

# 01. Disposition and Development Agreement (DDA)

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**for**

**HPHA SCHOOL STREET REDEVELOPMENT PROJECT  
Phase 1A**

by and among

**HAWAII PUBLIC HOUSING AUTHORITY**

**and**

**SCHOOL STREET I, LP**



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## **DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE SCHOOL STREET REDEVELOPMENT PROJECT**

### **HPHA School Street Redevelopment Phase 1A**

This Disposition and Development Agreement (this “**Agreement**”) is entered into and effective as of \_\_\_\_\_, 2024 (the “**Effective Date**”) by and among HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii (the “**Authority**”), and SCHOOL STREET I, LP, a Hawaii limited partnership (the “**Partnership**” or “**Developer**”). The Authority and the Developer are collectively referred to herein as the “**Parties**.”

### **RECITALS**

A. These Recitals refer to and utilize certain capitalized terms that are defined in Section 1.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. The Authority is a public housing authority formed pursuant to Chapter 356D of Hawaii Revised Statutes (“**HRS**”). The Authority is the fee simple owner of certain land consisting of 83,451 square feet located at 1002 School Street, Honolulu, Hawaii, 96817, designated as Tax Map Key No. (1) 1-6-009-012, referred to as Lot 2, and more particularly described in the attached Exhibit A (the “**Project Site**”).

C. On January 13, 2015, the Authority issued “Request for Qualifications for Master Developer for the Mixed Income, Mixed Use Redevelopment of the Authority's Administrative Offices and the Development of Low Income Public Housing Units on the Island of Oahu (RFQ OED-2015-05)” (the “**RFQ**”) and Retirement Housing Foundation, a California nonprofit corporation (“**RHF**”), submitted certain qualifications and proposals for the development of the Redevelopment Site (as defined below). The RFQ selection committee selected RHF, and the Authority and RHF’s affiliated entity, RHF Foundation, Inc., a California nonprofit corporation (“**RHFFI**”), entered into that certain Master Development Agreement dated November 15, 2019 (the “**Master Development Agreement**” or “**MDA**”).

D. RHFFI and HCDC School Street LLC (the “**Master Developer**”) are parties to that certain Assignment and Assumption of Master Development and Release dated January 11, 2024, by which RHFFI assigned, and Master Developer accepted and assumed, all of RHFFI’s rights and interests in, to and under the MDA (the “**RHF Assignment**”).

E. The Authority and RHFFI are parties to that certain Approval and Consent to Assignment and Assumption of Master Development Agreement and Release dated January 11, 2024, by which the Authority approved and consent to the RHF Assignment (“**Consent to Assignment**”).

F. The Master Development Agreement contemplates the revitalization and redevelopment of a portion of the 12.481 acres owned in fee simple by the Authority located at 1002 North School Street, Honolulu, Hawaii 96817, previously identified by Tax Map Key No. (1) 1-6-009-003 (collectively, the “**Redevelopment Site**”), to consist of a maximum of eight hundred (800) residential rental units, an approximately thirty thousand (30,000) square foot office facility for the Authority as its central administrative offices, approximately ten thousand (10,000) square feet of commercial/retail space, and related site improvements and amenities.

G. Under the Master Development Agreement, the Master Developer will redevelop the Property in at least three (3) phases (each, a “**Development Phase**”) with each Development Phase owned and developed pursuant to the terms of a disposition and development agreement and ground lease between the Authority and a Hawaii limited partnership or limited liability company formed by the Master Developer.

H. This Agreement governs the first Development Phase (the “**Project**”) to be constructed on the Project Site by the Developer, an affiliate of the Master Developer.

I. The Project will consist of two hundred fifty (250) Units and related amenities and improvements of which 249 shall be subject to the HPHA Affordability Requirement and requirements imposed by the Low Income Housing Tax Credit (“**LIHTC**”) program, as described in the Scope of Development and Site Plan attached hereto as Exhibit B.

J. To facilitate the Project, this Agreement provides that upon satisfaction of specified conditions, (i) the Authority will convey a leasehold interest in the Project Site under a ground lease to the Partnership; (ii) the Partnership will own and operate the Project, and will lease the rent-restricted Units in the Project to income-qualified tenants at affordable rents pursuant to the requirements of this Agreement, the Ground Lease, and other applicable financing programs; and (iii) subject to the rights of any mortgagee permitted in accordance with the terms of the Ground Lease, pursuant to the terms specified in Section 7.4, the Authority will have a Purchase Option and Right of First Refusal to purchase the Project and all interests in the Partnership after the Tax Credit Compliance Period.

K. The Authority and the Developer desire to enter into this Agreement to set forth their respective rights and obligations with respect to the above-described matters.

In consideration of the foregoing recitals and underlying promises, which the Parties agree are good and valuable consideration, the Parties agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below.

- (a) [Reserved].
- (b) “**Affiliate**” means, for Developer, (i) any entity providing services for the Development whose management and operation is controlled by Developer; (ii) any entity providing services for the Development in which an entity described in (i) has a controlling interest; (iii) any entity providing services for the Development a majority of whose voting equity is owned by Developer, or for which Developer serves as the managing member or general partner; or (iv) any entity in which, or with which, Developer, its successors or assigns, is merged or consolidated, under applicable statutory provisions for merger or consolidation, provided the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation.
- (c) “**Agreement**” means this Agreement including all exhibits attached hereto and made a part hereof.
- (d) “**Architect**” means Design Partners, Inc. or any successor approved by the Authority.
- (e) “**Authority**” means the Hawaii Public Housing Authority, a public body corporate and politic, organized under the laws of the State of Hawaii including any successor in interest or assigns by act of the Authority, or by operation of law, or otherwise.
- (f) “**Authority Board**” means the Board of Directors of the Authority.
- (g) [Reserved].
- (h) “**Authority Indemnitees**” is defined in Section 6.12(b).
- (i) “**Certificate of Occupancy**” means the certificate issued by the City authorizing occupancy of the Project.
- (j) “**City**” means the City and County of Honolulu, Hawaii.
- (k) “**Claims**” is defined in Section 2.2(d).

(l) “**Closing**” means the close of escrow for the construction financing and the conveyance of a leasehold interest in the Project Site by the Authority to the Partnership, pursuant to the applicable Ground Lease and Article III herein.

(m) “**Closing Documents**” is defined in Section 3.1(a)(9).

(n) “**Code**” means the Internal Revenue Code of 1986, as amended.

(o) “**Concept Plan**” means the conceptual rendering of the improvements to be constructed as part of the Project attached hereto as Exhibit D, as the Parties may revise from time to time.

(p) “**Construction Documents**” shall include or incorporate as they come into existence for the Project: (a) the construction contract(s) and the general, special, and supplemental conditions to such contract(s) and (b) the plans and specifications (“**Plans and Specifications**”).

(q) “**Contractor**” means any person or entity, including consultants, who performs services in connection with the Project or supplies labor, materials, or equipment for use in connection with the Project, other than the Developer, Master Developer, any General Contractor, or any Affiliate of the General Contractor.

(r) “**Design Documents**” is defined in Section 5.2.

(s) “**Developer**” means the Partnership.

(t) “**Developer Fee**” is defined in Section 4.4(a).

(u) “**Development Contingencies**” shall have the meaning provided in Section 3.1(a).

(v) “**Environmental Conditions**” means environmental conditions, including the presence of Hazardous Materials, geologic conditions, soils conditions, and water conditions.

(w) “**Environmental Measures**” means taking the actions or refraining from taking action as required by the Construction and Environmental Hazard Management Plan by Tetra Tech dated as of \_\_\_\_\_.

(x) “**Environmental Reports**” is defined in Section 6.12(b).

(y) “**Event of Default**” shall have the meaning set forth in Section 10.1 with respect to the Developer and the meaning set forth in Section 10.2 with respect to the Authority.

(z) “**Financing Documents**” is defined in Section 3.2(f).

(aa) “**Financing Plan**” means the plan for financing the Project, including the development budget for the Project and sources and uses analysis, as further detailed in Section 4.1 and attached hereto as Exhibit E, as such may be amended by mutual agreement of the Parties from time to time.

(bb) “**General Partner**” means HCDC School Street LLC, a Hawaii limited liability company, the managing general partner of the Partnership.

(cc) “**Ground Lease**” means the ground lease for the Project Site to be executed and delivered in conjunction with the Closing for the Project. The Ground Lease shall be in substantially the form set forth in Exhibit F; provided, however, that the Parties acknowledge that Developer’s lenders and/or equity investors may request modifications to the form of Ground Lease prior to the Closing.

(dd) “**Guarantor**” means the Master Developer or, subject to written approval by the Authority, an affiliate of the Master Developer.

(ee) “**Hazardous Materials**” means, without limitation, “hazardous substances” as defined by CERCLA; “hazardous wastes” as defined by RCRA; any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant; petroleum crude oil or fraction thereof; any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 *et seq.*, and amendments thereto and reauthorizations thereof; asbestos-containing materials in any form or condition; and polychlorinated biphenyls in any form or condition.

(ff) “**Hazardous Materials Laws**” means any and all applicable federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*),



the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

(gg) “**HHFDC**” means the Hawaii Housing Finance and Development Corporation.

(hh) “**HPHA Affordability Requirement**” means the Authority’s requirement as a condition for entering into the Ground Lease that the leased property is used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

(ii) “**HUD**” means the U.S. Department of Housing and Urban Development.

(jj) [Reserved].

(kk) “**Investor**” and “**Investor Limited Partner**” means the entity or entities selected by the Developer to make an equity contribution associated with the Low-Income Housing Tax Credits for the Project.

(ll) “**Low-Income Housing Tax Credit**” or “**LIHTC**” refers to the credit available under Section 42 of the Code or State law.

(mm) “**Master Development Agreement**” and the “**MDA**” are defined in the Recitals.

(nn) “**Master Plan**” is defined in the Master Development Agreement.

(oo) “**Memorandum of Ground Lease**” is defined in Section 2.6(a).

(pp) “**Official Records**” means the official records of the Bureau of Conveyances, State of Hawaii.

(qq) “**Net Cash Flow**” is defined in Exhibit E-1 of this Agreement.

(rr) “**Partnership**” and “**Limited Partnership**” means School Street I, LP, a Hawaii limited partnership, in which the General Partner will serve as the managing general partner.

(ss) “**Partnership Agreement**” means the Partnership’s Amended and Restated Limited Partnership Agreement admitting the Investor Limited Partner to the Partnership.

(tt) “**Permitted Title Exceptions**” means the following exceptions to title with respect to the Project Site: (a) applicable building and zoning laws and regulations; (b) the provisions of this Agreement; (c) the encumbrances resulting from the recorded Closing Documents; (d) any lien for current taxes or taxes accrued subsequent to Closing; (e) the exceptions to title set forth in the Title Insurance Policy approved by the Developer; (f) any other conditions or exceptions caused by the Developer; and (g) such other conditions, covenants, restrictions or easements of record as may be approved by the Developer pursuant to Section 3.5(a).

(uu) “**Predevelopment Costs**” means the costs paid for services performed by parties not affiliated with the Authority or the Developer in connection with the planning and financing of the Project that are incurred prior to Closing and are part of the development budget for the Project. Developer overhead and Authority overhead are not considered “Predevelopment Costs.”

(vv) “**Project**” means the improvements to be constructed pursuant to this Agreement and the Ground Lease, including housing units, community facilities, if any, and infrastructure, and may refer as well to the process of planning, financing and constructing such improvements.

(ww) “**Project Site**” means the portion of the Redevelopment Site on which the Project is to be constructed, as generally described and depicted in Exhibit A. The description attached as Exhibit A may be removed and replaced with a metes and bounds or other legal description for the Project Site mutually acceptable to the Parties prior to Closing.

(xx) “**Post-Foreclosure Use Restriction**” means that following foreclosure or deed in lieu of foreclosure of Developer’s interest in the Project by any mortgagee permitted in accordance with the Ground Lease, that two hundred forty-nine (249) units on the Project Site must be reserved for occupancy by households at or below sixty percent (60%) of Area Median Income for the City, adjusted for actual household size in accordance with all applicable restrictive covenants and regulatory requirements (“AMI”).

(yy) “**Purchase Option**” means the option described in Section 7.4.

(zz) “**Redevelopment Site**” is defined in the Recitals.

(aaa) “**Regulatory Agreements**” means, collectively, as applicable, (i) any regulatory agreement to be entered into by the Developer and HHDFC in connection with the use of Low-Income Housing Tax Credits for the initial construction of the Project and/or other financing provided by HHFDC (ii) any regulatory agreement entered into by the Developer with the issuer of tax-exempt financing for the Project (iii) any regulatory agreement in favor of the City and

County of Honolulu pursuant to Chapters 201H-38 and 46-15.1 of the Hawaii Revised Statutes, and (iv) any regulatory agreement entered into for the Project with any public agency.

(bbb) [Reserved].

(ccc) [Reserved].

(ddd) “**Rent Restricted**” means that the gross rent with respect to the residential units in the Project shall not exceed the lowest of: (a) thirty percent (30%) of the imputed income limitation applicable to such Units as calculated pursuant to Section 42(g)(2) of the Code, (b) the rents permitted pursuant to the Regulatory Agreements.

(eee) Reserved.

(fff) “**RFQ**” is defined in the Recitals.

(ggg) “**Right of First Refusal**” is defined in Section 7.4.

(hhh) “**Schedule of Performance**” means the summary schedule of actions to be taken by the Parties pursuant to this Agreement and the Ground Lease and attached hereto as Exhibit C, as it may be amended by mutual agreement of the Parties from time to time.

(iii) “**Scope of Development**” means the description of the basic physical characteristics of the Project, including a basic site plan, which will serve as the basis for the Developer’s application for City approvals and for the preparation of the Construction Documents. The Scope of Development is attached hereto as Exhibit B, as may be revised by the Parties from time to time.

(jjj) “**Site Preparation Documentation**” means the following documents: (i) Right-of-Entry Agreement dated effective as of January 12, 2024 permitting the Developer to access the Project Site and portions of the Redevelopment Site to prepare the Project Site for development including relocating Building M, erecting construction fencing, certain work on Building J, and demolishing certain structures and (ii) the Building M Relocation Funding Agreement School Street Phase 1A dated effective as of January 12, 2024 (the “**Building M Funding Agreement**”).

(kkk) “**Tax Credit Compliance Period**” means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Code starting with the first year of the credit period.

(lll) “**Title Company**” means the title company referred to in Section 3.4 herein.

(mmm) “**Title Insurance Policy**” means the policy of title insurance referred to in Section 3.6 herein.

(nnn) “**Transfer**” means a transfer of this Agreement, an interest in the Partnership, an interest in the Ground Lease, or an interest in the Project as more particularly described in Section 8.5.

(ooo) “**Units**” means residential dwelling units, including the manager’s unit in the Project.

(ppp) “**Work**” is the total construction of the Project as described in the Construction Documents.

Section 1.2 List of Exhibits. The following exhibits are attached hereto and incorporated into this Agreement by this reference:

Exhibit A	Project Site Description
Exhibit B	Scope of Development and Site Plan
Exhibit C	Schedule of Performance
Exhibit D	Concept Plan
Exhibit E	Financing Plan
Exhibit E-1	Definition of Net Cash Flow
Exhibit F	Ground Lease
Exhibit G	Project Labor Agreement
Exhibit H	Sustainability Plan
Exhibit I	Hawaii General Conditions

## ARTICLE II PROJECT

Section 2.1 Scope of Development. As more fully described in the Scope of Development and subject to review of the Authority, the Project will consist of the construction on the Project Site of (i) approximately two hundred fifty (250) Units of which two hundred forty-nine (249) shall be Rent Restricted, and (ii) one (1) will be a resident manager unit. The preliminary unit types, with their associated square footage and bedroom distribution, are described in Exhibit B.

