party designated by the City in connection with completion of the Project, without the consent of Developer.

9. No Assumption by City

The City shall not be deemed to have assumed any obligations under any Project Contract unless and until the City expressly agrees in writing to such assumption. The City shall have no liability for obligations arising prior to its exercise of step-in rights, or prior to the date of the City's written assumption of any Project Contract, except to the extent expressly agreed by the City in writing.

10. Further Assurances

Developer shall execute, and shall cause each contractor and consultant to execute, such further documents as the City may reasonably require to evidence or implement the City's rights under this Exhibit, including collateral assignments of Project Contracts, contractor/consultant consents, and estoppel certificates in forms acceptable to the City.

11. Applicability

This Exhibit shall apply during both the predevelopment phase and the construction phase of the Project. The parties acknowledge that certain Project Contracts may not be in place at the time of execution of the Predevelopment Agreement, and the obligations set forth in this Exhibit shall

arise and apply as each Project Contract is entered into. The obligations set forth herein shall survive execution of the Ground Lease and remain in full force and effect through Final Completion of the Project.

EXHIBIT I
PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as CONTRACTOR, hereinafter called Principal, and _____
_____

_____,
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a

surety in the State of Hawai‘i, are held and firmly bound unto the _____
_____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of

_____

_____, to which payment

Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on

_____, for the following project:

_____

_____

hereinafter called Contract, which Contract is incorporated herein by reference and

made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____ ,

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

STATE OF HAWAI‘I

CONTRACTOR’S ACKNOWLEDGMENT

STATE OF _____)
) S.S.
_____ COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____, and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____

the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

_____
(Signature)

_____
(Print name)

(Notary Stamp or Seal)

Notary Public, State of
_____

My Commission Expires:_____

NOTARY CERTIFICATE (Hawai‘i Administrative Rules §5-11-8)

Document Identification or Description:_____

_____

_____

_____

_____

Doc. Date: ___ No. of Pages:_____ Jurisdiction:

_____ (Notary Stamp or Seal)

Signature of Notary Date of Certificate

_____

Printed Name of Notary

(Acknowl2.frm)

SURETY ACKNOWLEDGMENT
[FOR USE BY SURETY]

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, 20___, before me personally came_____

to me known, who, being by me duly sworn, did depose and say that_____ resides in _____; that _____ is the Attorney-in-Fact of , the corporation described in and which executed the attached instrument; that is duly appointed under power of attorney, dated_____, which said power of attorney is attached hereto, is now in force and effect; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that ____ signed ____ name thereto by like order.

_____
____

(Notary Seal) Notary Public

State of

_____

My commission expires:

_____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

_____

_____

_____

LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as CONTRACTOR, hereinafter called Principal, and _____

_____
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a

surety in the State of Hawai‘i, are held and firmly bound unto the _____ _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of -

_____, to which

payment Principal and Surety bind themselves, their heirs, executors, administrators,

successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on

_____, for the following project:

_____

_____

hereinafter called Contract, which Contract is incorporated herein by reference and

made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this

obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A 'Claimant' shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawai'i Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____ , _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

STATE OF HAWAI'I

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) S.S.
_____ COUNTY OF _____)

On this _____ day of _____, _____, before me appeared

_____, and
_____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are

_____ and

_____of

_____

_____ the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

_____
(signature)

_____
(Print name)

(Notary Stamp or Seal)

Notary Public, State of
_____

My Commission Expires:_____

NOTARY CERTIFICATE (Hawai‘i Administrative Rules §5-11-8)

Document Identification or Description:_____

_____

_____

_____

_____

Doc. Date: ___ No. of Pages:_____ Jurisdiction:

_____ (Notary Stamp or Seal)

Signature of Notary Date of Certificate

_____

Printed Name of Notary

(Acknowl2.frm)

SURETY ACKNOWLEDGMENT
[FOR USE BY SURETY]

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, 20___, before me personally came_____

to me known, who, being by me duly sworn, did depose and say that_____

resides in _____; that _____ is the Attorney-in-Fact of

, the corporation described in and which executed the attached instrument; that

is duly appointed under power of attorney, dated_____, which said power of attorney is attached hereto, is now in force and effect; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that ____ signed ____ name thereto by like order.

_____

____

(Notary Seal) Notary Public

State of

_____

My commission expires:

_____

NOTARY CERTIFICATE (Hawai‘i Administrative Rules §5-11-8)

Document Identification or Description: _____

_____

_____

_____

_____

Attachment 2
Ground Lease

LEASE

between

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

“Lessor”

and

CARDINAL ALA WAI LLC
a Hawaii limited liability company

“Lessee”

LEASE

This **LEASE** (this "**Lease**") is made and entered into as of _____, (the "**Commencement Date**"), between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawai'i ("**Lessor**"), and **CARDINAL ALA WAI LLC**, a Hawaii limited liability company ("**Lessee**").

Lessor and **CENTRE URBAN REAL ESTATE HAWAII, LLC**, a Hawaii limited liability company ("Developer") entered into that certain Pre-Development Agreement dated ____, as further described in the Specific Provisions below. Developer is the manager of Lessee.

The Premises was acquired by Lessor using FY 2020, FY 2021, and FY 2023 Affordable Housing Fund ("AHF") funds totaling $3,850,000.00 and FY 2025 AHF funds totaling $506,500.00 were used to demolish the existing structure.

AHF requirements apply only for the $506,500.00 of FY 2025 AHF funds used for demolition, which requirements are satisfied by ___ of the units at 60% AMI referenced below.

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.

SPECIFIC PROVISIONS

The following are specific terms ("Specific Terms") applicable to this Lease and shall control over any conflicting, inconsistent, or ambiguous provisions or any Exhibit attached to this Lease. In the event of a conflict between the Specific Terms and any incorporated provision, the Specific Terms shall govern and prevail.

Project Name	Cardinal o Ala Wai
Premises	Approximately 9,454 square feet, more particularly describe and shown on **Exhibit A**. Premises Address: 1615 Ala Wai Boulevard, Honolulu, HI 96815
Term	75 years, commencing on _____, _____ (the "**Commencement Date**") and ending on _____, _____, subject to adjustment and earlier termination as provided in this Lease ("**Expiration Date**") thereafter, month to month.
Pre-Development Agreement	Pre-Development Agreement dated_____, by and between Lessor and Developer, approved by the Honolulu City Council via Resolution No_____. As of the Commencement Date, all of the following Pre-Development Agreement conditions have been satisfied and the following documents have been approved by the City and executed by Lessee, as indicated. (1) Development Plan (also referred to as the Approved Concept Plan), attached as **Exhibit B-1** (2) Development Schedule, attached as **Exhibit B-2**

	(3) Budget with Final Sources and Uses Statement, both attached as **Exhibit B-3** (4) Construction Contract (executed) attached as **Exhibit B-4** (5) Surety Bond (executed) attached as **Exhibit B-5** (6) Governmental Approvals (final) attached as **Exhibit B-6** (7) Construction Plans attached as **Exhibit B-7** (8) Rental Program attached as **Exhibit B-8** (9) Property Management Plan attached as **Exhibit B-9**
Authority	This Lease is issued pursuant to the Tenth Proclamation Relating to Affordable Housing, issued by Governor Josh Green, M.D. on December 6, 2024 (as renewed by subsequent proclamations, the "**Proclamation**"), under the emergency powers conferred by Chapter 127A, Hawaii Revised Statutes ("**HRS**"). Pursuant to HRS § 127A-13(a)(3), the Proclamation suspends HRS § 46-1.5, General Powers and Limitation of the Counties, and related county code(s), as applied to the authority to issue agreements, contracts, and leases related to state or county affordable housing projects. Chapter 38, Revised Ordinances of Honolulu ("**ROH**"), governing the leasing of City real property interests, is a related county code suspended thereby. This Lease is accordingly issued in reliance on the Proclamation and without compliance with the suspended provisions of ROH Chapter 38. Pursuant to the Proclamation, this Lease shall continue in full force and effect following the termination of the disaster emergency relief period to the extent allowed by law.
Affordable Housing Component Requirements	The following requirements and conditions from the Development Plan shall apply at all times. Minimum Units Amount:40 Minimum Unit Mix: 40 one-bedroom, one-bathroom units Minimum Parking Stalls: 7
Permitted Use:	Affordable Housing
Components	The development to be constructed includes the following: Affordable Housing Units: (No.) 40 Affordable Housing Area:____ sq. ft. Market Rate Housing Units: (No.) none Market Rate Housing Area: _none___ sq ft. Non-Housing Use Area: _none_____ sq. ft. Parking 7 Total, including 1 for persons with disabilities

Affordability and Income Restrictions	Lessee shall lease the following minimum units as more particularly described in Section 5.3.3. Years 1-15 [dates to be inserted] 16 units at or below 60% AMI 24 units at or below 100% AMI Years 16 – 75 [dates to be inserted] 16 units at or below 60% AMI 24 units at or below 120% AMI
Base Rent:	Base Rent from the Commencement Date until the Rent Commencement Date: $1.00 annually Base Rent after the Rent Commencement Date : $195,000 annually, consisting of the following Affordable Rent: $195,000 annually Market-Rate Rent: $_N/A_____ annually Non-Housing Use Rent: $__N/A_____ annually Beginning on the fifteenth (15th) anniversary of the Rent Commencement Date, the Base Rent shall increase five percent (5%) every five (5) years.
Annual Compliance Fee	$4,000 pursuant to Section 5.8, subject to increase beginning _____ [insert 5 years from Commencement Date].
Rent Commencement Date:	_____[insert 2 years from Commencement Date], or earlier based upon the date of the Project Completion Date as more particularly described in Section 6.1.1.
Early Completion Date	
Early Completion Credit	**$_____**
General Excise Tax:	Currently 4.712%
Addresses for Notice:	
Lessor:	City and County of Honolulu Department of Budget and Fiscal Services 530 South King Street Honolulu, Hawai'i 96813 Attn: Director With copies to: City and County of Honolulu Department of Housing and Land Management 650 South King Street, 3rd Floor

		Honolulu, Hawai'i 96813 Attn: Director City and County of Honolulu Department of the Corporation Counsel 1001 Bishop Street, Suite 2020 Honolulu, Hawai'i 96813 Attn: Corporation Counsel
	Lessee:	Cardinal Ala Wai LLC c/o Centre Urban Real Estate Hawaii, LLC 1620 Ala Moana Boulevard, Suite 510 Honolulu, Hawai'i 96815 Attn: Martin M. Q. Nguyen With a copy to: Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawaii 96813 Attn: Cori J. Terayama
Modifications to general terms		The following provisions are intended to modify the general terms of this Lease and shall control in the event of any conflict.
1		"Project" means that certain affordable rental housing project for individuals and families, to be developed on the Land and more particularly described in the Development Plan attached hereto as Exhibit B-1.
2.2.3		The improvements that exist on the Land as of the Commencement Date include only the slab on grade.
3.3		A new section 3.3 is added as follows: 3.3 Lessee's Early Right of Termination. Lessee shall have the one time right to terminate this Lease upon thirty (30) days prior written notice to Lessor within one year of the Commencement Date ("the **"Early Termination Date**") if (a) Historic Items (as defined later) are discovered on the Premises and such discovery results in a mitigation plan approved by the State Historic Preservation Division (SHPD) or (b) Hazardous Materials are discovered on the Premises and such discovery results in direct costs over $500,000, that Lessee determines and demonstrates will have a material and adverse effect on the Project. Lessee's notice shall include a complete schedule of all permits, approvals, and entitlements then held by Lessee with respect to the Project, together with copies thereof and the status of each (collectively, "**Permit Schedule**"). If Lessee elects to terminate

	this Lease pursuant to this section 3.3, then Lessee shall, as of the Early Termination Date: (a) restore the Premises to substantially the same condition as that existing as of the Commencement Date, including the removal at Lessee's cost of any improvements installed, unless otherwise directed in writing by Lessor; (b) at Lessor's election, made by written notice to Lessee within fifteen (15) days after Lessor's receipt of such notice and Permit Schedule, either: (i) terminate any permits, approvals, or entitlements obtained by Lessee relating to the construction of the Project, or (ii) assign, transfer and take all reasonable actions, at no cost to Lessor, to cause the applicable Governmental Authority to reissue such permits, approvals, and entitlements to Lessor or its designee, including execution of all applications, consents, and other documents reasonably necessary to effectuate such reissuance or transfer; (c) assign the Work Product described in Section 2.7 and the City shall not be required to pay the cost in Section 2.7(b); (d) remove and release any encumbrances or restrictions placed on the Premises by Lessee, except to the extent such encumbrances or restrictions were placed on the Premises in connection with any permits, approvals, and entitlements which Lessor expressly assumes pursuant to subsection (b) hereof; (e) reimburse funds provide for development, if any and (f) surrender the Premises to Lessor. For clarification, (d) above shall not apply to financing liens, mechanics' liens, monetary obligations, and other encumbrances not expressly accepted by Lessor.
5.1	Notwithstanding the provisions of Section 5.1, each Affordable Housing Unit shall be an Affordable Rental Housing Unit as defined in Revised Ordinances of Honolulu ("**ROH**") §32-1.1.
5.1.1	Notwithstanding the provisions of Section 5.1.1, the water heater requirement for each Affordable Housing Unit may be either an electric or solar water heater.
5.1.2	In the event of a conflict between the AMI as published by the City and County Department of Planning and Permitting ("**DPP**") and HHFDC, the AMI published by DPP shall take precedence.
6.1	Sections 6.1.3 and 6.1.4 are inapplicable to the Project and are hereby deleted.
7.2	With regard to Section 7.2, it shall be reasonable for Lessee to request Lessor's cooperation and execution of documents prepared by Lessee at Lessee's cost, in connection with Lessee's application for an exemption from real property taxes and assessments of every description, including Excise Tax and/or conveyance tax, for a period of time up to and including the Term of this Lease, provided that such exemption is available for the period of time so requested, including any required annual renewals of such exemptions, as well as for an

	exemption from conveyance tax which would be payable pursuant and concurrent with this Lease, and provided further that (a) Lessee is not in default under this Lease and has filed its most recent Certificate of Continuing Program Compliance demonstrating compliance with the Minimum Program Requirements; and (b) Lessor's cooperation under this Section shall not require Lessor to incur any cost, fee, or liability.
7.5	With regard to Section 7.5, Lessor shall cooperate as may be reasonably requested by Lessee as may be necessary or appropriate to arrange for such direct billing to Lessee.
8.1	With regard to Section 8.1, the annual Affordable Rent Credit shall be equal to One Dollar ($1.00) less than the applicable Base Rent for the same period and, consistent with Section 15.2, the Affordable Rent Credit application shall be due on March 31, and Lessee shall make commercially reasonable efforts for the annual average occupancy rates of the Affordable Housing Units to be 85% or higher. The annual average occupancy rates of the Affordable Housing Units shall be measured over a 12 month calendar year. If the annual average occupancy rate of the Affordable Housing Units falls below the minimum required occupancy rate, Lessee shall have a period of not less than twelve (12) months to restore the occupancy rate to 85% or higher. Lessor may, but is not obligated, to reduce the required annual average occupancy rate requirement in the event of extraordinary circumstances outside Lessee's reasonable control, provided Lessee is otherwise in compliance and is making diligent efforts to restore occupancy levels.
8.1.1	With regard to Section 8.1.1, if (a) Lessor fails to respond within sixty days after Lessee submits all required Compliance Reports, and (b) and within sixty days, Lessee has provided written notice to Lessor that Lessee believes it has submitted all Compliance Reports and is seeking deemed approval, then the Affordable Rent Credit shall be deemed approved.
8.3	With regard to Section 8.3, the future disqualification of the Affordable Rent Credit shall be subject to Section 5.9 as modified herein. Future disqualification of the Affordable Rent Credit shall only apply if Lessee fails to comply with Federal and State Affordable Housing Requirements and Housing Program Requirements for (a) three consecutive years or (b) five or more times during any ten year period of the Term.
9.3	With regard to the contracts referenced in Section 9.3, Lessee may enter into, terminate or modify such contracts in Lessee's sole discretion.

9.8.2	Lessor understands that in connection with the encumbrances described in Section 9.8.2, Lessee may be requesting Lessor's consent for the following: (a) any encumbrances recorded in connection with the permits and entitlements issued pursuant to the Pre-Development Agreement, (b) any encumbrances required for Lessee to obtain required utility services or allowances for the Project, and (c) any covenants, conditions and/or restrictions required by the Government for Lessee's development of the Project and/or any Improvements .
9.9	With regard to Section 9.9, Lessee shall provide Lessor with reasonable notice for non-adverse effects on affordability, density, traffic circulation, design, environmental impact, or the long-term condition of the Premises or the Project and Lessor's prior written approval is not required for such non-adverse effects. Lessor's prior written approval shall not be required for any proposed action that does not materially and adversely affect affordability, density, traffic circulation, design, environmental impact, or the long-term condition of the Premises or the Project, provided that Lessee shall give Lessor reasonable prior written notice describing the proposed action and its anticipated effects. If Lessor reasonably determines that the proposed action may materially and adversely affect any such matter. Lessor's prior written approval shall be required pursuant to Section 9.9
9.10	With regard to Section 9.10, upon Lessor's notice to Lessee of suspected illegal activity, Lessee may submit a written request to Lessor to allow Lessee additional time to investigate and resolve such activity, which Lessor may consider and grant on a case by case basis. Submission of such a request shall not itself extend, toll, or otherwise affect the forty-eight (48) hour period under Section 9.10.
10.9	With regard to Section 10.9, in the event Lessee requires the use of other lands owned by Lessor for the installation of infrastructure to support the Project, Lessee shall submit written requests to Lessor for such installation. Lessor may grant, deny, or condition such use in Lessor's sole discretion. Any grant of such use shall be documented by a separate written easement, license, or other instrument on terms acceptable to Lessor, including without limitation, provisions addressing term, compensation, maintenance and repair responsibility, insurance and indemnification, and removal and restoration obligations.
10.10	With regard to the certificate in Section 10.10, Lessee shall be responsible for the delivery of such certificate, but the certificate may be provided by Lessee's general contractor, architect or engineer.

10.11.3	With regard to Section 10.11.3, should Lessee be delayed in the prosecution of or completion of the Project Construction for a time period equal to or greater than forty-five days, as a result of unforeseeable causes, beyond the control of Lessee, and not due to its fault or neglect, including but not limited to (i) act(s) of God, (ii) war or wars, (iii) act of terror, or (iv) disaster (including, but not limited to, hurricane, flood, tropical or other major storm, earthquake, or earth movement or subsidence). Lessee shall, within thirty (30) days after Lessee becomes aware of the event giving rise to such delay, notify Lessor and provide evidence that Lessee's Contractor has asserted such delay and Lessor's Architect has certified the applicability of such delay, then Lessee shall be allowed to extend the completion date in the Development Schedule by not more than the actual period of delay directly and demonstrably caused by such event, not to exceed, in the aggregate across all such events during the Term, one hundred eighty (180) days, provided that Lessee shall use best efforts to mitigate such delay by adjusting other areas of the Development Schedule. Failure to provide notice within the thirty (30) day period described above shall be a waiver of Lessee's right to request and extension of the completion date on account of such event. An event of force majeure shall be deemed to have ended at such time as the event in question no longer reasonably obstructs or delays Lessee's performance of the Project Construction. Such delay shall not excuse Lessee from the performance of any other requirements under this Lease.
12.2.2	With regard to the notice required in Section 12.2.2(a), Lessee's notice shall be within twenty-four (24) hours of Lessee's reasonable knowledge.
16.1	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.
17.5	Section 17.5 is hereby deleted.
18.1.1	In addition to the requirements in Section 18.1.1, if a casualty occurs, then the Affordable Rent Credit shall automatically apply for three years from the date of such casualty, regardless of Lessee's compliance with Housing Program Requirements or submission of Compliance Reports during the Casualty. Lessee may request an extension beyond such three year period in the event Lessee has diligently pursued Restoration and can demonstrate that the delay in completion Restoration are due to delays outside of Lessee's control. Lessor may grant such request in Lessor's sole discretion.

19.1	With regard to Section 19.1, if Lessor wishes to perform tests, borings, and other analyses relating to possible Hazardous Substances Discharge, Lessor shall Notify Lessee of such request, and Lessor and Lessee shall work together to agree upon a schedule for Lessor to conduct such tests, borings, and other analyses that shall not adversely interfere with or disrupt Lessee's Construction schedule, or Lessee's Permitted Use of the Premises, including but not limited to, Lessee's tenants at the Project and, upon completion, Lessor shall promptly restore the affected portion of the Premises to the condition existing prior to such tests, borings, or other analyses, as applicable
21.1	Notwithstanding the provisions of Section 21.1, the following shall be deemed Permitted Transfers where no Transfer Premium shall be due, subject to the transferee's assumption of this Lease, including without limitation, all regulatory requirements and applicable affordability and City financing obligations: (a) foreclosure or deed-in-lieu by a permitted leasehold mortgagee; (b) transfer to a receiver or other party acting for the benefit of a leasehold mortgagee; and (c) the transfer of an equity interest 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. In addition, any transfer to the City and County of Honolulu shall be deemed a Permitted Transfer and no Transfer Premium shall be due.
21.3	Section 21.3 shall not apply to Transfers described in Sections 21.1(b)-(f).
21.6	With regard to Section 21.6.1, Lessor shall have the right to submit a written offer within ninety (90) days. Section 21.6.2 is hereby deleted. With regard to Section 21.6.3, the promote, carried interest, or waterfall distributions referred to in section (v) shall include a 15% Internal Rate of Return ("**IRR**"). There shall be no Transfer Premium until Lessee receives a 15% IRR. Once Lessee receives a 15% IRR, the Transfer Premium shall be 50% until Lessor receives an amount equal to the sum of all amounts expended by Lessor on the Premises from that certain fund established by Section 6-63 of the Revised Charter of the City and County of Honolulu 1973, as amended ("**Affordable Housing Fund**"). The amounts expended by Lessor from the AHF for the Premises are described in the Declaration referenced in Exhibit "A" ("**AHF Amount**"). With regard to Section 21.6.3, Net Proceeds shall include fees paid to Lessee or its managers during operation of the Premises.

