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Appendix D

(Mezzanine & 2nd Floor)

SAMPLE FORM OF LEASE

LAND COURT SYSTEM **REGULAR SYSTEM**

Return by Mail () Pickup () To:

City and County of Honolulu
Department of Community Services
222 North School Street
Honolulu, Hawai'i 96817

NO. OF PAGES:

PROPERTY DESCRIPTION

Property Address
431 Kūwili Street, Honolulu, Hawai'i 96817
[Mezzanine and 2nd Floor]

DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO: _____
Land Court () Regular () Double ()

Tax Map Key No. (1) 1-5-009:009

LEASE

THIS LEASE (this "Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (the "City"), and _____ a Hawai'i _____ corporation, the principal place of business and _____ mailing _____ address _____ of _____ which _____ is _____, ("Lessee").

WHEREAS, the City's primary charge as articulated in Section 2-102 of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition) ("Charter") is to "serve and advance the general welfare, safety and aspirations of its inhabitants"; and

WHEREAS, providing facilities to serve the needs of persons living with homelessness is a responsibility and priority of the City; and

WHEREAS, Section 6-302 of the Charter charges the Director of the Department of Community Services to "[d]evelop and administer projects, programs and plans of action for ... human services and housing programs"; and

WHEREAS, Section 38-3.4 of the Revised Ordinances of Honolulu 2021, as amended ("ROH"), specifically authorizes the lease of City property to housing and human services providers; and

WHEREAS, the City is entering into this lease in furtherance of its priorities, and in the discharge of its duties and responsibilities;

NOW THEREFORE, in consideration of the respective rights and obligations stated below, the City and Lessee agree as follows:

1. DEMISE AND DESCRIPTION OF PREMISES. The City, in consideration of the rent to be paid by Lessee and of the terms stated below to be performed by Lessee, leases to Lessee, and Lessee accepts the following:

A. Description of Premises. The [mezzanine and 2nd Floor space (together, the "Premises")] located in the Pūnāwāi Building (the "Building") located at 431 Kūwili Street (the "Property"), containing approximately 17,585 square feet [(4,684 square feet for the mezzanine and 12,901 square feet for the 2nd Floor)] of leasable area. A description of the Premises is marked Exhibit "A" and attached hereto and made a part hereof.

B. Access and Revocable License. A nonexclusive right of:

(i) Access to the Premises via all common entrances, lobbies, halls, corridors, stairways, elevators, and other public parts or common areas of the Building and Property, as the same may be designated and/or re-designated from time to time by City ("Access Areas"); and

(ii) Use of unreserved parking stalls located on the Property ("Parking").

The Access Areas and Parking are collectively referred to herein as "Common Areas".

C. Excluded Property. This Lease shall not include use of the first floor of the Building, which is currently used as a Hygiene Center, [the second floor,] the third floor of the Building currently comprised of permanent supportive housing, or assigned and/or reserved parking stalls within the parking lot as determined at the sole discretion of the City.

2. CONDITION OF PROPERTY. Lessee acknowledges that no representations, except as are herein set forth or endorsed hereon, have been made to Lessee concerning the condition of the Premises. Lessee has inspected the Premises and finds the Premises in good condition and accepts the Premises in its present condition, AS IS, WHERE IS AND WITH ALL FAULTS, without warranty, guaranty, liability, or representation whatsoever, express or implied, oral or written, on the part of the City, or any person on behalf of City, regarding the Premises' condition or its suitability for Lessee's purpose. Lessee's act of taking possession of the Premises shall be conclusive evidence as against Lessee that the Premises was then in good and satisfactory condition at the time possession was taken. Lessee will, at the termination of this Lease by expiration or otherwise, return the Premises to the City in good and satisfactory condition, ordinary wear and tear excepted.

3. TERM AND OCCUPANCY. The term of this Lease shall be [four (4) years and eleven (11)

months], commencing on _____ (the "Commencement Date") and expiring on _____, unless terminated earlier as stated below ("Term"). Unless otherwise expressly agreed upon by the parties, City shall deliver and Lessee shall have possession of and the right to occupy the Premises from and after the Commencement Date, and the right to such possession and occupancy shall continue unless and until Lessee shall be in default with respect to any of the terms, covenants, and/or conditions contained in this Lease and on the part of Lessee to be observed and performed.

4. PROPERTY MANAGEMENT. Through a separate contract, the City will be retaining a property manager to perform property management services for the operation of the Building and Property ("Property Manager").

5. RENT. Lessee shall pay to City the following amounts for the Premises ("Rent"):

A. Reserved Rent. Monthly reserved rent of \$[insert rent from Offeror's proposal] for the Premises ("Reserved Rent").

Unless otherwise directed by the City in writing, all payments shall be made in cash or by check to the following address:

City and County of Honolulu
Division of Treasury
Miscellaneous Receivables Section
P.O. Box 135038
Honolulu, HI 96801-5028

B. Gross Income Tax. In addition to the payment of Reserved Rent, Lessee shall pay to City as an additional rent, any and all General Excise Tax imposed by the State of Hawaii ("Gross Income Tax"), which shall be payable on all Reserved Rents and other amounts paid by Lessee to City under the terms of this Lease.

C. Building Reserves. In addition to Reserved Rent, Gross Income Tax and Operating Expenses, Lessee shall pay \$3,854 monthly to the City via the Property Manager for building reserves.

D. Operating Expenses.

1) Payment of Operating Expenses. In addition to the Reserved Rent, Gross Income Tax, and Building Reserves, and at the same time and place as such rent is payable to City, for each and every month during the term of this Lease, Lessee shall pay to City via the Property Manager one-twelfth (1/12) of Lessee's estimated annual Operating Expenses, as defined in Paragraph 5.D.4(c) Percentage Share, and as may be adjusted from time to time by City as provided in this Lease. Said fraction of the estimated Operating Expenses shall be paid in advance, without any offsets or deductions. The Operating Expenses payable for any portion of a particular calendar month shall be a pro-rata portion of the Operating Expenses payable for that full calendar month.

For purposes of this Lease, the "Fiscal Year" for the Building shall be a period of twelve (12) consecutive calendar months, with the initial Fiscal Year commencing on the first day of such month as shall be established by City, in City's sole discretion, and each succeeding Fiscal Year commencing on the anniversary thereof. For each period prior to the establishment of the first Fiscal Year and prior to the beginning of each Fiscal Year during the term of this Lease, City shall make its best estimate of Lessee's Operating Expenses for that Fiscal Year, and City may revise that estimate from time to time during each such period, in accordance with changing

conditions.