Section 2.2 Ownership Structure.

(a) Upon satisfaction of the conditions specified in Article III, the Authority will lease the Project Site to the Partnership pursuant to the Ground Lease. Subject to any legal obligations the Authority must fulfill as the current owner of the Project Site, and under this Agreement (including Section 2.6(a)(ii), the Developer shall be responsible for obtaining all necessary Land Use Entitlements (as defined in the Master Development Agreement) for the

development of the Project Site, which approvals shall be obtained prior to the commencement of the term of the Ground Lease. The Authority agrees to cooperate fully with the Developer's efforts to obtain such Land Use Entitlements.

(b) In connection with the Closing for the Project, the Partnership will enter the Partnership Agreement to evidence the admission of the Investor Limited Partner, that will then own the principal equity interest in the Partnership. The Partnership Agreement shall be subject to the review and approval of the Authority, pursuant to Section 4.1(b).

(c) As a condition to the Closing for the Project, the Partnership shall indemnify, defend and hold the Authority, and the respective board members, commissioners, directors, elected and appointed officers and officials, employees, agents, and contractors, harmless from and against all claims, losses, actions, demands, costs, expenses and attorney's fees (all of the foregoing, "**Claims**"), arising out of, attributable to or otherwise occasioned in whole or in part by the Partnership, its agents, contractor's servants or employees which constitute a breach of Partnership's obligations under this Agreement. If any party performing work for the Partnership on the Project shall assert any Claim against the Authority on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Partnership, its agents, servants, employees or contractors (including, without limitation, its general construction contractor for the Project), the Partnership shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Authority shall be allowed, the Partnership shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith including attorneys' fees. The obligations, indemnities, and liabilities of the Partnership under this section shall not extend to any liability caused by the negligence or misconduct of the Authority or their employees, contractors, or agents. The foregoing indemnity shall also not apply to Claims arising from breach of the Partnership Agreement, this Agreement, the Ground Lease, or any Closing Documents by the Authority, or any actions or inactions of RHF or RHFFI.

Section 2.3 Financing. The preliminary Project development budget is included in the Financing Plan at Exhibit E. The Parties recognize that financial needs may arise which require budget revisions so that the Project may be accomplished, and the Parties will consider and pursue such revisions in good faith. The Developer shall be responsible for obtaining all financing required for the development of the Project. The Authority has no obligation to provide any financing for the construction or operation of the Project except as expressly set forth herein or in the Building M Funding Agreement. There shall be no lien or encumbrance on the Authority's fee interest in the Project Site. Without limiting the generality of the foregoing, in no event shall the Authority's fee interest in the Project Site be encumbered by a mortgage or other security interest.

Section 2.4 Developer Designation. Subject to events of Force Majeure as defined in Section 10.1(b), Developer will implement the Project in substantial accordance with the Schedule of Performance at Exhibit C. Developer will develop the Project in its own name and for its own account, and not as agent or contractor of the Authority.

Section 2.5 Affordability Requirements. The Parties anticipate that one Unit will be the manager's unit, and two hundred forty-nine (249) Rent Restricted Units will be subject to occupancy and affordability restrictions imposed by the Regulatory Agreements and may be subject to restrictions applicable to other financing sources including those required as a condition to the disposition of the Project Site, other statutory or regulatory restrictions, or the agreements of the Parties. Pursuant to the Ground Lease, following foreclosure or deed in lieu of foreclosure of Developer's interest in the Project by any mortgagee permitted in accordance with the terms of the Ground Lease, the Project shall thereafter be subject to Post-Foreclosure Use Restrictions and restricted for occupancy by households whose gross household income does not exceed sixty percent (60%) of AMI. This requirement shall be included in the Ground Lease, shall not be subordinated, and shall survive the foreclosure of any mortgage, deed of trust or other lien recorded against the Project or the Project Site.

Section 2.6 Authority Commitments. Upon the performance by Developer of all its prior obligations with respect to the Project, as set forth herein, Authority shall take the following actions and execute and deliver such documents as are required to complete Closing. At the Closing for the Project, the Developer shall reimburse the Authority for its actual out-of-pocket legal and consultant costs related to the negotiation of this Agreement, the Ground Lease, and the Site Preparation Documentation incurred by the Authority on or prior to the Closing in an aggregate amount not to exceed a combined total of [to be inserted by Board Meeting] Dollars (\$ \_\_\_\_\_).<sup>1</sup>

(a) Site Conveyance. Upon Closing, the Authority shall lease the Project Site through a ground lease substantially in the form attached hereto as Exhibit F (the "**Ground Lease**") which shall have been negotiated and executed. The Ground Lease will provide for, without limitation, subject to final negotiations with lenders and investors, a term of not less than seventy-five (75) years. A Memorandum of Ground Lease ("**Memorandum of Ground Lease**") shall be recorded in the Official Records at Closing for the Project prior to all financing documents.

(b) Permission to Enter the Property. The Authority shall permit Developer to enter the Project Site prior to the Close of Escrow solely for purposes consistent with this Agreement provided that Developer indemnifies the Authority Indemnitees against any liability arising in connection with such entry as set forth in Section 3.1 (a)(1) below.

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<sup>1</sup> Amount to be complete by HPHA April board meeting.

(c) Ground Lease Payments. The payment for the leasehold interest in the Project Site will be equal to the appraised value of the leasehold interest in the Property and may be structured as annual ground lease payments. Ground Lease payments shall be paid annually to the Authority out of Net Cash Flow and any unpaid lease payment shall accrue interest as set forth in the Ground Lease.

(d) [Reserved].

### ARTICLE III CONDITIONS PRECEDENT TO PERFORMANCE AT CLOSING AND EARLY START CONSTRUCTION

Section 3.1 Mutual Conditions Precedent to Closing. The Parties' ability to perform responsibilities hereunder is substantially contingent upon actions by third parties over which Developer and Authority have limited control, upon factual circumstances which cannot be fully determined as of the date of this Agreement, and upon the negotiation of additional agreements (collectively, the "**Development Contingencies**"). The following Development Contingencies are conditions precedent to the obligations of both Parties to close escrow for the Project under Section 3.4:

(a) *Site Investigation; Due Diligence Investigation*. By the time set forth in the Schedule of Performance, Developer may make such investigations regarding the Project Site (including but not limited to Environmental Conditions) on or about the Project Site as the Developer deems appropriate. From and after the Effective Date until the Closing or earlier termination of this Agreement, the Authority shall afford authorized representatives of Developer access to the Project Site for purposes of satisfying Developer with respect to the condition of the Project Site and with respect to satisfaction of any conditions precedent contained herein, including, without limitation, site inspections and engineering and environmental surveys. Developer shall indemnify, defend and hold harmless the Authority Indemnitees from and against any Claims arising in connection with physical damage to the property or other damage or injury to persons or property which results from Developer's investigations except to the extent arising from the Authority's gross negligence or willful misconduct or for the discovery of pre-existing conditions (which indemnity and defense obligations shall survive the expiration or earlier termination of this Agreement).

(b) *Ground Lease*. The Ground Lease and the Memorandum of Ground Lease required by Section 2.6(a) shall have been executed by the Authority and the Developer. The Developer and Authority shall have agreed upon the Ground Lease.

(c) [Reserved].

(d) [Reserved].

(e) *Financing Plan.* Developer and Authority shall have agreed upon the Financing Plan attached hereto as Exhibit E.

(f) [Reserved].

(g) [Reserved].

(h) *Sustainability Plan.* The Developer shall have presented for Authority review feasible sustainable building methods for the Project in accordance with Section 5.4 of the Master Development Agreement. The Developer and the Authority shall have agreed to a plan to be compiled by the Architect for meeting the energy-efficiency requirements of the State of Hawaii's and/or the City's most recent building code(s) and the sustainability goals of the Master Development Agreement and attached hereto as Exhibit H.

(i) *Additional Agreements to be Negotiated.* The following agreements (the “**Closing Documents**”) shall have been negotiated for the Project in substance and form satisfactory to the Authority and the Developer executed by the respective parties thereto:

(1) Regulatory Agreements, as applicable, restricting the affordability of the Rent Restricted Units in the Project;

(2) All loan and financing documents for the construction and permanent financing of the Project, including but not limited to the Agreement of Limited Partnership for the Owner;

(3) Guarantees pursuant to Section 4.3(c);

(4) LIHTC and syndication documents including the Partnership Agreement and Developer guarantees to the Investor;

(5) Purchase Option and Right of First Refusal Agreement as described in Section 7.4; and

(6) Subdevelopment Fee Agreement and Asset Management Fee Agreement;  
and

(7) Property Management Agreement and Managing Agent Agreement..

(j) *Tax Credit Allocation.* Developer shall have obtained from issuing agencies such allocations of Low-Income Housing Tax Credits as will allow it to attract equity investments,



which, when combined with all other sources of financing, are sufficient for the feasible development of the Project as reflected in the Financing Plan.

(k) *Funding Commitments for Closing.* The Project shall have received commitments for all of the sources of projected assistance as enumerated in the Financing Plan attached as Exhibit E, or any substitute financing obtained by the Developer and reasonably acceptable to the Authority, including but not limited to the commitments described below, and, all on terms acceptable to Developer, at Closing, all construction loans and funding sources necessary to begin construction shall be in a position to close concurrently with the Closing:

(1) The commitment of a LIHTC equity investment at projected or other commercially reasonable rates;

(2) The commitment of private loans and other financing sources under projected or other commercially reasonable terms and conditions;

(3) The commitment of all projected assistance or reasonable substitutions therefor, including grants, loans and land transfers from other governmental bodies.

(l) *Environmental Review.* As of the date of this Agreement, the Parties agree that any Environmental Review in accordance with Section 2.2 of the Master Development Agreement has been completed. The Developer shall comply with the Environmental Measures.

(m) *Other Necessary Approvals.* The Developer shall have received all other necessary government approvals and permits for the Project.

(n) *Reimbursement of Predevelopment Costs.* The Developer and the Authority shall have provided for the reimbursement to each Party at Closing from the Project financing of the eligible, approved and budgeted Predevelopment Costs. As of the Effective Date, the Predevelopment Costs incurred by the Developer for the Project are estimated to be approximately [to be inserted by Board Meeting]<sup>2</sup> and the Predevelopment Costs incurred by the Authority are approximately [to be inserted by Board Meeting].<sup>3</sup> Except as provided in Section 3.7 herein, the Authority and Developer shall each be responsible for fifty percent (50%) of the Predevelopment Costs and shall be reimbursed for such costs at Closing; provided, however, that the Authority shall be reimbursed one hundred percent (100%) of the costs advanced pursuant to the Building M Funding Agreement. If the legal fees identified in Schedule 1 to the RHF Assignment (“**RHF Legal Costs**”) are not reimbursable at Closing, the Developer and the Authority agree to each pay fifty percent (50%) of such RHF Legal Costs from their respective shares of Developer Fee received pursuant to Section 4.4 (a) of this Agreement on a pari passu basis.

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<sup>2</sup> Amount to be complete by April HPHA board meeting.

<sup>3</sup> Same as above.

Section 3.2 Conditions Precedent to Authority Performance at Closing. The following are conditions precedent to Authority's obligation to enter into the Ground Lease and close escrow:

(a) *No Defaults*. The Developer shall not be in material default under this Agreement, after the expiration of any notice and cure period, and shall have completed all of its material predevelopment obligations required to be completed pursuant to this Agreement prior to Closing unless waived by Authority.

(b) *Construction Documents*. The Developer shall have prepared, or will have seen to the preparation of Construction Documents, including construction plans, budgets, schedules and a construction contract as provided in Article V.

(c) *Permits and Approvals*. The Developer shall have obtained (in its own name or, where appropriate and with the approval of the Authority, in the name of the Authority) all licenses, easements, zoning and approvals, and all building and construction permits necessary for construction of the Project, including commitments to provide the utilities necessary for the Project to the extent lenders or Investor require such commitments to be in place prior to commencement of construction.

(d) *Master Plan Certification*. The Developer shall have provided the Authority with a certification satisfactory to the Authority from the Architect that the Schematic Design Documents and Design Development Documents (each as defined in the Master Development Agreement) for the Project meet all requirements of the Master Plan.

(e) *Independent Report and Certification of Compliance with Accessibility Laws*. The Developer shall have provided the Authority with a written report from its Architect or an independent professional certifying that (i) it has reviewed the Plans and Specifications for the Project, (ii) the Plans and Specifications comply with all applicable State and Federal requirements concerning accessibility including, but not limited to, the Fair Housing Act of 1968, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended ("**Accessibility Requirements**"), and (iii) stating the number and type of Units that will be accessible in accordance with applicable Accessibility Requirements.

(f) *Financing Commitments and Documents*. Pursuant to Section 4.1(b), the Developer shall have provided to the Authority, for its review and approval, (a) evidence of firm financing commitments sufficient to complete the Project and (b) the iterations of all legal documents required by lenders and the Investor for the Project as such iterations are circulated to the financing participants, including, without limitation, all loan agreements, deeds of trust, mortgages, security instruments, covenants or restrictions to be recorded, promissory notes and partnership and/or operating agreements (the "**Financing Documents**"), such Financing Documents shall not be finalized without the Authority's approval pursuant to Section 4.1(b).

(g) *Recording Order.* The Developer shall have submitted and the Authority shall have accepted a recording order for the Financing Documents and any use restriction or other lien or encumbrance to be filed against the Project Site.

(h) *Equity Investors.* The Developer shall have solicited Investors to join and make equity contributions to the Project as set forth in the Financing Plan. The Developer shall seek equity investment competitively so as to maximize the benefit to the Project, all factors considered, including, without limitation, the amount, timing, other terms of contribution and the totality of Developer's past experiences with such Investors in prior transaction similar to those contemplated herein. The Developer shall disclose to the Authority any offers which are received; shall prepare for the Authority's review a comparative analysis of the offers; and shall give the Authority advance notice of which investor is proposed for selection. Developer will give good faith consideration to any objections the Authority has to the selected Investor.

(i) [Reserved].

(j) [Reserved].

(k) *Environmental Measures.* The Developer shall have provided evidence of compliance with the Environmental Measures applicable as of the date of the Closing.

(l) *Property Management Plan and Property Management Agreement.* The Developer shall have provided the Authority for its review and approval a plan for marketing the Project, as well as for asset and property management including but not limited to admissions criteria, a tenant selection plan, and a tenant lease designed to achieve the short and long term viability of the Project in accordance with the Master Plan;

(m) *Developer Guarantees.* The Guarantor shall provide the guaranties required by Section 4.3(c).

(n) *Additional Requirements.* The Developer shall have provided to the Authority proof of insurance as required by Article IX, the bonds required by Section 6.4, applicable Regulatory Agreements, copies of the conventional loan and other financing documents, and such other documents and instruments as reasonably requested by the Authority.

(o) *Partnership Agreement; Organizational Documents.* The Authority shall have reviewed and approved, and the parties to each shall have executed, the Partnership Agreement. Developer shall deliver to Authority fully-executed originals of the foregoing agreement. The Developer shall have provided to the Authority certified copies of the formation and organizational documents and a good standing certificate for the Partnership and the General Partner and any other general partner of the Partnership.

(p) *Purchase Option and Right of First Refusal.* The Purchase Option and Right of First Refusal Agreement (as defined herein) for the Project shall have been executed.

(q) [Reserved].

(r) *Compliance with Laws.* The Developer has included a provision in the Construction Documents to require the general construction contractor to comply with applicable laws concerning applicable wages and labor standards.

(s) [Reserved].

(t) *Evidence of Selection of Third Party Contractors.* The Developer shall have provided the Authority with satisfactory evidence that the Construction Contractor and all Third Party Contractors have been selected in accordance with Section 3.1(F) of the Master Development Agreement.