	"IRR" means the discount rate at which the net present value of all capital contributions by the Lessee is equal to the net present value of all Net Proceeds to the Lessee. IRR for all relevant purposes of this Lease shall be calculated using the Microsoft Excel method of calculating IRR, using XIRR function (or if such program is no longer available, such other software program for calculating IRR reasonably determined by Lessee), using the actual dates and amounts of all previous distributions (or deemed distributions) of Net Proceeds to the Lessee and using the actual dates and amounts of all previous capital contributions made (or deemed made) by the Lessee.
23.1.1	The five (5) day period in Section 23.1.1 shall be changed to thirty (30) days.
23.1.2	The (10) day periods in Section 23.1.2 shall be changed to (15) days.
23.2.1	With respect to Lessor's termination rights pursuant to Section 23.2.1, Lessor shall first give written Notice to Lessee and others entitled thereto and shall be subject to the terms of this Lease, including rights to cure, if any.
23.2.7	With regard to Lessor's damages in Section 23.2.7, Lessor shall not be entitled to recover twice for the same element of Lessor's damages.
23.2.12	The costs is Section 23.2.12(b) shall be reasonable.
23.5	The costs reimbursable pursuant to Section 23.5 shall be limited to third party costs.
24.3	For the avoidance of doubt, the pre-lease environmental assessments used for Section 24.3 shall be those conducted pursuant to Section 6.8 of the Pre-Development Agreement.
24.5	Section 24.5 shall apply upon surrender of the Premises.
26.12	With regard to Lessor and Lessee each agree to permit the use of telecopy or electronic signatures, which may include DocuSign or the exchange of .PDF counterparts via electronic mail, each of which may be considered an original signature.
26.12	The following is added to Section 26.12. Lessor and Lessee each agree to permit the use of telecopy or electronic signatures, which may include DocuSign or the exchange of .PDF counterparts via electronic mail, each of which may be considered an original signature.
Exhibits:	Each of the following Exhibits (if checked), and the terms and conditions set forth in the Exhibits, shall form a part of and shall be incorporated into this Lease. In the event Exhibits B-1 through B-9 are not included, Lessor shall not be required to issue the Notice to Proceed with construction.

	EXHIBITS	
	A – Legal Description of Premises	
	B-1 – Development Plan dated _____ (final approved)	
	B-2 – Development Schedule (final approved)	
	B-3 - Budget with Final Sources and Uses Statement dated _____ (final approved)	
	B-4 – Construction Contract dated _____ (executed)	
	B-5 – Surety Bond dated _____ (executed)	
	B-6 – Governmental Approvals	
	B-7 – Construction Plans dated _____ (final approved)	
	B-8 – Rental Program dated _____ (final approved)	
	B-9 - Property Management Plan dated _____ (final approved)	
	C – Form of Income Certification	
	D – Form of Certificate of Continuing Program Compliance	
	E – Rent Rates and Annual Calculation	
	F – Form of Bond	
	G – Conditions Precedent to Construction	
	H - Capital Replacement Schedule (sample, minimum requirements)	
	I – Form of Tri-Party Agreement	

ARTICLE 1:
DEFINITIONS

"Building Systems" means all systems serving the Premises, including mechanical, electrical, plumbing, structural components, elevators, fire/life safety systems, HVAC systems, security systems, communications systems, roofs, building envelope components, and any Mitigation System.

"**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.

"**Compliance Reports**" means all reports, certifications, financial statements, rent rolls, tenant income certifications, occupancy reports, environmental submissions, insurance certificates, property management reports, and other documentation that Lessee is required to deliver under this Lease.

"**CPI**" (also the Consumer Price Index) means the index published by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City average, all Items (or such comparable index as Lessor may utilize in substitution for or as the successor to the stated index).

"**Default Interest**" means interest at an annual rate equal to the lesser of: (a) 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 designated by Lessor plus four percent (4%) per annum; or (b) the highest rate allowed by law.

"**Depository**" means a bank or trust company mutually designated by Lessor and Lessee, which is qualified under the Laws of the State and having its principal office in Honolulu, Hawai'i.

"**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, 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 Internal Revenue Code of 1986 (26 U.S.C. § 42), as amended (and the corresponding provisions of the State laws) and/or any applicable agreement or restrictions relating to the receipt of any federal or State low income housing tax credits, and any other housing assistance program funded, insured, or operated by HUD or the State.

"**Government**" or "**Governmental Authority**" 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.

"**Governmental 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 Project. All such approvals must be final, non-appealable, and in full force and effect.

"Housing Program Requirements" means all requirements applicable to the Premises and the Project under this Lease, Federal and State Affordable Housing Requirements, HUD guidelines, HHFDC rules, County ordinances, and all program and regulatory agreements recorded or imposed in connection with the development or financing of the Premises.

"**Law**" **or** "**Laws**" means all laws, ordinances, requirements, orders, proclamations, directives, rules, program rules, regulatory agreements and regulations of any Government affecting the Premises or the Project, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, 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.

"**Legal Costs**" means all reasonable costs and expenses incurred in any legal proceeding (or other matter for which Legal Costs are reimburseable), including reasonable attorneys' fees, court costs, and expenses, and in or as a result of any bankruptcy.

"Mitigation System" means any system, structure, barrier, treatment mechanism, operation, or physical or engineering control required under Environmental Laws to prevent or mitigate exposure to Hazardous Substances or Vapor Intrusion.

"Operation" or **"Operate"** means the day-to-day activities relating to the use, occupancy, management, maintenance, leasing, recordkeeping, compliance, and physical condition of the Premises.

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

"**Public Accommodations Laws**" means all applicable Laws, 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.

"UPCS Standards" means the Uniform Physical Condition Standards set forth at 24 CFR Part 5, Subpart G, as amended.

ARTICLE 2:
PREMISES

2.1 **Premises.** The property leased includes the following (collectively, the "**Premises**"): (a) the land described in **Exhibit A** attached hereto (the "**Land**"); (b) the Improvements existing thereon as of the Commencement Date, including any fixtures incorporated in the Premises; and (c) the appurtenances and all the estate and rights of Lessor in and to the Land. This Lease is subject to the encumbrances described in **Exhibit A** and any title exceptions resulting from the exercise of Lessor's reserved rights.

2.2 **Acceptance in Existing Condition.** Lessor makes no representation or warranty, express or implied, as to the Premises, including without limitation with regard to acreage, boundaries, area, configuration, dimensions, or legal description of the Premises. 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 Lessor shall not be obligated to provide or pay for any work or services related to the Premises or the operation thereof. Lessee has relied, or shall rely, solely upon its own inspections, investigations, surveys, title review, and due diligence with respect to the Premises, including without limitation any ALTA/NSPS Land Title Survey obtained by or for Lessee. No discrepancy in area or boundary shall give rise to any claim for abatement of rent, termination of this Lease, or damages. Lessee acknowledges that it has not relied upon, and expressly disclaims reliance upon, any statements, reports, studies, projections, or other information provided or made

available by or on behalf of Lessor, except as expressly set forth in this Lease. Lessee agrees that Lessee has inspected the Premises carefully, or has had the opportunity to inspect the Premises carefully, and except as otherwise provided in 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 or entity on behalf of Lessor, regarding the Premises or matters affecting the Premises, including the following:

2.2.1 Legal Description. The accuracy, completeness, or sufficiency of the legal description of the Land or the area, acreage, or configuration thereof.

2.2.2 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.

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

2.2.4 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.

2.2.5 Compliance. The development potential of the Premises and 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.

2.2.6 Hazardous Substances. The presence or removal of hazardous substances which 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 ("**Hazardous Substances**"). 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 on, in, under or about the Premises or any adjoining or neighboring property. "**Environmental Laws**" includes all federal, State of Hawai'i ("**State**") and Honolulu County ("**County**") statutes, ordinances, regulations, rules, orders, and requirements relating to environmental conditions, Hazardous Substances, Hazardous Substances Discharge, asbestos, mold, moisture intrusion, air quality, stormwater, and natural resources, including but not limited to: CERCLA, RCRA, TSCA, Clean Water Act, Clean Air Act, Hawaii Revised Statutes ("HRS") Chapters 128D, 340E, 342D, 342L, 342B, 342F, and all DOH/EPA rules and guidance documents, each as amended from time to time. "**Environmental Condition**" means any condition, circumstance, or event relating to Hazardous Substances or the environment that (a) violates or may violate Environmental Laws; (b) requires investigation, monitoring, mitigation, or remediation under Environmental Laws; (c) creates a risk of vapor intrusion; or (d) may result in liability to Lessor or Lessee under Environmental Laws.

2.2.7 Economic Feasibility. Economic conditions or projections, development potential, market data, or economic feasibility of the Premises, the Project or the business Lessee intends to conduct on the Premises.

2.2.8 Utilities. The availability, existence, quality, nature, adequacy and physical condition of utilities serving the Project or the Premises.

2.2.9 Suitability. The use, habitability, merchantability, fitness, suitability, value or adequacy of the Premises for any particular purpose (including, without limitation, the Permitted Use and the Project).

2.2.10 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.

2.2.11 Access. Access to the Premises, including from or through any particular route.

2.2.12 Governmental Approvals and Financing. The availability, timing, or approval of any governmental permits, approvals, variances, financing programs, subsidies, tax credits, or other public assistance related to the development or operation of the Project; and

2.2.13 Other Matters. Any matter whatsoever that pertains to the Premises.

2.3 **Release of Lessor.** Lessee, on behalf of itself, its agents, sub-agents, employees, contractors, subcontractors (collectively, "**Lessee Agents**"), its officers, directors, partners, members and/or shareholders (collectively, "**Lessee Parties**"), hereby waives, releases and forever discharges Lessor and its agents, directors, employees and officers of and from any and all claims, actions, cause of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee, Lessee

Parties or Lessee Agents 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, except any claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation arising from the gross negligence or wilful misconduct of Lessor.

2.4 **Reservation of Lessor Rights**. Except as expressly granted to Lessee under this Lease, all rights in and to the Premises are reserved to Lessor. Without limiting the foregoing, Lessor expressly reserves the right, at any time and from time to time, to grant or reserve easements, licenses, rights of way, and utility rights; to enter the Premises for inspections, emergency access, maintenance, or public purposes as provided in this Lease; and to take any action in its capacity as a governmental entity, provided that Lessor shall exercise such reserved rights in accordance with this Lease and shall not materially and unreasonably interfere with Lessee's permitted use of the Premises, except in the case of emergency or imminent threat to public health or safety.

2.5 **Quiet Enjoyment**. So long as Lessee observes and performs all of the terms, covenants, conditions, provision and agreements herein containedon the part of Lessee to be kept, observed and performed, 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. Lessee's right to quiet enjoyment is conditioned upon Lessee's full compliance with all affordability, environmental, operational, and maintenance obligations under this Lease.

ARTICLE 3:
TERM

3.1 **Term.** The terms and provisions of this Lease shall be effective as of the Commencement Date and terminating at 11:59 p.m. on the Expiration Date, unless terminated sooner in accordance with this Lease. Lessee shall have no right to extend or renew the Term.

3.2 **Delivery of Possession.** Lessor shall deliver the Premises to Lessee on the Commencement Date. If for any reason Lessor cannot deliver possession of the Premises on the Lease Commencement Date, Lessee shall have the right to terminate this Lease by delivery to Lessor of a termination notice no later than thirty (30) days after the Commencement Date, and the termination of this Lease shall be effective ten (10) days after receipt of such notice by Lessor unless within such 10-day period the Premises are delivered to Lessee. Upon such termination, neither party shall have any further obligation or liability to the other under this Lease.

ARTICLE 4:
PROJECT DESCRIPTION AND REQUIREMENTS

4.1 **Project Description**. The Project is described in the Development Plan approved pursuant to the Pre-Development Agreement, composed at a minimum of affordable housing. Developer shall construct the improvements pursuant to the Development Plan and this Lease.

4.2 **Project Components.** The Project consists of the Affordable Housing Component, Market-Rate Housing Component and Non-Housing Use Component described below.

4.2.1 The "**Affordable Housing Component**" is the portion of the Projedct that consists of the rentable floor area of the Project or the Premises that is used exclusively for Affordable Housing Units and residential uses ancillary thereto ("**Affordable Housing Area**") which includes the dwelling units within the Improvements that are deed-restricted or contractually restricted to occupancy by Eligible Households at restricted rents, as set forth in this Lease, and applicable federal, state, or County affordability requirements ("**Affordable Housing Units**").

4.2.2 The "**Market-Rate Housing Component**" is the portion of the Project that consists of the rentable floor area that is used for Market-Rate Housing Units and residential uses ancillary thereto ("**Market-Rate Housing Area**") which includes the dwelling units within the Improvements that are not designated as Affordable Housing Units and that are not subject to affordability or rent restrictions under this Lease, or applicable federal, state, or County affordable housing programs ("**Market Rate Housing Units**").

4.2.3 The "**Non-Housing Use Component**" is the portion of the Project that consists of the rentable floor area of the Premises used for Non-Housing Uses.("**Non-Housing Use Area** ") which includes any use of the Premises that is not a residential use, including without limitation retail, office, commercial, nonprofit, governmental, medical, educational, cultural, healthcare, community-serving, or service-oriented use, ("**Non-Housing Uses**").

4.3 **Mixed-Use Allocation; Rentable Area Certification.** Upon Substantial Completion of the Improvements, Lessee shall allocate all rentable floor area among: Affordable Housing Area, Market-Rate Housing Area, and Non-Housing Use Area and submit such allocation to Lessor for approval ("**Rentable Area Certification**"). Lessor may require an independent measurement study at Lessee's cost or Lessor may request the backup material which supports Lessee's allocation. No area shall be classified as housing for rent purposes unless used exclusively for residential occupancy associated with the Affordable or Market-Rate Housing Components. Any future changes to the Rentable Area Certification shall have the prior written approval of Lessor and any reallocation approved by Lessor shall be effective prospectively only.

ARTICLE 5:
AFFORDABLE HOUSING PROGRAM

5.1 **Affordable Housing Construction**. Lessee shall develop, construct and operate the Affordable Housing Component as set forth below.

5.1.1 Dwelling Units. Each Affordable Housing Unit shall be a Dwelling Unit as defined in Revised Ordinances of Honolulu ("**ROH**") §8-10.17(a). They will be and remain similarly constructed, and each Affordable Housing 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 Affordable Housing 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, solar water heater, refrigerator, and sink, provided such solar water heaters may serve multiple Dwelling Units and may be located on a floor of a building instead within each Affordable Housing Unit 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 contravention of applicable law.

5.1.2 Affordable Housing Units Qualifications. Lessee shall design, construct, operate and maintain Affordable Housing Units, in the number and of the type described below, for individuals and families who meet the following income qualifications associated with said Affordable Housing Units (each, a "**Qualified Tenant**"). The Affordable Housing Units shall be rented to qualified tenants in accordance with the income requirements in this Lease; provided, however, that (a) the income limits shall be deemed a "ceiling" and (b) there shall be no "floor" for such income limits. Lessee shall rent not less than the number of units specified in the Specific Provisions to qualified tenants with household incomes at or below the percentage specified in the Specific Provisions of the area median income for the City and County of Honolulu, adjusted for family size ("**AMI**"), as determined by the United States Department of Housing and Urban Development ("**HUD**") and published by the Hawai'i Housing Finance and Development Corporation ("**HHFDC**") or an equivalent replacement determined by Lessor in the event no longer published. Annual income shall be determined based on rules for low-income housing tax credit projects under 24 Code of Federal Regulations ("**CFR**") Part 5, Subpart F, also known as Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment. In the event any agency or measure is o longer published or available, Lessor shall determine the appropriate substitute.

5.1.3 Parking. Lessee shall design, construct, operate and maintain a parking lot, to include a total number of parking stalls identified in the Specific Provisions with the specified number of parking stalls shall be reserved for persons with disabilities in compliance with Public Accommodations Laws. Use of the parking stalls and loading space designated to serve the Affordable Housing Units shall be restricted to residents, visitors, and other approved guests, and Lessee shall not charge residents and their guests for use of such stalls without the prior review and written approval of the Lessor, which Lessor may withhold in its reasonable discretion.

5.1.4 Unit Amenities. At a minimum, each Unit shall include a range/oven, range hood, refrigerator and sink, water heater (standard or solar), provided such water heaters may serve multiple Units and may be located on a floor of a building instead within each Unit. All appliances shall be in standard sizes acceptable to Lessor and each floor shall have laundry facilities or one or more or a centralized laundry room. Any centralized laundry room shall accommodate all of the tenants, including washers and dryers, in sizes adequate to the Units served.

5.1.5 Resident Amenities. Lessee shall design, construct, operate and maintain parking and common area amenities available exclusively for residents and their guests as specified in the Development Plan.

5.1.6 Common Area Amenities. Lessee shall design, construct, operate, and maintain common area amenities identified in the Development Plan.

5.2 **Affordable Rents**. Monthly Rent for the Affordable Housing Units shall not exceed Affordable Rent. "**Affordable Rent**" means a monthly rent for a Affordable Housing 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 Affordable Housing 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 may either be inclusive of tenant utility payments, or utility charges may be billed separately from rent and paid directly by tenant if permitted by law. Notwithstanding the foregoing, if any Qualified Tenants 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 Affordable Housing Unit under such program is greater than the Affordable Rent, the rent for such Affordable Housing Unit may be such contract rent.

5.3 **Minimum Project Requirements**. The Project shall at all times, include the components set forth in this Section (collectively, the "**Minimum Program Requirements**"). Lessee shall immediately notify Lessor in writing in the event of any failure to meet the Minimum Program Requirements, which shall constitute a default under this Lease.

5.3.1 Minimum Units. The "**Minimum Units Amount**" is the number of units set forth in the Specific Provisions and the Development Plan. In the event the actual Affordable housing Units falls below thte Minimum Unit Amount, Lessee shall immediately cure such default by shifting units from the Market-Rate Units.

5.3.2 Unit Mix. The "**Minimum Unit Mix**" is the mix of unit types by bedroom unit as set forth in the Specific Provisions and the Development Plan.

5.3.3 Affordability and Income Restrictions. The Affordable Housing Units shall be rented to Qualified Tenants in accordance with the following income requirements; provided, however, that (a) the income limits shall be deemed a "ceiling" and (b) there shall be no "floor" for such income limits. Developer shall rent not less than the percentage in the Special Provisions of the Affordable Housing Units in the Project to Qualified Tenants with household incomes at or below the percentage of the area median income for the City and County of Honolulu, adjusted for family size ("AMI") specified in the Special Provisions, as determined by the United States Department of Housing and Urban Development ("HUD") and published by the Hawai'i Housing Finance and Development Corporation ("HHFDC"). Annual income shall be determined based on rules for low-income housing tax credit projects under 24 Code of Federal Regulations ("CFR") Part 5, Subpart F, also known as Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment.

5.4 **Eligibility Procedures and Program**

5.4.1 Preference System. Lessee shall establish a system to determine preferences by lot in the event the number of eligible applicants exceeds the number of Affordable Housing Units available. The Affordable Housing Units shall next 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 Affordable Housing Units to Qualified Tenants, the Lessee will not otherwise give preference to any particular protected class or group except for the following:

(a) 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;

(b) 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,

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

5.4.2 Rental Program. Lessee shall rent the units in accordance with the rental, leasing, income-qualification, tenant-selection, waitlist, recertification, and occupancy policies and procedures prepared by Lessee attached as Exhibit B-8 "**Rental Program**". Any changes in the Rental Program shall be subject to Lessor's consent. Such rental program shall establish:

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

(b) A system for determining preferences by lot, in the event the number of Qualified Tenants exceeds the number of Affordable Housing Units available.

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

(d) A description of how the rental program will market the Affordable Housing Units if occupancy falls below 85%, including updated marketing plans.

(e) Affordable Rent for each Affordable Housing Unit, based on unit type, household size, and income level.

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

Unit Type	Household Size
1 bedroom	1-3 persons
2 bedroom	2-5 persons

5.4.3 Income Certification. Lessee shall establish procedures for verifying the income eligibility of a household for occupancy of an Affordable Housing Unit, in accordance with this Lease, and all applicable laws and document compliance with such procedures for each Affordable Housing Unit. Lessee shall maintain documentation verifying the income eligibility of a household for occupancy of an Affordable Housing Unit, conducted at lease-up and annually thereafter, in accordance with this Lease, the Rental Program, and all applicable Federal and State requirements ("**Income Certification**"). Lessee shall obtain, complete and maintain on file an Income Certification for each applicant of an Affordable Housing Unit at (i) at the time of initial occupancy of any Affordable Housing Unit, (ii) upon the vacancy and re-occupancy of any Affordable Housing Unit, and (iii) at least once annually during the term of each rental, an Income Certification, in a form approved by the Lessor, an example of which is attached hereto as **Exhibit C,** which shall be subject to independent investigation and verification by the Lessor. Lessee shall verify the information submitted by each Qualified Tenant at the time of submission, including taking, the following steps as part of the verification process by Lessee: (1) either obtain a federal income tax return for such Qualified Tenant for the most recent tax year or 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. For holders of a certificate or voucher from Section 8 of the Housing Act of 1937, as may be amended from time to time ("**Housing Act**"), Lessee shall comply with the Housing Act and keep record of such compliance. Annually beginning from the Rent Commencement Date,

Lessee shall file with Lessor a certificate confirming continuing program compliance in a form approved by the Lessor ("**Certificate of Continuing Program Compliance**"), an example of which is attached hereto as **Exhibit D,** on or before the first (1st) day of each March during the Term setting forth the required information for the preceding calendar or fiscal year. The Certificate of Continuing Program Compliance shall include a summary of any failure to meet the Minimum Program Requirements and steps and timing to cure, 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 may alternatively provide copies of forms that comply with the applicable Federal and State Affordable Housing Requirements and that contain substantially the same information (in Lessor's determination).

5.4.4 Tenant Files. Lessee shall develop procedures for maintaining Tenant Files. For each Affordable Housing Unit, Lessee shall maintain leases, Income Certifications, recertification documents, applications, notices, tenant correspondence, rent ledgers, subsidy documentation, and all materials that may be required ("**Tenant Files**"). The procedures for maintaining Tenant Files shall be included in the Rental Program and the Property Management Plan.

5.5 **Management and Operation of Residential Leases**.