2) Adjustment of Operating Expenses. If, at any time during the Fiscal Year, City revises upward its best estimate of Lessee's Operating Expenses for that Fiscal Year, City shall notify Lessee to the extent of such revision. In the event of any such upward revision, Lessee shall pay to City, on or before the date on which the next regular installment of Lessee's estimated Operating Expenses becomes due, the difference between:

(a) The total amount which Lessee would theretofore have been obligated to pay City for the then-current Fiscal Year, pursuant to this paragraph, if said revised estimated Operating Expenses had been in effect continuously from and including the first day of that Fiscal Year, and

(b) The total amount which Lessee theretofore had actually paid City for the then-current Fiscal Year, pursuant to this paragraph. If at any time during the Fiscal Year, City revises downward its best estimate of Lessee's Operating Expenses for that Fiscal Year, City shall notify Lessee of the extent of such revision.

3) Definition. The term "Operating Expenses" shall be construed to encompass any and all taxes, assessments, impositions, duties, charges and other outgoings of every description and character incurred or paid by City in connection with the ownership, operation, and maintenance of the Property, the Building and the Premises for which City or Lessee are now or may during the term of this Lease become liable and whether the same are or shall be assessed to or be payable or dischargeable by law by either City or Lessee. Without limiting the generality of the foregoing, Operating Expenses shall include, but shall not be limited to, any and all payments made on account of the ownership, operation, maintenance, repair and replacement of any and all common areas, facilities, and services including but not limited to the following:

(a) Areas. Management, maintenance, repair, and replacement of the parking lot or area, walkways, landscaped areas, entrance and exit ways to and from the Property and the Building, stairways, hallways, corridors, restrooms and lobby areas.

(b) Facilities. Management, maintenance, repair and replacement of elevators, electrical and plumbing facilities, restroom facilities and supplies, air conditioning and heating equipment, automated control systems, alarm systems, light bulb replacement, and depreciation or rental of maintenance equipment.

(c) Services. Water and electricity for general lighting and office machines and equipment for normal office use during normal business hours, air conditioning during normal City business hours, service contracts for repair, maintenance, replacement, window washing, trash disposal, customary janitorial services, accounting and auditing services, legal services, other professional fees, landscaping services, amortized cost of energy efficient systems, miscellaneous management services, security services or systems, and premiums for insurance coverage, including specifically but not limited to City's coverage for fire, liability and casualty for the Building.

(d) Miscellaneous. Real property taxes, sewage charges and other assessments made under any betterment or improvement law, and reasonable reserves for operating expenses and any other costs, charges, and expenses which under generally accepted accounting principles would be regarded as management, maintenance, and operating expenses. City shall not be liable to Lessee for damages, nor shall the reserved rent herein be abated, for the temporary failure to or the delay in either furnishing any of the foregoing services or operating, maintaining, repairing, or replacing any of the foregoing common areas and facilities when such temporary failure or delay is caused by acts of God, accidents, labor disruptions or disputes of any kind, inability to secure supplies, equipment or labor after reasonable efforts to do so, or by any and all other conditions beyond the control of City. The temporary failure to or the delay in

either furnishing such services or operating and maintaining any of such common areas and facilities shall neither be construed as an eviction, actual or constructive, of Lessee, nor relieve Lessee of and from the duty of observing and performing any of the terms, covenants, and conditions of this Lease.

4) Prorations.

(a) Uniform Accrual. All Operating Expenses shall be deemed to have accrued uniformly through and during the calendar year.

(b) Based on Area of Respective Premises. Lessee understands that the Property, the Building and Premises are taxed, assessed, levied, and charged as one unit and agrees that the total net actual Operating Expenses, as determined hereinbelow, shall be equitably pro-rated by City between Lessee and other tenants of the Property and Building based on and according to the rentable floor area of the respective demised premises of the Lessee and other tenants.

(c) Percentage Share. Lessee's share of annual Operating Expenses shall be conclusively deemed to be \$1.00 per square foot of the Premises for the Term, subject to any adjustments by City in City's sole discretion based on any changes in net rentable area of the Building and changes in Operating Expenses as set forth below.

5) Determination of Annual Operating Expenses.

(a) Estimated. On the anniversary date of each Fiscal Year as shall be determined by City during the term of this Lease, or as soon as possible thereafter, City shall determine, based on the Net Actual Annual Operating Expenses, as defined immediately below, of the immediately preceding calendar year and the information made available either by suppliers or providers of the appropriate goods, services, and utilities or by other reasonably reliable sources, the total dollar amount of Operating Expenses which City reasonably anticipates and projects will be incurred or paid by City for the forthcoming calendar year on account of ownership, operation, maintenance, repair, replacement, and management of the Property and the Building, hereinbefore and hereinafter called "Estimated Annual Operating Expenses."

(b) Actual. On said anniversary date of each Fiscal Year during the term of this Lease, or as soon as possible thereafter, or on the Termination Date of this Lease, as the case may be, or on any date of earlier termination as may be provided herein, City shall determine, in accordance with generally accepted principles of sound accounting practices, the total dollar amount of Operating Expenses which City actually incurred or paid either for the Fiscal Year just ended or for the portion of the Fiscal Year ending on the Termination Date of this Lease, as the case may be, or ending on any date of earlier termination as may be provided herein, on account of ownership, operation, maintenance, repair, replacement, and management of the Property and the Building, hereinbefore and hereinafter called "Actual Annual Operating Expenses," reduced by and net of Lessee's Special Operating Expenses, as determined hereinbelow, hereinbefore and hereinafter called "Net Actual Annual Operating Expenses."

6) Lessee's Share of Annual Operating Expenses.

(a) Estimated. Lessee's Operating Expense, expressed in dollars, shall be determined by multiplying Lessee's proportionate share of operating expenses by the Estimated Annual Operating Expenses.

(b) Actual. Lessee's share of the Net Actual Annual Operating Expenses, expressed in dollars, shall be determined by multiplying Lessee's proportionate share of operating expenses by the Net Actual Annual Operating Expenses hereinbefore and hereinafter called

"Lessee's Share of Net Actual Annual Operating Expenses."

7) Amount of Deficiency. City shall determine the total dollar amount of the excess of Lessee's Share of Net Actual Annual Operating Expenses over Lessee's Share of Estimated Annual Operating Expenses by subtracting (i) the dollar amount of Lessee's Share of Estimated Annual Operating Expenses paid by Lessee and received or collected by City through the lump sum payment and each monthly installment during either the Fiscal Year just ended or the portion of the Fiscal Year ending on the Termination Date of this Lease, as the case may be, or ending on any date of earlier termination as may be provided herein, from (ii) Lessee's Share of Net Actual Annual Operating Expenses, hereinbefore and hereinafter called the "Amount of Deficiency."