(u) *Ground Lease Payment.* If the Ground Lease requires an annual lease payment, the first such payment shall have been paid in escrow with the Title Company or, if the Ground Lease requires a seller note, such seller note shall have been placed in escrow with the Title Company.

The conditions set forth in this Section 3.2 shall have been satisfied as of the Closing, unless the Authority waives them in writing. If there is no waiver or satisfaction by the Closing, the Authority may terminate this Agreement upon written notice to Developer without further liability, except for such liability as may be provided for under any predevelopment loans or separate contracts to which the Authority is a party, entered pursuant to this Agreement and except for continuing indemnities provided elsewhere in this Agreement.

Section 3.3 Conditions Precedent to Developer's Performance at Closing. The following are conditions precedent to the Developer's obligation to lease the Project Site from the Authority and close escrow:

(a) *Project Site Condition Generally.* At Closing, there shall be no material adverse condition at the Project Site and or material adverse changes in the condition of the Project Site since the execution of this Agreement that would materially adversely interfere with the Project development.

(b) *Construction Documents.* The Authority shall have approved the Construction Documents required to be approved up to the time of Closing.

(c) *Title Insurance.* The Title Company shall be prepared to issue to the Developer all title insurance required by Section 3.6 to be delivered to Developer.

(d) *Financing Documents.* The Authority shall have approved the Financing Documents pursuant to Section 4.1(b).

(e) *Ground Lease.* The Ground Lease shall have been executed by the Authority and the Partnership such that the Partnership shall concurrently with Closing acquire a ground leasehold estate in the Project Site.

(f) *Government Approvals.* The Project shall have received (in its own name or, when appropriate and with the approval of the Authority, in the name of the Authority) all necessary governmental approvals and permits, including without limitation, all building and construction permits, licenses, easements, zoning and approvals necessary for the commencement of construction of the Project, including commitments to provide the utilities necessary for the Project.

(g) *Authority's Representation and Warranties.* At Closing, the Authority's representations and warranties set forth in Section 11.2 shall be true and correct in all material aspects as if made on and as of the Closing.

(h) *Final Map.* The final map, in a form approved by the Developer, for the Project has been recorded by the Authority.

(i) *No Litigation.* No litigation or claim with any governmental entity shall have been filed and be pending which may have a material, adverse impact on the Project.

(j) *No Authority Default.* No Event of Default on the part of the Authority shall exist and be continuing under this Agreement and the Authority shall have completed all of its material predevelopment obligations required to be completed pursuant to this Agreement prior to Closing unless waived by Developer.

(k) [Reserved].

The conditions set forth in this Section 3.3 shall be satisfied as of the Closing, unless the Developer waives them in writing. If there is no waiver or satisfaction by the Closing, the Developer may terminate this Agreement upon written notice to the Authority without further liability, except for such liability as may be provided for under the Master Development Agreement, any predevelopment loans or separate contracts entered pursuant to this Agreement, and except for continuing indemnities provided elsewhere in this Agreement.

#### Section 3.4 Delivery of Site.

(a) *Authority's Obligation to Ground Lease.* Provided that the conditions precedent in Sections 3.1, 3.2 and 3.3 have been satisfied or expressly waived, the Authority and the Developer shall instruct Old Republic Title Company (the "**Title Company**") or other title company selected by mutual agreement, to complete the Closing as set forth below. Upon the Closing, the Authority shall deliver the Project Site to the Partnership pursuant to the Ground Lease and subject only to the Permitted Exceptions.

(b) *Steps for Closing.* The Closing shall be completed as follows:

(1) By the Closing date set forth on the Schedule of Performance, the Authority shall obtain approval from the Authority Board for the disposition of a ground leasehold interest in the Project Site to the Partnership.

(2) On or before the Closing date, the Authority shall execute, acknowledge, deposit and deliver to the Title Company, as necessary and appropriate, the Ground Lease, the Memorandum of Ground Lease and Closing Documents to which the Authority is a party.

(3) On or before the Closing date, the Partnership shall execute, acknowledge, deposit and deliver to the Title Company, as necessary and appropriate, the Ground Lease, the Memorandum of Ground Lease, and the agreements listed in Section 3.1(a)(9).

(4) The Developer shall concurrently close on its construction financing and Investor equity for the Project.

(5) The Authority and the Developer shall instruct the Title Company to consummate the escrow and upon Closing, the Title Company shall record in the Official Records the Memorandum of Ground Lease and any other Closing Documents required to be recorded under the terms of this Agreement or the then applicable Financing Documents.

(6) The Title Company shall issue title policies to the Developer and the Authority, as required in Section 3.5.

(c) *Effect of Closing.* Once Closing has occurred, this Agreement will terminate, except with regard to any surviving indemnity provisions or other provisions that expressly survive the Closing, and the Ground Lease will govern the Parties' obligations as to matters set forth in them. In the event of any conflict between the Ground Lease and this Agreement, the provisions of the Ground Lease will govern. No termination of this Agreement, in and of itself, shall release the other Party from the obligations it has undertaken in the Ground Lease nor increase the rights and remedies it may have under such documentation.

### Section 3.5 Conditions of Title.

(a) Permitted Title Exceptions. Within ninety (90) days following the execution of this Agreement (the “**Permitted Title Exceptions Date**”), the Developer shall provide written notice to the Authority of any matters shown on a preliminary title report for the Project Site that the Developer shall reasonably require to be removed from title prior to conveyance of the Project Site. Within sixty (60) days after the receipt of such notice from Developer, the Authority shall deliver to the Developer a notice setting forth those disapproved exceptions the Authority agrees to use good faith efforts (with the Developer’s assistance if required) to eliminate prior to the Closing. If the Authority refuses to eliminate any of the disapproved exceptions prior to the Closing, the Developer may elect: (i) to waive such disapproval(s) and to accept title to the leasehold interest in the Project Site subject to such exceptions; or (ii) to terminate this Agreement. Title exceptions for which the Developer does not provide notice of disapproval or for which the Developer waives such disapproval pursuant to this Section 3.5(a) shall constitute Permitted Title Exceptions. The Authority shall convey a leasehold interest in the Project Site to the Partnership under and subject to the provisions of the Ground Lease and subject only to the Permitted Title Exceptions. At its expense, the Authority shall remove at or before the Closing all monetary liens (collectively, “**Monetary Liens**”) including without limitation: (1) all delinquent taxes, bonds and assessments and interest and penalties thereon; and (2) all other monetary liens, whether or not shown on the preliminary title report (including judgment and mechanics' liens, whether or not liquidated, and mortgages and deeds of trust, with the Authority being fully responsible for any fees or penalties incurred in connection therewith). Monetary Liens shall not include a lien for non-delinquent general real property taxes prorated in accordance with this Agreement. Notwithstanding the foregoing, the Authority shall not be responsible for the removal of liens that result from the activities of Developer or Developer’s employees, agents, or contractors.

(b) New Title Matters.

(1) From and after the Permitted Title Exceptions Date, the Authority shall not enter into any new agreements or contracts or modify any existing agreements or contracts related to or that may affect the Project Site without Developer's prior written consent, unless the same shall be cancelable without penalty or premium upon not more than thirty (30) days’ notice from the Authority. The Authority will cancel all such contracts and agreements, or any other Service Contracts as defined in Section 11.2 prior to Closing (unless otherwise agreed to by the Developer in writing).

(2) Without limiting the forgoing, the Authority shall be obligated, at the Authority’s expense, to cure any title defect which is curable by the payment of money or the posting of a bond if such title defect arises after the Permitted Title Exceptions Date and on or before the Closing, and is caused solely by the Authority, its agents, contractors or employees.

(3) Notwithstanding the above, and subject to reasonable negotiation with relevant utility companies, in its mapping process, the Authority shall take all necessary action to remove any utility easements which would materially and adversely affect the Project.

Section 3.6 Title Insurance to be Issued at Closing. The Title Company shall issue to the Developer an ALTA extended coverage title insurance policy (“**Title Insurance Policy**”) with such coinsurance or reinsurance and direct access agreements as the Developer may reasonably request, in an amount designated by the Developer, insuring that the leasehold estate in the Project Site is vested in the Partnership subject only to the Permitted Title Exceptions, and with the ALTA form endorsements and such other endorsements as may be reasonably requested by the Developer and the Investor. Authority shall execute and deliver at Closing the Title Company’s standard form affidavit and indemnity required in order to issue the Title Insurance Policy. The Title Company shall issue to the Authority an ALTA Lender’s policy of title insurance in the amount of each loan provided by the Authority, insuring that each mortgage is a lien on the leasehold estate, and that the Memorandum of Ground Lease and the Purchase Option and Right of First Refusal Agreement have been recorded, with such endorsements as may be reasonably requested by the Authority.

Section 3.7 Work Related to Building M Relocation, Building J, Fencing and Initial Demolition. The parties have entered into certain Site Preparation Documentation to permit the Developer to access the Project Site and portions of the Redevelopment Site identified therein to permit certain work commence to prepare the Project Site for timely development. The Authority has agreed to advance one hundred percent (100%) of the costs associated with the relocation of Building M pursuant to the Building M Funding Agreement, which provides that the Authority shall be reimbursed in full for such costs at the Closing. Other costs incurred by each Party related to the preparation of Site Preparation Documentation and the site preparation work related thereto are considered Predevelopment Costs pursuant to Section 3.1(n) herein.

#### ARTICLE IV FINANCING ARRANGEMENTS

Section 4.1 Financing Plan and Financial Commitments. The Parties acknowledge that subject to financing commitments and other requirements, the Developer shall use diligent efforts to obtain financing commitments consistent with the Financing Plan. The Financing Plan shall consist of the information set forth in subsection (a) below. The items set forth in subsections (a)(1), (a)(2), and (a)(3) shall be attached hereto as Exhibit E for the Project. The remaining information in subsection (a) shall be submitted by the Developer to the Authority.

(a) Financing Plan.

(1) the approved Project Budget, which budget shall include any Predevelopment Costs paid by the Authority, Master Developer or Developer for the Project;



- (2) the sources and uses analysis for the period of the construction for the Project, including an analysis of subsidized financing necessary from public entities, if any;
- (3) the sources and uses analysis from the date of the origination of the permanent loan, including an analysis of subsidized financing from public entities for the Project, if any;
- (4) the twenty (20)-year cash flow projections for the Project, including an analysis from the date of the issuance of the Certificate of Occupancy;
- (5) the initial operating budget for the Project, including without limitation an operating reserve fund and capital replacement reserve fund;
- (6) all underlying assumptions for each of the above, including terms, conditions, and pricing of all debt and equity; and
- (7) a rent schedule showing the number of units by bedroom size and projected rent amount.

(b) *Approvals.* The Developer shall also submit to the Authority for approval any revisions to the Financing Plan for the Project. The Developer shall submit to the Authority for review any and all commitments for financing necessary to undertake the construction of the Project and for permanent financing necessary for the Project. The Developer shall further submit to the Authority for its reasonable approval copies of any proposed partnership agreements and funding agreements between the Developer and Investors; any documents proposed to be entered into by the Developer with respect to any subsidies; and loan agreements and all other documents that the Developer and its proposed construction lender(s) and permanent lender(s) propose to execute in connection with such financing for the Project. With the exception of Financing Documents that are subject to Section 3.2(f), if the Developer does not receive approval or disapproval of any document submitted pursuant to this paragraph within twenty one (21) days, including the notice period required by Section 12.7(c), along with the specific reasons for any disapproval, such document may be deemed approved by the Authority as further provided in, and subject to the requirements of, Section 12.7. Notwithstanding the foregoing, the Authority shall not withhold approval of Financing Documents that are consistent with the terms of the final approved Financing Plan and that do not materially and adversely affect the rights of the Authority as contemplated herein and in the Ground Lease.

(c) *No Subordination.* The Authority will not approve any subordination of its fee interest in the Project Site to the interests of any lender or other funder. Notwithstanding the foregoing, the Authority's Purchase Option under Section 7.4 shall be subordinate to Developer's construction and permanent financing pursuant to commercially reasonable terms to be negotiated in good faith between the Authority and Developer, and the Purchase Option shall also be

subordinate to the loan and all regulatory agreements associated therewith, if required. The Ground Lease shall include a list of permitted subordinate liens.

Section 4.2 Intentionally omitted.

Section 4.3 Financing for the Development.

(a) *Authority Assistance.* The Authority will assist and support in good faith Developer's effort to obtain public and private financing for the Project, but shall have no obligation to provide any financing for the Project. Notwithstanding the foregoing, the Developer shall be primarily responsible for seeking all financing for the Project.

(b) *Developer Financial Information.* The Developer shall provide, and the Developer shall cause the Guarantor to provide, financial statements.

(c) *Guarantees.* The Guarantor or another Affiliate of Developer shall provide all guarantees required by investors and lenders, including, but not limited to, completion (development deficit), operating deficit, and tax credit recapture guarantees. The Guarantor shall provide a completion guaranty for the benefit of the Authority and in a form approved by the Authority and the Guarantor.

Section 4.4 Developer Fee and Other Fees.

(a) For developing the Project, Developer (or its Affiliates) and the Authority shall be entitled to receive a fee equal to [Fifteen Million and 00/100 Dollars (\$15,000,000.00)] to be disbursed as set forth herein (the "**Developer Fee**"); provided, however, that during the construction period, the Developer and its Affiliates shall earn no more than the amount allowable pursuant to restrictions imposed by Section 42 of the Code, HHFDC regulations or other applicable financing programs. The Developer Fee shall be paid as follows: fifty percent (50%) of the Developer Fee shall be paid to the Developer, and the other fifty percent (50%) of the Developer Fee shall be paid to the Authority on a pari passu basis and pursuant to a Subdevelopment Fee Agreement between the Developer and the Authority.

(b) Except as expressly provided in the Partnership Agreement or elsewhere herein, Developer (and its Affiliates) shall not receive any additional payment for providing goods or services to the Project except with the express written consent of the Authority. Developer will disclose any proposed relationship to the Authority and will provide the Authority sufficient information about the terms and conditions of the proposed relationship to enable the Authority to evaluate its propriety and commercial reasonableness. Without limiting the generality of the foregoing, Developer shall disclose to Authority in writing, and shall include in the Financing Plan, the interest rate, terms, and payee for any predevelopment loan that will be included in the development budget for the Project by an affiliate of the Developer.

(c) Developer has selected, and the Authority hereby approves, Michaels Management-Affordable LLC, a New Jersey limited liability company, or its affiliate (“**Michaels**” or “**Property Manager**”), as the initial property manager, and HCHP Property Management, LP, a California limited partnership, as the management agent (collectively, “**Management Agent**”). All proposed fees associated with property management, including without limitation, lease-up fees, management fee, accounting fees, set-up fees, reimbursement of eligible expenses, and charges for resident services shall be consistent with industry standards for multi-family residential developments similar to the Project, and all such proposed fees shall be disclosed in writing to the Authority, shall be subject to the Authority’s reasonable approval, and shall be included in the Financing Plan.

(d) The Authority has approved a \$7,500 annual asset management fee for the Project to an affiliate of the Developer (“**HCDC Asset Management Fee**”) and a \$7,500 annual asset management fee to the Authority (“**HPHA Asset Management Fee**”). HCDC Asset Management Fee and the HPHA Asset Management Fee (together, “**Asset Management Fees**”) shall be paid from Net Cash Flow in accordance with the asset management fee agreements. The Asset Management Fees will increase by three percent (3%) on an annual basis, will be cumulative and will accrue annually beginning upon the date the Project converts to permanent financing.

(e) The Authority has approved a Property Management Oversight Fee to an affiliate of the Developer in the amount equal to two percent (2%) of effective gross income (“**PM Oversight Fee**”) provided that the affiliate of the Developer pays fifty percent (50%) of the PM Oversight Fee to the Authority (“**HPHA PM Fee**”) upon receipt of any portion of the PM Oversight Fee pursuant to a HPHA Property Management Fee Agreement. Neither the PM Oversight Fee nor the HPHA PM Fee are cumulative.