5.5.1 Subordination of subleases. 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.

5.5.2 Disclosures. In connection with all subleases of the Affordable Housing Units, tenants shall be provided written disclosures, including notice of pre-existing uses in the surrounding community.

5.5.3 Tenant Protection and Relocation Requirements. Lessee shall not engage in harassment, wrongful eviction, or any action that violates Residential Leasing Requirements or applicable laws. If tenants must be temporarily relocated due to repairs, remediation, or capital improvements, Lessee shall prepare and implement a written plan, subject to Lessor approval, governing temporary relocation of tenants during repairs, remediation, or rehabilitation and consistent with applicable housing Laws ("**Tenant Relocation Plan**"). Lessee shall not require any tenant to sign a release of claims as a condition of relocation assistance. The Tenant Relocation Plan shall be included in the Rental Program and the Property Management Plan.

5.5.4 Property Management Plan. Lessee has developed a comprehensive property management program, including all policies, procedures, staffing standards, maintenance schedules, tenant-file requirements, and operational protocols attached as Exhbiit B-9 ("**Property Management Plan**"). Lessee shall submit a request for Lessor's consent to any changes in the Property Management Plan. Lessee's use and operation of the Premises and Project shall comply at all times with the Rental Program and Property Management Plan.

5.5.5 Condition of the Premises. Lessee agrees that throughout the Term, it shall (1) maintain the Premises, Project and Building Systems in good working order and in compliance with all applicable codes and UPCS Standards; (2) maintain and Operate the Project and the Premises in Safe and Sanitary Condition, including the provision of all Essential Services; and (3) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended. These obligations are in addition to Lessee's obligations under Article 13 (Operation, Management and Maintenance).

5.6 **Compliance Requirements**.

5.6.1 Federal and State Compliance. The Affordable Housing 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 Affordable Housing Unit shall be required to make a payment toward rent in excess of the limits established by this Lease for such Affordable Housing 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

5.6.2 Affordable Housing Compliance. Lessee shall operate the Project in compliance with all requirements applicable to the Affordable Housing Component and the Project, including without limitation Housing Program Requirements**.** Lessee shall maintain complete and accurate records sufficient to demonstrate such compliance, shall implement policies and procedures to ensure continuing compliance, and shall provide Lessor with access to such records upon Lessor's request. Such records shall include, without limitation, tenant certification and recertification; environmental compliance, reporting, and monitoring; tenant eligibility and screening; Affordable Rent calculations and adjustments; calculation of utility allowances; annual and interim income recertifications; fair housing, accessibility compliance; and nondiscrimination requirements, and all reporting, audit, inspection, and certification obligations. In addition to any other reporting required in this Lease, should additional reports be required by Federal and State Affordable Housing Requirements, Lessee shall provide the same upon request from Lessor.

5.6.3 Default. If at any time the Project is not in compliance with Federal and State Affordable Housing Requirements and Housing Program Requirements, Lessee shall immediately provide Lessor with written notice describing the noncompliance. Lessee shall also provide Lessor with the proposed plan and timing for cure.

5.7 **Covenants to Run with the Property**. Lessor and Lessee hereby covenant and agree that the covenants set forth herein that govern the use and occupancy of the Premises and the Project shall be and are covenants running with the Land for the Term and shall be binding upon all subsequent lessees of the Premises and the Project for such Term, and are not merely personal covenants of Lessor and Lessee. Any contract, deed or other instrument hereafter executed conveying the Premises, Project 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 or not such provision is included.

5.8 **Annual Compliance Fee**. Lessee shall pay an annual fee to reimburse Lessor for administrative, monitoring, inspection, reporting, and compliance oversight costs ("**Annual Compliance Fee**"). The Annual Compliance Fee shall be due and payable on or before March 1 each year, submitted together with the Certificate of Continuing Program Compliance. Beginning on January 1 following the fifth (5th) anniversary of the Commencement Date, and on January 1 each year thereafter, the Annual Compliance Fee shall increase by the percentage increase in the CPI for the preceding year; provided that the Compliance Fee shall not decrease.

5.9 **Chronic Lease Violations and Termination**. Lessee understands compliance with Federal and State Affordable Housing Requirements and Housing Program Requirements is a material condition. Lessee agrees that if Lessee fails to comply with Federal and State Affordable Housing Requirements and Housing Program Requirements more than two times during any five year period of the Term, regardless of whether such defaults shall have been cured by Lessee, the third default in such compliance shall, at Lessor's election, in its sole and absolute discretion, be deemed a noncurable default resulting in Lessor's right to terminate this Lease, upon ninety (90) day's written notice to Lessee, in addition to any other rights.

ARTICLE 6:
RENT

6.1 **Base Rent.** Lessee shall pay without prior notice or demand to Lessor annual base rent ("**Base Rent**"), consisting of the following three components: Affordable Housing Component Rent ("**Affordable Housing Rent**"); Market-Rate Housing Component Rent ("**Market-Rate Rent**"); and Non-Housing Use Component Rent ("**Non-Housing Use Rent**"). Base Rent shall be payable in equal monthly installments, in advance, on July 1 of each year during the Term, without deduction, set-off, abatement, or counterclaim, except as expressly provided in this Article. Base Rent shall commence on the earlier of: (a) the date on which the Affordable Housing Component achieves Stabilization, or (b) the date on which the Market-Rate Housing Component achieves Stabilization, or (c) twelve (12) months after the issuance of the first residential certificate of occupancy for the Improvements.

6.1.1 Rent Commencement. Base Rent on the earlier to occur of (a) 1st day of the 2nd calendar month following the Project Completion Date and (b) two years from the Commencement Date ("**Rent Commencement Date**") and thereafter, such Rent shall be paid in equal monthly installments, in advance, on the first day of each month for which such Rent accrues under this Lease. If the Rent Commencement Date falls on a day other than the first day of the year, then the Rent for the first fractional year shall be computed on a daily basis from the Rent Commencement Date to the end of the year and shall be paid accordingly.

6.1.2 Affordable Housing Rent. Lessee shall pay the annual base rent payable for the Affordable Housing Component ("**Affordable Housing Rent**"), as established in the Special Provisions and described in **Exhibit E**.

6.1.3 Market-Rate Rent. Lessee shall pay the annual base rent payable for the Market-Rate Housing Component ("**Market-Rate Rent** "), which shall be the maximum rent per rentable square foot as established in the Special Provisions and described in **Exhibit E**.. Market-Rate

Rent shall always be payable in full at the Market-Rate Rent. No credits, abatements, offsets, waivers, deductions, or incentives of any kind apply. Lessee may not classify, reclassify, or convert any dwelling unit between Affordable Housing and Market-Rate Housing without Lessor's prior written approval. The Parties affirm that public land subsidies, incentives, and affordability benefits shall apply only to the Affordable Housing Component. Market-Rate Housing Units shall not receive any public subsidy through reduced ground rent.

6.1.4 Non-Housing Use Rent. Lessee shall pay the annual base rent payable for the Non-Housing Use Component ("**Non-Housing Use Rent Rate**"), which shall be the maximum rent per rentable square foot as established in the Special Provisions and described in **Exhibit E**. Non-Housing Use Rent shall always be payable at full rate and shall not be subject to credits, deductions, abatements, or waivers. "No space shall be reclassified to or from Non-Housing Use without Lessor's prior written approval.

6.2 **No Offsets.** Except as expressly provided herein, Lessee shall have no right to offset, deduct, or abate Base Rent. Affordable Rent Credits are conditional incentives and shall not be treated as offsets or withholdings of rent.

6.3 **Additional Rent.** Any and all amounts payable by Lessee to Lessor pursuant to the terms of this Lease, other than Base Rent, are hereinafter collectively referred to as the "**Additional Rent**". Additional Rent not paid when due shall bear interest at the Default Rate.

6.4 **Rent**. The Base Rent and Additional Rent are collectively referred to as "**Rent**."

ARTICLE 7:
ADDITIONAL PAYMENTS BY LESSEE

7.1 **Net Lease.** This Lease shall constitute an absolute "net" lease. Except as expressly provided otherwise in this Lease, Lessee shall pay as Additional Rent and shall timely discharge, before any failure creates a material risk of lien, forfeiture, or interruption of Operations, each and every cost, charge, expense, tax, fee, duty, or obligation of any kind whatsoever related to, arising from, or in any manner connected with: (a) the Premisesor the Project; (b) Lessee's leasing, Operation, management, maintenance, repair, use, or occupancy of the Premises or the Project; or (c) any permitted Construction, rehabilitation, or capital improvement affecting the Premises or the Project. All such amounts constitute Additional Rent under this Lease and shall be payable in accordance with the terms of this Lease. For avoidance of doubt, all compliance, monitoring, enforcement, review, environmental oversight, audit costs, and all other sums required to be paid by Lessee under this Lease shall constitute Additional Rent.

7.2 **Taxes.** At least ten (10) days before the same become delinquent, Lessee will pay to the taxing authority all real property taxes and assessments of every description (whether public or private) that are now or may during the Term be assessed against (i) all or any portion of the Premises or the Project; or (ii) Lessor or Lessee, with respect to their respective interests in the Premises or the Project, or for which Lessor or Lessee may be liable, whether assessed to or payable by Lessor or Lessee. Notwithstanding the foregoing, with respect to any assessments made under any betterment or improvement Law that may be payable in installments, Lessee shall be required to pay only such installments of principal together with interest on unpaid balances thereof as shall become due and payable during the Term, and such taxes shall be prorated. Lessee shall also have the right to apply for any applicable exemption from Taxes

applicable to the Premises or the Project, and Lessor shall cooperate as may be reasonably requested by Lessee to provide such certifications and other information in support of such application and renewals throughout the Term hereof.

7.3 **Tax Contests**. Lessee shall have the right, subject to Lessor's reasonable approval, to contest by appropriate proceedings the amount or validity, in whole or in part, of any taxes or assessments. In the event the applicable Governmental Authority having jurisdiction over the contest proceedings allows the posting of security or some other method of deferring payment of the disputed taxes or assessments, Lessee may do so; otherwise Lessee shall not postpone or defer payment of any disputed taxes or assessments, but shall pay such taxes or assessments notwithstanding such contest. To the extent that Lessor is required to execute any application or other document or otherwise cooperate in connection with any Lessor-approved proceeding hereunder, the same shall not in any manner be construed as Lessor's agreement that the content of Lessee's contest (including any proposed market valuation) is accurate or proper. Lessee shall protect, defend, indemnify and hold the Lessor Parties harmless from and against any and all Liabilities arising from or in connection with any such proceedings.

7.4 **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.

7.5 **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 or the Project during the Term.

7.6 **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 Base 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 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.

7.7 **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 Lessee shall be responsible for preparing, executing and/or filing when due such documentation as may be necessary or proper in connection therewith; provided that Lessor shall promptly execute and deliver to Lessee such required documentation in connection with such payment. 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 execute the required documentation and promptly deliver the same together with payment of 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.

7.8 **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, the Project or with respect to personal property of any kind owned by or placed in, upon or about the Premises or the Project by or at the expense of Lessee.

7.9 **Consent Fee**. Concurrently with Lessee's notice of any request for consent, Lessee shall pay to Lessee a fee of $3,500 to defray Lessee's expenses in reviewing such request, and Lessee shall also reimburse Lessor immediately upon request for its reasonable consultant fees incurred in connection with considering any request for consent.

7.10 **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 actually 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 Project, 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 shall survive the expiration or earlier termination of the Term.

ARTICLE 8:
RENT CREDITS

8.1 **Affordable Rent Credit.** Lessee may earn an annual credit if the annual average occupancy rates of the Affordable Housing Units is 90% or higher, with full compliance with all Housing Program Requirements including affordability, income-qualification, property management, maintenance, reporting, environmental, and operational obligations ("**Affordable Rent Credit**"). Lessee shall apply for the Affordable Rent Credit by March 1 of each year, and Lessee is responsible for submitting all documentation evidencing Lessee's qualification for the Affordable Rent Credit.

8.1.1 Qualification**.** The Affordable Rent Credit shall apply only after: (i) Lessee submits all required Compliance Reports by March 1; and (ii) Lessor issues a written determination approving the Affordable Rent Credit. Until such approval, Lessee shall continue to pay Affordable Housing Rent. Lessor may reduce or deny credits for any period of noncompliance, including periods later cured. Affordable Rent Credits are not bankable or transferrable to subsequent years. Affordable Rent Credits are discretionary incentives and not entitlements, and no expectation of approval shall arise from prior approvals.

8.1.2 Application**.** Affordable Rent Credits shall be applied prospectively toward Affordable Housing Base Rent and shall not delay, suspend, or excuse timely payment of Base Rent when due.

8.2 **One-Time Early Completion Credit**. If Lessee achieves Substantial Completion of the Improvements on or before the Early Completion Date without having been in default under this Lease, Lessee may request apply for a one time credit in the amount specified in the Special Provisions ("**Early Completion Credit**"). Qualification for the Early Completion Credit requires: Lessee achieving Substantial Completion of the Improvements by the Early Completion Date; Lessee's compliance in all material respects with this Lease; and Lessor's approval of the Close-out Documentation (defined below). Lessee shall be responsible for applying for the Early Completion Credit within six months of the Substantial Competion of the Improvement. If Lessor certifies such completion and qualification, then Lessee shall be entitled to a one-time Early Completion Credit in the amount specified in the Special Provisions, which shall be an amount equal to one (1) year of Base Rent applicable to the Affordable Housing Component only. The Early Completion Credit shall be applied prospectively, to the next Base Rent payment, beginning with the next payment following Lessor's written approval.

8.3 **Condition to Rent Credits**. Any Rent Credit or Early Completion Credit, compliance credit, or other rent reduction available under this Lease is expressly conditioned upon Lessee's full, timely, and continuous compliance with the terms of this Lease. Any default or failure to comply with Article 5 (Affordable Housing Program) and Article 15 (Financial and Compliance Reporting) automatically suspends all Rent Credit or Early Completion Credit until the applicable default is cured to Lessor's reasonable satisfaction and can result in future disqualification.

ARTICLE 9:
USE

9.1 **Permitted Use.** Subject to all applicable Laws and this Lease, Lessee shall use the Premises only for the puroses stated in the Special Provisions. Lessee acknowledges and agrees that the Premises are to be primarily held, developed, managed and operated as a "housing project" within the meaning of Section 8 of the Revised Ordinances of Honolulu ("**ROH**") 2021, as amended, in accordance with and subject to the provisions of this Lease regarding Affordable Housing Units for Qualified Tenants at Affordable Rents and appurtenant facilities.

9.2 **Prohibited Uses.** Lessee shall not cause, maintain or permit any waste or nuisance to exist on, in or about the Premises or the Project. Lessee shall not do or permit anything to be done in or about the Premises or the Project which will in any way damage the Premises, or use or allow the Premises to be used for any improper, offensive or unlawful purpose, or use other than the Permitted Use. Lessee shall not make, permit, or suffer any spoil, nuisance, strip, waste, or unlawful, improper, or offensive use of the Premises.

9.3 **Exclusive Ownership of Improvements and Control of Premises.** During the Term, Lessee shall be the exclusive owner of the Improvements within the Premises (collectively, the "**Project Improvements**"). Except as otherwise expressly provided in this Lease, Lessee shall have exclusive control, use, and management of the Premises or the Project during the Term. Subject to any applicable Laws, Lessee may enter into, terminate, or modify any existing contract which Lessee agreed to assume as of the Commencement Date or future contract for management or operation of the Premises or the Project or provision of services to the Premises or the Project effective from and after the Commencement Date (provided that any such termination or modification is done in conformity with the terms of such contracts). Lessee shall Indemnify Lessor arising as a result of any such cancellation or termination. All such contracts shall expire automatically on or before the Expiration Date, except for contracts entered into in the ordinary course of maintenance and operation of the Premises or the Project, which shall expire no later than one (1) year after the Expiration Date. Following the end of the Term, ownership of the Project Improvements shall belong to Lessor and remain with the Premises. During the Term, Lessee alone shall be entitled to all of the tax attributes of ownership of the Project Improvements, including without limitation, the right to claim depreciation or cost recovery deductions and the right to claim tax credits under Section 42 of the Internal Revenue Code and Hawai'i state law.

9.4 **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 violate any Laws applicable to the use, condition or occupancy of the Premises. At its sole cost and expense, Lessee shall, in all material respects, promptly comply with all such applicable Laws. Lessee shall, at its sole cost and expense, make all alterations to the Premises, the Project, 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 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 are located within the Premises and that may be required by applicable Laws to be made, built, maintained and repaired in connection with Lessee's or its sublessees' use of the Premises, the Project or any part of the Premises.

9.5 **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.

9.6 **Human Remains; Artifacts; Historical Items.** In the event any human remains, traditional cultural items, artifacts or historical items (collectively "**Historic Items**") or human remains are discovered on the Premises, Lessee shall immediately report such discovery to Lessor. Upon such discovery 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, human remains or the potential historic site to cease in amanner that secure the safety of the site; and (b) cause the Historic Items or human remains to be handled or preserved in accordance with applicable Law, including requirements of the Historic Preservation Division of the Department of Land and Natural Resources of the State ("**SHPD**"). Lessee shall comply with all Laws applicable to the handling of such human remains. Lessee shall provide a complete copy of the results of any archaeological studies or historic preservation studies to Lessor promptly upon completion thereof. 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. Lessor shall retain the exclusive right 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 and applicable Laws.

9.7 **Copies of Notices.** Lessee shall promptly provide Lessor a copy of any notice of any kind regarding the Premises or the Project and any notice from or to any Government, utility company or insurance carrier affecting the Premises or the Project.

9.8 **Lessee's Covenant Aainst Liens.**

9.8.1 Lessee covenants to keep the Premises free from 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), that attaches (or may attach) to the leasehold estate or the Fee Estate ("**Prohibited Liens**"). Lessee shall commence taking necessary or appropriate action to remove any Prohibited Liens by bond or otherwise within 30 days after Lessee is informed of the existence of such lien or encumbrance, or if a Prohibited Lien cannot be removed within such 30 day period, and provided that Lessee promptly begins and diligently pursues the removal in good faith during the 30 day period, Lessee shall have such additional time as is reasonably necessary, not to exceed ninety (90) days in the aggregate to remove any Prohibited Liens, and if Lessee shall fail to remove such Prohibited Liens, 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.

9.8.2 Title Encumbrances. Lessee shall keep the Premises and the Fee Estate free from any encumbrances against title, and shall not record or permit the recordation of any lien, encumbrance, easement, and memorandum of sublease or other document that affects the record title to the Premises or 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.

9.9 **Entitlements.** Lessee shall maintain in full force and effect all entitlements and permits necessary for the Permitted Uses. Lessee shall not apply for, amend, or modify any exemptions, variances, permits, or entitlements relating to the Premises or the Project without Lessor's prior written approval, which may be withheld in Lessor's sole discretion where such entitlement could affect affordability, density, traffic circulation, design, environmental impact, or the long-term condition of the Premises or the Project.

9.10 **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 Project, or the Premises are being used for an illegal purpose that could result in criminal or civil forfeiture, or both, of the Premises, any portion of the Premises, or the Project 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 accordance with applicable Law). 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 (in accordance with applicable Law). 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 (in accordance with Law). If such investigation yields any evidence of any illegal activity on the Premises, Lessor may immediately commence all reasonable and appropriate action as may be necessary to stop such illegal activity. If Lessee refuses or fails to commence taking 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 a default. Lessor's rights in this Section does not obligate or require Lessor to take any such action, and shall not be liable to Lessee, any person or any Government if Lessor does not exercise such right.

9.11 **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 and the Project, 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, and to take such actions and make such alterations or reasonable accommodations as are necessary for such compliance. If Lessee concludes that the Premises or the Project are not in compliance with Public Accommodations Laws as of the Commencement Date, or that the Premises or the Project thereafter fail to comply with Public Accommodations Laws, then Lessee shall provide to Lessor a plan for compliance within one hundred twenty (120) days of the Commencement Date or the date of such subsequent noncompliance. At minimum, such plan shall identify the work to be done to cause the Premises or the Project to be in compliance with Public Accommodations Laws and the timetable for completing such work. Any such work shall be subject to Lessor's reasonable approval.

9.12 **Use of Public Buildings by Blind or Visually Handicapped Persons.** Lessee acknowledges 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.

9.13 **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.

ARTICLE 10:
CONSTRUCTION

10.1 **General.** This Article shall apply in connection with any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, restoration, capital improvements, replacements, new improvements, work affecting any Improvements, including new construction and replacements affecting the Premises ("**Construction**").

10.2 **Lessor's Consent Required**. Lessor's consent consent shall be required for any Construction, excepting only Construction (a) that consists of the replacement or rebuilding of Improvements in substantially the same form and (b) that is reasonably anticipated to cost less than $1,000,000 and does not increase the floor area or density of the Improvements. Lessee shall request Lessor's consent to any Construction not less than sixty (60) days prior to the commencement thereof, and such request for Lessor's consent shall be accompanied by detailed plans and specifications relating to the proposed Construction, and such other information as Lessor shall reasonably request. Lessor shall have the right to impose reasonable requirements and/or conditions in connection with or related to Lessor's approval of any Construction.

10.3 **Approval Criteria.** The design of all Improvements comprising the Construction, including without limitation, the site plan, structural plans, landscaping plan, materials, colors, and elevations, shall be subject to Lessor's prior written approval. Lessee shall not apply for any approvals from Governmental Authority until after obtaining Lessor's prior written approval of the design drawings. Prior to finalizing any construction documents that differ in any material respect from any design or other construction documents previously approved by Lessor, Lessee shall submit such documents to Lessor, upon which any changes shall be indicated, for Lessor's prior written approval. If Lessor disapproves any aspect of Lessee's proposed Improvements, Lessee shall make whatever changes are reasonably necessary to address the disapproved item and shall resubmit it for Lessor's written approval. Lessee shall not proceed with the disapproved item, or any item affected by the disapproved item, until Lessor has approved Lessee's changes.

10.4 **Architects and Contractors.** Prior to commencing any Construction, Lessee shall furnish Lessor with a written estimate of the total cost of the Construction to be undertaken, and a written list of the name and address of each architect, consultant, general contractor, subcontractor and materialman that Lessee has retained or will retain. Upon written request by Lessor, Lessee shall provide to Lessor copies of any design, consulting or construction contract entered into by Lessee in connection with such Construction.