8) Amount of Overpayment. City shall determine the total dollar amount of the excess of Lessee's Share of Estimated Annual Operating Expenses over Lessee's Share of Net Actual Annual Operating Expenses by subtracting (i) Lessee's Share of Net Actual Annual Operating Expenses, from (ii) the dollar amount of Lessee's Share of Estimated Annual Operating Expenses paid by Lessee and received or collected by City through lump sum payment and each monthly installment during either the Fiscal Year just ended or the portion of the Fiscal Year ending on the Termination Date of this Lease, as the case may be, or ending on any date of earlier termination as may be provided herein, hereinbefore, and hereinafter called "Amount of Overpayment."

9) Annual Adjustments Based on Amounts of Deficiency or Overpayment. Within ten (10) days of written notice by City, Lessee shall pay to City any Amount of Deficiency so determined. In the event City determines an Amount of Overpayment, Lessee shall be entitled to a refund equal to the Amount of Overpayment. Lessee shall be entitled to a refund equal to the Amount of Overpayment within thirty (30) days after the determination of same by City, or at City's option, City may credit said Amount of Overpayment to future payments of rent.

10) Determination of Lessee's Special Operating Expenses. In the event City, in its sole opinion and judgment, shall determine that Lessee, in order to satisfy its special requirements or needs, has used or consumed goods, services, and/or utilities which is in excess of that amount or level considered by City to or which should otherwise be reasonably normal or customary for premises of similar size and shall further determine that a portion of the Actual Annual Operating Expenses was attributable to or caused by Lessee's said excess use and consumption of same, then and in that event City shall determine the dollar amount of that portion of the Actual Annual Operating Expenses reasonably representing Lessee's said excess use and consumption of goods, services, and/or utilities, hereinbefore and hereinafter called "Lessee's Special Operating Expenses." Without limiting the generality of the foregoing, Lessee's Special Operating Expenses shall include, but shall not be limited to, the excess use or consumption of electricity needed to supply any air conditioning and to operate any office machines or equipment after normal business hours. City may install, at Lessee's expense, a meter(s) in or for the Premises to measure and more accurately determine the amount or level of services actually used or consumed by Lessee.

11) Audit. At City's option, Actual Annual Operating Expenses for the Building may be audited by a firm of certified public accountants selected by City. The audited statement, if any, shall be available for inspection by Lessee, or its representative designated in writing during normal business hours in City's office.

12) Review of Records. Lessee shall have the right to reasonably review supporting data for any portion of the Actual Annual Statement of Operating Expenses that Lessee claims is incorrect, provided that Lessee is not in default under this Lease. Lessee may exercise its right to review by delivering to City written notice within thirty (30) days after City's Actual Annual Statement of Operating Expenses is sent, specifying the portions of the statement claimed to be incorrect. Lessee shall simultaneously, with its written notice, pay to City all amounts due from Lessee as stated in the Actual Annual Statement of Operating Expenses. Lessee shall not withhold, deduct, or offset any monetary obligation Lessee has to City under the Lease, including payment of reserved rent, Estimated Operating

Expenses, and operating expense reconciliation. Lessee's right to review may be exercised once for each Actual Annual Statement of Operating Expenses, and shall be waived by Lessee's failure to comply with the procedure provided in this paragraph. Lessee acknowledges that any records reviewed under this paragraph is confidential information and agrees not to disclose to anyone other than the accountant(s) performing the review and to Lessee's principals who receive the results of the review. The disclosure of such information to anyone other than such accountant(s) or principals of Lessee shall constitute a material breach of this Lease.

13) Finding of Error. Any errors discovered by a review of records under this paragraph shall be promptly corrected, provided that City may have another independent firm of certified public accountants review the records. In the event the two accounting firms disagree, the review that comes closest to City's Annual Statement shall be deemed to be correct. In the event the review of records reveals that Lessee has overpaid operating expenses, City shall credit the amount of such overpayment toward Lessee's future payments of Estimated Operating Expenses. In the event the review of records reveals that Lessee has underpaid operating expenses, Lessee shall pay City the amount of such underpayment with Lessee's next monthly payment of Estimated Operating Expenses.

6. PAYMENT OF RENT. Lessee shall pay to the City, without any deduction and without any notice or demand, Reserved Rent on or before the first day of each and every month at the location specified in Paragraph 5.A. Reserved Rent.

A. Pro-Rata Rent. The Reserved Rent payable for any portion of a particular calendar month shall be a pro-rata portion of the Reserved Rent payable for that full calendar month.

B. Delinquent Payments. Reserved Rent and every other payment due hereunder from Lessee to City, which is not paid by the date it is due and payable, shall bear interest at the maximum rate then allowed by law, from that due date until paid. Any payment due and payable but not paid within ten (10) business days shall be considered delinquent and City may send Lessee a written notice of default. If Lessee has become delinquent on the payment of Reserved Rent provided herein for any five (5) monthly due dates out of any twelve (12) month period, such delinquent performance shall constitute a default by Lessee under this Lease and City may, at its election, immediately terminate this Lease forthwith by giving Lessee notice of its election to do so.

C. Right to Collect. If (i) the Premises is sublet or occupied by anyone other than Lessee and Lessee is in default hereunder, or (ii) this Lease is assigned by Lessee, City may collect (and the assignee, subtenant or occupant is hereby authorized to pay City) the rent directly from the assignee, subtenant, or occupant, and apply the net amount to the Reserved Rent herein specified or other charges, costs, or fees specified herein; but no such collection shall be deemed a waiver of the covenant herein relating to assignment and subletting, or an acceptance of such assignee, subtenant, or occupant, or a release of Lessee from further performance of the covenants herein contained.

7. QUIET ENJOYMENT. Upon payment of the Rent and all other charges, payments, and assessments herein provided, if any, and upon faithful performance and observance of the terms, covenants and conditions of this Lease by Lessee, Lessee shall peaceably hold and enjoy the Premises for the Term without hindrance or interruption by the City or any other person or persons lawfully claiming by, through, or under the City, except as may be stated herein.