## ARTICLE V DESIGN

Section 5.1 Design in Conformance with Scope of Development and Concept Plan. In designing and constructing the Project, the Developer shall require the Architect to cause all subsequent design documents to be consistent with the Scope of Development, attached as Exhibit B, the Concept Plan, attached as Exhibit D approved by the Authority, and the Accessibility Requirements defined and described in Section 5.11 below. The Scope of Development and the Concept Plan shall establish the baseline design standards from which the Developer shall prepare all subsequent Design Development Documents. The Project shall be designed to satisfy all of the Development Goals described in the Master Development Agreement. The Project shall be designed in a manner to achieve a density that is economically feasible, while also taking into consideration the views of community stakeholders. The Developer shall seek input from community stakeholders in accordance with the Master Development Agreement.

Section 5.2 Design Documents. The Developer shall cause its Architect to proceed diligently to prepare Schematic Design Documents, Design Development Documents and Construction Documents for the Project, consistent with the Scope of Development and the Concept Plan, including, without limitation, such drawings as may reasonably be required to show the location, bulk, height and other principal external features of the Project. In connection with its submittal to the Authority for its approval, the Developer shall provide to the Authority the Design Development Documents in the form and at each of the stages described in Section 5.3, as may reasonably be required by the Authority for its review. The Design Development Documents shall incorporate any conditions imposed by the City's planning and entitlements process.

Section 5.3 Submittal and Review of Design Development Documents. Within the times set forth in the Schedule of Performance, the Developer shall submit to the Authority the Design Development Documents in the following stages:

(a) *Design Development Drawings*. The Design Development Drawings shall be based on the Concept Plan and the Scope of Development. The Design Development Drawings shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. The drawings shall fix and describe all design features, as well as the size, character, and quality of the Project as to architectural, structural, and mechanical systems. Key details shall be provided in preliminary form. The Developer shall submit to the Authority concept drawings, 30% plans, 60% plans and 90% plans in accordance with the Schedule of Performance in Exhibit C.

(b) *Final Plans and Specifications*. Final Plans and Specifications are to be a continuation of approved Design Development Drawings. The Plans and Specifications shall provide all the detailed information necessary to allow for the Developer to obtain the superstructure building permit, and shall provide all the detailed information necessary to obtain building or site permits to build the Project including complete building, site, landscape, requirements, standards, and specifications. The Developer shall provide material samples upon the reasonable request of the Authority.

Section 5.4 Project Approvals. Within the times set forth in Section 5.6, the Authority shall have the right to review and approve the Design Development Documents in order to ensure that the Project will be constructed with high quality architectural design and materials and to ensure consistency with the Scope of Development and the provisions of this Agreement. The Authority shall have the right to review and approve the Design Documents associated with each phase of the design process. The Authority shall provide to Developer written approval or disapproval. For purposes of this Article V, "approval" means approval of the Authority Executive Director or his or her designee.

Section 5.5 New Material Concerns. If the Authority determines that there are material changes which are not logical progressions from previously approved Design Development

Documents or which raise material concerns that were not reviewable in previously approved Design Documents, then in approving or disapproving such Design Development Documents, the Authority shall act in its reasonable discretion.

Section 5.6 Approval Process. The Authority shall approve or disapprove submittals under this Article V within twenty (20) business days of receipt of the submittal from the Developer. In the event the Authority disapproves a submittal of the Design Development Documents pursuant to Section 5.4, the Authority shall submit a list of reasons for such disapproval to the Developer, together with its notice of disapproval. Upon receipt of such a list, the Developer shall have twenty (20) business days to resubmit a revised submission. Upon its receipt of a revised submission, the Authority shall have five (5) business days (or in the event Authority Board action is required as soon as reasonably possible) to approve or disapprove of the revised design.

Section 5.7 No Change in Design Documents. Once the Authority has approved Final Construction Drawings, the Developer shall not make any changes in those documents which would materially impact the matters set forth in Section 5.3, excluding any change required for compliance with building codes or other government health and safety requirements, without the prior written approval of the Authority, which approval shall be granted in the Authority's reasonable discretion and within the time periods set out in Section 5.6. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Authority's consent be required for any change orders associated with changes to the Scope of Development unless such change order (a) individually, increases the development budget by more than \$50,000, or (b) such change order, when added to increases in the development budget caused by all previous change orders, increases the development budget by more than \$250,000, or (c) represents a material change in the building materials or equipment, or the structural or architectural design or appearance of the Project as provided in the Scope of Development and Concept Plan approved by the Authority. The Developer shall not make any material change required for compliance with building codes or other government health and safety requirements without giving prior notice to the Authority.

Section 5.8 Submittal and Review of Construction Contract. Within the times set forth in the Schedule of Performance, the Developer shall submit to the Authority for its approval the proposed construction contract and other Construction Documents for the Project prepared in accordance with the Master Development Agreement.

Section 5.9 Additional Permits and Approvals. Within the times specified in the Schedule of Performance, Developer shall obtain all permits and approvals which are required by local jurisdictions prior to commencement of construction for the Project including building permits, but excluding any demolition permits. All applications for such permits and approvals shall be consistent with the approved Design Documents. The Developer shall not commence construction under a building or site permit, excluding any necessary demolition work pursuant to a separate agreement regarding demolition, until the Authority has approved the Plans and Specifications. The Developer acknowledges that execution of this Agreement by the Authority

does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

Section 5.10 Authority Review. The Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Authority with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the Authority, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the Authority as to the quality of the design or construction of the Project.

Section 5.11 Accessibility Requirements. The design and operation of the Project shall meet the program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 or any applicable successor regulation, the Americans with Disabilities Act, and the Fair Housing Act and their implementing regulations. In addition, the Developer shall ensure that the percentage of accessible dwelling units complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, subpart C or any applicable successor regulation. The Developer shall employ a Certified Access Specialist to conduct an accessibility review of the Project and provide the Authority with a written report certifying compliance with State and Federal standards and identification of the number and type of accessible units.

## ARTICLE VI CONSTRUCTION

Section 6.1 Commencement of Construction. Subject to events of Force Majeure as defined in Section 10.1(b), the Developer shall commence or cause to be commenced construction of the Project after the Closing and/or pursuant to the Site Preparation Documentation and otherwise in accordance with the Schedule of Performance.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute or cause to be prosecuted to completion the construction of the Project, and shall complete or cause to be completed the construction the Project no later than the time specified in the Schedule of Performance, subject to events of Force Majeure as defined in Section 10.1(b).

Section 6.3 Construction Pursuant to Plans.

(a) The Developer shall construct or cause to be constructed the Project substantially in accordance with the Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for Authority approval any proposed change in the Final Construction Drawings which materially changes the size, location or elevation of the Project or which would require an amendment to any approval or permits obtained from the City or other governmental agencies. The process for approving or disapproving change orders shall be negotiated further by the Authority and the Developer before the Closing.

(c) No change which is required for compliance with building codes or other laws, codes or regulation shall be deemed material. However, the Developer must submit or cause to be submitted to the Authority, in writing, any change that is required for such compliance within ten (10) business days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.4 Construction Bonds. The Partnership shall require its contractor to procure and deliver to the Authority copies of labor and material (payment) bonds and performance bonds, or a dual bond which covers both payment and performance obligations, in a penal sum each of not less than one hundred percent (100%) of the scheduled cost of construction of the Project, and one hundred percent (100%) payment bond. Said bonds shall be issued by an insurance company which is licensed to do business in the State and has a rating equivalent to A-.VII or as otherwise approved by the Authority. The labor and materials (payment) bond shall name the Authority as a co-obligee or assignee.

Section 6.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with the Project to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the Authority for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Project.

Section 6.6 Non-Discrimination; Equal Opportunity. The Developer, for itself and its successors and assigns, and transferees agrees that in the construction, operation and management of the Project:

(a) It will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, disability, medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, or retaliation for having filed a discrimination complaint (nondiscrimination factors). The Developer will take affirmative action to ensure that

applicants are considered for employment by the Developer without regard to the nondiscrimination factors, and that Developer's employees are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(b) It will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(c) It will cause the foregoing provisions to be inserted in all contracts for the construction, operation or management of the Project entered into after the Effective Date of this Agreement; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(d) [Reserved].

Section 6.7 Equal Opportunity/Non-Discrimination in Employment and Contracting Procedures, Including Utilization of Minority and Women Businesses. The Developer and the Authority acknowledge and agree that it is the policy of the Authority to promote and ensure equal opportunity through employment and in the award of contracts and subcontracts for construction. During the period of this Agreement, the Developer shall not discriminate on the basis of race, color, creed, religion, national origin, ancestry, disability, medical condition, age, marital status, gender identity status, sex, sexual orientation, HIV status or Acquired Immune Deficiency Syndrome (AIDS) condition or perceived condition, in the hiring, firing, promoting or demoting of any person.

(a) During the construction of the Project, the Developer shall provide to the Authority such information and documentation as reasonably requested by the Authority.

(b) The Developer shall use reasonable efforts to monitor and enforce, or shall cause its general contractor to monitor and enforce, the equal opportunity requirements imposed by this Agreement. In the event, after notice from the Authority and an opportunity to cure such failure as set forth in Article X of this Agreement, the Developer fails to use reasonable efforts to monitor or enforce these requirements, the Authority may declare the Developer in default of this Agreement and pursue any of the remedies available under this Agreement.

Section 6.8 Prevailing Wages. In the construction of the Project, for all on-site and adjacent construction activities, the Developer shall execute and submit an "Agreement to be Bound" in connection with the Project Labor Agreement between the State of Hawai'i and the



Hawai'i Construction Alliance, as attached hereto as Exhibit G ("PLA"). The Developer shall comply with all applicable requirements of the PLA. The Developer shall provide the Authority with any required reports confirming compliance with the PLA requirements.

Section 6.9 Progress Reports. Until such time as the Developer is entitled to the issuance of a Certificate of Occupancy by the City, the Developer shall provide the Authority with monthly progress reports regarding the status of the construction of the Project, including the Developer's compliance with all applicable State and Federal requirements.

Section 6.10 Entry by the Authority. The Developer shall permit the Authority, through its officers, agents, or employees, to enter the Project Site with advance written notice, at all reasonable times and in a safe, unobtrusive manner to review the work of construction to determine that such work is in conformity with the approved Plans and Specifications or to inspect the Project for compliance with this Agreement. The Authority is under no obligation to (a) supervise construction, (b) inspect the Project, or (c) inform the Developer of information obtained by the Authority during any review or inspection, and the Developer shall not rely upon the Authority for any supervision, inspection, or information.

Section 6.11 Taxes. At all times both prior to and after obtaining any applicable property tax exemptions, the Limited Partnership shall pay prior to delinquency all real property taxes and assessments assessed and levied on the Project Site after the Partnership takes title to a leasehold interest therein, and shall remove any levy or attachment made on the Project Site. The Limited Partnership may, however, contest the validity or amount of any tax, assessment, levy, attachment or lien on the Project Site.

Section 6.12 Hazardous Materials.

(a) *Certain Covenants and Agreements*. The Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Project or the Project Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Project in violation of any applicable law;

(2) The Developer shall keep and maintain the Project and each portion thereof in compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same, the Developer shall immediately advise the Authority in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer

or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all Claims made or threatened by any third party against the Developer or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as “**Hazardous Materials Claims**”); (C) the presence of any Hazardous Materials in, on or under the Project in such quantities which require reporting to a government agency; or (D) the Developer’s discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project Site or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws. If the Authority reasonably determines that the Developer is not adequately responding to a Hazardous Material Claim, the Authority shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its attorney’s fees in connection therewith paid by the Developer.

(4) Without the Authority’s prior written consent, which shall not be unreasonably withheld or delayed, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Project (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(5) Notwithstanding any contrary provision hereof, construction materials, gardening materials, household products, office supply products and janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential property, and which are used, stored, and disposed of in accordance with all applicable Hazardous Materials Laws may be used in connection with the construction and operation of the Project.

(b) *Indemnity.* Without limiting the generality of any other indemnification set forth herein, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Authority) the Authority, any Affiliate of the Authority that participates as a partner of the Limited Partnership, and the City, and their respective board members, commissioners, directors, elected and appointed officers and officials, employees, members, agents, consultants, volunteers and representatives (all of the foregoing, the “**Authority Indemnitees**”) from and against any and all Claims arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or any other person or entity, except for the Authority and the Authority Indemnitees, to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project subsequent to the conveyance of the Project Site to the Limited Partnership; (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Project which presence, discharge, or release occurred after the date of

the Ground Lease; or (3) any activity carried out on, or undertaken on or adjacent to the Project subsequent to the conveyance of the Project Site to the Partnership, by the Developer or any of its affiliates, employees, agents, contractors or subcontractors, or any third persons except for the Authority and the Authority Indemnitees, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Project (collectively “**Indemnification Claims**”).

The foregoing indemnity shall further apply to any residual contamination in, on or under the Project or the Project Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials subsequent to (i) the rights of access pursuant to the Site Preparation Documentation and/or (ii) the conveyance of the Project Site to the Limited Partnership pursuant to the Ground Lease, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration or earlier termination of this Agreement, and shall remain in full force and effect, except that this indemnity shall not apply to contamination that first occurs after termination of the Ground Lease (as documented by a Phase I environmental report and, if needed, a Phase II environmental report performed by the Lessee upon the termination of the Ground Lease) or contamination caused by the gross negligence or willful misconduct of the Authority, any affiliate of the Authority, or Authority Indemnitees.

Notwithstanding anything to the contrary herein, Developer shall not be liable under this Section 6.12 for any claims or other liabilities resulting from circumstances under the Authority’s control, including without limitation, any condition existing on the Project Site prior to the effective date of the Site Preparation Documentation and/or the Ground Lease, as previously identified in (i) the Phase I Environmental Site Assessment, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023 (the “**Phase I Report**”); (ii) the Phase II Environmental Site Assessment, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024 (the “**Phase II Report**”); or (iv) the Final Environmental Impact Statement dated April 2018 (collectively, the “**Environmental Reports**”), done prior to the effective date of the Site Preparation Documentation and/or the Ground Lease, or for any claim or other liability caused by the negligent acts of the Authority or its agents other than Developer.

(c) *No Limitation.* The Developer hereby acknowledges and agrees that the Developer’s duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the Authority may have concerning the Project Site and/or the presence in, on or under the Project Site of any Hazardous Materials, whether the Authority obtained such information from the Developer or from its own investigations, unless the Authority intentionally and knowingly withholds such information from Developer, and except as otherwise expressly provided herein.

(d) *Environmental Work.* After Closing the Developer shall be responsible for performing the work of any investigation and remediation which may be required by applicable law on the Project Site in order to develop the Project. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation, the Authority and the Developer. During the term of the Ground Lease, the Developer shall notify the Authority promptly upon discovery of any actionable levels of Hazardous Materials, and upon any release thereof, and shall consult with the Authority in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. The Developer shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this Agreement.

(e) *Developer Right to Terminate.* If, prior to the Closing, Developer discovers Hazardous Materials, the cost of remediation of which exceeds the amount of insurance proceeds available for payment to Developer pursuant to any applicable insurance policy, then Developer, subject to the conditions set forth below, shall have the right to terminate this Agreement by delivery of thirty (30) days' written notice to Authority. Developer's right so to terminate this Agreement shall be subject to the condition precedent that Developer shall first have: (a) submitted to Authority any and all information then available to Developer as to the nature and scope of the Hazardous Materials discovered and as to the cost estimated to remediate them, if any such cost estimate exists, and (b) offered to Authority the right, within six (6) months after receipt of such information, or such longer period of time as may reasonably be required by Authority to obtain competitive bids for the work, to elect, at its sole and absolute discretion, to cause such work to be performed, at Authority's sole cost and expense, to the satisfaction of Developer; provided however, the Parties will cooperate to expeditiously address Hazardous Materials discovered after the date upon which low-income housing tax credits are allocated to the Project and in all events shall avoid jeopardizing compliance with construction completion/placed in service deadlines. Unless the Developer makes a reasonable determination that the remediation work cannot be completed prior to any applicable construction completion or placed in service deadlines, if the Authority so elects and causes such work to be performed as soon as reasonably possible, then Developer shall not have the right to terminate this Agreement under this Section 6.12(e).