10.4.1 Subordination of Liens. The contract entered into between Lessee and each architect, contractor, subcontractor and materialman with respect to any Construction shall include language to effectuate a subordination of mechanic's and materialmen's liens. Each such contract shall provide that such lien rights shall be subject and subordinate to this Lease and shall not affect Lessor's Interest regardless of whether such lien rights, if asserted, would otherwise be entitled to priority over this Lease and attach to Lessor's Interest. Each such contract shall also provide that the contractor, subcontractor, or materialman executing the same shall not, in any mechanic's or materialmen's lien proceeding or otherwise, claim priority with respect to this Lease or claim an interest in Lessor's Interest. Lessee shall protect, defend, indemnify and hold the Lessor Parties harmless from and against any and all Liabilities in any manner relating to the installation, placement, removal or financing of any Improvements (including Alterations), which obligations of Lessee shall survive the expiration or earlier termination of this Lease.

10.4.2 Financing Committments. Lessee shall provide Lessor evidence satisfactory to Lessor that there are funds available and committed to Lessee sufficient to pay for one hundred

percent (100%) of the total hard costs and one hundred percent (100%) of any other indirect or "soft costs" associated with any Construction, including, without limitation, architectural fees, other professional or consulting fees, finance charges or fees for loan commitments or money borrowed for such construction, costs for obtaining governmental approvals necessary for such construction, and Lessee's overhead and administrative costs for such construction and development.

10.5 **Bond.**

10.5.1 Acceptable Construction Contract Performance and Payment Bonds. Prior to the commencement of Construction, Lesseer shall provide or shall cause the contractor to provide, at no cost to Lessor, a performance and payment bond covering the cost of the Construction. Acceptable performance and payment bonds shall be limited to surety bonds underwritten by a company licensed or otherwise authorized under applicable law to issue bonds in the State. The bonds must be issued by a corporate surety who is listed on the United States Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds" and the A.M. Best rating of the corporate surety issuing such bonds must be rated A or higher. The corporate surety issuing such bonds shall not be a captive or an entity related in any way to Lessee.

10.5.2 Form of Bond. Lessee shall have executed or caused the contractor to execute the surety performance and payment bond substantially in the form attached as **Exhibit F**. The contractor shall be the principal, and the surety shall be a corporate surety satisfactory to Lessor. A performance and payment bond obtained from a captive insurance company or other entity related in any way to Lessee shall not be permitted. The bond shall be conditioned upon the full and proper performance of the work in accordance with the plans and specifications approved by Lessor and upon the payment of all materials and labor in connection with the development and construction of the Project.

10.5.3 Payment Claims Against the Payment Bond.

(a) Each person who has furnished labor or material to Lessee for the work required under this Lease for which a payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety (90) days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against Lessee or Lessee and its sureties, on the payment bond and have its rights and claims adjudicated in the action, and judgment rendered thereon; subject to Lessor priority on the bond. As a condition precedent to any such suit, written notice shall be given by registered or certified mail to contractor, Lessee and surety, within ninety (90) days from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

(b) Every suit instituted upon a payment bond shall be brought in the First Circuit Court of the State, but no suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied for the work provided in this Lease. The obligee named in the bond need not be joined as a party in any suit.

(c) With respect to any such payment bond, if the full amount of the liability of Lessee or Lessee and its sureties on the security is insufficient to pay the full amount of the claims, then after paying the full amount due to Lessor (if any), the remainder shall be distributed pro rata among the claimants.

(d) Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

10.6 **Inspection.** During and upon completion of the construction of any Construction, Lessor and any architect, engineer or other representative whom Lessor may select to act for Lessor, may inspect the Improvements and all work and materials as rendered and installed. Lessee shall furnish Lessor with copies of all plans, shop drawings and specifications relating to any Construction. If Lessor and its architects, engineers or other representatives shall determine that the materials do not substantially conform to the approved plans and specifications, or that the Improvements are not being constructed in accordance with the approved plans and specifications, prompt notice in writing shall be given to Lessee, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the work does not conform with the approved plans and specifications. Upon the receipt of any such notice, Lessee shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and shall immediately remove such materials and replace such construction and furnish materials in accordance with such plans and specifications or with materials that meet or exceed the quality provided for in such plans and specifications. Lessee shall promptly correct any deficiency identified in an inspection or observation, and failure to do so within thirty (30) days after written notice shall constitute a default.

10.7 **Compliance.** The Construction shall be in accordance with all applicable laws, at Lessee's sole cost and expense, including without limitation, the following. HRS Chapter 103B, HRS Chapter 444 relating to contractor licensing, and comply with all OSHA, DOH, BOH, DCAB, fire-code, and applicable safety requirements; Lessee shall maintain insurance coverage in accordance with this Lease.

10.8 **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.

10.9 **Infrastructure.** Lessee shall be responsible for construction of all on-site and associated off-site infrastructure required for the development and use of the Premises and the Project, including but not limited to, planning, design, payment of permit fees for such infrastructure such as roadways, waterlines, sewers, drainage, and electrical, telephone, gas and cable television lines, conduits, and hookups within the Premises and following completion, to maintain all on-site infrastructure within the Premises. Lessee shall be responsible at its sole expense for obtaining potable water for the Project, including any fees or exemptions related to obtaining a potable water allocation and water facilities charges. Lessee shall be responsible at its sole expense for securing sewage treatment capacity and connection approvals and payment of any facilities charges or exemptions therefrom. Failure to provide proper infrastructure may result in the termination of this Lease, subject to notice and applicable cure rights.

10.10 **Completion**. Upon substantial completion of any Construction, Lessee's architect shall deliver to Lessor a certificate setting forth the total cost of such construction and certifying that the Alterations has been completed in compliance with the approved plans and specifications for such work. In addition, Lessee shall deliver to the Lessor a reproducible copy of the "as built" drawings of such Construction as well as all permits, approvals and other documents issued by any Governmental Authority in connection with such Construction.

10.11 **Construction of the Project**. The initial development and construction of the Project ("**Project Construction**") shall be subject to the following additional requirements. The Project Construction shall comply with this Article and be governed by the terms of the Development Plan attached to this Lease as Exhibit B-1 ("**Development Plan**"). The Project Construction shall be in accordance with the Construction Plans attached to this Lease as Exhibit B-7 ("**Construction Plans**"). All construction shall be in accordance with the applicable statutes, codes and ordinances of the Federal government, the State and the City and in accordance with customary professional standards for comparable affordable housing projects in the State of Hawai'i. Developer shall promptly correct, at Lessee's sole cost and expense, any work not performed in accordance with such standards.

10.11.1 Commencement of Project Construction**.** Lessee shall not commence the Project Construction until Lessor issues a written Notice to Proceed ("NTP"). Lessee shall issue a written request to Lessor for the NTP and shall have provided complete, accurate copies of the documents evidencing satisfaction of the conditions precedent to Project Construction and this Lease, as described in Exhibit G. Lessee shall provide any updates to the items in this Article and failure to provide accurate or updated documents shall be a default under this Lease. "**Commencement of Project Construction**" means the date Developer commences actual physical construction of the Project after issuance of a building permit or special assessment inspection permit, as applicable.

10.11.2 Construction Management. The Project Construction shall be managed using best practices to ensure completion of the Project Construction on time, within budget, and meeting quality standards.

(a) Construction Industry Standards. All construction shall be performed in accordance with construction industry standards and in a good, workmanlike manner, using materials and practices consistent with applicable codes, manufacturer recommendations, and recognized best practices. Lessee shall promptly correct, at its sole cost, any work that does not meet these standards.

(b) Coordination of Construction with Ongoing Activities. Lessee shall coordinate its construction on the Premises and shall also reasonably cooperate with the reasonable requests of other landowners and other activities taking place in the vicinity of the Premises of which Lessee receives written notice. Lessee shall be responsible for repairing or paying for the costs of repairing any damage that its activities may cause to any existing improvements, other than improvements that are replaced, removed, or demolished as part of the approved construction.

(c) Noise and Dust Abatement. Lessee shall implement best management practices to minimize noise and dust and their impacts on neighboring properties and the public, to the maximum extent practicable and economically feasible under the Budget. Lessee shall respond to and address all complaints in a manner reasonably satisfactory to Lessor. Lessee

shall comply with all laws and regulations governing dust, noise and other nuisances; however, such compliance shall not limit or satisfy Lessee's obligation to take all reasonable measures to minimize the impacts of its construction activities on neighboring properties.

10.11.3 Development Schedule. From the Commencement of Project Construction, Lessee shall provide updated Development Schedules at least monthly and upon Lessor's reasonable request. The Development Schedule shall be a logic-linked schedule identifying mortgagee activities, milestones, long-lead items, and critical path sequencing. Lessee shall promptly notify Lessor in writing of any actual or anticipated delay together with Lessee's proposed mitigation measures. Lessee shall not revise the Development Schedule in a manner that extends the completion date without Lessor's prior written approval.

10.11.4 **Construction Reporting and Monitoring**. Lessee acknowledges that timely and accurate reporting during construction is essential to Lessor's oversight of the Project. Accordingly, Lessee shall comply with the following access, reporting and certification obligations. Lessee's failure to timely submit any report, certification, or notice required under this Section, or submission of materially incomplete or inaccurate information, shall constitute a default.

(a) Construction Meetings. Lessor shall be invited to Lessee's pre-construction meeting with its Contractor and to Lessee's regularly scheduled owner-architect-contractor meetings for the Project. Lessee shall provide agendas, materials, and minutes for such meetings upon Lessor's request.

(b) Monthly Construction Progress Reports. Commencing upon the start of construction and continuing through construction completion, Lessee shall provide to Lessor monthly written progress reports, which shall include: (i) a narrative summary of construction progress during the prior month; (ii) the status of each milestone in the Develolpment Schedue; (iii) identification of any delays, impacts, or anticipated deviations from the Development Schedule; (iv) measures to address delays; (v) a three month look ahead schedule; and (vi) updated anticipated completion dates. The monthly progress reports shall report at a minimum, on the following key milestones: permit application and approval, construction document status (50% and 80% completion), site preparation, foundation, structural framing, electrical and plumbing, interior and exterior finishes, substantial completion and final inspection. The December monthly report shall summarize the progress for the year ("**Annual Progress Report**").

(c) Budget-to-Actual Reporting. Lessee shall provide monthly budget-to-actual cost reports, including: (i) total Project budget; (ii) actual costs incurred to date; (iii) committments and projections; (iv) remaining contingency and contingency draws; and (v) explanation for any cost variance above five percent (5%) in any budget category. The December monthly report shall summarize the budget-to-actual cost reports for the full year ("**Annual Budget Report**").

(d) Annual Construction Report. The Annual Progress Report and the Annual Budget Report are collectively referred to as the "**Annual Construction Report**"). The Annual Construction Report shall be submitted with the Annual Compliance Report.

(e) Lessee Certifications. With each monthly report, Lessee shall provide a written certification from an authorized representative stating that: (a) the information provided is true, correct, and complete to the best of Lessee's knowledge;(b) construction is being performed in accordance with the approved Construction Plans and this Lease; (c) Lessee is in material compliance with this Lease; and (d) any variances, delays, or cost impacts have been disclosed.

(f) Change Order Reporting. Lessee shall provide Lessor with copies of all approved change orders within five (5) Business Days of execution; an explanation of the necessity for each change order; and a summary of cumulative change orders, including cost and schedule impact. Any change order that materially affects the Budget or the Development Schedule shall be subject to Lessor's prior written approval.

(g) Notice of Delays. Lessee shall notify Lessor in writing within five (5) Business Days of any event, condition, or circumstance that: has caused or may reasonably be expected to cause a delay in the Development Schedule; may materially affect construction costs; or could interfere with completion of the Project in accordance with this Lease. Such notice shall describe mitigating steps Lessee is taking or proposes to take.

(h) Lessor Access and Monitoring Rights. Lessor and its consultants shall have the right, upon reasonable notice, to enter the Premises for inspection; review construction records, including schedules, budgets, contracts, draw requests, invoices, and lien releases; and attend construction meetings as an observer. Lessor's attendance shall not obligate Lessor to supervise construction or to assume responsibility for the work.

10.11.5 **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 Lessor. All of Lessee's advertising and promotional program materials shall be subject to review and prior approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall be given fifteen (15) Business Days to provide comments to Lessee. If comments are provided by Lessor, then the parties shall promptly work to address and/or resolve Lessor's comments in a manner that is reasonably acceptable to the parties.

(a) Ceremonies and Events. If Lessee hosts ceremonies and events, at Lessee's cost, such as a groundbreaking ceremony or grand opening, Lessee and Lessor shall participate in the programming. The parties shall confer and mutually agree upon all details.

(b) Project Signage. During Project Construction, Lessee shall provide signs to identify the Project and disclose the fact that the Project is being developed by Lessee with assistance from Lessor. The signs shall be erected at locations mutually agreed to by Lessee and Lessor at the Project site. Signs shall be properly erected and kept clean and legible. After the Completion Date, Lessee shall remove the signs.

10.11.6 **Completion of Construction**. Upon completion of construction of the Project, Lessee shall deliver to Lessor written notice that construction is substantially complete ("notice of substantial completion"). 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. The notice of substantial completion shall be accompanied by: (i) a written certification from Lessee's architect or engineer duly licensed under the laws of the State that the improvements have been completed substantially in accordance with the Construction Plans and specifications; (ii) a certificate of occupancy (temporary or final, as applicable) for the Project or any completed phase; and (iii) evidence that all final inspections required by applicable governmental authorities have been passed. In addition, Lessee shall deliver to Lessor a reproducible copy of the "as built" drawings of all Construction as well as all Governmental Approvals and other Government documents, if any, issued in connection with such Construction. Lessor shall have the right to inspect the Project

following Lessee's notice of substantial completion and may identify items that, in Lessor's reasonable judgment, do not comply with the Construction Plans, this Lesae, or applicable laws ("**Punchlist Items**"). Developer shall promptly correct all Punchlist Items at Developer's sole cost and expense, and shall provide written confirmation to Lessor when such corrections have been completed. No approval shall be implied by silence, and only written approval issued by Lessor shall constitute acceptance of completion.

(a) Post-Completion Deliverables. Within five (5) Business Days of receipt of each item, Lessee shall submit the following to Lessor: (i) (a) architect/engineer certification of completion; (b) one half-size printed set and one electronic PDF set of as-built drawings, sealed by the licensed design professional; (c) copies of all Certificates of Occupancy; and (d) proof of publication of Notice of Completion.

(b) Upon Lessee's completion of Construction of the Project, Lessee shall provide written notice to Lessor of the completion of Construction and Lessee shall provide certification of completion in accordance with such County standards.

(c) Close-out Documentation. Within ninety (90) calendar days after substantial completion, Developer shall provide Lessor with complete close-out documentation for the Project, including: (i) final as-built drawings (digital and hard copy) reasonably acceptable to Lessor; (ii) operations and maintenance manuals; (iii) equipment and appliance warranties; (iv) a written summary of all approved value engineering or field changes; and (v) copies of all third-party special inspection reports, testing results, and commissioning reports, if any ("**Close-out Documentation**").

10.11.7 **Occupancy Upon Completion**. No Unit may be occupied, and the Project shall not commence lease-up or operations, until: (i) Lessor has received the notice of substantial completion; (ii) all Punchlist Items affecting life safety, accessibility, habitability, or Building Systems have been corrected to Lessor's reasonable satisfaction; and (iii) Lessee has provided Lessor with evidence of all insurance required under this Lease.

ARTICLE 11:
EQUAL EMPLOYMENT OPPORTUNITY, LABOR COMPLIANCE, AND WORKFORCE REQUIREMENTS

11.1 **Equal Employment Opportunity and Nondiscrimination**. Lessee shall comply, and shall cause its contractors, subcontractors, consultants, and agents to comply, with all applicable federal, state, and county laws, rules, and regulations relating to equal employment opportunity and nondiscrimination, including without limitation, Title VII of the Civil Rights Act of 1964, Hawai'i Revised Statutes Chapter 378; and Revised Ordinances of Honolulu Chapter 1, Article 18. Lessee shall ensure that all solicitations or advertisements for employees state that all qualified applicants will receive consideration without regard to protected characteristics.

11.2 **Sexual Harassment Policy Acknowledgment**. Lessee shall provide written confirmation to Lessor that Lessee and all contractors with on-site personnel have acknowledged receipt of, and agreed to comply with, Lessor's sexual harassment policy and ROH Chapter 1, Article 18.

11.3 **Hawai'i Workforce Requirements (HRS Chapter 103B).** Lessee, its contractors, and subcontractors shall comply with **HRS Chapter 103B** (as amended), requiring that **not less than eighty percent (80%)** of the workforce employed to perform construction work on the Project

shall be residents of the State of Hawai'i, excluding shortage trades as determined by the Hawai'i Department of Labor and Industrial Relations. Compliance with this Section shall apply for the entire duration of construction, and the Project shall be deemed a "public building" for purposes of HRS §103B requirements.

11.4 **Chapter 104, HRS**. Lessee shall comply with the provisions of HRS Chapter 104, relating to prevailing wages. Lessee, its contractors and subcontractors shall pay all mechanics and laborers employed on the Project, minimum prevailing wages pursuant to HRS Chapter 104. Lessee shall provide Lessor with certifications at the end of each calendar year affirming 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 certifications are not submitted on a timely basis, or if Lessor finds a failure to comply, Lessor may take appropriate action in accordance with HRS Section 104-21. Lessor may, after the giving of written notice and opportunity to cure to Lessee as set forth in this Lease, 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 Lessor for any excess costs occasioned thereby. Lessee shall not employ, use or sub-contract any contractor(s) currently suspended under Chapter 104, HRS.

11.5 **Annual Certification**. No later than March 31 of each year, Lessee shall provide the certifications in this Article relating to sexual harassment policy and HRS Chapter 104 ("**Workforce Certification**"). The Workforce Certification shall be submitted with the Annual Compliance Report.

ARTICLE 12:
HAZARDOUS MATERIALS; ENVIRONMENTAL MATTERS

12.1 **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, treatment, or disposal of any Hazardous Substance, or the 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 full compliance with all Environmental Laws. Lessee shall not install or permit any underground storage tank, hazardous building materials, regulated waste facility, vapor-producing operations, or similar regulated activity on the Premises without Lessor's prior written approval. Lessee shall further ensure that: no Hazardous Substance is released, discharged, or allowed to migrate onto, from, or within the Premises; no vapor intrusion condition arises; no condition exists that poses a risk to human health, the environment, or indoor air quality; and all construction, demolition, grading, soil disturbance, and ground-intrusive activities comply with all Environmental Laws.

12.2 **Compliance; Clean-Up; Notice.**

12.2.1 Compliance. Lessee shall comply with all Environmental Laws and shall, at its sole cost and expense, investigate, monitor, remove, remediate, and mitigate any Hazardous Substances or Hazardous Substance Discharge on, under, or migrating from the Premises, whether existing prior to or arising during the Term, except to the extent caused by the gross negligence or willful misconduct of Lessor. "**Hazardous Substances Discharge**" means any

deposit, discharge, generation, release, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, spill or other movement of Hazardous Substances into the environment 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.

12.2.2 Clean-Up and Notice.

(a) Lessee shall notify Lessor within twenty-four (24) hours of any Hazardous Substances Discharge, regulatory notice, enforcement action, vapor intrusion alarm, exceedance, or condition requiring investigation, reporting or response under Environmental Laws.

(b) In the event of any Hazardous Substances Discharge, Lessee, at its own sole cost and expense, shall (i) immediately comply with any and all reporting requirements imposed pursuant to any and all Environmental Laws, (ii) take any and all necessary investigation, characterization, monitoring, assessment, repair, closure, remediation, removal, or other clean-up (the "**Clean-Up**") in accordance with any and all applicable Environmental Laws, utilizing an environmental consultant approved by Lessor, and (iii) provide a letter or other written determination from the overseeing Governmental Authority confirming that the Clean-up has been completed in accordance with all requirements of the Governmental Authority and that no further response action of any kind is required for the unrestricted use of the Premises ("**Closure Letter**"),. The Clean-Up shall be performed in a manner such that the Premises are remediated to a condition allowing unrestricted use of the Premises (i.e. to a level that will allow any future use of the Premises, including residential, without any engineering controls or deed restrictions). Lessor may, as required by any and all Environmental Laws, report the Hazardous Substances Discharge to the appropriate Governmental Authority, identifying Lessee as the responsible party. Lessee shall deliver to Lessor copies of all administrative orders, notices, demands, directives or other communications directed to Lessee from any Governmental Authority with respect to any Hazardous Substances Discharge in, on, under, from, or about the Premises, together with copies of all investigation, assessment, and remediation plans and reports prepared by or on behalf of Lessee in response to any such regulatory order or directive.

(c) Lessee shall promptly provide Lessor with any regulatory correspondence, NOVs, warning letters, consent orders, cleanup agreements, or sampling results.

(d) Lessee shall cooperate fully with all regulatory agencies, including without limitation, DOH HEER and EPA.

If Lessee fails to commence or perform required environmental actions, Lessor may (but is not obligated to) undertake such actions on behalf of Lessee, and all costs incurred shall constitute Additional Rent.

12.2.3 Clean-Up Reporting. Lessees shall prepare and submit to Lessor an annual written summary included in the Annual Compliance Report describing all Environmental Conditions, Mitigation System performance, environmental testing or monitoring, compliance with Environmental Laws, and any remediation, mitigation, or regulatory actions undertaken during the

reporting period ("**Annual Environmental Status Summary**"). The Annual Environmental Status Summary shall be contained in the Annual Compliance Report.

12.3 **Surrender and Failure to Timely Clean-Up.** Should any Clean-Up for which Lessee is responsible not be completed, or should Lessee not receive the Closure Letter and any Governmental Approvals required under Environmental Laws in conjunction with such Clean-Up prior to the expiration or earlier termination of this Lease, then Lessee shall be liable to Lessor as a holdover tenant until Lessee has fully complied with its obligations under this Article.