8. AMENDMENTS TO FACILITATE FINANCING. This Lease and any other documents relating to the Premises may be amended to comply with reasonable changes requested by a permanent lender financing the Premises, if approved by the City, in advance. It is expressly understood and agreed that the City reserves the right to reject any request for an amendment of this Lease if the proposed amendment will adversely affect the City's rights in the Premises. At no time shall the length of the Lease exceed 80% of the useful life of the building, which at the time of signing is 19 years or the balance remaining of the original 30-year estimated useful life of the building based upon a straight-line depreciation method for non-residential real property.

9. USE AND TRANSFER OF PREMISES. The Premises shall be used by Lessee exclusively as an outpatient medical clinic and low- to moderate-income housing and/or medical respite that serves homeless individuals and households and provides housing, and healthcare, or other social services (the "Project"), in accordance with the Request for Proposal dated _____, and Lessee's proposal dated _____, all of which are incorporated herein by reference. In addition:

- A. Lessee shall occupy and use the Premises solely to deliver health and supportive services, permanent, transitional housing, and/or respite housing to individuals and/or families experiencing homelessness, and for no other purpose without City's prior written consent, in accordance with the terms and conditions below:
- 1) The Mezzanine level shall support the operations of an Outpatient Clinic (the "Outpatient Clinic" or the "OC"), known and referred to as the Pūnāwai Clinic, that provides organized non-emergency services for the diagnosis and treatment of persons experiencing homelessness who are ambulatory and do not require hospitalization. At all times, Lessee shall operate the Outpatient Clinic in compliance with any State and Federal laws, regulations, and guidance related to the operation of outpatient medical clinics, including any applicable regulations promulgated by the State of Hawai'i, Department of Health;
 - 2) The 2nd Floor shall support permanent, transitional, and/or respite housing for persons experiencing homelessness, and/ the programmatic needs of the patients of the OC located on the Mezzanine level by offering medical respite space, in accordance with the proposal identified above in Section 9. Use and Transfer of Premises;
 - 3) [Rent for the residential units shall not exceed the amount considered affordable for households earning sixty percent (60%) of the area median income (as defined and determined by the United States Department of Housing and Urban Development). Initial rent shall be \$_____per unit, and any changes proposed by the Lessee shall be subject to City approval;]
 - 4) Residents shall be limited to persons experiencing homelessness, with priority given to chronically homeless persons and households and as established in the request for proposal scope of work;
 - 5) To the extent practicable, tenant selection shall be integrated with the Coordinated Entry System ("CES") and the CoC's agreed upon CE Assessment tool, used by State and local government to help identify homeless households with the best fit for the Project;
 - 6) All activities and services related to use of the Premises by Lessee shall be reported in the Homeless Management Information System ("HMIS") on an ongoing basis;
 - 7) Regular reporting by Lessee on the activities, services, and clients served through the Project by Lessee may be required by the City, on a scope and schedule determined at the sole discretion of the City;
 - 8) Lessee shall be solely responsible for the operation, management, staffing, supervision, screening, licensing, permitting, certification,

registration, accreditation, and delivery of all services conducted on the Premises related to the Project;

- 9) Lessee shall establish and enforce appropriate policies and procedures concerning client eligibility, supervision, behavioral incidents, emergencies, crisis intervention, security, discharge, and transition;
- 10) Lessee shall immediately notify the City of any suspension, expiration, investigation, enforcement action, or loss of any material license, permit, certification, registration, accreditation, or approval issued by any regulatory agency or accrediting body related to its use of the Premises as permitted under this Lease;
- 11) Lessee shall not accept or impose any grant, funding, contractual, regulatory, or program requirement related to the Project that purports to bind City or impose any obligation upon City without City's prior written consent.

B. Lessee shall be responsible for providing the following property management functions related to housing within the Premises:

- 1) Manage any direct resident leases for the permanent supportive housing component;
- 2) Manage all contracts for maintenance of common areas within the Premises including security and fire alarm system contracts, if any;
- 3) Manage project level bookkeeping records to include collection of rental revenue and payment of property related expenses such as utility, security, and insurance invoice;
- 4) Maintain three (3) separate bank accounts and provide City access and reports on each: Operating Account, Security Deposit Account, and Reserve Account; and
- 5) Submit an Annual Financial Report prepared by a Certified Public Accountant to the City within ninety (90) calendar days of the close of each fiscal year.

C. Lessee shall participate in monthly coordination meetings with the ground floor tenant (Hygiene Center Operator) and Property Manager to ensure collaboration of services, fluidity of program, and resolution of any operating concerns. City shall attend any meeting upon the prior written request of the Lessee, Hygiene Center Operator or Property Manager; such requests are to be submitted to the City no fewer than fourteen (14) calendar days in advance of the meeting. Lessee shall make good faith, reasonable efforts to coordinate with the Property Manager on the occupancy of second and third floor residential units based upon the needs of patients of the Outpatient Clinic who require continued medical care, and the needs of persons experiencing homelessness who require permanent supportive housing, and to place referrals from the Property Manager if there is space available.

10. UTILITIES AND SERVICES. Lessee shall arrange, subscribe, contract and pay directly to the particular provider or supplier for all services and utilities related to the Premises and all other similar charges for the Premises prior to such charges becoming delinquent.

11. REGULATING COMMON AREA. City reserves the right to make, prescribe, amend and enforce rules and regulations as to the use and maintenance of such areas which Lessee is given a right to use in common and share with others entitled thereto for the proper maintenance, protection, safety, order, quiet enjoyment, and cleanliness of the Building and Property, which may be amended from time to time by City in its discretion. Lessee shall at all times observe, abide, and comply with such rules and regulations received from and so promulgated by City. It is expressly understood and agreed that City reserves and shall have the right to assign exclusive parking stall(s) as to all or a portion of the common parking areas to Lessee and others entitled thereto to promote more orderly use of the parking areas.

12. OBSERVANCE OF LAWS AND COVENANTS. Lessee shall at all times keep the Premises in a reasonably clean and sanitary condition, shall observe all laws, ordinances, rules and regulations now or hereafter made by any governmental authority which are applicable to the Property, Building and Premises and will observe all covenants and restrictions affecting the Property, Building and Premises. Lessee shall be responsible for any and all costs associated with such compliance.

13. IMPROVEMENTS REQUIRED BY LAW. Subject to Section 14 below, Lessee shall build, maintain, and repair, at its sole expense, all improvements which may be required by law in connection with its use of the Premises.

14. CONSTRUCTION OF IMPROVEMENTS.

A. City's Prior Approval. Lessee shall not construct or make any addition, improvement, repair, renovation, modification or alteration ("Improvements"), to or of the Premises, except in accordance with plans and specifications therefor first approved in writing by City, unless the aggregate cost thereof shall be less than FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00).