(f) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, Developer's termination rights set forth in this Section 6.12(e) shall not apply to the discovery of Hazardous Materials that have migrated onto the Project Site from adjoining properties developed, controlled or operated by Developer or Developer affiliates, nor shall the Authority have any obligation to remediate any such Hazardous Materials.

Section 6.13 AS-IS Conveyance. The Ground Lease shall convey a leasehold interest in the Project Site in its “AS-IS, WHERE-IS, WITH ALL FAULTS” condition with no warranties or representations by the Authority concerning the condition of the Project Site, including without limitation, the presence or absence of any Hazardous Materials, except as expressly provided in writing. Developer hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Authority: (i) neither Authority, nor anyone acting for or on behalf of Authority, has made any representation, statement, warranty or promise to Developer concerning the development potential or condition of the Project Site; (ii) in entering into this Agreement, Developer has not relied on any representation, statement or warranty of Authority, or anyone acting for or on behalf of Authority, other than as may expressly be contained in writing in this Agreement; (iii) all matters concerning the Project Site have been or shall be independently verified by Developer and that the Limited Partnership shall lease the Project Site based upon Developer’s own prior examination thereof; and (iv) THAT THE LIMITED PARTNERSHIP SHALL LEASE THE PROJECT SITE, IN AN “AS IS” PHYSICAL CONDITION AND IN AN “AS IS” STATE OF REPAIR.

Section 6.14 City and Other Governmental Authority Permits. Before the commencement of construction or development of any buildings, structures or other work of improvement upon the Project Site, the Developer shall secure or cause to be secured any and all permits or other authorizations, which may be required by the City or any other governmental agency regulating such construction, development or work. The Authority shall provide all assistance deemed appropriate by the Authority to the Developer in securing these permits. Costs and fees associated with Developer’s performance under this Section shall be a cost to the Project.

Section 6.15 Planning/Zoning Approvals for the Project Site. It shall be the responsibility of the Developer to ensure that the zoning of the Project Site shall be such as to permit the development and use of the Project Site in accordance with the provisions of this Agreement. The Authority shall cooperate with the Developer in seeking any variances, conditional use permits, parcel maps or other discretionary approvals, to implement this Agreement. Costs and fees associated with Developer’s performance under this Section shall be a cost to the Project.

Section 6.16 Environmental Measures. The Developer and the Authority have agreed to implement Environmental Measures.

## **ARTICLE VII OWNERSHIP, OPERATION AND DISPOSITION OF PROJECT SITE**

Section 7.1 Ownership. Units developed pursuant to this Agreement shall be owned by the Partnership, and all net income therefrom shall be subject to the terms and provisions of the documents governing the operation of the Project, including without limitation, the Ground Lease. The Project will be owned and operated by the Partnership in which the managing general partner will be Master Developer or its Affiliate.

Section 7.2 Property Management and Management Agent. Developer, through a management agent and professional property manager or property management company, shall manage the Project or cause it to be managed pursuant to a management agent agreement, property management agreement and management plan that are subject to the Authority's review and approval. Any manager or management company retained to act as agent for Developer in meeting the obligation of providing a property manager shall be subject to prior written approval of the Authority, which approval shall not be unreasonably withheld or delayed. In exercising its approval rights hereunder, the Authority may require proof of ability and qualifications of the management company based upon (i) prior experience, (ii) assets, (iii) insurance coverage, and (iv) other factors determined by the Authority as reasonably necessary. Furthermore, upon sixty (60) days' prior written demand from the Authority for cause in the Authority's reasonable discretion, Developer shall remove and replace a property management company. In any agreement with a Management Agent ("**Management Agreement**"), Developer shall expressly reserve the right to terminate such agreement with cause. Notwithstanding, the Authority agrees that the Management Agent or Property Manager, as the case may be, shall be entitled to a sixty (60)-day notice of default and a reasonable opportunity to cure before any such termination.

Section 7.3 Approval of Operating Budgets; Financial Statements; Books and Records. The Authority shall have the right to review and approve the annual operating budgets for the Project, which approval shall not be unreasonably withheld. The Limited Partnership shall submit to the Authority a proposed annual operating budget for the Project not later than sixty (60) days prior to the beginning of each fiscal year during the term of the Ground Lease. The proposed budget shall include a description of anticipated repairs and capital replacements to be undertaken in the next fiscal year. In addition, the Limited Partnership shall be required to annually submit to the Authority a copy of audited financial statements for the Project within ninety (90) days following the end of each fiscal year, but in no event later than April of each year, during the term of the Ground Lease, except that the Limited Partnership shall not be required to submit a copy of audited financial statements for the Project for the first fiscal year that the Project is operating until no later than July of such year. The Authority shall have the right to inspect all books and records related to the development, operation and management of the Project.

Section 7.4 Purchase Option and Right of First Refusal. The Authority (directly or through an Affiliate) shall have options (the "**Purchase Options**") to acquire the Project or any and/or all general and limited partnership interests in the Partnership, and a right of first refusal ("**Right of First Refusal**"), as more fully described in Section 8.4 of the MDA and subject to the terms and conditions set forth in a Purchase Option and Right of First Refusal Agreement between the Parties ("**Purchase Option and Right of First Refusal Agreement**").

## **ARTICLE VIII OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION; ASSIGNMENT AND TRANSFERS**

Section 8.1 Maintenance. The Developer hereby agrees that, upon Closing, and prior to completion of the construction of the Project, the Project Site shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards.

Section 8.2 Non-Discrimination. The Developer covenants by and for itself and its successors and assigns acting as Developer that there shall be no discrimination against or segregation of a person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site or of the Project by the Developer, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the Project Site or of the Project.

Section 8.3 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Project shall contain the following language:

(a) In Deeds: “Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

(b) In Leases (except for leases from the Developer to a residential tenant): “The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that his lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the land herein leased.”

(c) In Contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race; sex, including gender identity or expression; sexual orientation; color; religion; marital status; familial status; ancestry; disability; age; or human immunodeficiency virus infection in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee, or vendees of the land.”

Section 8.4 Employment Opportunity. During the operation of the Project, there shall be no discrimination by the Developer on the basis of race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, reproductive health decision, or domestic or sexual violence victim status in the hiring, firing, promoting, or demoting of any person engaged in the operation of the Project.

Section 8.5 Transfer.

(a) For purposes of this Agreement, “**Transfer**” shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Project, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Project is transferred and Developer retains title. The term “**Permitted Transfer**” shall mean (a) the admission or withdrawal of limited partners in the Limited Partnership; (b) the transfer of interests in the limited partners of the Partnership; (c) the leasing of any single unit in the Project to a tenant in compliance with the Regulatory Agreements, as applicable; (d) the transfer of this Agreement to the Partnership; (e) the removal of the general partners by the limited partners pursuant to the terms of the Partnership Agreement, (f) the granting of any security interests pursuant to the terms of financing for the Project pursuant to the approved Financing Plan, and (g) the substitution of an Affiliate of the Developer as a general partner or limited partner of the Limited Partnership.

(b) No Transfer other than Permitted Transfers shall be permitted without the prior written consent of the Authority, which the Authority may withhold in its sole discretion. The Authority will not unreasonably withhold consent to the granting of any easements necessary for the development of the Project Site as contemplated herein. The Authority may approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the Authority for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the Authority such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the Authority within thirty (30) days of receipt by the Authority of Developer’s request for approval of a Transfer.



(c) The Partnership Agreement shall specify that forty five percent (45%) of the net proceeds of sale or refinancing received by the Limited Partnership, after payment of any priority payments (including, but not limited to, brokerage fees, commissions, proceeds set aside in reserve for repairs, title and escrow fees, transfer taxes, financing costs, legal costs and all other customary costs incurred during a sale or refinancing) required by the Partnership Agreement, shall be allocated to the Authority. If the Project is sold or otherwise conveyed or Transferred, the Authority shall be entitled to receive forty five percent (45%) of the net proceeds of such sale or other Transfer.

Section 8.6 Encumbrance of Property. Except as otherwise provided in this Agreement, the Developer shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Project Site or part thereof other than a lien for current taxes, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Project Site, except with the prior written consent of the Authority. The Developer shall notify the Authority in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or the Project Site, and of any encumbrance or lien that has been created on or attached to the Project Site whether by voluntary act of the Developer or otherwise.

## ARTICLE IX INSURANCE

Section 9.1 Developer. The Developer shall maintain and keep in full force and effect and shall cause all of its Contractors to maintain and keep in full force and effect, during the term of this Agreement and the Ground Lease the policies of insurance described in this Section. Each liability policy shall name the Authority, any affiliate of the Authority participating as a partner in the Partnership, and their respective board members, commissioners, directors, elected and appointed officers and officials, employees, agents, and consultants as additional insureds. The property insurance policies shall name the Authority as loss payee as its interests may appear. Each policy shall be underwritten and issued by reputable companies authorized to do business in the State with an A.M. Best's rating of not less than A:VII, shall not be subject to cancellation without thirty (30) days' prior written notice to the Authority, and shall be primary and non-contributing to any insurance carried by the Authority. Any language purporting to limit the insurer's liability for failure to give the required 30-day prior written notice shall be unacceptable to Authority. Developer shall provide the Authority with certificates of insurance and endorsements evidencing the required insurance, and upon request, copies of all insurance policies. All liability policies shall be written on an occurrence basis.

(a) Commercial General Liability (CGL) insurance, insuring for legal liability of the Developer, and caused by bodily injury, property damage, personal injury or advertising injury, contractual liability, and products and completed operations arising out of the ownership or management of the Project and including the costs to defend such actions brought against the Partnership. Limits of the policy shall be not less than Five Million Dollars (\$5,000,000) per

occurrence; provided however, during the period prior to the start of construction such limit may be reduced to Two Million Dollars (\$2,000,000). During construction, the Partnership shall be obligated to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Two Million Dollars (\$2,000,000) and the general contractor shall be required to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Five Million Dollars (\$5,000,000). Upon completion of construction, the Limited Partnership shall be required to maintain CGL coverage consistent with the requirements of this paragraph with coverage in the amount of Five Million Dollars (\$5,000,000).

(b) Worker's Compensation insurance, insuring for occupational disease or injury and employer's liability, and covering the Developer's full liability for statutory compensation to any person or persons who perform work for the Developer or perform duties on the Project Site, and liability to the dependents of such persons. The policy will be in a form and amount which complies with the worker's compensation acts and safety laws of the State. Worker's Compensation limits shall be not less than One Million Dollars (\$1,000,000) per occurrence;

(c) Automobile Liability insurance, insuring for legal liability of the Developer, and caused by bodily injury, property damage, or personal injury arising out of the ownership or use of motor vehicles, including uninsured motorist liability, and including the costs to defend such actions brought against the Developer. Limits of the policy shall be not less than One Million Dollars (\$1,000,000) each person and One Million Dollars per accident for bodily injury, and One Million Dollars (\$1,000,000) per accident or Two Million Dollars (\$2,000,000) combined single limit for property damage;

(d) Property insurance covering the Project, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Authority, naming the Authority as a loss payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations; and

(e) Builder's Risk insurance, insuring for all risks of physical loss of or damage (including the perils of fire, vandalism and malicious mischief, excluding the perils of earthquake, and excluding the perils of flood unless specifically required by the Authority) to the Project, and personal property of the Developer used to maintain or service the Project construction. Limits of policy will be the estimated replacement value of the completed the Project.

## **ARTICLE X TERMINATION FOR CAUSE**

### **Section 10.1 Events of Default by the Developer.**

(a) The following shall constitute an “**Event of Default**” by the Developer:

(1) if Developer shall fail to use diligent efforts to comply with the Schedule of Performance (other than due to Force Majeure as defined in Section 10.1(b)) and such failure shall continue after expiration of the notice and cure period set forth in Section 10.3(a); or

(2) if Developer shall materially breach or fail to diligently pursue its obligations under this Agreement (other than due to Force Majeure as defined in Section 10.1(b)) and such failure shall continue after expiration of the notice and cure period set forth in Section 10.3(a); or

(3) any fraud or willful misconduct on the part of the Developer or any of its general partners; or

(4) if the Developer or any of its general partners (i) is or becomes insolvent or bankrupt or otherwise ceases to pay its debts as they mature or makes any arrangement with or for the benefit of its creditors or consents to or acquiesces in the appointment of a receiver, trustee or liquidator for the Project or for any substantial part of either; (ii) institutes any bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding under the laws of any jurisdiction, or any such proceeding is instituted against the Developer in any jurisdiction which is not stayed or dismissed within 90 days after its institution; (iii) files any action or answer admitting, approving or consenting to any such proceeding; (iv) becomes subject to levy of any distress, execution or attachment upon its property which interferes with its performance hereunder, and the Developer fails within 90 days to discharge such levy, execution or attachment, or to substitute another entity (whether or not an Affiliate) acceptable to the Authority to perform the obligations of the Developer without material delay in performance; or (v) is convicted of any criminal offense or violation of law.

(5) A material Event of Default hereunder by the Developer with respect to any portion of the Project shall constitute an Event of Default by the Developer for which the Authority may exercise any of its remedies under this Agreement with respect to the Developer.

(b) For purposes hereof, “**Force Majeure**” shall mean causes beyond the control and without the fault or negligence of Developer. Such causes shall include without limitation: (i) acts of God, or of the public enemy, (ii) court order, acts, delays, failure or refusal to act on the part of a governmental entity in either its sovereign or contractual capacity, (iii) acts of a contractor other than Developer, or subcontractor, in the performance of an agreement with the Authority (and not pursuant to a contract with the Developer), (iv) riots, war or acts of terrorism, (v) fires, (vi) floods or earthquakes, (vii) strikes or lockouts, (ix) freight embargoes, (x) litigation, (xi) non-issuance of permits, (xii) lack of HUD approval (if applicable), (xiii) unusually severe weather, (xiv) the presence of Hazardous Materials or archaeological finds on the Project Site, (xv) delays of subcontractors or suppliers at any tier arising from unforeseeable causes, or (xvi) in connection with any action that the Authority is required to take pursuant to this Agreement, the Authority’s failure to act within the applicable time period specified in this Agreement.

Section 10.2 Events of Default by the Authority.

(a) The following shall constitute an “**Event of Default**” by the Authority:

(1) if the Authority shall fail to perform its obligations under this Agreement and such failure shall continue after expiration of notice and cure periods set forth in Section 10.3(a); or

(2) any fraud or willful misconduct on the part of the Authority.

(b) It shall not be an Event of Default if any failure by Authority arises due to Force Majeure. For purposes hereof, “Force Majeure” shall mean causes beyond the control and without the fault or negligence of Authority. Such causes shall include without limitation: (i) acts of God, or of the public enemy, (ii) court order, acts, refusal, delay or failure to act on the part of a governmental entity (other than the Authority) in either its sovereign or contractual capacity, (iii) acts of another contractor or subcontractor in the performance of an agreement with the Developer (and not pursuant to a contract with the Authority or an Affiliate of Authority), (iv) riots, war or acts of terrorism, (v) fires, (vi) floods or earthquakes, (viii) strikes or lockouts, (viii) freight embargoes, (ix) litigation, (xii) non-issuance of permits, (xiii) lack of HUD approval (if applicable), (xiv) unusually severe weather, (xv) the presence of Hazardous Materials or archeological finds on the Project Site, or (xvi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes.

