# EXHIBIT G

# CDBG Use Restriction Agreement

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Department of Community Services
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai'i 96817

Attention: Community Based Development Division

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TITLE OF DOCUMENT:

COMMUNITY DEVELOPMENT BLOCK GRANT USE RESTRICTION AGREEMENT
[SUBRECIPIENT'S NAME AND PROJECT DESCRIPTION]

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PARTIES TO DOCUMENT:

[SUBRECIPIENT'S NAME], A [PLACE] NONPROFIT ORGANIZATION

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PROPERTY DESCRIPTION: Affects TCT No. _____

[PROPERTY'S FULL ADDRESS]

TAX MAP KEY NO.: _____

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)**
**USE RESTRICTION AGREEMENT**
**[SUBRECIPIENT'S NAME]**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT USE RESTRICTION AGREEMENT ("**Agreement**") is by and 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 _____ [SUBRECIPIENT'S NAME], a Hawai'i nonprofit corporation, whose principal place of business is at _____, _____, Hawai'i 96___ (the "**Subrecipient**").

The City and Subrecipient have entered into a COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT, dated _____ identified as Contract No. CT-DCS-_____ (the "**Subrecipient Agreement**"), pursuant to which the City authorized the use of Community Development Block Grant funds to the Subrecipient in the amount of _____ [Dollar Amount Spelled Out] ($_____.XX) (the "**CDBG Funds**") for use by Subrecipient to acquire the real property located at _____, _____, Hawai'i 96___, Tax Map Key (1) _____, as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Real Property**").

Subrecipient shall use the Real Property as [PROJECT DESCRIPTION] during the applicable compliance period discussed below for households earning ___ percent (__%) or below of the area median income (the **"Project**"). This Agreement, and Subrecipient Agreement as defined herein, memorialize the obligations of Subrecipient with respect to the above described Real Property and Project.

The use of Community Development Block Grant funds for the Project requires Subrecipient to comply with CDBG Program requirements in 24 Code of Federal Regulations (CFR) Part 570 and City requirements, as set forth in the Agreement, and Subrecipient Agreement. The purpose of this Agreement is to secure the Subrecipient's performance of such obligations under the Subrecipient Agreement.

Subrecipient hereby declares that the Real Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, improved, and sold subject to the rules, regulations, and requirements of the Subrecipient Agreement, CDBG Program, including 24 CFR Part 570 requirements.

NOW, THEREFORE, in consideration of the mutual covenants and obligations stated within the Subrecipient Agreement and subject to the terms and conditions hereinafter stated, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. **Term; Release.** Subrecipient must comply with all CDBG Program and City rules and requirements from execution of the Subrecipient Agreement until satisfaction of the affordability period, all CDBG funds having been disbursed by the City and drawn from City's Treasury Department ("**Term**"). The affordability period shall run for five

(5) years to satisfy the CDBG National Objective Period, commencing at the time of Subrecipient's acquisition.

On the date of completion of the National Objective Period, that certain Regulatory Agreement dated _____, by and between the City and Subrecipient, shall become effective and shall impose upon the Subrecipient a twenty (20) year affordability period and other obligations to the City to ensure long-term Project operations.

The Term shall be extended for any period of time that the City or the United States Department of Housing and Urban Development ("**HUD**") determine that Subrecipient has not complied with the terms of this Agreement, including the terms of the Subrecipient Agreement, or for any additional term as may be mutually agreed upon by the Parties.

Upon Subrecipient providing all required information to the City, the City will notify Subrecipient of the actual date of Project completion and the exact date of the expiration of the affordability period, which shall be calculated based on the date of Project completion If necessary, Subrecipient shall execute an amendment of this Agreement identifying the exact date of expiration of the affordability period.

Upon request of Subrecipient, or its successor in title, made on or after the end of the Term, the City shall execute a release of this Agreement. The Subrecipient shall bear all costs and expenses for the preparation and recordation of such release.