B. Bond. Before the commencement of construction of any improvement on the Premises exceeding \$5,000.00 in costs, Lessee shall show evidence satisfactory to City that Lessee has sufficient current funds to pay for the entire cost of such construction and will obtain and deposit with the City, a good and sufficient surety bond naming the City as an additional obligee, in a penal sum of not less than 100% of the cost for all labor and materials to be furnished and used for such construction, with a corporate surety authorized to do business in Hawai'i guaranteeing:

- (1) the full and faithful performance and completion of the construction contract; and
- (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

15. REPAIRS AND MAINTENANCE. Lessee shall maintain and keep in repair, at Lessee's own cost and expense, the interior of the Premises, including all electrical installations, all plumbing and equipment, all hardware, all interior painting, all doors, all windows and the replacement of all broken glass, whether ordinary window glass, plate glass show windows or other glass.

16. WASTE AND UNLAWFUL USE. Lessee shall not make or suffer any strip, waste, or unlawful, improper, or offensive use of the Property.

17. INSPECTION. The City and its agents may enter and inspect the Property at all reasonable times during the Term. Subject to the provisions of Sections 11-16 above, Lessee shall, at its own expense, repair all defects in the Property within thirty (30) calendar days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within thirty (30) calendar days, commence such repair within that time period and act with diligence until the repair is completed. If Lessee shall fail to commence or complete the repairs within the period provided above, the City may make such repairs without prejudice to any remedies available to the City under this Lease or at law for Lessee's default of its obligations under this Lease. If the City makes such repairs, Lessee shall pay to the City the cost thereof plus interest at the rate of twelve percent (12%) per annum on demand, and if Lessee shall default on such payments, City shall have the remedies provided in this Lease. The City shall not be responsible

to Lessee for any loss or damage that may be caused to the Property or business of Lessee by reason thereof.

18. AUDITS. All of Lessee's records relating to the Premises shall be available for examination during normal business hours by the City, its auditors, or other agents.

19. NEITHER PARTY AGENT, JOINT VENTURER NOR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, nor a joint venture, nor partner with, the other party.

20. INSURANCE. During the Term, Lessee shall procure at its own cost and expense, the following types of insurances coverages and limits:

A. Property And Business Income Insurance. "Special" form property insurance, including coverage for hurricane, Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation. Such policies shall be made payable to City and Lessee as their interests may appear. Should any of the buildings and/or other improvements now or hereafter erected on the Property sustain loss or damage, City shall have the sole discretion to determine whether to repair, rebuild or replace such buildings and/or improvements. If City elects not to repair or rebuild, City shall provide written notice to Lessee of such election, at which time Lessee shall, after payment to City of all accrued rent and unpaid taxes and all other required payments, be relieved of any further obligation hereunder. Lessee shall report the occurrence of any loss or damage to the Property to City as soon as practicable within 48 hours after such occurrence.

B. Liability Insurance. Liability insurance shall cover the Lessee and/or any sub-Tenants, concessionaires, licensees or other persons in, on or about the Premises, with limits not less than the following:

- 1) Commercial General Liability insurance written on an "occurrence" form covering claims arising out of Lessee's premises, operations or independent contractors resulting from bodily injury & property damage, products & completed operations, and personal & advertising injury liability:

Bodily Injury and Property Damage Combined Single Limit:

\$1,000,000 Each Occurrence.

\$2,000,000 General Aggregate per policy year.

\$2,000,000 Products and Completed Operations Aggregate per policy year.

Personal and Advertising Injury:

\$1,000,000 Each Occurrence.

Medical Expenses:

\$1,000 Any One Person.

Damage to Rented Premises:

\$250,000 Each Occurrence.

- 2) Automobile Liability insurance, including coverage for all owned, non-owned, hired autos:

\$1,000,000 Combined Single Limit, Bodily Injury and Property Damage - Each Accident.

- 3) Workers Compensation as required by statute, and Employer's Liability:

Bodily Injury by Accident - \$500,000 Each Accident.

Bodily Injury by Disease - \$500,000 Each Employee.

Bodily Injury by Disease - \$500,000 Policy Limit.

- 4) Excess/Umbrella Liability insurance written on an "occurrence" form providing excess limits over the Commercial General Liability, Automobile Liability and Employer's Liability coverage limits:
\$2,000,000 Each Occurrence.
\$2,000,000 Aggregate.
- 5) Professional Liability (Errors & Omissions) insurance covering professional services performed by the Lessee for City as real estate manager of the Premises, and medical malpractice for services rendered (or failure thereof) in Lessee's use of the Premises as a medical clinic:
\$3,000,000 Each Common Cause
\$3,000,000 Aggregate

C. Crime Insurance. Crime insurance covering the loss of money due City from burglary, robbery, forgery, alteration, computer fraud including electronic funds transfer, employee dishonesty and/or other crimes:
\$250,000 Each Occurrence.

D. Policy Form: All policies of insurance provided for herein shall be issued by insurance companies with an A.M. Best's insurance report's rating of A- or better, financial category class of VII or higher and qualified to do business in the State of Hawaii, and shall name Lessee as the named insured and City and any such other persons or firms as City specifies from time to time, as additional insureds and/or loss payee as their interests may appear. Such policies shall be for the mutual and joint benefit and protection of City, Lessee and such other persons hereinabove mentioned or otherwise specified by City having an insurable interest, but without any cost to City. Evidence of such policies in the form of an Evidence of Property Insurance and Certificates of Insurance shall be delivered to City prior to, or concurrently with, the delivery of possession of the Premises to Lessee, and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All Commercial General Liability policies shall contain a provision that City although named as additional insureds, shall nevertheless be entitled to recovery under said policies for any loss occasioned to City, their servants, agents and employees by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All evidence of insurance delivered to City must contain a provision that the company writing said policy will give to City thirty (30) days' prior written notice of any cancellation or lapse. If Lessee's insurance company or its insurance agent/broker will not agree to provide such notice, Lessee shall assume the obligation to provide City with such written notice. All policies required to be maintained by Lessee under this Lease shall be written as primary policies, not contributing with and not in excess of coverage which City may maintain.

E. Waiver of Subrogation: Lessee hereby waives, on Lessee's behalf and on behalf of any insurance carrier of Lessee, any claim which Lessee might otherwise have against City or City's Affiliates arising out of loss or damage, including consequential loss or damage, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage, or from any loss or damage required to be insured against by Lessee. Because Lessee's employees perform and use services in and around City's premises and accepts the condition of these premises as is, Lessee further agrees to require its workers compensation carrier to waive its right of subrogation against City and any Additional Insureds.