Section 10.3 Procedure for Termination For Cause/Remedies.

(a) The occurrence of any event described in Sections 10.1(a)(1), 10.1(a)(2), 10.2(a)(1) or 10.2(a)(2) shall not constitute an Event of Default unless the non-defaulting Party has delivered written notice of default to the defaulting Party, and such defaulting Party shall fail to cure the default within thirty (30) days from its receipt of such notice or, if such cure cannot reasonably be completed within such thirty (30) day period, fails to commence such cure or having commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time period thereafter, provided that such time period does not exceed 120 days. Notwithstanding the foregoing, if any event described in Sections 10.1(a)(1), 10.1(a)(2), 10.2(a)(1) or 10.2(a)(2) occurs within thirty (30) days of Closing, the defaulting Party shall have only until Closing to cure such default.

(b) Upon the occurrence of an Event of Default by either Party, the non-defaulting Party shall be entitled to all remedies permitted by law or at equity, including but not limited to specific performance.

(c) Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement, or after Closing, in the Ground Lease. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach, or the exercise of any of such remedies for any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

## ARTICLE XI REPRESENTATIONS AND WARRANTIES

Section 11.1 Developer's Warranty of Good Standing and Authority. Developer represents and warrants to the Authority as follows:

(a) *Organization.* Developer is duly organized and validly existing, is in good standing under the laws of the State, and has the power and authority to own its property and carry on its business as now being conducted.

(b) *Authority of Developer.* Developer has full power and authority to execute and deliver this Agreement, to execute and deliver the Ground Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) *Authority of Persons Executing Documents.* This Agreement and all other documents or instruments executed and delivered or to be executed and delivered pursuant or in connection with this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the Ground Lease, and all other documents or instruments executed and delivered or to be executed and delivered pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of the above-named documents.

(d) *Valid and Binding Agreements.* This Agreement, the Ground Lease and all other documents or instruments which have been executed and delivered or will be executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of

Developer, enforceable against it in accordance with their respective terms, subject to the laws affecting creditors' rights and principles of equity.

(e) *No Breach of Law or Agreement.* Neither the execution nor delivery of this Agreement, the Ground Lease, or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) *Pending Proceedings.* Except as disclosed in writing to the Authority prior to execution of this Agreement, Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Project at law or in equity, before or by any court, board, commission or agency whatsoever.

(g) *Financial Statements.* The financial statements of Developer and other financial data and information furnished by Developer to the Authority fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Developer from that shown by such financial statements and other data and information.

Section 11.2 Authority's Warranty of Good Standing and Authority. The Authority represents and warrants to Developer that (i) the Authority is a duly organized, validly organized, public body, corporate and politic, and is in good standing under the laws of the State, (ii) the Authority has all necessary power and authority under State law, (iii) this Agreement has been duly entered into and is the legally binding obligation of the Authority, (iv) this Agreement will not violate any judgment, law, consent decree, or agreement to which the Authority is a party or is subject to, and will not violate any law or ordinance under which the Authority is organized, and (v) there is no claim pending, or to the best knowledge of the Authority, threatened, that would impede the Authority's ability to perform its obligations hereunder.

## ARTICLE XII MISCELLANEOUS

Section 12.1 Term. This Agreement shall commence upon the Effective Date, and unless sooner terminated in accordance with the provisions herein shall terminate as to the Project upon Closing; provided however all indemnification provisions incorporated in this Agreement shall survive the Closing or earlier termination of this Agreement.

Section 12.2 Decision Standards. In any approval, consent or other determination by any party required under this Agreement, the party shall act reasonably and in good faith, unless a different standard is explicitly stated. “Good faith” shall mean honesty in fact in the conduct or transaction concerned based on the facts and circumstances actually known to the individual(s) acting for the party. “Discretion,” “sole discretion,” “option,” “election” or words of similar import in this Agreement denote the party’s privilege to act in furtherance of the party’s interest.

Section 12.3 Notices. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (a) delivered personally or by courier, (b) electronic mail, (c) sent by overnight express delivery, or (d) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party):

If to the Authority: Hawaii Public Housing Authority  
1002 North School Street  
Honolulu, HI 96817  
Attn: Hakim Ouansafi, Executive Director  
Email: hakim.ouansafi@hawaii.gov

with a copy to: Department of the Attorney General  
of the State of Hawaii  
425 Queen Street  
Honolulu, HI 96813  
Attn: Linda L.W. Chow  
Email: linda.l.chow@hawaii.gov

If to the Developer: c/o Highridge Costa Development Company, LLC  
330 West Victoria Street  
Gardena, CA 90248  
Attn: Mohannad H. Mohanna, President

with a copy to: Settle Meyer Law LLLC  
Pioneer Plaza,  
900 Fort Street Mall, Suite 1800  
Honolulu, HI 96813  
Attn: Scott W. Settle

And: Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111  
Attn: Christian D. Dubois

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, electronic mail transmission, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of electronic mail, upon receipt of electronic confirmation thereof, (iii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

Section 12.4 Time of Performance. All performance dates (including cure dates) expire at 5:00 p.m., Honolulu, Hawaii time, on the performance or cure day. A performance date which falls on a Saturday, Sunday or Authority holiday is deemed extended to the next business day. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

Section 12.5 Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

Section 12.6 Attorneys' Fees. Developer shall pay all costs, including attorney's fees, and expenses which may be incurred by or paid by the State and/or Authority in enforcing the covenants and conditions of this Agreement, in recovering possession of the Project Site, or in the collection of delinquent fees, taxes, assessments, and any and all other charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State related to this Agreement, the Developer shall pay all costs, including attorney's fees, and expenses incurred by or imposed on the State.

Section 12.7 Authority Approvals.

(a) For all actions requiring Authority approval, Developer shall submit the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: "Important: Your Response is Required in [insert number of days from applicable provision of this Agreement] Days."

(b) The Authority shall have a specified number of days to respond in writing. Authority's response, if not an approval, must include the basis for any objection and suggested modifications to obtain approval. For issues identified in this Agreement, this Agreement identifies the number of days that Authority shall have to respond. For issues not specified, the amount of response time shall be stated in the notice and shall be proportionate to the type and magnitude of the decision. For example, but not in limitation, the decision time for emergency situations shall be shorter than the time for review and approval of budgets.



(c) If the Developer does not receive a response within the specified number of days, it may send the Authority a notice of non-response, which shall be delivered to the President and Chief Executive Officer of the Authority in accordance with the formal notice provisions hereof and which shall bear the bold-faced legend, “Important: Notice of Non-response.” Following the giving of this notice, the Authority will have five (5) days in which to respond. If the Authority does not respond within such five (5) days, the Authority shall be deemed to have approved the action.

Section 12.8 Representatives. To facilitate communication, the Parties to this Agreement shall designate a representative with responsibility for the routine administration of each Party’s obligations under this Agreement. The Parties initially appoint the following as representatives:

Authority: Hakim Ouansafi  
Developer: Mohannad H. Mohanna

Section 12.9 Further Assurances. Each Party will promptly execute and deliver without further consideration such additional agreements and other documents as the other Parties may reasonably request to carry out the transactions contemplated herein, so long as the Parties’ rights and obligations thereunder are not substantively affected, modified or otherwise altered by such additional agreements and other documents, except as mutually agreed to between the Parties. Whenever this Agreement requires any Party to submit matters to another Party for approval, and there is no time specified herein for such approval, the submitting Party may submit a letter requiring approval or rejection by the other Party of the documents or matter submitted within twenty (20) days after submission or within sixty (60) days of submission if the document or matter requires approval by the Authority Board (unless another time frame is expressly set forth herein), and unless rejected within the stated time such documents or matter shall be deemed approved. Except where such approval is expressly reserved to the sole discretion of the approving Party, all approvals required hereunder by any Party shall be reasonable and not unreasonably withheld, conditioned or delayed.

Section 12.10 Counterparts. This Agreement may be executed on one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

Section 12.11 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in Hawaii state court in the City and County of Honolulu. This Agreement is subject to the Hawaii General Conditions (AG-008 103D) attached as Exhibit I to the MDA; provided, however, that only Sections 2, 4, 5, 8, 24, 25, 31, 33, and 42 of the Hawaii General Conditions apply to this Agreement. The Developer shall comply with the

terms and provisions of this Agreement and the foregoing sections of the Hawaii General Conditions to the extent applicable to the transactions contemplated herein. In the event of a direct conflict among any of the foregoing, the following order of precedence shall apply: (a) the terms and provisions of this Agreement; and (b) the Hawaii General Conditions.

Section 12.12 Severability. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

Section 12.13 Final Agreement. This Agreement, together with Exhibits attached hereto, represents the final agreement of the Parties with respect to the subject matter hereof and may not be contradicted by evidence of prior or contemporaneous oral or written agreements of the Parties. There are no unwritten oral agreements between the Parties.

Section 12.14 Limitation of Liability. Except as may be expressly set forth herein, no present or future member, partner, shareholder, participant, employee, agent, commissioner, director, or officer of or in Developer or any transferee shall have any personal liability, directly or indirectly, under or in connection with this Agreement; provided, however, that the foregoing shall not void or diminish the obligations of Developer under this Agreement. No present or future employee, agent, commissioner, director, or officer of or in the Authority shall have any personal liability, directly or indirectly, under or in connection with this Agreement; provided, however, that the foregoing shall not void or diminish the obligations of the Authority under this Agreement.

Section 12.15 Developer Not an Agent. Nothing in this Agreement shall be deemed to appoint Developer as an agent for or representative of the Authority, and Developer is not authorized to act on behalf of the Authority with respect to any matters except those specifically set forth in this Agreement. The Authority shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Developer, whether arising from actions under this Agreement or otherwise.

Section 12.16 Conflict of Interest. Developer represents and warrants that to its actual knowledge, no member, official, employee, agent, consultant or contractor of the Authority or the City has any direct or indirect personal interest in this Agreement or participated in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested. Developer further represents and warrants to the Authority that it has not paid or given, and will not pay or give, to any third party (other than as specifically set forth in this Agreement) any money or other consideration for obtaining this Agreement.

Section 12.17 Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorized representatives of the Authority and Developer, as applicable.

Section 12.18 Successors. This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

Section 12.19 Headings; Exhibits. The headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions. The Exhibits attached hereto are hereby incorporated into this Agreement by this reference.

Section 12.20 Construction. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. The terms “herein”, “hereof”, “hereto”, “hereunder” and similar terms refer to this Agreement and not to any particular section or subsection of this Agreement. The terms “include” and “including” shall be interpreted as if followed by the words “without limitation”. All references in this Agreement to sums denominated in dollars or with the symbol “\$” refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency.

Section 12.21 Cumulative Rights. The rights, powers, options, and remedies given to the Parties under this Agreement shall be cumulative, except as otherwise specifically provided for in this Agreement.

Section 12.22 Business Licenses. The Developer has obtained or will obtain all licenses required to conduct its business in the City and State and is not in default of any fees or taxes due to the State or City.

[signature page(s) to follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized signatories effective on or as of the date written at the commencement of this Agreement.

**AUTHORITY:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

*SIGNATURES CONTINUE ON FOLLOWING PAGE(S).*

**DEVELOPER:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**EXHIBIT A**

**PROJECT SITE DESCRIPTION**

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;

10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;

- 26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
- 27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

#### EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

- 1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
- 2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
- 3. 247° 38' 38" 20.14 feet along same;
- 4. 241° 56' 41" 81.98 feet along same;
- 5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
- 6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
- 7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;



8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37
10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;

24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;

40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;

10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;

2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

- |    |      |         |        |   |
|----|------|---------|--------|---|
| 1. | 64°  | 35'     | 22.53  | feet along the northerly side of Lanakila Avenue  |
| 2. | 151° | 30'     | 444.95 | feet along the remainder of Former Lanakila Emergency Homes;                            |
| 3. | 61°  | 54' 43" | 28.18  | feet along same;  |
| 4. | 331° | 30'     | 496.00 | feet along same to the point of beginning and containing an Area of 10,023 square feet, |

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

- |    |      |         |       |   |
|----|------|---------|-------|---|
| 1. | 157° | 57' 40" | 11.21 | feet along the northeasterly side of School Street; |
| 2. | 241° | 56' 41" | 70.50 | feet along the same;                                |

3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

**EXHIBIT A (continued)**  
**MAP OF PROJECT SITE**

[attached]



2022/SCUB-72  
APPROVED  
DEPARTMENT OF PLANNING AND PERMITTING  
City and County of Honolulu  
Date SEP 15 2023