12.4 **Copies of Environmental Reports.** Lessee shall provide copies of all reports, studies, sampling data, monitoring data, assessments, correspondence, regulatory notices, or other documents relating to Environmental Conditions, Environmental Laws, Hazardous Substances, or any Mitigation System ("Environmental Reports") to Lessor promptly upon receipt. Environmental Reports shall include, without limitation: environmental assessments (Phase I, Phase II, updates); audits, studies, field sampling, vapor sampling; groundwater monitoring data; environmental health and safety plans; mitigation system operation & maintenance (O&M) logs; remedial action plans; quarterly/annual regulatory reports; and dust control, stormwater, or erosion control documentation. Lessee shall deliver all Environmental Reports regardless of whether prepared for Lessee or obtained by any other means, including environmental reports prepared for lenders, investors, buyers, or regulators. Lessor shall have the right to enter the Premises, with reasonable notice, to conduct independent environmental inspections, sampling, and audits, at Lessee's cost if a violation or release is found.

12.5 **Lessee's Performance**.

12.5.1 Assurance of Performance and Environmental Assessments. Lessor may, but shall not be required to, engage from time to time such contractors as Lessor determines to be appropriate to perform environmental assessments to ensure Lessee's compliance with the requirements of this Lease with respect to Hazardous Materials. All costs and expenses incurred by Lessor in connection with any such environmental assessment initially shall be paid by Lessor; provided that if any such environmental assessment shows that Lessee has failed to comply with the provisions of this Article, then all of the costs and expenses of such Environmental Assessment shall be reimbursed by Lessee as Additional Rent within ten (10) days after receipt of written demand therefor.

12.5.2 Lessor's Rights. In the event Lessee fails to comply with any of the requirements of this Article, Lessor may: require immediate cessation of the activity; enter the Premises to stabilize or remediate; draw on reserves or security; recover all costs as Additional Rent; disallow Rent Credits; and pursue termination of the Lease if warranted in Lessor's sole discretion.

12.6 **Survival.** Each covenant, agreement, representation and warranty made by Lessee in this Article shall survive the expiration or earlier termination of this Lease and shall remain effective until all of Lessee's obligations under this Article have been performed and satisfied.

ARTICLE 13:
OPERATION, MANAGEMENT, AND MAINTENANCE

13.1 **Obligation to Maintain**.

13.1.1 General Obligation. Lessee, at its sole cost and expense, shall keep, maintain, repair, replace, and operate the Premises, the Project and Improvements in good order, condition, and repair at all times during the Term, reasonable wear and tear excepted, and in a manner consistent with Prudent Management Practices for comparable affordable housing projects. Lessee shall, at its sole cost and expense, operate and manage the Premises and the Project in accordance with this Lease, the approved Rental Program, applicable Affordable Housing Requirements, Environmental Laws, and Prudent Management Practices for comparable affordable housing projects. Compliance with this Article is a condition precedent to any Rent Credit. "**Prudent Management Practices**" means the standards and practices commonly used by experienced managers of high-quality affordable rental housing, including compliance with applicable laws, UPCS Standards, HUD and HHFDC requirements, safety protocols, maintenance protocols, and generally accepted affordable housing management standards.

13.1.2 Scope of Maintenance and Repair. Lessee's obligations under this Section include, without limitation, all structural and non-structural, capital and non-capital, repairs and replacements to the Premises, the Project and Improvements, including Building Systems, building equipment, fixtures, finishes, roofs, façades, foundations, utilities, mechanical, electrical, plumbing, fire/life safety systems, elevators, windows, doors, landscaping, site improvements, parking areas, signage, and all other appurtenant components.

13.1.3 Management Agent. Subject to Lesor's prior written approval, Lessee shall engage a property manager with: demonstrated experience in compliance with Affordable Housing laws; capability to comply with HUD, HHFDC, and County requirements; a record free of significant violations or compliance findings; and adequate staffing, systems, and training capacity ("**Management Agent**"). Lessee shall not engage, replace, or materially modify any contract with a Management Agent without Lessor's prior written consent.

13.2 **Property Management Plan**. At least sixty (60) days prior to initial residential occupancy, Lessee shall submit to Lessor an updated Property Management Plan for review and written approval. The updated Property Management Plan shall be include a financial and operational strategy for ongoing property management and shall include the following, at minimum.

(a) Preventive Maintenance Program and Inspection Reports. Lessee shall develop, implement and maintain a preventive maintenance program reasonably designed to identify, prevent, and correct deterioration or unsafe conditions, including regular inspections of mechanical, electrical, plumbing, roof, fire and life safety, façade, and site systems ("**Preventive Maintenance Program**"), which program shall establish a regular schedule for inspection and review. Each such inspection and review shall include a written report ("**Inspection Report**");

(b) Emergency Response. Lessee shall develop, implement and maintain procedures and protocols ("**Emergency Response Procedures**") governing responses to emergency situations including (a) serious injury or death; (b) medical incidents; (c) threats to tenant safety; (d) Casualty, including fire, flood, structural failure, or extended utility outage; (c) Environmental Condition requiring action; (d) incidents involving law enforcement which affect safety; (e) interruption for mover than four (4) hours of Essential Services and other urgent conditions (collectively, "**Emergency Situations**"). "**Essential Services**" shall include heat, cooling, electricity, water, sewer, elevator service, fire and life safety systems, and any other utility or service necessary for safe and habitable occupancy of the Premises or the Project

(c) Incident Reporting Procedures. Lessee shall develop procedures for maintaining a log of Emergency Situations (collectively, "Incident Log") and procedures for notification of Lessor with a written report documenting the matter on the Incident Log, with information on which emergency services were contacted and how the matter was resolved, or if it has not been resolved, the estimated time for resolution and steps being taken to resolve (collectively, "Incident Reports"). Incident Reporting. On an annual basis, Lessee shall submit a summary of Incident Reports that occurred in the prior year, including follow-up reports for any Incident Reports that have not been resolved ("**Annual Incident Summary**"). The Annual Incident Summary must be included in the Annual Compliance Report.

(d) Security. Lessee shall establish security protocols, which shall include Crime Prevention through Environmental Design (CPTED) principles.

(e) Compliance. Lessee shall establish procedures to comply with all federal, State, and County fair housing and nondiscrimination and reasonable accommodation laws; procedures and compliance systems for Affordable Rent, Income Certification, and tenant eligibility requirements; and compliance systems and procedures for Environmental Obligations, including operation of any Mitigation System.

(f) Tenant Files. Procedures for maintaining and handling tenant information, in compliance with applicable Laws.

(g) Rent Collection and Delinquency Management Procedures. Lessee shall establish procedures governing rent collection, late rent notices, payment plans, legal actions, evictions, all compliance with applicable Laws ("**Delinquency Management Procedures")**.

(h) Data Systems. Lessee shall provide a description of the systems used by Lessee to track maintenance requests, work assignments, completion dates, costs, and verification of repairs. and Maintenance Logs; and

(i) Rental Program. Procedures for the property manager's implementation of the Rental Program.

(j) Manager Staffing Plan. Lessee shall provide an annual staffing plan, identifying key personnel and contacts for residential tenants and Lessor. The staffing plan should include staffing structure and responsibilities. The staffing plan shall identify personnel who may be leaving and the proposed replacement, with a summary of their relevant experience.

The updated Property Management Plan must be approved by Lessor in writing before occupancy. Lessee shall submit an updated Property Management Plan with the Annual Compliance Report; within thirty (30) days of any material change in Operations; and when required by Lessor based on deficiencies. Updates shall ahve the prior approval of Lessor.

13.3 **Maintenance and Physical Condition**. Lessee shall maintain the Premises and the Project in a good, safe, sanitary, habitable, and operable condition, consistent with customary standards for affordable rental housing in the State of Hawai'i and in compliance with all applicable Laws and UPCS Standards, free of mold, pests, water intrusion, structural hazards, unsanitary conditions, or other health or safety risks ("**Safe and Sanitary Condition**"). Lessor shall have no obligation for the repair, alteration, maintenance, or replacement of the Premises or the Project.

13.3.1 Standards for Maintenance and Condition.

(a) Inspections and Preventive Maintenance. Lessee shall cause the Premises, the Project and Improvements to be inspected periodically by qualified persons to confirm compliance with this Lease, pursuant to the Preventive Maintenance Program.

(b) Building Systems. Lessee shall operate and maintain all Building Systems in good working order for safety, efficiently, and in compliance with applicable laws, manufacturer's standards and consistent with Prudent Management Practices.

(c) ADA Compliance. Lessee shall ensure that all accessibility requirements, including mobility, visual, and hearing-impaired units and accessible routes in compliance with ADA are maintained in good working order.

(d) Remediation and Pest Control. Lessee shall promptly remediate any conditions requiring repair or replacement, including water intrusion, mold, structural deterioration, infestations of termites, rodents, or other pests, or any condition that may adversely affect health, safety, habitability, or the long-term condition of the Premises or the Project.

13.3.2 Lessee's Reports of Maintenance and Condition. To confirm the Safe and Sanitary Condition, Lessee shall create and maintain the following logs and reports.

(a) Lessee shall maintain records documenting the performance of routine, preventative and corrective maintenance, work orders and maintenance requests, including the dates of service, responsible personnel, materials used, completion dates, costs, and verification of repairs ("**Maintenance Logs**").

(b) Lessee shall create and update annually, a plan identifying anticipated capital repairs, replacements, and improvements for at least the next five (5) years, including projected costs, priorities, and anticipated funding sources (""**Capital Improvement Plan**"). The Capital Improvement Plan shall be submitted annually to Lessor with the Annual Compliance Report.

13.4 **Lessor's Inspections; Corrective Action**.

13.4.1 Corrective Action Plan. Lessor may require Lessee to prepare and implement a written plan identifying deficiencies, describing corrective actions required to address any operational, maintenance, compliance, safety or environmental deficiencies, timelines for cure, responsible parties and required documentation (each, a "**Corrective Action Plan**"). Failure to comply with a Corrective Action Plan shall constitute a default. Lessor may also increase the frequency of inspections, audits, and monitoring, with all costs reimbursed by Lessee.

13.4.2 Inspections. Lessor may conduct inspections of Lessee's operations as follows: annually; upon reasonable notice; or immediately if a condition threatens health, safety, the environment, or does not comply with the Housing Program Requirements. Lessee shall cure deficiencies identified by Lessor: for non-critical deficiencies, within thirty (30) days; health or safety issues, within twenty-four (24) to seventy-two (72) hours; and broader deficiencies, pursuant to a Corrective Action Plan approved by Lessor. Lessor may conduct follow-up inspections at Lessee's expense.

13.5 **Incident Reporting**. Lessee shall maintain the Incident Log and Lessee shall submit an Incident Report to Lessor within twenty-four (24) hours of any matters on the Incident Log.

13.6 **Annual Budget**. Lessee shall prepare a proposed operating budget for the Premises for the upcoming year, submitted annually by Lessee to Lessor, and including projected revenues, operating expenses, reserve contributions, capital expenditures, staffing, and any assumptions required by Lessor ("**Annual Operating Budget**"). The Annual Operating Budget shall be submitted to Lessor with the Annual Compliance Report.

13.7 **Continuity of Operations; No Abandonment**. Lessee shall ensure continuous operation of the Premises and the Project. No portion of the Premises or the Project may be abandoned or intentionally left vacant for more than five (5) consecutive days except: for emergency repairs, or with Lessor's written consent.

13.8 **Lessor Step-In Rights**. If Lessor determines, in its reasonable discretion, that (a) a condition at the Premises or the Project materially threatens the health or safety of tenants or the public, (b) Lessee has failed to maintain the Premises or the Project in Safe and Sanitary Condition, (c) Lessee has failed to provide Essential Services, or (d) an Environmental Condition requires immediate action under Article 12 (Hazardous Materials; Environmental Matters), then Lessor may, but shall not be obligated to, enter the Premises (including the Project) and take any actions reasonably necessary to cure such condition ("**Step-In Rights**"). All costs incurred by Lessor shall constitute Additional Rent. Lessor's exercise of Step-In Rights shall not be deemed a waiver of any default or any other remedy under this Lease. Lessee shall be responsible for all costs incurred by Lessor in exercising its Step-In Rights, including labor, materials, contractor expenses, and administrative costs.

13.9 **Removal of Property Manager**. If Lessor determines, in its reasonable discretion, that the Management Agent (a) lacks the experience or capacity required to ensure compliance with this Lease, (b) has engaged in repeated or material violations of Affordable Rent, tenant eligibility, or Residential Leasing Requirements, (c) has failed to maintain the Premises and the Project in Safe and Sanitary Condition, or (d) has otherwise failed to perform its obligations in a manner consistent with industry standards for affordable housing management, then Lessor may require Lessee to remove and replace the Management Agent. Lessee shall propose a qualified replacement within thirty (30) days, subject to Lessor's approval.

ARTICLE 14:
CAPITAL IMPROVEMENTS, REPLACEMENTS AND RESERVES

14.1 **Ongoing Capital Compliance Obligations**. During the Term, Lessee shall, at its sole cost and expense, make all capital improvements, replacements, and upgrades to the Premises, the Project and Improvements as may be required to: (i) comply with applicable Laws; (ii) maintain the Premises and the Project in Safe and Sanitary Condition; (iii) preserve the structural integrity, habitability, and long-term operability of the Improvements; and (iv) satisfy Prudent Management Practices for comparable affordable housing projects. Capital obligations under this Section are in addition to routine maintenance obligations.

14.2 **Capital Replacement Planning**. Lessee shall identify all major building components, such as windows, doors, siding, roofs, elevators, heating systems and flooring, and any anticipated new major building components, with an estimated remaining useful life of the

components and their replacement or acquisition cost. Based on this review, Lessee shall prepare and maintain a replacement schedule for such components and capital needs (the "**Capital Replacement Schedule**"). The Capital Replacement Schedule shall be in a form consistent with the Capital Needs Assessment or Physical Needs Assessment required for HUD or Fannie Mae loans and shall be updated not less than once every five (5) years and submitted to Lessor with the Annual Compliance Report or upon request. The first Capital Replacement Schedule shall be submitted prior to the fifth anniversary of the Commencement Date. Not less than once every ten (10) years, or more frequently if required by Lessor due to observed conditions or compliance concerns, Lessee shall have the Capital Replacement Schedule prepared by an independent third-party qualified professional acceptable to Lessor. A sample or minimum requirements of the Capital Replacement Schedule is attached as Exhibit H.

14.3 **Reserve Funding Requirements**. Lessee shall fund and maintain the following reserve accounts throughout the Term, which accounts shall allow Lessor to draw from such accounts pursuant to the rights in this Section:

14.3.1 **Operating Reserve**. Lessee shall establish and maintain three (3) months of projected Operating Expenses and debt service ("**Operating Reserve**"). Draws from the Operating Reserve require Lessor's approval except in emergencies. Funds drawn from the Operating Reserve must be replenished within 90 days.

14.3.2 **Replacement Reserve**. Lessee prepare an annual report of the funds necessary to complete repairs and replacements identified in the Capital Replacement Schedule and Lessee shall fund a reserve equal to such amount ("Replacement Reserve"), which Replacement Reserve shall be submitted to Lessor for review and approval.

14.4 **Reserve Replenishment and Withdrawals**. Lessee shall be funded annual at its full amounts and shall replenish any reserve deficiency within ten (10) days of notice from Lessor. All withdrawals from any reserve account shall require Lessor's prior written approval, except in emergencies affecting health and safety. All withdrawals must be supported by invoices or documentation acceptable to Lessor.

14.5 **Reserve Account Reporting**. Lessee shall provide Lessor with reserve account statements and annual funding schedules for all reserves ("**Reserve Account Report**") as part of the Annual Compliance Report.

14.6 **Lessor Cure**. If Lessee fails to cure maintenance or capital deficiencies, Lessor may elect to cure such deficiencies and shall be entitled to draw from reserves for such cure work and require replenishment of the reserve within 30 days, in addition to asserting a default.

14.7 **Inspections; Audits; Corrective Action**. Lessor may conduct inspections of the Premises and the Project and may require Lessee, at Lessee's expense, to obtain independent third-party inspections, audits, or reports relating to physical condition, operations, compliance, or environmental matters. If Lessor identifies deficiencies, Lessor may require Lessee to submit and implement a Corrective Action Plan within timelines specified by Lessor.

14.8 **Failure to Perform Capital Obligations**. If Lessor determines that Lessee has failed to perform required capital improvements or replacements in a timely manner, Lessor may require Lessee to submit and implement a Corrective Action Plan for such obligation.

14.9 **Intermediate Enforcement; Rent Credit Suspension**. Without limiting Lessor's other remedies, Lessor may suspend eligibility for Rent Credits, require enhanced reporting, escrow reserve contributions, or mandate third-party management oversight at Lessee's cost, if Lessor determines that Lessee's performance under this Article is deficient but does not yet warrant termination or exercise of Step-In Rights.

14.10 **No Limitation on Remedies**. Lessor's election under this Section shall not limit Lessor's rights to require Lessee to maintain the Premises and the Project in accordance with this Lease through the Expiration Date, nor shall it waive any default or excuse any failure by Lessee to comply with its capital, maintenance, or surrender obligations.

ARTICLE 15:
FINANCIAL AND COMPLIANCE REPORTING

15.1 **Purpose**. This Article establishes the reporting, documentation, and recordkeeping obligations of Lessee necessary to demonstrate compliance with this Lease, the Rental Program, Federal and State Affordable Housing Requirements, Environmental Laws, and all other Housing Program Requirements. Compliance with this Article is a condition to receiving any Rent Credit. Failure to comply with this Article suspends all Rent Credits until cured.

15.2 **Annual Compliance Report**. Lessee shall submit to Lessor an annual report by March 31 each year, reporting on Lessee's obligations and summarizing compliance with the terms of this Lease, in a form approved by Lessor and certified by an authorized officer of Lessee ("**Annual Compliance Report**"). The Annual Compliance Report shall include, without limitation:

(a) Rentable Area Certification (if applicable);
(b) Certificate of Continuing Program Compliance for the preceding year;
(c) the Annual Construction Report;
(d) the Workforce Certification;
(e) the Annual Environmental Status Summary;
(f) current Property Management Plan;
(g) Annual Operating Budget;
(h) Reserve Account Report;
(i) the Annual Incident Summary
(j) the Capital Improvement Plan and year-end update;
(k) the Capital Replacement Schedule;
(l) audited financial statements if required by lenders, investors, or law; and
(m) any additional information reasonably requested by Lessor.

15.3 **Recordkeeping Requirements**. Lessee shall comply with organization, accessibility, and documentation standards governing maintenance of complete and accurate books and records required under this Lease for at least twenty-five (25) years or longer if required by applicable Law ("**Recordkeeping Requirements**"), which records include but are not limited to: (a) Tenant Files; (b) Income Certifications and supporting documentation; (c) Maintenance Logs; (d) inspection reports, Inspection Schedules, and correction documentation; (e) Incident Logs; (f) Environmental Reports and monitoring data; (g) financial records including all operating statements, budgets, invoices, receipts, general ledgers, reserve account statements, balance sheets, income statements, audits, bank statements, and other documents used to track or verify

the financial performance of the Premises; and (h) all records required under the Rental Program, Property Management Plan, and Federal and State Affordable Housing Requirements.

15.4 **Access to Records**. Lessee shall make all records required under this Lease available to Lessor upon reasonable notice during normal business hours at the Premises or another mutually agreed location and in electronic format upon Lessor's request.

15.5 **Supplemental Information**. Lessor may request supplemental reports, documents, or certifications reasonably necessary to confirm Lessee's compliance with this Lease or applicable law. Lessee shall provide such information within the time specified by Lessor.

ARTICLE 16:
INDEMNIFICATION; LIABILITY OF LESSOR

16.1 **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 Lessee's use, operation, or occupancy of the Premises, the Project 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) Lessee's use, occupancy, control, management, operation, and possession of the Premises; (iii) any Construction and any agreements that Lessee (or anyone claiming through Lessee) makes for any Construction; (iv) the condition of the Premises and the Project from and after the Commencement Date; and (v) any accident, injury or damage whatsoever caused to any person or property in or on or originating from the Premises or the Project. Lessee shall further indemnify, defend, and hold Lessor harmless from and against any claim, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of or related to: (a) any violation of the Rental Program, Property Management Plan, affordability requirements, tenant income restrictions, or any other compliance obligation under this Lease; (b) any breach of Environmental Laws or failure to perform any environmental remediation required under this Lease; and (c) any misrepresentation or omission in reports or certifications delivered by Lessee to Lessor.

16.2 **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 officials, directors, employees, and agents' (and anyone claiming by or through Lessor) willful misconduct or gross negligence. Lessor's right to enter and inspect the Premises and the Project 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 officials, directors, employees, and agents' (and anyone claiming by or through Lessor) willful misconduct or gross negligence. Lessee acknowledges that Lessor is entering into this Lease to advance affordable housing objectives. No provision of this Lease shall be construed to impose upon Lessor operational liability for conditions arising from Lessee's construction, management, operation, maintenance, or leasing of the Premises or the Project.

16.3 **Indemnification.** Should Lessor be named as a defendant in any suit brough against Lessee in connection with or arising out of Lessee's leasing, subleasing, development, occupancy or use of the Premises or operation of the Project, Lessee shall pay to Lessor its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as reasonable appraisers', accountants' and attorneys' fees. Wherever this Lease requires Lessee to indemnify Lessor the following shall apply.

16.3.1 Selection of Counsel. Lessee shall select counsel reasonably acceptable to Lessor. In addition, Lessor 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. Lessee's counsel shall actively consult with Lessor's counsel.

16.3.2 Survival. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any liabilities arising in connection with any event occurring prior to such expiration or termination.

ARTICLE 17:
INSURANCE

17.1 **Lessee's Insurance.** At all times during the Term and until such time as action is barred by the provisions of Chapter 657, HRS, Lessee shall procure and maintain in full force and effect, at Lessee's sole expense, 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:

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

17.1.2 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 ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), 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). The CGL policy to be carried by Lessee during the course of Construction shall be endorsed to redefine the word occurrence to include construction defect coverage. Lessor shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 or equivalent, and as appropriate CG 20 37 or equivalent and under the commercial umbrella. The policy(ies) shall contain a waiver of subrogation against Lessor.

17.1.3 Business Automobile Liability Insurance. Lessee shall maintain business auto liability (including no-fault coverage) insurance with a limit of not less than **$1,000,000** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this Lease. If Lessee does not own vehicles,

insurance shall cover liability arising out of hired and non-owned autos. Business auto coverage shall be written on ISO form CA 00 01 or CA 00 20, or a substitute form providing equivalent liability coverage. The policy shall be endorsed to provide contractual liability coverage.