F. Inspection of Policies/Adequacy of Coverage: The adequacy of the coverage afforded by Lessee's policies of insurance shall be subject to review by City from time to time, and if it appears in such a review that a prudent business person in Honolulu, Hawaii, operating a similar business to that operated by Lessee on the Premises, would increase the coverage and/or limits of such insurance, Lessee shall increase the amount and/or scope of its coverage as required by City up to the

limits maintained for other similar commercial property in the State of Hawaii. To effectuate the foregoing, Lessee agrees to permit City at all reasonable times to inspect the policies of insurance of Lessee covering risks upon the Premises for which policies or copies thereof are not required to be delivered to City.

G. No Limitation of Liability: City does not in any way represent that the insurance coverages or the limits of insurance hereinafter specified are sufficient or adequate to protect Lessee's or City's interests or liabilities and Lessee's liability under the terms of this Lease shall not be limited to the minimum limits as required to be carried by Lessee herein.

21. CITY'S COSTS AND EXPENSES. Lessee shall pay to the City on demand all costs, including reasonable attorneys' fees, incurred by the City in enforcing any of the terms of this Lease, in remedying any breach of the terms of this Lease by Lessee, in recovering possession of the Premises, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee to which the City shall be made a party without any fault on the City's part.

22. NON-LIABILITY OF CITY.

A. Risk of Loss. Any and all Improvements, furniture, fixtures, furnishings, equipment, inventory, supplies and other property, whether owned by Lessee or a third party or anyone claiming under either such Lessee or third party, which are placed, located or stored in, upon or about the Premises, the Building and the Property shall be at Lessee's or such other owner's own sole risk.

B. Property Loss or Damage or Personal Injury or Death. City shall not be liable either for any loss or damage to any property or for any personal injury or wrongful death sustained or suffered by Lessee (including its officers, employees, agents, licensees or invitees) or a third party, or anyone claiming under either Lessee or such third party, on or about the Premises, the Building and the Property. If any such property damage or loss shall be caused by any act or neglect of Lessee, City may, at its option, repair and remedy such damage or loss, whether caused to the Premises, the Building and the Property, or to the tenants or occupants thereof, and Lessee shall thereupon reimburse City for the total cost of such property damage or loss, whether to the Premises, the Building or the Property, or to the tenants or occupants thereof.

C. Indemnification. Lessee shall indemnify and defend the City, and hold the City's Representatives harmless against all claims whatsoever for:

- (a) failure of Lessee or its agents and employees to make any required disclosures in connection with the Property to users or any other person as required by law;
- (b) any misrepresentations made by Lessee or its agents and employees in connection with the Property to any person;
- (c) the failure of Lessee or its occupants, its clients, agents, employees, tenants, contractors, or subcontractors to observe all applicable laws and covenants as stated herein;
- (d) the failure of Lessee to observe and perform its obligations stated in this Lease; and
- (e) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the use or occupancy of the Property by Lessee or any patient, client, tenant, occupant, or other person claiming by, through or under Lessee, or any accident or fire on the Property, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Property in a safe condition, or any other liability whatsoever on account of the Property, or on account of the acts or omissions of Lessee, its employees, agents, contractors, subcontractors, tenants, occupants, patients, clients, or any other persons present upon the Property in connection with Lessee's use or occupancy thereof.

In connection with the foregoing, the Lessee will reimburse the City for all its costs and expenses including but not limited to reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within the Property at the sole risk of Lessee and hold the City harmless for any loss or damage thereto by any cause whatsoever.

D. City's Gross Negligence or Willful Misconduct. Nothing herein shall be deemed to relieve City from damages or liability caused by the gross negligence or willful misconduct of and on the part of the City, its employees, or agents.

23. LIENS. Lessee shall keep the Property free of all liens and encumbrances arising out of its activities, except in connection with financing of the Property (which liens and encumbrances shall be subject to the City's prior written consent). Should any lien or encumbrance attach to the Property without the City's prior written consent, Lessee shall then:

(a) Immediately notify the City of such attachment, and

(b) Pay the claim and cause the same to be satisfied and discharged of record, and if Lessee shall not pay the same and cause it to be satisfied and discharged of record promptly, City may, at its option, pay the same and any amount paid by the City shall become immediately due and payable by Lessee to City as additional rent.

Lessee will indemnify and hold the City its employees, officers, directors, agents, contractors, subcontractors or representatives harmless against such lien or encumbrance and all expenses incurred by the City including but not limited to reasonable attorneys' fees.

24. CONDEMNATION. At any time or times during the Term, the Premises or any part thereof shall be required, taken, or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the Premises so required, taken or condemned shall at once cease and terminate, and Lessee shall not by reason thereof be entitled to any claim against the City or others for compensation or indemnity for the leasehold interest, and all compensation and damages payable for or on account of the Premises or portion thereof shall be payable to and be the sole property of the City. Lessee shall, however, have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Lessee in its own right for or on account of any damages to Lessee's business or its fixtures, inventory, or equipment, or the expense caused to Lessee by the necessity of removing the foregoing or any other items from the Premises, the Building and/or the Property.

25. TRANSFER BY CITY. The City may transfer, assign, or sell this Lease, or any interest in this Lease or the Property, at any time, with prior notice to Lessee, upon which transfer, assignment or sale, City shall be released of all liability hereunder. Lessee shall attorn to the transferee, assignee, or purchaser, and shall perform all obligations required to be performed by Lessee under this Lease after the date Lessee is notified of the transfer, assignment, or sale, as though the transferee, assignee or purchaser was the original lessor named in this Lease.

26. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this Lease, to which the City has consented in writing, the City will not terminate this Lease because of any default by Lessee if, within a period of thirty (30) calendar days after the City has mailed written notice to the mortgagee of intention to terminate this Lease at the last known address thereof, such mortgagee shall either cure such default or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the terms of this Lease until this Lease is sold upon foreclosure. Upon such undertaking, the City will not terminate this Lease within such further time as may be required by the mortgagee to complete the foreclosure process provided that such process is pursued and completed diligently. Ownership by the same person of both the fee and leasehold estates in the Property shall not affect the merger thereof without the prior written consent of any mortgagee to such merger.