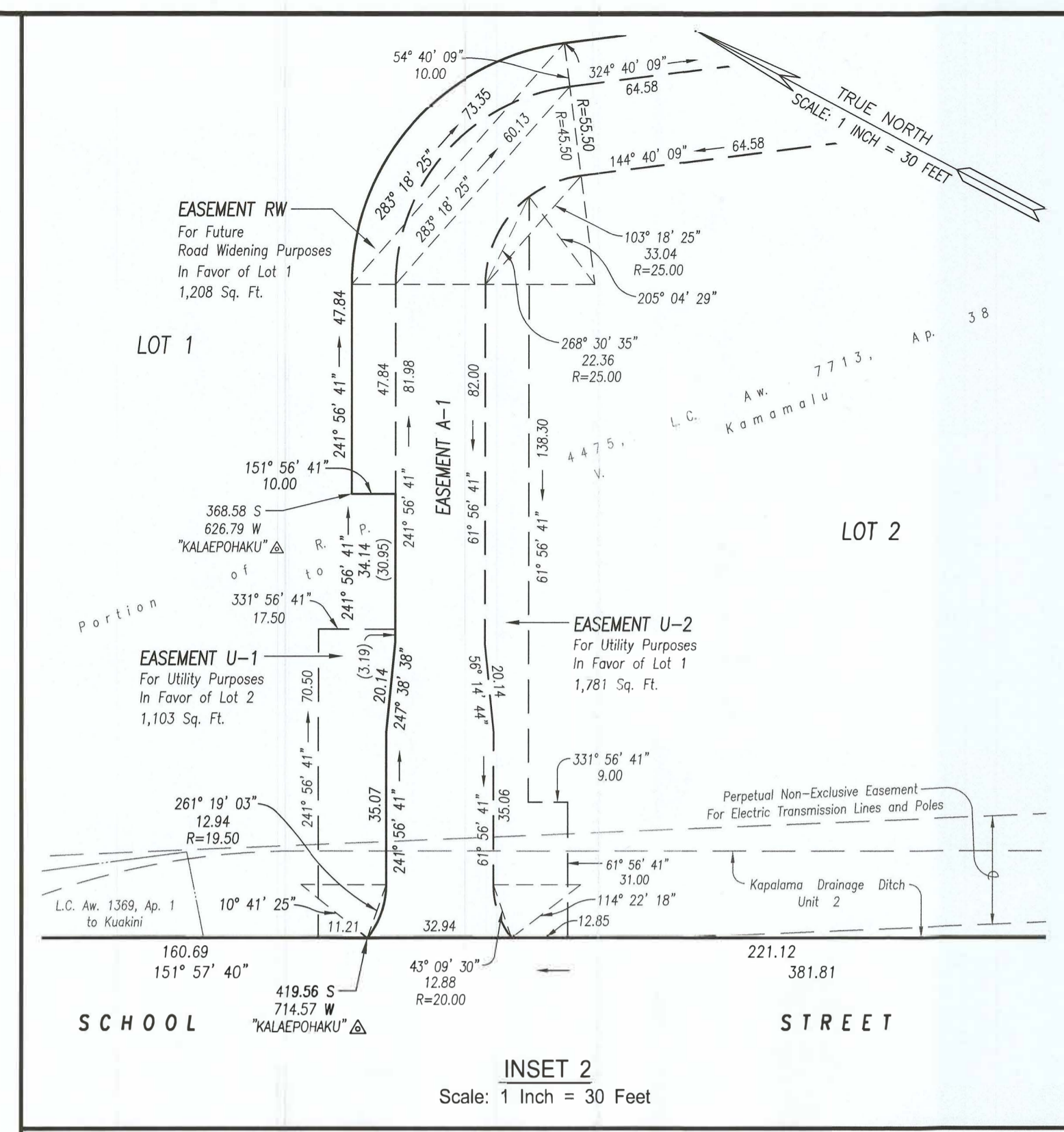
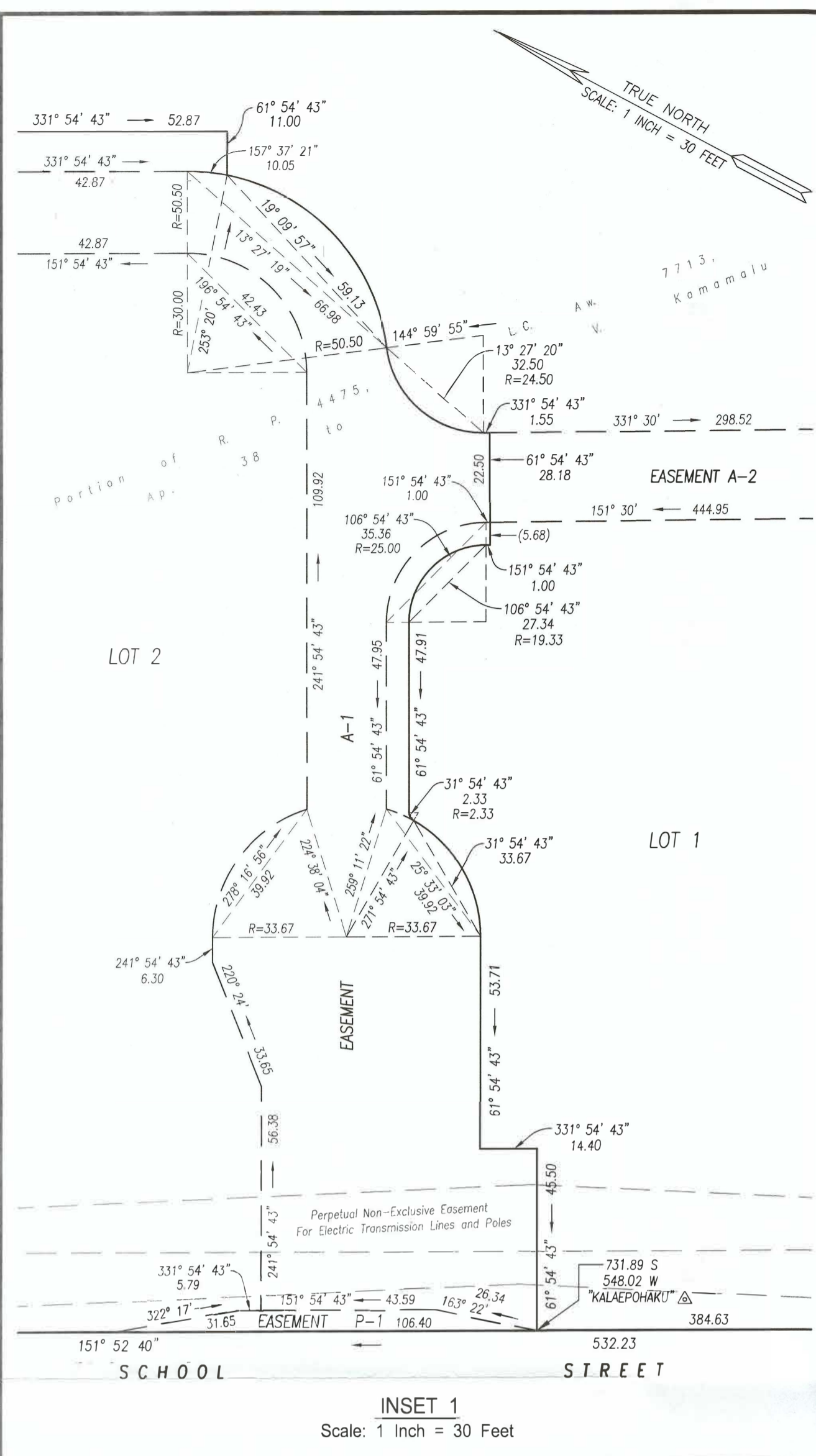
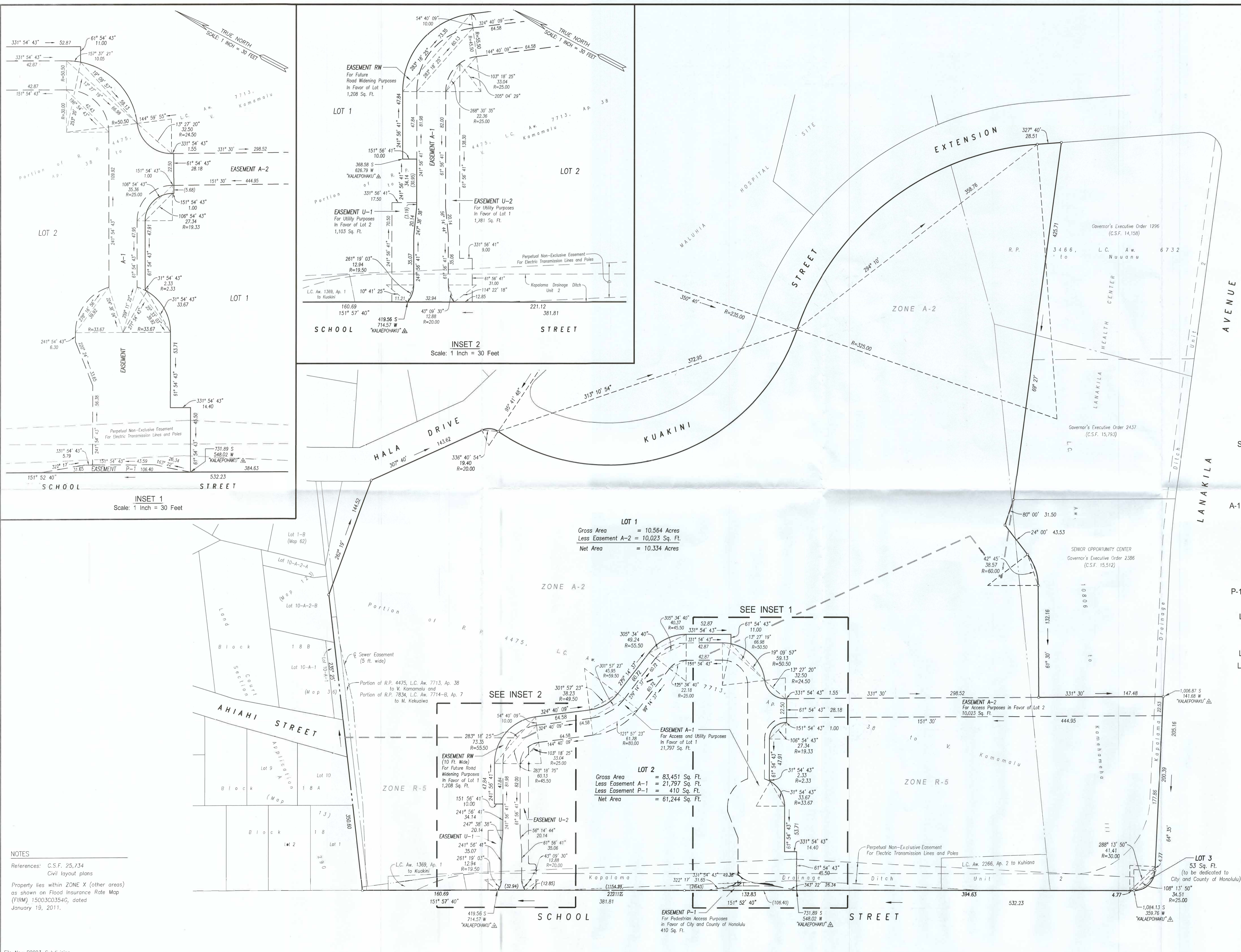
Director of Planning and Permitting  
FOR

**MAP SHOWING**  
SUBDIVISION OF FORMER LANAKILA EMERGENCY HOMES  
INTO  
LOTS 1, 2 AND 3  
AND  
DESIGNATION OF THE FOLLOWING EASEMENTS:  
A-1 FOR ACCESS AND UTILITY PURPOSES AFFECTING LOT 2,  
A-2 FOR ACCESS PURPOSES AFFECTING LOT 1,  
RW FOR FUTURE ROAD WIDENING PURPOSES  
AFFECTING LOT 2,  
U-1 FOR UTILITY PURPOSES AFFECTING LOT 1,  
U-2 FOR UTILITY PURPOSES AFFECTING LOT 2,  
AND  
P-1 FOR PEDESTRIAN ACCESS PURPOSES AFFECTING LOT 2  
BEING PORTIONS OF THE FOLLOWING:  
LAND COMMISSION AWARD 10,806 TO KAMEHAMEHA III,  
LAND COMMISSION AWARD 7713, APANA 38 TO  
V. KAMAMALU,  
LAND COMMISSION AWARD 1369, APANA 1 TO KUAKINI,  
LAND COMMISSION AWARD 2266, APANA 2 TO KUHIANA,  
LAND COMMISSION AWARD 6732 TO NUUANU  
AND  
LAND COMMISSION AWARD 7714-B, APANA 7  
TO KEKUIWA  
AT KAPALAMA, HONOLULU, OAHU, HAWAII

OWNER: HAWAII PUBLIC HOUSING AUTHORITY



THIS WORK WAS PREPARED BY  
ME OR UNDER MY SUPERVISION.  
Natalie K. Imata  
Natalie K. Imata Exp. 04/30/2024  
Licensed Professional Land Surveyor No. 5816



**LOT 1**  
Gross Area = 10.564 Acres  
Less Easement A-2 = 10,023 Sq. Ft.  
Net Area = 10.334 Acres

**LOT 2**  
Gross Area = 83,451 Sq. Ft.  
Less Easement A-1 = 21,797 Sq. Ft.  
Less Easement P-1 = 410 Sq. Ft.  
Net Area = 61,244 Sq. Ft.

**NOTES**  
References: C.S.F. 25,134  
Civil layout plans  
Property lies within ZONE X (other areas)  
as shown on Flood Insurance Rate Map  
(FIRM) 15003C0354G, dated  
January 19, 2011.



**EXHIBIT B**

**SCOPE OF DEVELOPMENT**

[attached Scope of Development Narrative, Unit Distribution Chart, Parking and Physical Goals and Requirements]



PALEKANA PERMITS  
 THIRD PARTY CERTIFICATION  
 BUILDING CODE  ELECTRICAL CODE  
 MECHANICAL CODE  PRB (LAND USE ORDINANCE)  
 STRUCTURAL (NON-SINGLE/2-FAMILY DWELLINGS)