17.1.4 Umbrella/Excess Liability. Lessee shall maintain umbrella/excess liability insurance with limits of not less than $10,000,000 per occurrence combined single limits and aggregate. Such insurance shall be written on an occurrence basis in excess of the underlying insurance described in Section 17.1.1, which is at least as broad as each of the underlying policies, and otherwise including "pay on behalf" wording, concurrency of effective dates with underlying primary coverages, blanket contractual liability, and construction defect coverage (construction defect coverage shall be carried during the course of Construction only).

17.1.5 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, 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, and collapse, earthquake, flood and windstorm. The insurance shall apply on a replacement cost 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 include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition. The insurance required shall name as insured Lessor, Lessee, Lessee's contractor, and all of Lessee's contractors' subcontractors in the work.

(b) Boiler and Machinery Insurance. Lessee shall maintain boiler and machinery insurance covering insured objects, including rooftop HVAC units and any separate heating units or boilers which serve the Premises, during installation and testing and until final acceptance, and including mechanical breakdown. Such coverage shall be for the full replacement value without deduction for depreciation. This insurance shall name as insured Lessor, Lessee, and Lessee's contractor in the work.

(c) Lessee shall be responsible for any and all loss or damage to equipment, tools and other personal property, and may at its option purchase insurance to cover such property and equipment.

(d) Environmental Impairment Liability or Contractors Pollution Liability Insurance. The Lessee shall maintain, or cause its contractor to maintain, environmental impairment liability or contractors pollution liability insurance covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from Construction. Lessor will be named as an additional insured. The limits of coverage will not be less than $2,000,000 per occurrence and $2,000,000 aggregate.

(e) Professional Liability Insurance. Lessee's architect shall be required to maintain professional liability insurance with limits of not less than $2,000,000 per claim/ aggregate, covering such architect and its employees for liability arising out of errors, omissions, or negligence in the performance of professional services in connection with the Project. Such insurance shall remain in full force and effect continuously for the period of design and construction of the improvements, and for a period of 3 years following substantial completion of Construction, as mutually determined and agreed. Any licensed design professional or consultant hired by Developer's architect as a subcontractor shall maintain professional liability insurance with limits of not less than $1,000,000 per occurrence and in the aggregate. For the purposes of this section "professional services" has the meaning set forth in Section 103D-104 of the HRS.

17.1.6 Insurance Coverage For Operations. Upon final acceptance of the Construction, and termination of the builder's risk insurance required 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 to the extent applicable as reasonably determined by Lessor and commercially available at commercially reasonable rates, 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. Lessee shall maintain property insurance on all buildings, equipment, and improvements (whether installed or paid for by Lessor or Lessee), including alterations, additions, repairs, and business personal property, inventory, and stock on the demised premises. Such property insurance shall provide coverage under the "Causes of Loss Special Form" (copyright by ISO Commercial Risk Services, Inc.) or equivalent, and shall be in an amount as near as practicable to the full replacement cost thereof, and shall include coverage for debris removal without limitation, an agreed amount endorsement, and building ordinance coverage, including coverage for contingent liability from operation of building laws, demolition, and increased cost of construction, exclusive of foundation and excavation costs. Lessee is required to at least annually, review the sufficiency of such coverages/limits and if insufficient, shall immediately increase such coverages and/or limits. Unless as agreed to by Lessor, the deductible shall not exceed the sum of $10,000.00 per occurrence, except for the perils of windstorm and hurricane, in which case the deductible shall not exceed three percent (3%) of total insurable values at the time of loss. If the building, equipment, and improvements are in a flood zone A, V, or VE, Lessee must purchase flood insurance and can include such coverage under the property insurance policy, or purchase the maximum flood coverage available through the National Flood Insurance Program (NFIP).

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

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

(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 or boiler and machinery insurance required herein. If either policy does not expressly allow the insured to waive rights of subrogation prior to loss, Lessor shall cause such policies to be endorsed with a waiver of subrogation as required above.

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

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

17.3.1 Contractor insurance. Lessee shall either: (a) include all contractors as insureds under all insurance set forth above, or (b) 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.

17.3.2 Insureds. Insurance policies shall identify Lessor as an "additional insured" using ISO additional insured endorsement form CG 20 10 (or equivalent), and as appropriate CG 20 37 (or equivalent) under the commercial general liability umbrella policy 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. "**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. On all insurance policies where Lessor is named as an additional insured, Lessor shall be an additional insured to the full limits of coverage purchased by Lessee even if those limits are in excess of those required under this Lease.

17.3.3 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.

17.3.4 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.

17.3.5 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.

17.3.6 Notice to Lessor. All policies required hereunder shall be written to provide not less than thirty (30) days prior notice of cancellation or material change to Lessor; provided that upon Lessee's request, Lessor shall allow Lessee to assume this obligation if Lessee demonstrates that its insurers will not provide such notice.

17.4 **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.

17.5 **Waiver of Subrogation.** Lessee agrees to a waiver of any right to subrogation against Lessor and their respective employees and agents by each insurer under each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. Lessee will require of its contractors and consultants, by appropriate written agreements, similar waivers of Lessor. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee, contractors or consultants enter into such an agreement on a pre-loss basis.

17.6 **Evidence of Insurance.**

17.6.1 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 60 days advance written notice to Lessor.

17.6.2 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 above. 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 above.

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

17.6.4 Failure of 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.

17.6.5 The acceptance of delivery by 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.

17.7 **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.

17.8 **Failure to Maintain Insurance.**

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

17.8.2 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.

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

17.9 **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.

17.10 **No Representation.** Lessor makes no representation that the limits of liability required to be carried by Lessee pursuant to this Article 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.

ARTICLE 18:
CASUALTY AND CONDEMNATION

18.1 **Casualty.** If either party becomes aware of 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**"), then such party shall promptly notify the other.

18.1.1 Effect of Casualty. 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 subject to terms of this Article. Lessee shall restore the Improvements in a manner that preserves all affordability, income-restricted unit counts, accessibility features, and other regulatory or programmatic requirements applicable to the Project. 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 for 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 any changes in Law that would limit the foregoing ("**Restoration**"). Ikn the event of a Casualty (a) that occurs less than five (5) years before the end of the Term and renders the Improvements, in Lessee's reasonable judgment, not capable of being economically restored or (b) where any Law prevents the Improvements from being restored to substantially the same condition, and for the same use, as before the Casualty, then 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, 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 Premises under this Lease (b) second, to Lessor (subject to the rights of any Leasehold Mortgagees). "**Restoration Funds**" means any loss proceeds (and deposits by Lessee) to be applied to Restoration.

18.1.2 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:

(a) 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 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;

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

(c) Other. Such other documents, deliveries, certificates and information as Depository reasonably requires.

18.2 **Condemnation**

18.2.1 Substantial Condemnation**.** In the event of a any taking, condemnation or acquisition under threat of condemnation ("**Condemnation Event**") 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 ("Substantial Condemnation", then this Lease (except as to allocation of the Condemnation Award) shall terminate on the date that the condemning authority has acquired title to any portion of the Premises subject to the Condemnation Event ("**Condemnation Effective Date**"). Rent shall be apportioned accordingly. All compensation and damages paid or payable because of or as compensation for any Condemnation Event, including amounts for Improvements and interest ("**Condemnation Award**") shall be paid after Lessor and Lessee shall agree upon an allocation of the Condemnation Award for the leasehold interest ("**Value of the Leasehold Estate**") and for the leased fee interest ("**Value of the Leased Fee Interest**"). Lessee shall receive such portion of the Condemnation Award up to the Value of the Leasehold Estate and Lessor shall receive such portion of the remaining Condemnation Award up to the Market Value of the Fee Estate condemned at the Condemnation Event Effective Date.

18.2.2 Insubstantial Condemnation. If the event of less than a Substantial Taking but excluding a Temporary Condemnation and Immaterial Loss ("**Insubstantial Condemnation**"), then this Lerase shall continue and 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.

18.2.3 Temporary Condemnation. In the event of a condemnation, taking or similar event of the right to use or occupy all or part of the Premises for a temporary period of time ("**Temporary Condemnation**"), this Lease shall not terminate and Lessee shall not be excused from full performance of its covenants or any other obligations hereunder capable of performance by Lessee during the period of such Temporary Condemnation, and Lessee shall receive any Condemnation Award for the Temporary Condemnation (for periods within the Term).

18.2.4 Immaterial Loss**.** In the event of a condemnation, taking or similar event in which the condemning authority's determination of just compensation is less than $500,000 ("Immaterial Loss"), then this Lease shall continue and Lessee shall receive any Condemnation Award in trust to be applied first to Restoration. Lessee shall restore in accordance with this Lease. After Restoration, Lessor shall receive any remaining Condemnation Award.

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

ARTICLE 19:
LESSOR'S RESERVED RIGHTS

19.1 **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, and to otherwise conduct compliance reviews (including the review of Lessee's Books and Records,, contracts and/or subleases pertaining to the Premises and the Project, and any reports or logs required in this Lease; (b) cure Lessee's defaults, in accordance with this Lease; (c) inspect the Premises, the Project 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, Environmental Laws, Environmental Reports; 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 (provided that any such entry by Lessor into a Affordable Housing Unit shall comply with advance written notice requirements under applicable Law) and shall comply with Lessee's reasonable instructions. Inspections may include operational, management, financial, environmental, and compliance audits. Lessee shall provide access to all books, records, digital systems, management files, and Tenant Files as reasonably required to verify compliance.

19.2 **Other Entries by Lessor.** In addition to any other Lessor's rights under this Lease, Lessor may enter the Premises at any time (a) to take possession due to any breach that has been without cure under any applicable cure period of any default under 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 (provided that any such entry by Lessor into a Affordable Housing Unit shall comply with advance written notice requirements under applicable Law). 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.

19.3 **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.

19.4 **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 to any person, entity or Government on, over, under, across and through the Premises, provided that 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.

19.5 **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 to Lessee (unless otherwise approved by Lessee).

19.6 **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 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.

19.7 **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, orders and other recorded instruments or maps encumbering or affecting the Land.

ARTICLE 20:
LESSOR'S TRANSFER

Lessee acknowledges that Lessor has the right to transfer Lessor's interest and Lessee agrees to cooperate with Lessor in connection with any such transfer; provided that Lessee's rights and obligations under this Lease shall not be amended in any material respect as a result of or in connection with such transfer. Following any such transfer, Lessor shall deliver to Lessee a copy of the instrument evidencing such transfer.

ARTICLE 21:
LESSEE'S TRANSFERS

21.1 **Assignment and Subletting.** Except for residential rentals of Affordable Housing Units and Market-Rate Housing Units, Lessee shall not transfer this Lease or the leasehold estate, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. "**Transfer**" means any subelease or assignment, or other transfer, including 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);

(b) transfer of any controlling interest in Lessee;

(c) any refinancing or recapitalization that generates cash-out proceeds;

(d) syndication proceeds;

(e) transfer of a general partner or limited partner interest; or

(f) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any equity interest(s) in the owner of such property.

21.2 **Lessor's Consent.** Lessee agrees 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 and the Project after the Transfer shall comply with the provisions of this Lease; (iii) the proposed transferee has the financial capability and resources to operate and maintain the Premises and the Project as required by this Lease; (iv) either (x) the proposed transferee or its property manager has an excellent business reputation, the experience, managerial and operational skills to operate and maintain the Project and the Premises and comply with Federal and State Affordable Housing Requirements; or (y) the transferee agrees to retain a property manager with the skills, experience and record described in clause (x) above, effective as of the date of 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; (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; (vii) the transferee has not been a lessee of a lease with Lessor and been in default under such lease; or (viii) the transferee demonstrates to Lessor's reasonable satisfaction that it is capable of complying with all applicable laws;

(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 this Lease shall be specifically assumed and agreed to by the transferee, along with such other documents reasonably requested by Lessor in connection with the Transfer but which do not expand, increase, diminish or otherwise modify the rights, duties and obligation of the "lessee" under this Lease; and

(c) receipt by Lessor of all fees and/or expenses then currently due and payable to Lessor by Lessee as set forth in this Lease. It is hereby expressly stipulated and agreed that any Transfer in violation of this Section 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.

21.3 **No Partial Transfers.** Except in the case of a residential rental of Affordable Housing Units and Market-Rate Housing Units, 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.

21.4 **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 signed purchase and sale agreement or other agreement 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 most recent fiscal year, and business credit, personal references and business history of the proposed transferee; (e) the proposed transferee's experience, reputation, managerial and operational abilities with affordable housing projects; and (f) such other information in connection with the proposed Transfer as Lessor shall reasonably request.

21.5 **Expenses.** Lessee shall pay all costs and expenses, including transfer and other taxes, if any, payable on account of any Transfer by Lessee or any Lessee Party. Within ten (10) days following demand, Lessee shall reimburse Lessor for Lessor's reasonable costs (including attorneys' fees and consultant fees) incurred in reviewing and approving or disapproving, or otherwise consulting with respect to, any proposed Transfer, whether or not Lessor consents.

21.6 **Lessor's Rights in connection with proposed Transfer**.

21.6.1 Lessor's Right of First Offer (ROFO). Before soliciting or accepting any means any bona fide, arm's-length offer or proposal made by a person or entity other than Lessor or its designee to acquire the Lease, any portion thereof, any interest in Lessee, or any controlling interest therein, which is intended to result in a Transfer ("Third-Party Offer") for a Transfer, Lessee shall first deliver to Lessor: written notice of Lessee's desire or intent to Transfer; the proposed terms, pricing, structure, capitalization, and timing; and all supporting financial or due diligence materials reasonably requested by Lessor. Lessor shall have the right, within one hundred twenty (120) days to submit to Lessee a written offer to acquire the Lease or the interest proposed to be Transferred, on terms acceptable to Lessor in its sole discretion ("**ROFO**"). During this ROFO period, Lessee shall negotiate exclusively with Lessor for one hundred twenty (120) days. If no agreement is reached, Lessee may proceed under Section 21.6.2 (ROFR).

21.6.2 Lessor's Right of First Refusal (ROFR). If Lessee receives a bona fide Third-Party Offer, Lessee shall promptly provide Lessor: a complete copy of the Third-Party Offer; all schedules, side letters, financial statements, valuation materials, and transaction documents; and all information necessary for Lessor to evaluate the offer. Lessor shall have right, within one hundred twenty (120) days to elect, in writing, to purchase the subject interest on the same terms as the Third-Party Offer ("**ROFR**"). Closing shall occur within ninety (90) days (or such longer period as is commercially reasonable) after Lessor's ROFR election. A Transfer made in breach of this ROFR is void, of no force or effect, and constitutes a default.

21.6.3 Transfer Premium. In the event of a Transfer, and regardless of whether Lessor exercises its ROFO or ROFR, Lessee shall pay to Lessor a Transfer Premium equal to: fifty percent (50%) of the Net Proceeds of any Transfer or recapitalization ("**Transfer Premium**"). "**Net Proceeds**" means all cash, consideration, distributions, receipts, or economic value of any kind received by Lessee or any direct or indirect owner of Lessee in connection with a Transfer, less (a) the unpaid principal of senior indebtedness secured by the Lease (excluding soft debt or residual receipt loans); (b) reasonable and customary third-party closing costs; (c) transaction taxes triggered solely by the Transfer; and (d) verified, arm's-length transaction costs approved by Lessor. Net Proceeds include, without limitation: (i) proceeds from the sale or transfer of any controlling interest in Lessee; (ii) proceeds from any refinancing or recapitalization that generates cash-out proceeds; (iii) syndication proceeds; (iv) general partner or limited partner interest sale proceeds; (v) promote, carried interest, or waterfall distributions; and (vi) any financial benefit that, in substance, transfers value of the leasehold estate. Net Proceeds do not exclude developer fees, asset management fees, or ownership distributions unless expressly approved by Lessor in writing. The Transfer Premium shall be due at closing of the Transfer, and paid concurrently with the delivery of all closing documents to Lessor. Lessor's approval of any Transfer, or its election not to exercise the ROFO or ROFR, does not constitute: a waiver of any future Transfer restrictions, future Transfer Premium obligations; or a precedent limiting Lessor's rights.

21.7 **No Transfers Prior to Stabilization**. Notwithstanding anything to the contrary in this Article, no Transfer may occur prior to: (a) Substantial Completion of all Improvements; (b) issuance of all required certificates of occupancy; (c) completion of lease-up to the Stabilization; and (d) delivery to Lessor of all compliance certifications required under this Lease. Any Transfer made in violation of this Section shall be void and constitute a default. "**Stabilization**" means achievement of ninety percent (90%) occupancy for ninety (90) consecutive days among the Housing Units.

21.8 **Policy Intent; Anti-Avoidance**. The Parties acknowledge that: the leasehold estate is created on publicly owned land; public subsidies and incentives significantly contribute to the Project's value; and Lessor is entitled to share in any appreciation, upside, or financial benefit realized through a Transfer. The Transfer Premium ensures that public value is not privately monetized. Any transaction that has the substantive effect of a Transfer —regardless of form, structure, or intermediaries—shall be deemed a Transfer for purposes of this Article. Lessor may require full transaction documentation, financial models, and certifications to confirm compliance.

ARTICLE 22:
LEASEHOLD MORTGAGES

22.1 **Leasehold Mortgage.** Subject to Lessor's consent, Lessee shall have the right at any time and from time to time to encumber all of Lessee's Interest (but not less than all of Lessee's Interest) by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Section being herein referred to as a "**Leasehold Mortgage**") to secure repayment of a loan (and associated obligations) made to Lessee by an Institutional Lender for the purpose of financing the construction of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the loan secured by a Leasehold Mortgage shall be payable over not more than the remaining portion of the Lease Term. "**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 it shall not be an any entity controlling or controlled by or under common control of Lessee ("**Affiliate**").

22.2 **Preservation of Lessor Enforcement Rights**. No Leasehold Mortgagee shall interfere with or limit Lessor's rights to enforce affordability, tenant-level compliance, environmental obligations, including without limitation:

(a) Residential Leasing Requirements and Affordable Housing Requirements under Article 5;

(b) Property Management requirements under Article 13;

(c) Reporting Requirements under Article 15; or

(d) Environmental obligations under Article 12.

Lessor may take enforcement action, including exercising Step-In Rights or appointment of a receiver, notwithstanding the pendency of any lender cure period if necessary to protect health, safety, or compliance with Affordable Housing Requirements.

22.3 **No Encumbrance of Lessor's Interest**. In no event shall any of Lessor's Interest be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument which secures any obligations of Lessee.

22.4 **Refinancing Restriction**. Lessee shall not enter into any refinancing or modification of Leasehold Mortgages that results in a cash-out distribution to Lessee or any Affiliate without Lessor's prior written approval. Lessor may condition approval upon: (a) verification that Affordable Rent, Residential Leasing, and Property Management obligations will continue unaffected; (b) full funding of reserve accounts; (c) submission of a long-term capital needs assessment; and (d) updated financial projections showing continued feasibility. Any refinancing proceeds must first be applied to fund reserves, cure Deferred Maintenance, and correct Code Violations before any distribution to Lessee. "**Deferred Maintenance**" means repairs, replacements, capital improvements, or corrective work identified by Lessor or a Capital Replacement Schedule that Lessee has failed to complete within required timelines.

22.5 **Protection of Leasehold Mortgagee.** Upon request by Lessee, Lessor agrees to enter into a tri-party agreement substantially in the form attached as Exhibit I with Lessee and any Institutional Lender holding a first priority Leasehold Mortgage (each, a "**Leasehold Mortgagee**"), such agreement to be modified as reasonably requested by the Leasehold Mortgagee.

ARTICLE 23:
EVENTS OF DEFAULT; REMEDIES

23.1 **Lessee Defaults.** The following shall be an "**Event of Default**" for which Lessor shall have the remedies provided for in this Lease:

23.1.1 Monetary Default. Lessee's failure to pay any Rent or other sums due or restore any deposit or reserves when and as required under this Lease, which failure is not cured within five (5) days after the giving of notice thereof by Lessor, such notice being in lieu of, and not in addition to, any applicable statutory notice;

23.1.2 All Other Lease Violations. Lessee's: (a) failure to comply with any material affirmative or negative covenant or obligation in any material respect in this Lease; (b) breach by Lessee of any material representation or warranty in any material respect; or (c) failure to perform or observe any other covenant, condition or agreement of this Lease, all of which is not cured within ten (10) days after the giving of notice thereof by Lessor unless such default is of such nature that it cannot be cured within such ten (10) day period, in which case no Event of Default shall occur so long as Lessee shall commence the curing of the default within such ten (10) day period and shall thereafter complete the curing thereof with diligence and continuity;.

23.1.3 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, 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);

23.1.4 Falsification of Information. Lessee or any agent of Lessee falsifies any report or misrepresents other information to be furnished to Lessor pursuant to this Lease; and

23.1.5 Cross Default. As further inducement for Lessor to enter into this Lease, in the event that Lessee shall fail to timely perform or observe, beyond the applicable cure period, any of the provisions required to be performed or observed by Lessee under this Lease, or under any other agreement relating to the Premises, or any other agreement between Lessor and Lessee, and all other leases and agreements, whether in effect now or after the date of this Lease.

23.2 **Remedies.** If an Event of Default occurs, then Lessor shall, at Lessor's option (unless prohibited by Law), 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.

23.2.1 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 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.

23.2.2 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.

23.2.3 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.

23.2.4 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.

23.2.5 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, 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.

23.2.6 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 ("**Receiver**"), and to Operate, manage, repair, and maintain the Premises and the Project, enforce Residential Leasing Requirements, and collect the rents, revenues, income and profits generated from the Premises and the Project, without regard to the value of the Premises or the solvency of any person or entity 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. Lessee expressly consents to the appointment of a receiver and waives any objection on the basis that a remedy at law is adequate. All costs and expenses of the Receiver shall constitute Additional Rent and shall be reimbursed by Lessee upon demand.