27. DEFAULT. Lessee shall be in default of its obligations under this Lease upon occurrence

of any of the following events (hereinafter called "Events of Default"):

- A. Failure to Make Payments. Lessee's failure to pay Reserved Rent or other charges required to be paid by Lessee under this Lease within ten (10) calendar days of its due date; or
- B. Failure to Comply. Lessee's failure to comply with any other provision of this Lease which Lessee is obligated to comply with within thirty (30) calendar days of written notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within thirty (30) calendar days, then so long as Lessee has commenced the action to comply and diligently prosecutes the same, Lessee shall not be in default; or
- C. Abandonment. Lessee's abandonment of the Property, for a period of thirty (30) consecutive days or more; or
- D. Assignment to Creditors. Lessee's assignment of this Lease for the benefit of creditors; or
- E. Writ of Execution. Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or
- F. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or
- G. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of thirty (30) days after written notice to Lessee; or
- H. Transfer of Control. The change or transfer of ownership or control of Lessee's business by and from the owners or stockholders presently having such control at the Commencement Date to any other person or stockholder, without the prior written consent of City, as a result of any sale of assets, sale of voting stock, merger, consolidation, or otherwise; or
- I. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to the City concerning the financial condition or credit standing of Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or the City reasonably determines that its position as the lessor hereunder is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

28. REMEDIES.

- A. Interest and Late Payment Charge. If Lessee shall be delinquent in payment of the rent or the payment of any other charge required to be paid by Lessee under this Lease, Lessee shall pay, with each overdue payment, interest on the overdue payment at the rate of twelve percent (12%) per year. In addition to interest, Lessee shall also pay to the City a late fee equal to five percent (5%) of the overdue payment to cover the City's administration costs of processing such overdue payment.

- B. Remedies Upon Default. Upon occurrence of any Event of Default, the City may exercise any of the following remedies:
- 1) Re-entry; Termination. The City may elect to terminate this Lease, by providing a written notice to Lessee, and may terminate the rights of Lessee to this Lease and the Premises, and may reenter the Premises to take possession of it;
 - 2) Re-entry; No Termination. Without terminating this Lease, the City may reenter the Premises and take possession and may, but is not obligated to, relet any portion or all of the Premises for the account of Lessee; provided that the City may terminate this Lease at any time after Lessee's default, even if the City has relet any portion of the Premises for the account of Lessee.
 - 3) Cure. The City may but shall not be obligated to cure any Event of Default and charge Lessee for the cost of effecting such cure.
- C. Exercising the City's Remedies. Upon the City exercising any of its above-listed remedies, Lessee agrees to the following:
- 1) Removal of Persons and Personal Property. If City reenters the Property and takes possession, unless otherwise directed by the City, the Lessee shall, at its sole expense, remove all persons and its personal properties from the Property by any lawful means available and repair any damage to the Property caused thereby. The City may, at its sole discretion and at the expense of Lessee, remove all persons and Lessee's personal properties from the Property and enforce its right against that property, or store Lessee's personal properties in a City-designated location, which the City may dispose of if Lessee does not reclaim the property within thirty (30) calendar days after City has re-entered the Property.
 - 2) No Termination. Unless the City provides written notice to Lessee of its intent to terminate this Lease, the City's re-entry into the Property or its action to obtain possession of the Property shall not be deemed to constitute a termination of this Lease, or a termination of Lessee's obligation to pay rent or any other charge required to be paid by Lessee under this Lease, or a termination of any other liability of Lessee under this Lease including but not limited to Lessee's liability for damages.
 - 3) Reletting. If the City elects to relet the Property to a replacement lessee, with or without terminating this Lease Agreement, the City may enter into an agreement with the replacement lessee for such rent and on such terms as the City in its sole discretion deems appropriate. Once the City takes possession of the Property, it may repair or alter the Property to suit the purposes of the replacement lessee or to enable the City to relet the Property or any portion thereof.
 - 4) Application of Rent. The City shall apply the rent and other payments received from the replacement Lessee, in the following order and priority: (1) to the costs incurred by City to recover possession of the Property, including but not limited to reasonable attorney's fees and costs; (2) to the costs incurred by City to relet the Property, including but not limited to the costs of repairs and alterations, and broker's commissions; (3) to the unpaid rent and other payments required to be paid by Lessee under this

Lease. If there shall be a surplus, City may retain such surplus to pay subsequent amounts which become due and payable by Lessee under this Lease, and if there shall be any surplus at the expiration of this Lease Agreement, City shall pay such surplus to Lessee at the expiration of this Lease. If there shall be any deficiency between the rent and payments received from the replacement Lessee and the amount required to pay the items described in subparagraphs (1), (2), and (3) of this paragraph, Lessee shall be liable to City for such deficiency.

- 5) Legal Action. City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease, even though such action is initiated prior to termination of this Lease or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease Agreement and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.
- 6) Additional Remedies. If City terminates this Lease, then in addition to any other remedy available to City, City may recover from Lessee either: (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.
- 7) Remedies Cumulative. The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.
- 8) Costs and Attorney's Fees. The City shall be entitled to recover from Lessee all costs incurred by the City in enforcing any provision of this Lease, which Lessee is required to comply with, including but not limited to reasonable attorney's fees and costs.

29. SURRENDER: HOLDING OVER.

- A. Surrender. Upon expiration or earlier termination of this Lease, Lessee shall immediately vacate and surrender the Property to the City, together with all improvements, additions and fixtures then on the Property, whether installed by the City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; and free and clear of all encumbrances (including, but not limited to, all claims, liens, charges or liabilities); provided that the City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease within seven (7) days following the expiration or earlier termination of this Lease. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.

- B. Failure to Restore. If Lessee fails to complete the removal and the restoration in the manner and within the time specified by the City, the City may complete such removal and restoration in which event Lessee shall be liable to the City for all costs incurred by the City which amount shall be immediately due and payable after notice to Lessee by the City of the amount due.
- C. Holding Over. If Lessee remains in possession of the Property after the expiration or earlier termination of this Lease without the consent of City, Lessee shall be liable for:
- (1) two times the fair market rent for the Property, determined as of the expiration or earlier termination of this Lease,
 - (2) all other charges payable by Lessee pursuant to other provisions of this Lease, and
 - (3) all other damages the City may sustain as a result of such wrongful holdover. Acceptance of rent or other payments by the City from Lessee during any holdover period shall not be deemed to create a new tenancy in favor of Lessee, but to the contrary, the City may initiate action against Lessee at any time to recover possession of the Property, and to recover all damages sustained by the City as a result of Lessee's wrongful holdover.

30. DISSOLUTION OF LESSEE. In the event of the corporate dissolution of Lessee, the City may terminate this Lease. Should the Lessee or its assigns have a change of non-profit status, the Lessee shall immediately notify the City, who may terminate the Lease.