2. **Use Restriction Agreement.** The Project must be operated in accordance with all applicable laws. For the Term of this Agreement, Subrecipient agrees to comply with all CDBG Program and City requirements (as amended from time to time), including but not limited to use, income targeting and affordability requirements, tenant protections and selection criteria, fair housing provisions, and housing quality standards.

   Without limiting the generality of the foregoing, Subrecipient shall for the Term of this Agreement only utilize the Property to _____ [PROJECT DESCRIPTION]. Subrecipient shall comply with the standards set forth in the Americans with Disabilities Act of 1990, as amended, for accessibility standards for persons with hearing or vision impairments, unless otherwise approved by the City in writing.

3. **Specific Performance.** Subrecipient acknowledges that the primary purpose of this Agreement is to assure compliance of the Project and by Subrecipient with the ongoing requirements of the CDBG Program, in particular 24 CFR Part 570. Subrecipient hereby further specifically acknowledges that the City and the eligible beneficiaries of Subrecipient's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. By reason thereof, Subrecipient, in consideration for receiving CDBG funding for the Project, hereby agrees and consents that the City and any individual who meets the eligibility requirements under the Subrecipient Agreement and the CDBG Program—whether prospective, present, or former occupants of the Project—shall be entitled, for any breach of the provisions

hereof and in addition to all other remedies provided by law or in equity, to enforce specific performance by Subrecipient of its obligations under this Agreement in a state or federal court of competent jurisdiction. The right to seek specific performance is in addition to and may be exercised independently from, or in concert with, any other remedies available under this Agreement, the Subrecipient Agreement, the other Subrecipient documents, or any other agreement between the City and Subrecipient, or its successors in interest.

4. **Maintenance and Submission of Records.** Subrecipient agrees to obtain and maintain records which evidence compliance with all applicable CDBG Program use and affordability requirements. Subrecipient shall provide these records and/or other certifications, statements, or records that the City may require to demonstrate compliance promptly upon the City's request. The obligations of Subrecipient under this paragraph shall survive the termination of this Agreement for a period of five (5) years.

5. **Violations; City's Remedies.** If the City determines that Subrecipient is not in compliance with the terms of this Agreement, the City shall provide written notice to Subrecipient. Upon receipt of the City's notice, Subrecipient shall have thirty (30) days to cure the violation, provided that upon a showing of reasonable necessity, the City may in writing extend such period for an additional sixty (60) days. The failure to cure any violation to the City's satisfaction within such thirty (30) day period, as the same may be extended, shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. If Subrecipient fails to meet the affordability requirements for the full Term, as the same may be extended as provided herein, Subrecipient shall repay the City the amount of CDBG funds provided to assist the Project. The parties further agree that upon any default by Subrecipient, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation of any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

6. **Indemnification.** Subrecipient agrees to reimburse, indemnify, and save and hold the City and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost, or deficiency, including but not limited to any repayment obligation to HUD incurred by the City, reasonable attorneys' fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to the City or its successor in interest, on demand, the full amount of any sum which the City or its successor has paid or becomes obligated to pay on account of:

   A. Any misrepresentation, omission, or the breach of any representation or warranty by Subrecipient under this Agreement, Subrecipient Agreement, or any other Subrecipient Document;

   B. Any failure of Subrecipient to fully perform or observe or cause to be performed or

observed any term, provision, covenant, or agreement to be performed or observed by Subrecipient, or , after an assumption, by a subsequent owner, pursuant to this Agreement, Subrecipient Agreement, or any other Subrecipient Document;

C. Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by Subrecipient, or, after an assumption, Subrecipient's successors to the Property or Project; or

D. The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by Subrecipient or any of their past or present affiliates on the Property which occurs prior to possession passing from Subrecipient pursuant to a deed received upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

The provisions of this paragraph shall survive the termination of this Agreement, Subrecipient Agreement, and the other Subrecipient Documents, and the liabilities and the exercise of any right or remedy under this Agreement, Subrecipient Agreement, or any other Subrecipient Document.