23.2.7 Damages. Lessor may recover from Lessee all damages Lessor incurs by reason of an Event of Default that occurs and is continuing beyond any applicable cure period, including reasonable costs of recovering possession, re-letting the Premises or the Project, 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 the occurrence and continuation of an Event of Default beyond any applicable cure period, 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 the occurrence and continuation of an Event of Default beyond any applicable cure period, but may bring and prosecute a single combined action for all such Rent and damages.

23.2.8 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 non-monetary default.

23.2.9 Lease Continuation. 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.

23.2.10 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 for the disposition of Property Insurance Proceeds upon a Casualty Termination, subject to any claims for damages resulting from such Event of Default.

23.2.11 Lessor's Right to Cure. Lessor may elect to cure any life-safety, environmental, or habitability violation if Lessee fails to cure within the applicable period. All costs incurred by Lessor shall constitute Additional Rent and shall be reimbursed by Lessee within ten (10) Business Days.

23.2.12 Lessor's Environmental Remedies. Upon the occurrence of an Environmental Default, and in addition to all other rights and remedies under this Lease or at law.

(a) Immediate Stabilization. Lessor may immediately enter the Premises to stabilize or contain a Hazardous Substance Discharge or address any condition posing risk to human health or the environment.

(b) City Cure Rights. Lessor may undertake investigation, sampling, remediation, monitoring, or corrective action on behalf of Lessee. All costs incurred by Lessor shall constitute Additional Rent, due and payable within ten (10) days of demand.

(c) Suspension of approvals and Credits. Lessor may suspend: Rent Credits, any incentive under Article 8, (Rent Credits) consents under Articles 21 (Lessee's Transfers) or 22 (Leasehold Mortgages), and construction approvals until the Environmental Default is cured.

23.2.13 Require Additional Security. Lessor may require Lessee to provide supplemental security, including increased insurance, letter of credit, reserve funds, or remediation bonds.

23.2.14 Termination. If the Environmental Default (a) threatens public health or safety, (b) causes regulatory enforcement action against Lessor, or (c) is not cured within the cure period, Lessor may terminate this Lease. Any Environmental Default that results in (a) regulatory enforcement action, (b) a risk to human health or safety, or (c) contamination requiring remediation beyond the boundary of the Premises, shall constitute grounds for immediate

termination of the Lease, subject only to notice to any Leasehold Mortgagee as required under a Tri-Party Agreement.

23.2.15 Lessor's exercise of any right under this Section shall not limit its right to enforce indemnity or seek damages.

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

23.3.1 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;

23.3.2 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 and the Project for re-letting;

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

23.3.4 Residue. Fourth, after payment to itself of any balance remaining on account of Lessee's liability to Lessor, to Lessee.

23.4 **Lessee's Late Payments; Late Charges.** 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. In addition, and without limiting any other rights or remedies of Lessor, Lessee shall pay Lessor, as Additional Rent, an administrative charge equal to five percent (5%) of any payment that Lessee fails to pay within thirty (30) days after such payment is first due and payable. Such administrative charge is intended to compensate Lessor for the inconvenience and staff time incurred by Lessor to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Lessee under this Lease.

23.5 **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 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; and (b) Default Interest on the amounts in clause (a) above.

23.6 **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 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.

23.7 **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 or the Project, 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.

23.8 **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.

23.9 **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:

ARTICLE 24:
END OF TERM

24.1 **Surrender of Possession**. Upon any Expiration Date, Lessee shall peaceably surrender to Lessor possession of the Premises and the Project in the condition required under this Lease. Lessee shall surrender any right, title, or interest in and to the Premises and the Project and shall deliver such evidence and confirmations of surrender as Lessor reasonably requires.

24.2 **End-of-Term Condition; Election Regarding Improvements**. Not more than two (2) years prior to the Expiration Date, Lessee shall deliver written notice to Lessor requesting Lessor's election regarding the disposition of the Improvements upon surrender of the Premises. Lessor shall, not less than one (1) year prior to the Expiration Date, elect in writing either to:

24.2.1 accept the Improvements in their then-existing "as is, where is" condition, subject to Lessee's compliance with surrender and condition requirements under this Lease; or

24.2.2 require Lessee, at Lessee's sole cost and expense, to remove some or all of the Improvements and restore the Premises as specified by Lessor prior to surrender.

24.3 **Environmental Surrender Obligations.** At expiration or earlier termination of the Term, Lessee shall (a) provide a current Phase I ESA and any recommended supplemental investigations upon surrender of the Premises demonstrating compliance with all Environmental Laws; (b) remediate all Hazardous Substances at the Premises to levels required for the more stringent of (i) unrestricted use or (ii) the applicable regulatory cleanup standards, unless Lessor expressly approves a lower cleanup standard; comply with any regulatory agency's long-term site management plans or hazard mitigation plans; dispose of all Hazardous Substances in accordance with Environmental Laws; and (c) repair any damage to the Premises caused by investigation or remediation work. Lessee shall restore the Premises to the environmental condition existing as of the Commencement Date, as established by the pre-lease environmental assessments, except to the extent Lessor elects to accept the Improvements "as is, where is".

24.4 **Transfer of Improvements and Personal Property**. All Improvements, and building equipment shall automatically become the property of Lessor without payment by Lessor, free and clear of all liens, security interests, or other encumbrances, except those expressly permitted by Lessor in writing. Lessee shall deliver to Lessor all operating manuals, Maintenance Logs, and documentation relating to the Improvements, and building equipment.

24.5 **Licenses, Permits, Contracts, Warranties, and Plans**. Lessee shall assign to Lessor, and deliver to Lessor originals or copies of, all assignable licenses, permits, approvals, warranties, guarantees, service contracts, and maintenance contracts relating to the Premises and the Project, together with the current year's operating budget and applicable backup information. Lessee shall also provide, if available, a complete set of as-built plans and specifications for all Improvements.

24.6 **Transition of Operations; Books and Records**. The parties shall cooperate to achieve an orderly transition of operations without interruption. As part of surrender, Lessee shall deliver to Lessor all books and records relating to the Premises and the Project, including Tenant Files, rent rolls, income certification records, compliance data, environmental reports, maintenance history, inspection reports, and all operational documents reasonably necessary to allow Lessor or a successor operator to lawfully continue operations. For sixty (60) days following the Expiration Date, Lessee shall reasonably cooperate with Lessor to answer operational questions and facilitate transition. Lessee shall maintain all utilities and essential services until the date Lessor assumes operational control.

24.7 **Legal and Regulatory Compliance at Surrender**. As a condition of surrender, Lessee shall cause the Premises and the Project to be delivered free from: (a) any uncured violation of Laws; (b) any outstanding notice of violation, citation, correction order, or stop-work order issued by any Government agency; and (c) any fines, penalties, or charges attributable to Lessee's use or Operation of the Premises and the Project. Lessee shall, at its sole cost, resolve, close out, or cure all such matters before the Expiration Date.

24.8 **Environmental Closeout**. Lessee's obligations under Article 12 (Hazardous Materials; Environmental Matters) shall survive the Expiration Date. As a condition of surrender, Lessee shall: (a) complete all required investigation, remediation, monitoring, mitigation, and reporting required under Article 12 or applicable Laws; (b) deliver to Lessor a current Phase I ESA and any recommended supplemental reports; and (c) demonstrate compliance with all Environmental Laws. The Premises shall not be deemed surrendered until such documentation is delivered and accepted by Lessor.

24.9 **Vendor and Service Contracts**. Lessee shall, at its sole cost, terminate or assign (at Lessor's election) all service, maintenance, management, utility, and vendor contracts relating to the Premises and the Project. Lessee shall provide Lessor with evidence of such termination.

24.10 **Termination Documents**. The parties shall execute any termination, release, affidavit of surrender, estoppel certificate, or other instrument reasonably required by Lessor or any Government agency to evidence the expiration or termination of this Lease in the public records.

24.11 **No Claims Against Lessor**. Lessee's surrender obligations shall be performed at Lessee's sole cost and shall not entitle Lessee to any claim for damages, Rent abatement, extension of time, or delay claim against Lessor, including those arising from unavoidable delays in transition or from obligations imposed by applicable Laws.

24.12 **Survival**. Lessee's obligations under this Article shall survive the Expiration Date until fully performed.

ARTICLE 25:
NOTICES

All Notices shall be in writing and addressed to Lessor and Lessee (and their designated copy recipients), as applicable, as set forth in the Specific Provisions. Notices (including any required copies) 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 the Special Provisions. 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).

ARTICLE 26:
MISCELLANEOUS

26.1 **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 Land Court, as appropriate. If the parties amend this Lease, then the parties shall record a memorandum of such amendment.

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

26.3 **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 HUD, County, State and other federal statutes, laws, and regulations and Lessee shall execute such amendment. If such amendment would render the continued operation of the Project to be economically infeasible, as determined by Lessee, in its sole discretion, or in the event that Lessee objects to such amendment that is intended to assure compliance with applicable Law as contemplated under this Section, Lessor shall negotiate in good faith with Lessee. If the parties are unable to reach a mutual agreement with respect to the terms of such amendment, then Lessee shall have the right to terminate this Lease, upon one hundred eighty (180) days advance written notice to Lessor.

26.4 **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.

26.5 **Due Authorization and Execution.** Lessor and Lessee represents and warrants that each has full right, title, authority and capacity to execute and perform this Lease; the execution and delivery of the Lease has been duly authorized by all requisite actions of each party; the Lease constitutes valid, binding, and enforceable obligations of each party; and the execution of the Lease does not violate any agreement (including organizational documents), contract, or other restriction. Lessee represents and warrants that Lessee is qualified to do business in the State. Both parties' representations and warranties in this Section shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

26.6 **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 the Project 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.

26.7 **No Consequential Damages.** Whenever either party may seek or claim damages against the other party, 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.

26.8 **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.

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

26.10 **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.

26.11 **Service of Process.** Lessee and every assignee shall either be domiciled in the State or shall designate in writing an agent who is domiciled in the State upon whom service of notice or process may be made at all times. In the event there is no agent for the service of process, 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 the Director of Commerce and Consumer Affairs shall have the force and effect of personal service upon Lessee.

26.12 **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.

26.13 **Entire Agreement.** This Lease contains all terms, covenants, and conditions about the Premises and the Project. The parties have no other understandings or agreements, oral or written, about the Premises, the Project or Lessee's use or occupancy of, or any interest of Lessee in the Premises except for any agreements referenced in this Lease.

26.14 **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 of Hawai'i, 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.

26.15 **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.

26.16 **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.

26.17 **Joint and Several.** If there is more than one person or entity comprising Lessee, the obligations imposed upon such Persons under this Lease shall be joint and several.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS 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:
_____, 2026

APPROVAL RECOMMENDED:

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

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

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel
Department of the Corporation Counsel

LESSEE:

Date of execution by Lessee:
_____, 2026

CARDINAL ALA WAI LLC
A Hawaii limited liability company
By: Centre Urban Real Estate Hawaii, LLC
Its Developer Manager

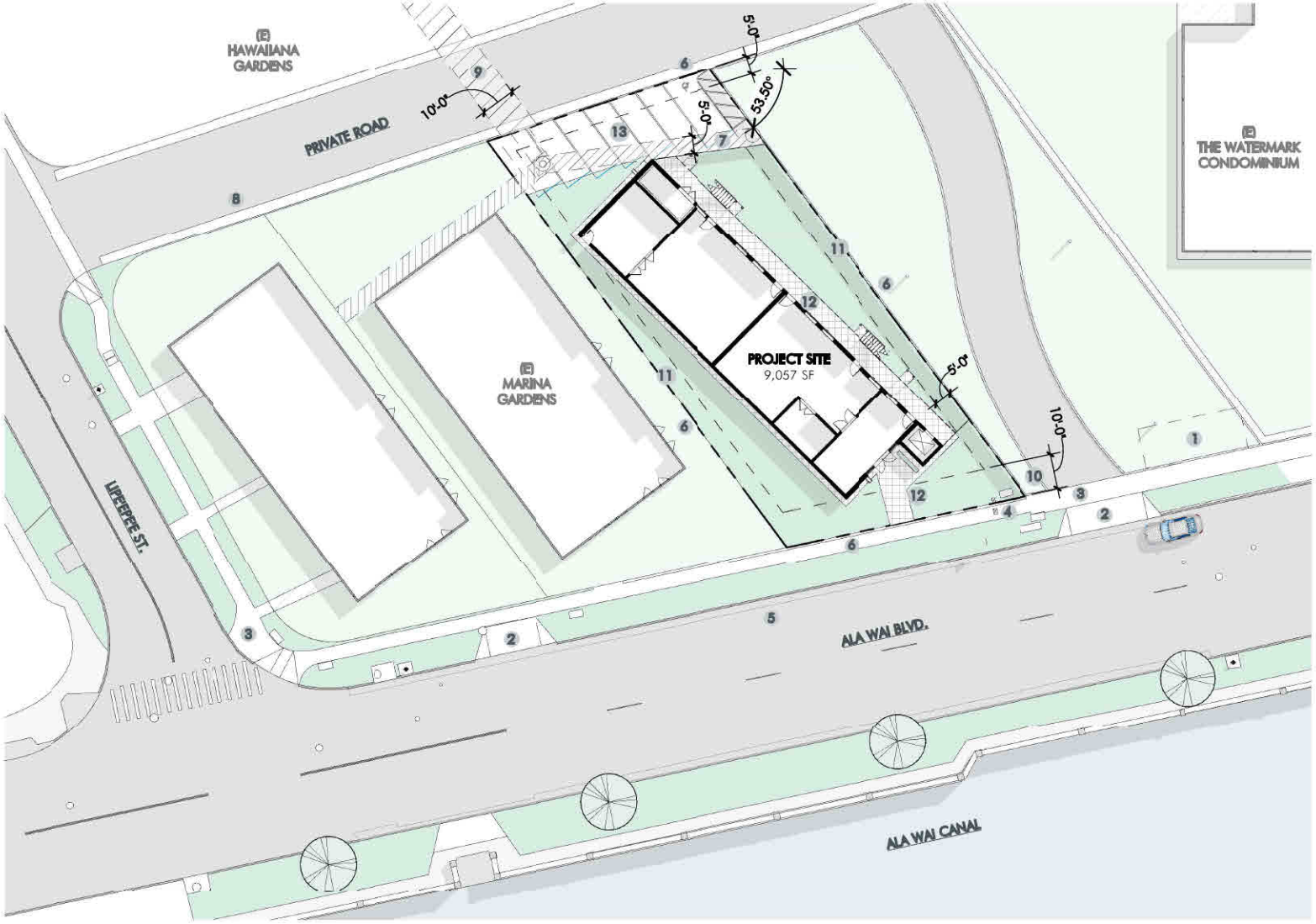
_____
Martin M. Q. Nguyen
Its Managing Principal

EXHIBIT A
LEGAL DESCRIPTION AND ENCUMBRANCES

[TO BE ATTACHED: LEGAL DESCRIPTION AND LIST OF ALL ENCUMBRANCES OF RECORD]

EXHIBIT B-1

DEVELOPMENT PLAN



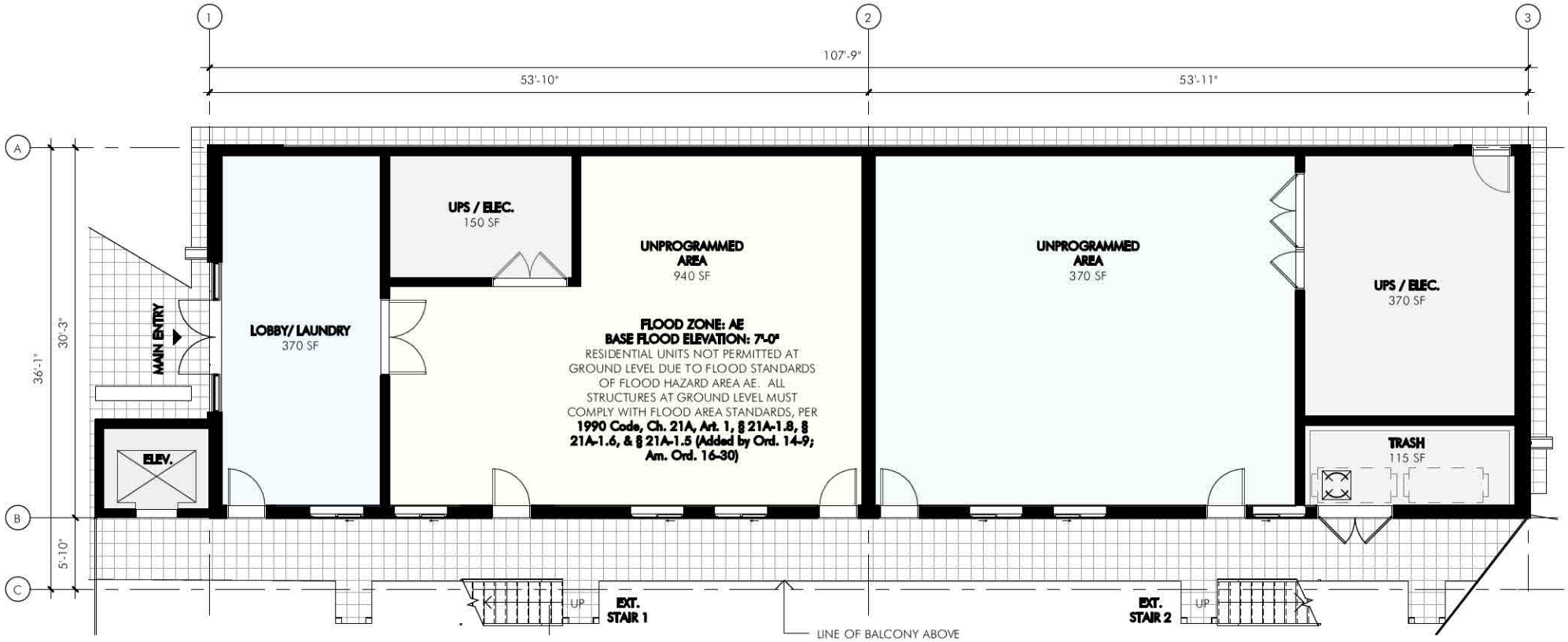
PROPERTY LOT INFO

ADDRESS	1615 ALA WAI BLVD.
TMK	2-6-011:033
ZONING	APARTMENT PRECINCT
SPECIAL DISTRICT	WAIKIKI SPECIAL DISTRICT
AREA	9,454 SF
TOTAL NO. UNITS	40
LEVEL 1	UTILITIES
LEVELS 2-6	8 UNITS/ LEVEL
FLOOR AREA	
UNIT	360 NET SF 395 GROSS SF
FLOOD ZONE	AE
BASE FLOOD EL.	7'-0"

SITE PLAN KEYNOTES

1. EASEMENT "E" FOR WATER METER
2. (E) CONCRETE DRIVEWAY
3. (E) CONCRETE SIDEWALK
4. (E) WATER METER
5. (E) CONCRETE CURB W/ GUTTER
6. PROPERTY LINE
7. SEWER EASEMENT "B" 5'-0" WIDE
8. (E) CONCRETE SWALE
9. (E) UTILITY EASEMENT "A" 10'-0" WIDE
10. FRONT YARD SETBACK
11. SIDE YARD SETBACK
12. EXT. PAVED HARDSCAPE
13. (E) 7 PARKING STALLS

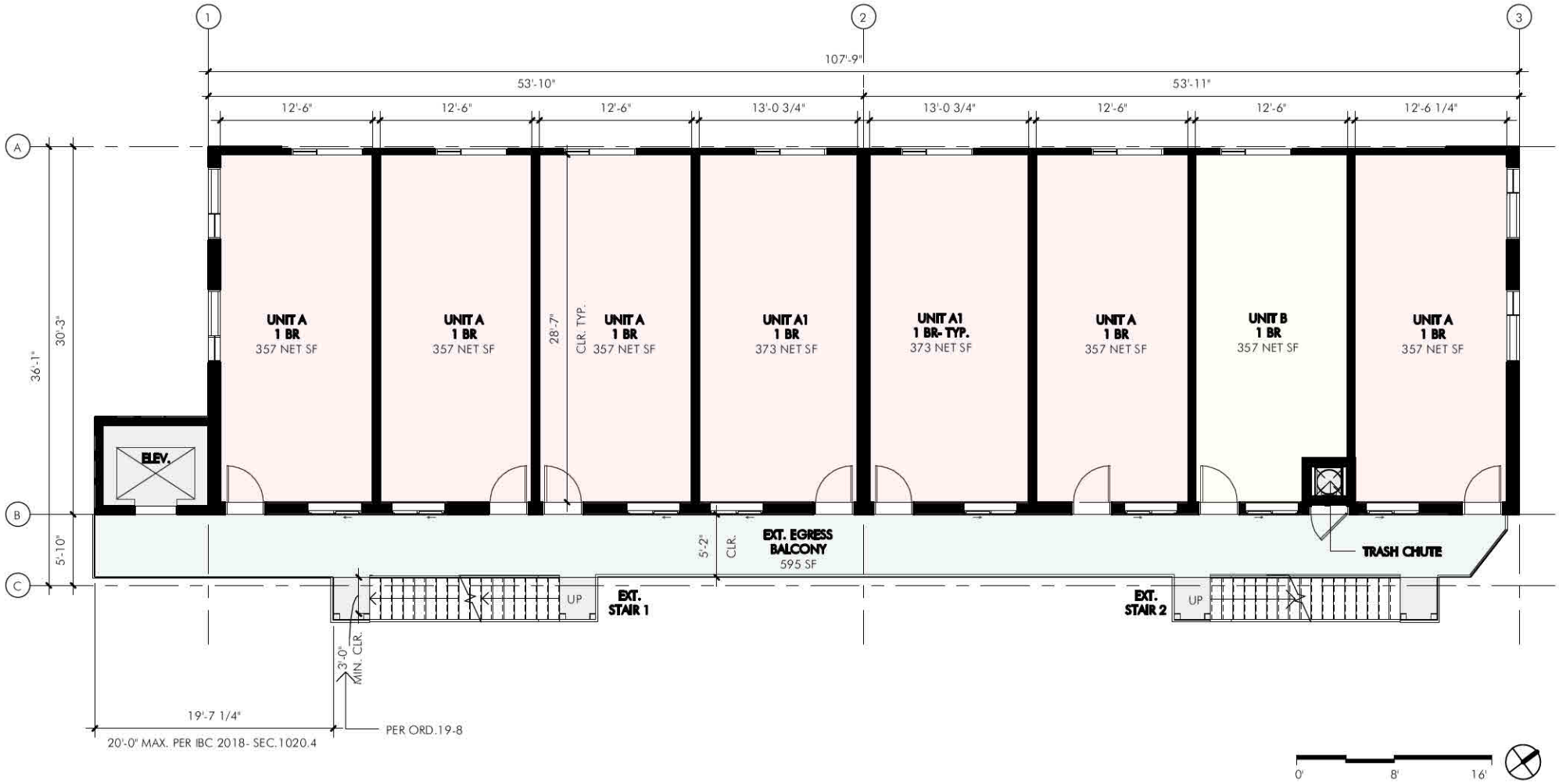
0' 30' 60'



CENTRE URBAN REAL ESTATE | hi-arch-y llp architecture · planning · interiors

LEVEL 1 OVERALL FLOOR PLAN

A-101



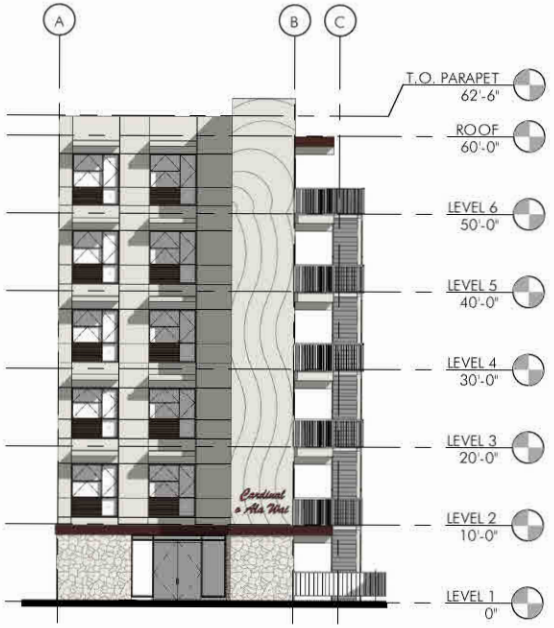
CENTRE URBAN REAL ESTATE | hierarchy llp architecture · planning · interiors

LEVEL 2-6 OVERALL FLOOR PLAN, TYP.