31. NON-WAIVER. Neither the acceptance of Reserved Rent by the City nor City's failure to enforce and insist on specific performance of any term, covenant, or condition herein set forth shall be construed as a waiver by City of any breach or default by Lessee of any term, covenant, condition herein contained, nor shall any custom or practice which may develop or grow up between the parties in the course of during the original and extended, if any, term of this Lease be deemed a waiver or be deemed to lessen the rights of the City.

32. HAZARDOUS SUBSTANCES. Lessee shall not cause, permit, or allow the storage, use, escape, disposal or release of any hazardous material in or about the Property by Lessee, Lessee's agents, employees, contractors, invitees or licensees, except in full compliance with all hazardous materials laws. Without limiting the foregoing, Lessee shall ensure that all medical supplies are properly handled, all medical wastes are properly disposed of, and all pretreatment requirements satisfied to prevent the discharge of pollutants into the City's wastewater system. "Hazardous Material" means and includes any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" "hazardous substances" or "toxic substances" under or for the purposes of any Hazardous Materials Laws (defined below).

"Hazardous Materials Laws" means and includes all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. section 5101, et seq. and implementing regulations at 49 CFR Part 171, the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, Chapter 128D, Hawaii Revised Statutes, as amended ("HRS"), Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and

any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any storage, presence or release of any Hazardous Material, then the reasonable costs thereof shall be reimbursed by Lessee to the City upon demand as additional charges if such requirement applies to the Property. In addition, Lessee shall execute affidavits, representations and the like from time to time at the City's request concerning Lessee's best knowledge and belief regarding the presence of hazardous substances or materials on the Property. In all events, Lessee shall defend, indemnify and hold harmless the City and the City's Representatives from and against any claims, demands, actions, lawsuits, proceedings, losses, damages, liabilities, fines, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, removal or presence of Hazardous Material by Lessee or attributable to Lessee or Lessee's agents, employees, contractors, invitees or licensees, including, but not limited to any damages, the cost of clean-up or detoxification of the Property and the preparation and implementation of any closure or remedial or other required plans and all reasonable costs and expenses incurred by the City in connection with such items including, but not limited to, attorneys' fees and costs. The foregoing covenants shall survive the expiration or earlier termination of this Lease.

33. ADA COMPLIANCE. As between the City and Lessee, Lessee shall be responsible for ensuring that the Property, all alterations and improvements in the Property, and Lessee's use and occupancy of the Property complies with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, *et seq.*), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect therewith (the "ADA"). However, Lessee shall not make any such alterations or improvements except in accordance with the provisions of Sections 11-16 above.

34. SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY. All entities having a contract with the City (referred to in this Section as a "Contractor") must comply with ROH Chapter 1, Article 18 ("Article 18") on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the Contractor's business and includes the following:

- A. Prohibitions against an officer's or employee's sexual harassment of the following:
 - 1) Another officer or employee of the employer;
 - 2) An individual under consideration for employment with the employer; or
 - 3) An individual doing business with the employer;
- B. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Article 18 § 1-18.4(a)(1);
- C. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- D. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

- E. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- F. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- G. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
- H. Disciplinary action which may be imposed on an officer or employee who committed a prohibited act; and
- I. For a Contractor with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this Section shall be in effect for at least the duration of the Contractor's contract with the City. The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Article 18.

35. OTHER POLICIES FOR EMPLOYER HAVING A CONTRACT WITH THE CITY. All entities having a contract with the City (referred to in this Section as a "Contractor") must have a plan to ensure language access to the public as required under Title VI of the Civil Rights Act of 1964.

36. MISCELLANEOUS PROVISIONS

- A. Amendment. The provisions of this Agreement may be amended only by each party executing a subsequent written Agreement which states each amended provision.
- B. Assignment. Assignment of this contract or subletting shall be upon prior written consent by the City.
- C. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawai'i as that law is construed and amended from time to time.
- D. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Agreement.
- E. 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.

- F. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement in order to assure compliance with all City and County of Honolulu, State of Hawai'i, federal, and other statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to the Lessee. Lessee agrees that it shall immediately take any and all reasonable steps to comply with such amendments.
- G. Consent; Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- H. Construction. Each party named in this Agreement acknowledges and agrees that each party:
 - (i) is of equal bargaining strength;
 - (ii) has actively participated in the negotiation and preparation of this Agreement;
 - (iii) has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate;
 - (iv) has ensured review of this Agreement by any legal counsel or advisors engaged by the party; and
 - (v) has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.
- I. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.
- J. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- K. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.
- L. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, 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) days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.
- M. Gender; Number. In this Agreement, 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.
- N. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an

independent contractor, and neither party hereto is a partner, agent and/or employee of the other.

- O. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Agreement which is not included as a provision in it.
- P. 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 its reasonable expenses, including attorneys' fees and costs.
- Q. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- R. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, 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 another party.
- S. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- T. 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.
- U. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.

(1) CITY AND COUNTY OF HONOLULU:
Department of Community Services
Community-Based Development Division
222 North School Street
Honolulu, Hawai'i 96817
Attention: Director

(2) (Lessee name and address)
Address:

- V. Use of Public Buildings by Blind or Visually Handicapped Persons. Lessee shall ensure that any vending facilities on the Property, including but not limited to vending machines, shall be placed in compliance with HRS Section 102-14 and the rules

adopted by the State of Hawai'i Department of Human Services to implement such statute.

- W. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.
- X. Required Actions by the Parties. Each party named in this Agreement agrees to execute the agreements and 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.
- Y. 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.

THE PARTIES have executed this Agreement on _____, 20____.

APPROVED AS TO FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU

By _____
Deputy Corporation Counsel
City and County of Honolulu

By _____
Department of Budget and Fiscal Services

APPROVAL RECOMMENDED:

(LESSEE)

By _____
Department of Community Services

By _____
Its

Printed title:

Printed name:

APPROVAL RECOMMENDED:

By _____
Department of Housing and Land Management

ACKNOWLEDGMENT

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

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

Type or print name: _____
Notary Public, State of Hawaii

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Lease (Mezzanine [and 2nd Floor] Pūnāwai Hale)

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

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

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

ACKNOWLEDGMENT

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this _ day of _____, 20 ____, before me appeared _____
_____, personally known to me, who being by me duly sworn, did say that he/she is the _____
_____ of _____, a public body and a body corporate and
politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the
corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its
Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the
corporation.

Type or print name: _____
Notary Public, State of Hawaii

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Lease (Mezzanine and 2nd Floor Pūnāwai Hale)

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

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