7. **Covenants to Run with the Land.** This Agreement shall be deemed and shall constitute a covenant running with the land for the benefit of the City and its successors and assigns and shall pass and be binding upon all heirs, successors, and assigns in title to the Property, or if the Property shall not include title to the land, but shall include a leasehold interest in land, this Agreement shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, successors, and assigns to such interests. For the Term, each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof or any interest therein (excepting only leases of units in the Project) shall conclusively be held to have been executed, delivered, and accepted subject to this Agreement, regardless of whether any or all of such covenants contained herein are set forth in such contract, deed or other instrument. If a portion or portions of the Property, or interest or interests in the Property, are conveyed, all such covenants contained herein shall run to each portion of or interest in the Property.

**8. Miscellaneous Provisions.**

A. Amendment. The provisions of this Agreement may be amended only by a subsequent written agreement executed by all of the parties and recorded with the appropriate recording agency in the State of Hawai‘i.

B. 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.

C. Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior

written consent of each other party.

D. Authorization. Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. Subrecipient and the persons signing for Subrecipient below further represent and warrant that there are no restrictions, agreements, or limitations on Subrecipient's 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 HUD, City and County of Honolulu, State of Hawai'i and other federal 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 Subrecipient. Subrecipient agrees that it shall immediately take any and all reasonable steps to comply with such amendments and not to jeopardize the CDBG Funds.

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 (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party 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 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 Subrecipient 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 agreements 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 representation 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 by each party, stated below. No other method of notice shall be effective.

CITY AND COUNTY OF HONOLULU
Department of Community Services
Community Based Development Division
925 Dillingham Boulevard, Suite 200
Honolulu, Hawai‘i 96817

With a copy to:

CITY AND COUNTY OF HONOLULU
Department of Budget and Financial Services
Federal Grants Unit, Post-Monitoring
925 Dillingham Boulevard, Suite 240
Honolulu, Hawai‘i 96817

[SUBRECIPIENT’S NAME]
[Subrecipient’s Address]

V. 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.

W. 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 so consummate the transaction contemplated by this Agreement.

X. 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.

Y. 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).

Z. Survival. Each representation and warranty stated in this Agreement made by a party shall survive the termination of this Agreement, unless otherwise specifically stated.

AA. Time is of the Essence. Time is of the essence with respect to the obligations of Subrecipient under this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

COMMUNITY DEVELOPMENT BLOCK GRANT USE RESTRICTION AGREEMENT
[Project Name]
City and County of Honolulu
Tax Map Key _____

**IN WITNESS WHEREOF**, this Agreement has been executed by the duly authorized representative of Subrecipient on the date below his signature line below.

APPROVED AS TO CONTENT
Department of Community Services

_____
Director

CITY AND COUNTY OF HONOLULU

By _____
Name: Andrew T. Kawano
Title: Director of Budget & Fiscal Services

APPROVED AS TO FORM AND LEGALITY

_____
Deputy Corporation Counsel

NAME OF NONPROFIT

_____
Authorized Subrecipient Official

Name:_____

Title:_____

Date: _____

STATE OF HAWAI‘I )
) 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 (s)he is the _____ of the City and County of Honolulu, Department of Budget and Fiscal Services, and that the foregoing instrument as it is executed in the name and behalf of said City and County of Honolulu, by and through its Department of Budget and Fiscal Services, by _____as its _____, and said _____ acknowledged said instrument to be the free act and deed of said City and County of Honolulu, by and through its department of Budget and Fiscal Services by authority of the City Council of the City and County of Honolulu.

_____
Type or print name: _____
Notary Public, State of Hawai‘i

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Community Development Block Grant Use Restriction Agreement – [Project’s Name]

☐ 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

_____ (Official Stamp or Seal)
Printed Name of Notary

STATE OF HAWAI‘I )
) SS:
CITY AND COUNTY OF HONOLULU )

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

Type or print name: _____
Notary Public, State of Hawai‘i

My commission expires: _____

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Community Development Block Grant Use Restriction Agreement – [Project’s Name]

☐ 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

_____ (Official Stamp or Seal)
Printed Name of Notary