A-102

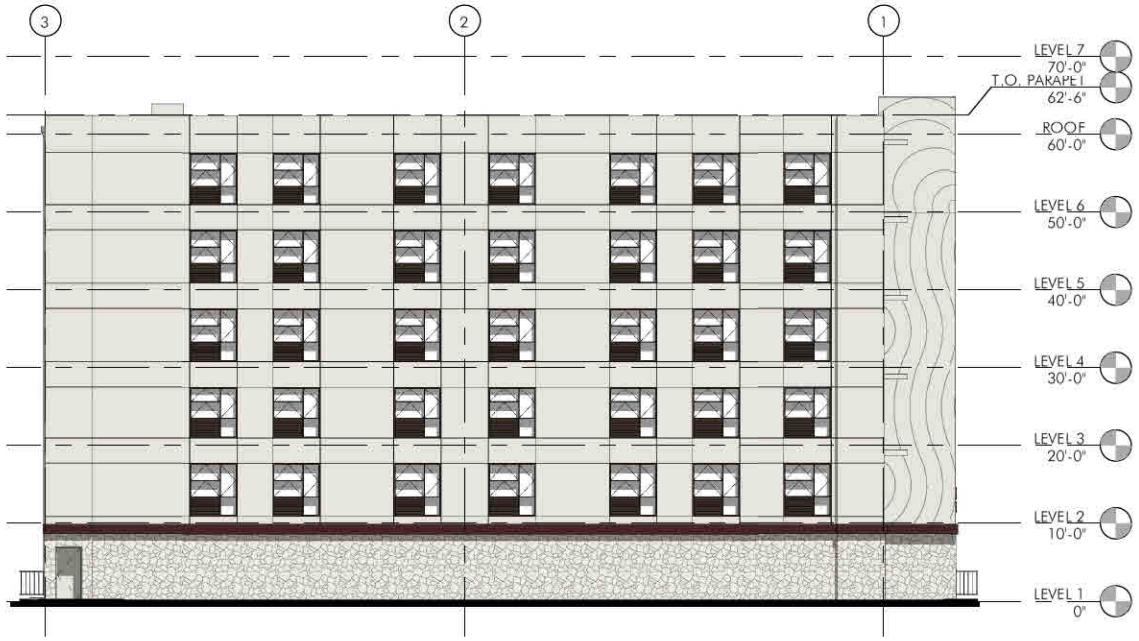


WEST ELEVATION



NORTH ELEVATION - ALA WAI BLVD.

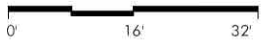
0' 16' 32'

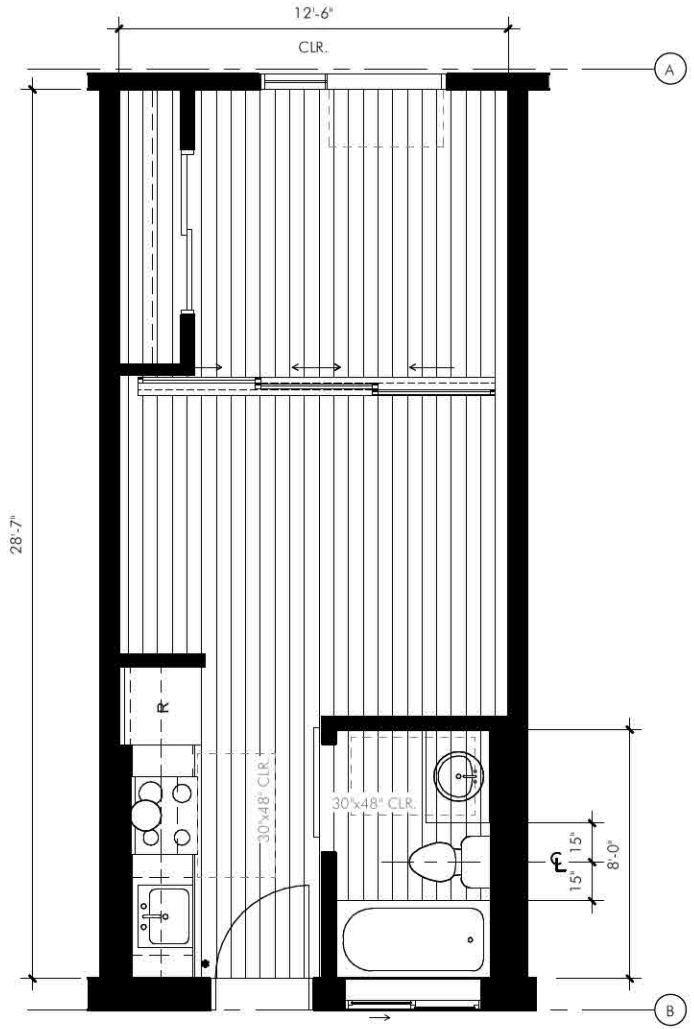


EAST ELEVATION

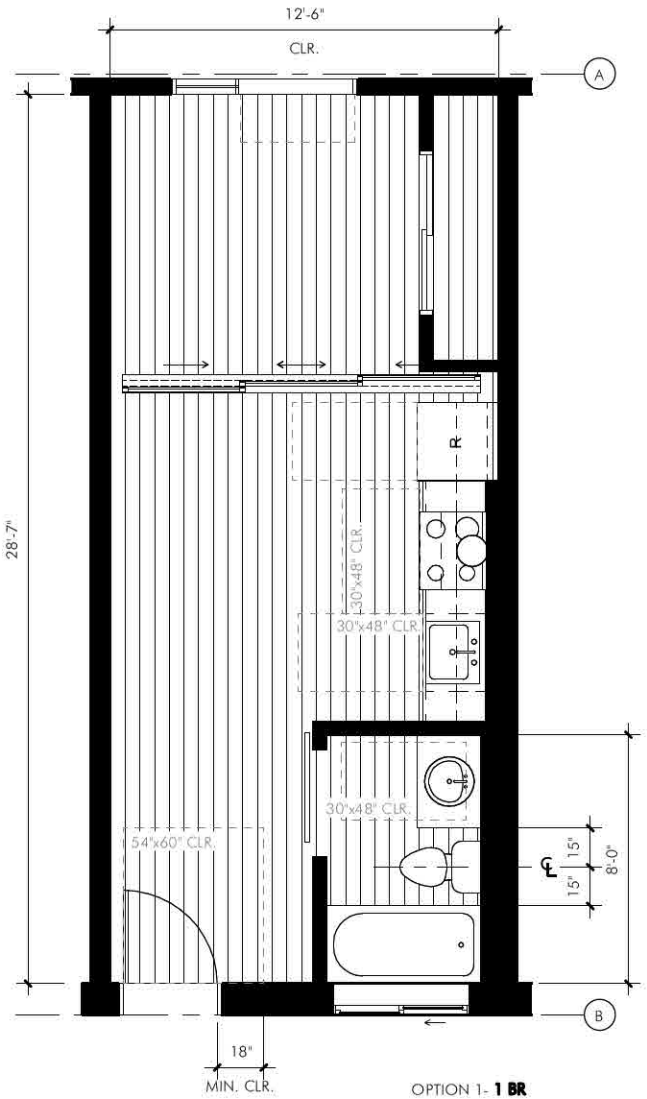


SOUTH ELEVATION





OPTION 2- **1 BR**



OPTION 1- **1 BR**

NOTE. PER **ROH CH. 16A: HOUSING CODE SEC.4.4(B)(3)**, 1B FHA UNIT A TO UTILIZE TRANSPARENT PRIVACY SCREENS TO MEET LIGHT AND VENTILATION REQUIREMENTS, PER ROH CH.16A HOUSING CODE, SEC.4.4(B)(3).

WALL OPENING AREA REQUIRED

WALL AREA 12'-6"
x 8'-9"
109.38 SF
x 1/2
54.69 SF

OR **25 SF** (WHICHEVER IS GREATER)

PROVIDED

WALL OPENING AREA 12'-6"
x 8'-9"
109.38 SF

UNIT NOTE: SHOWN IS THE TYPICAL UNIT TYPE. REFER TO OVERALL PLANS FOR UNIT DOOR LOCATION AND REQUIRED STRUCTURAL WALLS.

* DOOR STRIKE CLEARANCE ON INTERIOR OF UNIT ENTRY DOOR SUBJECT TO MODIFICATION AND DCAB FAU REVIEW **(SECTION 103-50, HAWAII REVISED STATUTES)** SHOULD THE FOLLOWING PROJECT CRITERIA CHANGE:

1. THE PROJECT IS **NOT** DESIGNED, CONSTRUCTED, PURCHASED, OR LEASED WITH THE USE OF ANY STATE OR COUNTY FUNDS OR FEDERAL FUNDS ADMINISTERED BY THE STATE OR A COUNTY.
2. THE PROJECT DOES **NOT** HOUSE STATE OR COUNTY PROGRAMS, SERVICES, OR ACTIVITIES THAT ARE INTENDED TO BE ACCESSED BY THE GENERAL PUBLIC.
3. THE PROJECT IS **NOT** CONSTRUCTED ON STATE OR COUNTY LANDS.
4. THE PROJECT IS **NOT** CONSTRUCTED ON LANDS THAT WILL BE TRANSFERRED TO THE STATE OR A COUNTY UPON COMPLETION OF CONSTRUCTION.

1 BR- FLOOR AREA CALCULATION:

GROSS FLOOR AREA **395 SF**

NOTES:
GROSS FLOOR AREA TAKEN FROM EXTERIOR PERIMETER WALLS & CENTERLINE OF DEMISING WALLS. DIMENSIONS FROM FACE OF CORE UNO.

0' 4' 8'



Cardinal
Ale House
25




Cardinal
o Ala Wai

EXHIBIT B-2

DEVELOPMENT SCHEDULE

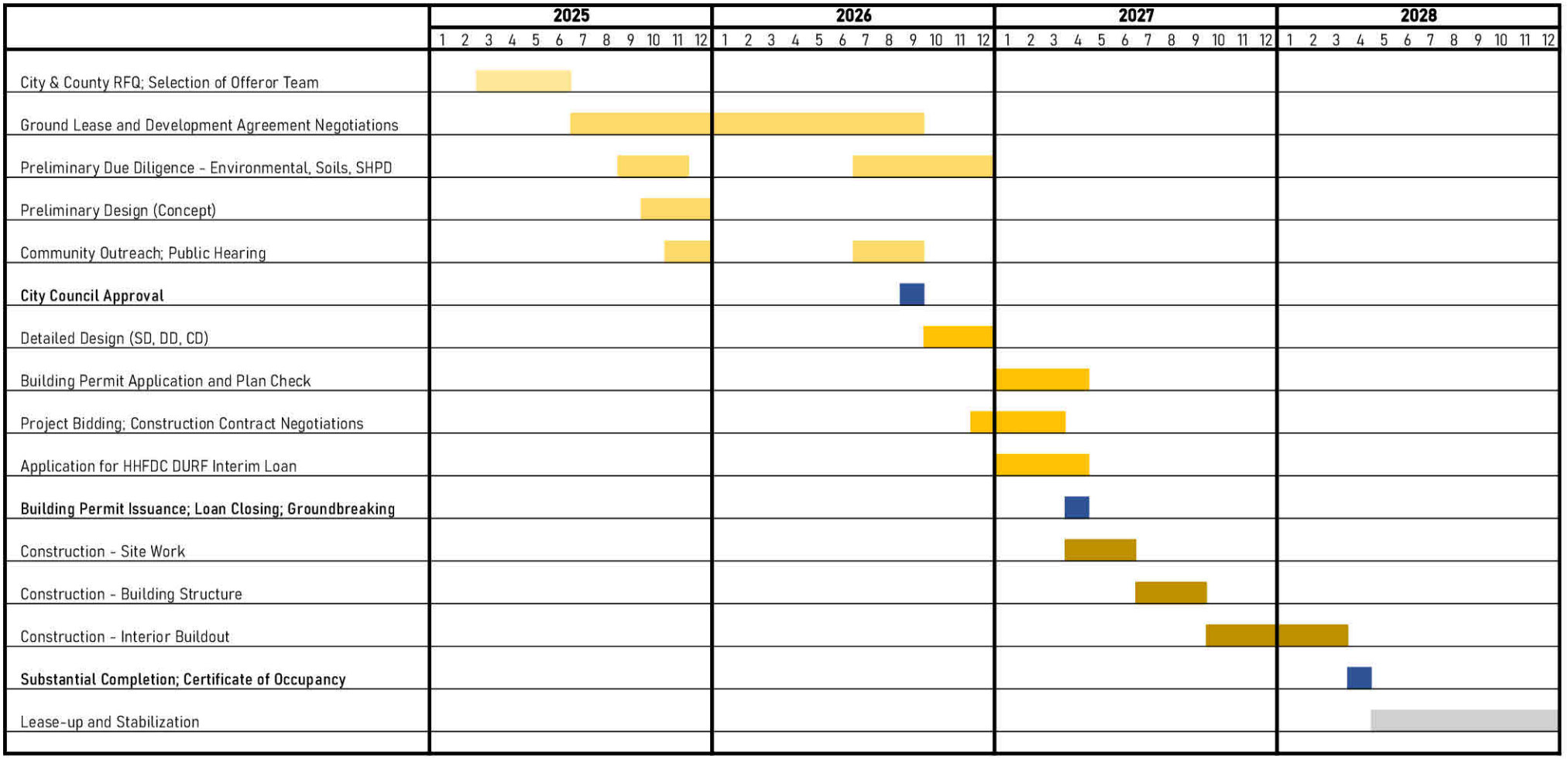

2025
2026
2027
2028
1 2 3 4 5 6 7 8 9 10 11 12
City & County RFQ; Selection of Offeror Team
Ground Lease and Development Agreement Negotiations
Preliminary Due Diligence - Environmental, Soils, SHPD
Preliminary Design (Concept)
Community Outreach; Public Hearing
City Council Approval
Detailed Design (SD, DD, CD)
Building Permit Application and Plan Check
Project Bidding; Construction Contract Negotiations
Application for HHFDC DURF Interim Loan
Building Permit Issuance; Loan Closing; Groundbreaking
Construction - Site Work
Construction - Building Structure
Construction - Interior Buildout
Substantial Completion; Certificate of Occupancy
Lease-up and Stabilization

EXHIBIT B-3

BUDGET AND FINAL SOURCES AND USES STATEMENT

Developers Budget and Final Sources and Uses

Sources	**Interim**	**Permanent**
Senior Debt	$11,000,000	$10,000,000
Sponsor Equity	$2,000,000	$2,000,000
City and County of Honolulu Subsidy	$0	$0
RHRF MIRP Interim/Permanent Loan	$7,000,000	$3,000,000
Affordable Housing Fund (AHF)	$0	$5,000,000
Total	**$20,000,000**	**$20,000,000**

Uses	**Amount**	**Cost/Unit**	**Total Cost %**
Land Acquisition	$0	$0	0.0%
Site Development	$1,860,329	$46,508	9.3%
Construction	$12,433,866	$310,847	62.2%
Pre-Development Costs	$850,000	$21,250	4.3%
Soft Costs	$2,400,805	$60,020	12.0%
Owner's Contingency	$1,200,000	$30,000	6.0%
Interest Reserve	$1,050,000	$26,250	5.2%
Financing Costs	$205,000	$5,125	1.0%
Total	**$20,000,000**	**$500,000**	**100.0%**

EXHIBIT B-4

CONSTRUCTION CONTRACT

[RESERVED—The final Construction Contract will be inserted prior to execution of this Ground Lease.]

EXHIBIT B-5

SURETY BOND

EXHIBIT B-6

GOVERNMENT APPROVALS

Governmental Approvals

Effective Date: 10/30/2026
Lease Closing, Termination Date: 6/30/2027

GOVERNMENTAL APPROVALS (Land Use and Zoning)	
Building Permit Application processed and approved by Department of Planning and Permitting	**Prior to Lease Closing; Termination Date: June 30, 2027**
Project construction documents completed; Building permit application submitted to DPP	*91 days from Effective Date January 29, 2027*
DPP approval of Special Assignment Inspection (SAI) permit (prerequisite: SHPD approval)	*182 days from Effective Date April 30, 2027*
DPP approval of building permits including but not limited to (BWS/ENV commitment/connection approvals, HECO approvals and HFD approvals)	*253 days from Effective Date June 30, 2027*
DPP approval of construction related permits including but not limited to (DOH dust and noise approvals and DPP grading, grubbing, stockpiling approvals)	*253 days from Effective Date June 30, 2027*
DPP approval of Temporary Certificate of Occupancy	*556 days from Effective Date April 28, 2028*
GOVERNMENTAL APPROVALS (Environmental Review and Compliance)	
All required historical and archeological review and compliance actions via SHPD per HRS Chapter 6E	**152 days prior to Lease Closing; Termination Date: March 31, 2027**
SHPD approval of AIS	*91 days from Effective Date January 29, 2027*
SHPD approval of AMP; receipt of final determination letter and notice to proceed	*152 days from Effective Date March 31, 2027*
All required environmental review and compliance actions completed under HRS Chapter 343	**119 days prior to Lease Closing; Termination Date: February 26, 2027**

EXHIBIT B-7

CONSTRUCTION PLANS

[RESERVED—The final Construction Plans will be inserted prior to execution of this Ground Lease.]

EXHIBIT B-8 RENTAL PROGRAM

[RESERVED—The Rental Program details will be inserted prior to execution of this Ground Lease.]

EXHIBIT B-9

PROPERTY MANAGEMENT PLAN

[RESERVED—The Property Management Plan will be inserted prior to execution of this Ground Lease.]

EXHIBIT C
Form of Income Certification

VERIFICATION OF INCOME

RE: Property Address Line 1
Property Address Line 2

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 sub item (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 sub items (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 _____ (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
Rent Rates and Rent Calculation

1. Rent Rates

1.1 Affordable Housing Component

Category	Description	Amount
Affordable Housing Rent	Annual base rent for Affordable Housing Component before credits	$_____ / year (project-wide amount)**
Affordable Rent Credit	Annual credit available upon full compliance	Up to $_____ / year

Note: Affordable Rent is not calculated per square foot. Rent Credits are applied annually in arrears.

1.2 Market-Rate Housing Component

Category	Description	Amount
Market-Rate Rent	Maximum annual rent per rentable sq. ft. for Market-Rate Housing Area	$_____ / year

1.3 Non-Housing Use Component

Category	Description	Amount
Non-Housing Use Rent Rate	Maximum annual rent per rentable sq. ft. for Non-Housing Use Area	$_____ / year

2. Rentable Area Allocations

(To be updated based on the Rentable Area allocation statement.)

Component	Rentable Area (sq. ft.)	Annual Rent
Affordable Housing Area	_____ sq. ft. *(for info only — rent not by sq. ft.)*	Affordable Housing Rent – Affordable Rent Credit (if earned)
Market-Rate Housing Area	_____ sq. ft.	= $_____
Non-Housing Use Area	_____ sq. ft.	= $_____

EXHIBIT F
Form of Bond

EXHIBIT G

Conditions Precedent to Project Construction

1. Receipt of all Governmental Approvals and Permits
2. Approved Construction Plans
3. Off-Site Infrastructure Approvals
4. Construction Contract
5. Architect and Engineer Contracts
6. Performance and Payment Bonds
7. Construction Schedule
8. Updated Development Cost Breakdown
9. Updated Evidence of Financing
10. Environmental Compliance and Readiness
11. Construction Environmental and Mitigation Plans
12. Archaeological Monitoring Plan
13. Traffic Control Plan
14. Community Notification and Construction Communications Plan
15. Insurance Requirements
16. Representations and Warranties
17. Confirmation of Compliance with all Laws, including without limitation, DCAB, SHPD, Clean Water Act, Energy Conservation (Section 196-9, HRS)
18. Additional Deliverables required by Lessor

EXHIBIT H

Capital Replacement Schedule

EXHIBIT I
Tri-Party Agreement

Report Title:
Department of Housing and Land Management; Pre-Development Agreement; Ground Lease; Affordable Housing Project; Centre Urban Real Estate Hawai'i, LLC; Cardinal Ala Wai LLC.