PROJECT INFORMATION	ITEM	ALLOWABLE (PER RESOLUTION 20-251, CD1, FD1)	PROPOSED (PHASE 1A)															
<b>PROJECT DESCRIPTION:</b> THE RETIREMENT HOUSING FOUNDATION PROPOSES TO DEVELOP A 250 - UNIT RESIDENTIAL TOWER FOR THE STATE OF HAWAII, HAWAII PUBLIC HOUSING AUTHORITY (HPHA) WHICH WILL BE PART OF PHASE 1A.  TMK: (1) 1-6-009-003 ADDRESS: 1002 NORTH SCHOOL STREET HONOLULU, HI 96817 TOTAL LOT AREA: 543,672 SF (12,421 ACRES) FLOOD ZONE: X - FEMA ZONING: BMX-3 (COMMUNITY BUSINESS DISTRICT)	<b>LUO ZONING :</b> <b>LOT AREA:</b> <b>MAXIMUM HEIGHT:</b> <b>SETBACKS</b> FRONT: SIDE AND REAR HEIGHT <b>MAXIMUM DENSITY (FAR):</b> <b>UNIT COUNTS:</b>	BMX-3 543,672 SF (12,421 ACRES) 170'-0" 10'-0" 10'-0" ANY PORTION OF THE STRUCTURE OVER 40'-0" IN HEIGHT MUST HAVE ADDITIONAL SETBACKS: A) EACH 10'-0" OF ADDITIONAL HEIGHT OR PORTION THEREOF AN ADDITIONAL 1'-0" SETBACK MUST BE PROVIDED AND, B) ADDITIONAL SETBACK MUST BE A CONTINUOUS PLANE FROM THE TOP OF THE STRUCTURE TO THE HEIGHT OF 40'-0" ABOVE GRADE. MAX FAR ALLOW: 2.5 (1,359,180 SF) (PER LAND USE ORDINANCE TABLE 21-3.4) 797 UNITS (ALL THREE PHASES PER RESOLUTION 20-251)	BMX-3 145'-0" 10'-0" 10'-0" (SIDE) 10'-0" (REAR) A) COMPLY, SEE SITE PLAN B) COMPLY, SEE SITE PLAN 227,009 SF + EXISTING STRUCTURES TO REMAIN. CURRENT DEVELOPMENT SIGNIFICANTLY UNDER THE MAX. ALLOWABLE, NOT REQUIRING OVERALL SITE DATA AT THIS TIME. 250 UNITS															
	<b>PARKING STALLS:</b>	250 STALLS (820 TOTAL STALLS FOR ALL THREE PHASES)	244 STALLS + 3 ON-GRADE STALLS = 247 STALLS															
<b>CODE INFORMATION</b>  APPLICABLE CODES: INTERNATIONAL BUILDING CODE (IBC) 2018 EDITION CITY AND COUNTY OF HONOLULU CHAPTER 21 LAND USE ORDINANCE (LUO) RESOLUTION 20-251, CD1: ADOPTED OCTOBER 1, 2020 INTERNATIONAL ENERGY CONSERVATION CODE (IECC) 2018 EDITION WITH LOCAL AMENDMENTS UNIFORM PLUMBING CODE (UPC) 2018 EDITION WITH LOCAL AMENDMENTS UNIFORM FIRE CODE (UFC) NFPA 1 2018 EDITION WITH LOCAL AMENDMENTS NATIONAL ELECTRICAL CODE (NEC) 2018 EDITION AMERICANS WITH DISABILITIES ACT (ADA) GUIDELINES FAIR HOUSING ACT (FHA) DESIGN MANUAL - 1998	<b>ADA STALLS:</b>  <b>ELECTRICAL VEHICLE CHARGING STALLS:</b>  <b>LOADING STALLS:</b>  <b>BIKE PARKING SPACE:</b>	(PER ADA TABLE 208.2) <table border="1"> <thead> <tr> <th>VISITOR</th> <th>TOTAL PARKING STALLS</th> <th>ACCESSIBLE</th> <th>VAN ACCESSIBLE</th> <th>TOTAL</th> </tr> </thead> <tbody> <tr> <td>25</td> <td></td> <td></td> <td></td> <td>1</td> </tr> <tr> <td>RESIDENCE</td> <td>250</td> <td>5</td> <td>2</td> <td>7</td> </tr> </tbody> </table> NOTE: VAN ACCESSIBLE PARKING SPACES ARE 1 OF 6 ACCESSIBLE SPACES  1 TOTAL (8'-6" x 19'-0" x 10'-0" VERTICAL CLEAR) LOADING STALLS & (6 STALLS FOR ALL THREE PHASES) 1 TOTAL (12'-0" x 35'-0" x 15'-0" VERTICAL CLEAR) LOADING STALLS (3 STALLS FOR ALL THREE PHASES)  250 LONG-TERM STALLS 65 SHORT-TERM STALLS 315 TOTAL BIKE STALLS (FOR ALL THREE PHASES)	VISITOR	TOTAL PARKING STALLS	ACCESSIBLE	VAN ACCESSIBLE	TOTAL	25				1	RESIDENCE	250	5	2	7	*BOTH ADA & EV STALLS ARE INCLUDED IN THE TOTAL 247 STALLS* 1 TOTAL VISITOR ADA STALLS (1 VAN ACCESSIBLE) 10 TOTAL RESIDENCE ADA STALLS (2 VAN ACCESSIBLE)  5 ELECTRICAL VEHICLE CHARGING STALLS (1 VAN ACCESSIBLE STALL)  1 TOTAL (8'-6" x 19'-0" x 10'-0" VERTICAL CLEAR) LOADING STALL & 1 TOTAL (12'-0" x 35'-0" x 14'-0" VERTICAL CLEAR) LOADING STALL  92 LONG-TERM STALLS 20 SHORT-TERM STALLS 112 TOTAL BIKE STALLS
	VISITOR	TOTAL PARKING STALLS	ACCESSIBLE	VAN ACCESSIBLE	TOTAL													
25				1														
RESIDENCE	250	5	2	7														
<b>ENTITLEMENT APPROVALS:</b> 1. RESOLUTION 20-251, CD1, FD1  <b>LAND USE ORDINANCE (LUO) EXEMPTIONS UNDER RESOLUTION 20-251, CD1, FD1</b> 1. EXEMPTION FROM LUO SECTION 21-3.70-1(a) AND TABLE 21-3.2, RELATING TO PERMITTED USES AND STRUCTURES IN THE R-5 RESIDENTIAL DISTRICT, TO ALLOW THE PROJECT TO HAVE MULTIFAMILY DWELLINGS, OFFICE BUILDINGS, AND COMMERCIAL USES AS PERMITTED IN THE BMX-3 COMMUNITY BUSINESS MIXED-USE DISTRICT. 2. EXEMPTION FROM LUO SECTION 21-3.70-1(b) AND (c) AND TABLE 21-3.2, RELATING TO DEVELOPMENT STANDARDS IN THE R-5 RESIDENTIAL DISTRICT, TO ALLOW THE PROJECT TO COMPLY INSTEAD WITH THE DEVELOPMENT STANDARDS APPLICABLE IN THE BMX-3 COMMUNITY BUSINESS MIXED USE DISTRICT. 3. EXEMPTION FROM LUO SECTION 21-3.70-1(b) AND (c) AND TABLE 21-3.2, RELATING TO MAXIMUM BUILDING HEIGHT IN THE R-5 DISTRICT, TO ALLOW A PROJECT MAXIMUM BUILDING HEIGHT OF 170 FEET (INSTEAD OF A MAXIMUM BUILDING HEIGHT OF 25 FEET). 4. EXEMPTION FROM LUO SECTION 21-6.20 AND TABLE 21-6.1, RELATING TO OFF-STREET PARKING FOR MULTIFAMILY DWELLINGS, TO ALLOW THE PROJECT TO PROVIDE A MINIMUM OF 820 TOTAL PARKING SPACES (RATHER THAN THE REQUIRED MINIMUM 1,200 PARKING SPACES), INCLUDING A MINIMUM OF 578 RESIDENTIAL PARKING SPACES; PROVIDED THAT THE DPP MAY, UPON REQUEST OF THE APPLICANT, APPROVE FURTHER REDUCTIONS IN THE REQUIRED MINIMUM NUMBER OF RESIDENTIAL PARKING SPACES. 5. EXEMPTION FROM LUO SECTION 21-6.100, RELATING TO OFF-STREET LOADING SPACES, TO ALLOW THE PROJECT TO PROVIDE SIX 8.5-FOOT BY 19-FOOT LOADING SPACES WITH A 10-FOOT VERTICAL CLEARANCE, AND THREE 12-FOOT BY 35-FOOT LOADING SPACES WITH A 14-FOOT VERTICAL CLEARANCE (RATHER THAN THE REQUIRED FOUR 8.5-FOOT BY 19-FOOT LOADING SPACES WITH A 10-FOOT VERTICAL CLEARANCE, AND FIVE 12-FOOT BY 35-FOOT LOADING SPACES WITH A 15-FOOT VERTICAL CLEARANCE). 6. EXEMPTION FROM THE SIGN STANDARDS IN LUO ARTICLE 7 TO ALLOW THE PROJECT TO COMPLY WITH A PROJECT MASTER SIGN PLAN ("MSP") APPROVED BY THE DPP. 7. EXEMPTION FROM LUO SECTION 21-6.150, RELATING TO BICYCLE PARKING SPACES, TO ALLOW THE PROJECT TO PROVIDE 250 LONG-TERM AND 65 SHORT-TERM BICYCLE PARKING SPACES (RATHER THAN THE REQUIRED 400 LONG-TERM AND 80 SHORT-TERM BICYCLE PARKING SPACES).  <b>APPLICATION FEES AND INFRASTRUCTURE AND/OR PUBLIC WORKS FEES AND CHARGES EXEMPTIONS UNDER RESOLUTION 20-251, CD1, FD1</b> 1. EXEMPTION FROM SECTION 14-13.6 OF THE REVISED ORDINANCES OF HONOLULU ("ROH"), AND THE DPP RULES RELATED TO WATER QUALITY, TO ALLOW AN EXEMPTION FROM PAYMENT OF WATER QUALITY REVIEW FEES FOR THE EROSION CONTROL AND SEDIMENT PLAN ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$713.99. 2. EXEMPTION FROM ROH SECTIONS 14-10.1, 14-10.2, AND 14-10.3, TO ALLOW AN EXEMPTION FROM PAYMENT OF WASTEWATER SYSTEM FACILITY CHARGES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$4,234,195.71. 3. EXEMPTION FROM ROH SECTION 14-12.2(f), TO ALLOW AN EXEMPTION FROM PAYMENT OF THE PRIVATE STORM DRAIN CONNECTION LICENSE FEE ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$571.19. 4. EXEMPTION FROM ROH SECTION 14-14.4, TO ALLOW AN EXEMPTION FROM PAYMENT OF GRADING AND GRUBBING PERMIT FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$2,766.80. 5. EXEMPTION FROM ROH SECTION 18-6.1, TO ALLOW AN EXEMPTION FROM PAYMENT OF PLAN REVIEW FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$86,625.41. 6. EXEMPTION FROM ROH TABLE 18-A, TO ALLOW AN EXEMPTION FROM PAYMENT OF SPECIAL ASSIGNMENT INSPECTION (COURTESY INSPECTION) FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$19,053.59. 7. EXEMPTION FROM ROH TABLE 18-6.2, TO ALLOW AN EXEMPTION FROM PAYMENT OF BUILDING PERMIT FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$1,731,761.64. 8. EXEMPTION FROM ROH SECTION 20-1.1, ITEM 3, TO ALLOW AN EXEMPTION FROM PAYMENT OF HONOLULU FIRE DEPARTMENT PLAN REVIEW FEES ATTRIBUTED TO THE PROJECT'S RESIDENTIAL UNITS, ESTIMATED AT \$11,908.49.  <b>SUBDIVISION AND PARK DEDICATION ORDINANCE REQUIREMENTS:</b> 1. EXEMPTION FROM ROH SECTION 22-1.2(a), TO ALLOW AN EXEMPTION FROM PAYMENT OF SUBDIVISION PERMIT FEES, ESTIMATED AT \$800. 2. EXEMPTION FROM ROH CHAPTER 22, ARTICLE 7, TO ALLOW AN EXEMPTION FROM PARK DEDICATION REQUIREMENTS, TOTALING APPROXIMATELY 88,000 SQUARE FEET OF PARK SPACE, OR PAYMENT OF AN EQUIVALENT IN-LIEU FEE, ESTIMATED AT \$3,774,596.45. (REFER TO PAGE 4 IN THE RESOLUTION 20-251 CD1, FD1 FOR FURTHER DETAILS).																		

**Design Partners Incorporated**  
 Architecture Planning Interiors

*Signature*  
 APRIL 30, 2024  
 LICENSED PROFESSIONAL ARCHITECT  
 No. 3971  
 HAWAII U.S.A. A.A.A.  
 Expiration Date of the License  
 This work was prepared by me or under my supervision and I am a duly licensed professional architect in the State of Hawaii. My registration number is 3971. My expiration date is 4/30/2024. I am not responsible for any errors or omissions in this document unless I have personally prepared or supervised the preparation of the project and I have not been observed by another professional architect in the State of Hawaii.

REVISION SCHEDULE
-------------------

**Bid Set**

**School Street Senior Affordable Housing Phase 1A**

1002 North School St, Honolulu, 96817  
 TMK: (1) 1-6-009-003

Project Name

Project Title  
 PROJECT DATA - PROJECT DESCRIPTION, ZONING & CODE INFO

Project Number	Date	
19066	06/30/2023	
Drawn JK / E.J	Checked T1	Designed MM

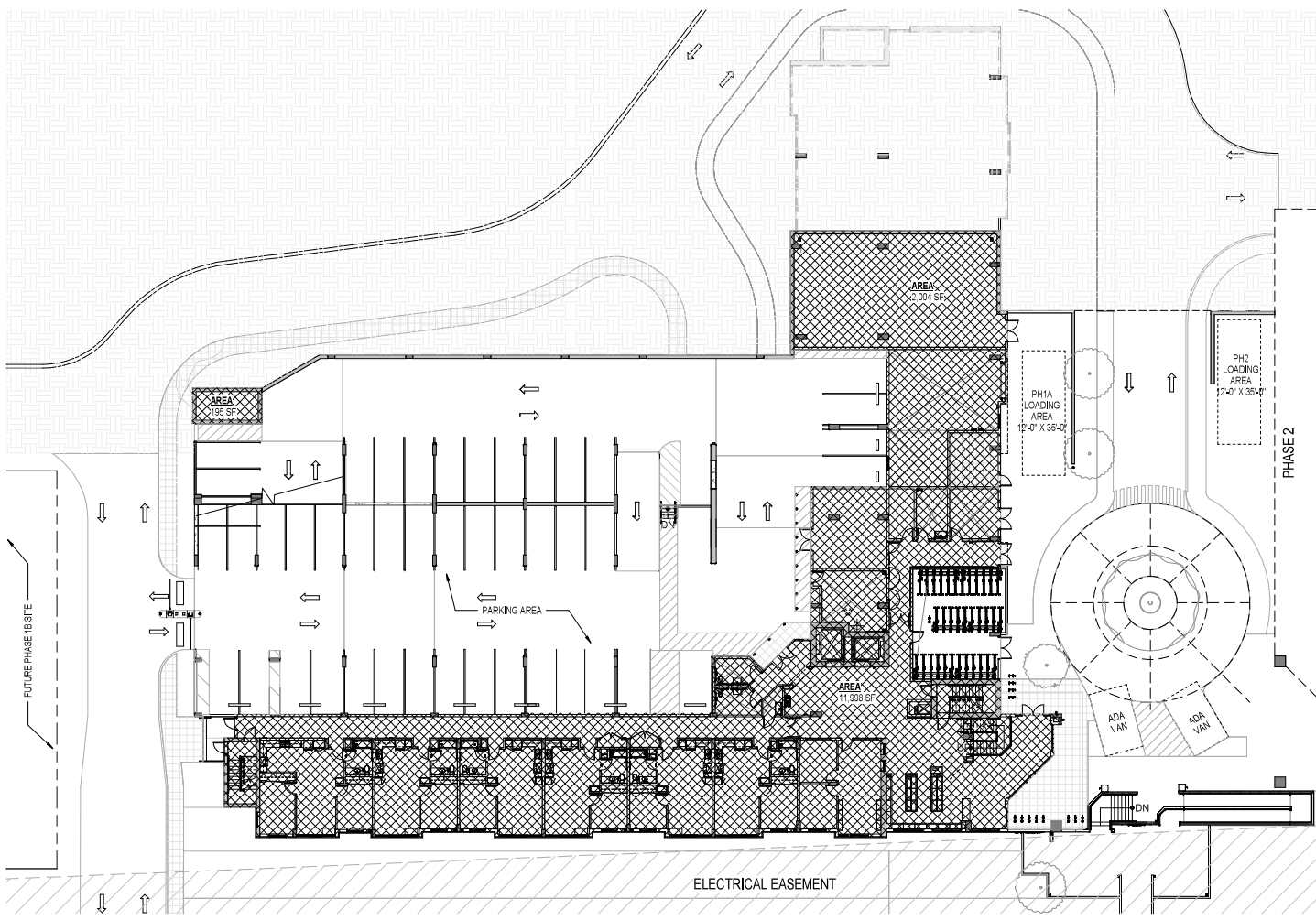
Drawing Number  
**G-007**

Sheet No. \_\_\_ of \_\_\_

1 2 3 4 5

PALEKANA PERMITS  
THIRD PARTY CERTIFICATION

- BUILDING CODE  ELECTRICAL CODE
- MECHANICAL CODE  ZPRB (LAND USE ORDINANCE)
- STRUCTURAL (NON-SINGLE/FAMILY DWELLINGS)



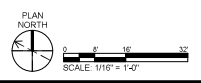
**A1 F.A.R. CALCULATION - GROUND FLOOR**  
1/16" = 1'-0" GS-005

F.A.R. AREA TABLE

TOTAL = 14,197 SF
-------------------

F.A.R. LEGEND

XXXXX AREA OF F.A.R., FLOOR AREA CALCULATION



**Design Partners Incorporated**  
Architecture Planning Interiors

**MUZILLA WASAM WARD**  
LICENSED PROFESSIONAL ARCHITECT  
No. 5971  
STATE OF HAWAII

Signature: *M. Wasam Ward*  
DATE: 06/30/2023  
Expiration Date of the License: \_\_\_\_\_

This work was prepared by me or under my supervision and construction of this project will be under my observation.

REVISION SCHEDULE

--	--

**Bid Set**

**School Street Senior Affordable Housing Phase 1A**  
1002 North School St. Honolulu, 96817  
TMK: (1) 1-G-009-003

Project Name

Project Number	Date	
19066	06/30/2023	
Drawn JK / E.J.	Checked TI	Designed MM

Drawing Number

**GS-005**

Sheet No. \_\_\_\_\_ of \_\_\_\_\_

**School Street Apts - Phase 1A**  
**PRO FORMA INCOME AND EXPENSE SUMMARY**  
 Senior/ New Construction / 15 Story / 4% Tax Credits

06-Mar-24

NUMBER OF UNITS	TYPE OF UNIT	SQUARE FOOTAGE	AMI	ALLOWED RENT/MO.	OPENING RENT/MO.	UTILITY ALLOW.	MONTHLY RENT	TOTAL RENT	RENT PER S.F.	
			HUD	2023	RENTS					
4	0 BD - 1 BA - Flat	350	30.00%	687	687	64	623	2,492	1.78	
16	0 BD - 1 BA - Flat	350	50.00%	1,146	1,146	64	1,082	17,312	3.09	
12	0 BD - 1 BA - Flat	350	60.00%	1,375	1,375	64	1,311	15,732	3.75	
21	1 BD - 1 BA - Flat	575	30.00%	736	736	82	654	13,734	1.14	
104	1 BD - 1 BA - Flat	575	50.00%	1,228	1,228	82	1,146	119,184	1.99	
83	1 BD - 1 BA - Flat	575	60.00%	1,473	1,473	82	1,391	115,453	2.42	
1	2 BD - 1 BA - Flat	800	30.00%	884	884	95	789	789	0.99	
5	2 BD - 1 BA - Flat	800	50.00%	1,473	1,473	95	1,378	6,890	1.72	
3	2 BD - 1 BA - Flat	800	60.00%	1,768	1,768	95	1,673	5,019	2.09	
1	2 BD - 1 BA - Flat	800	MGR	0	0	0	0	0	0.00	
Other		0								
Retail		0								
Other		101,339								
<b>250</b>	<b>Total</b>	240,139							296,605	

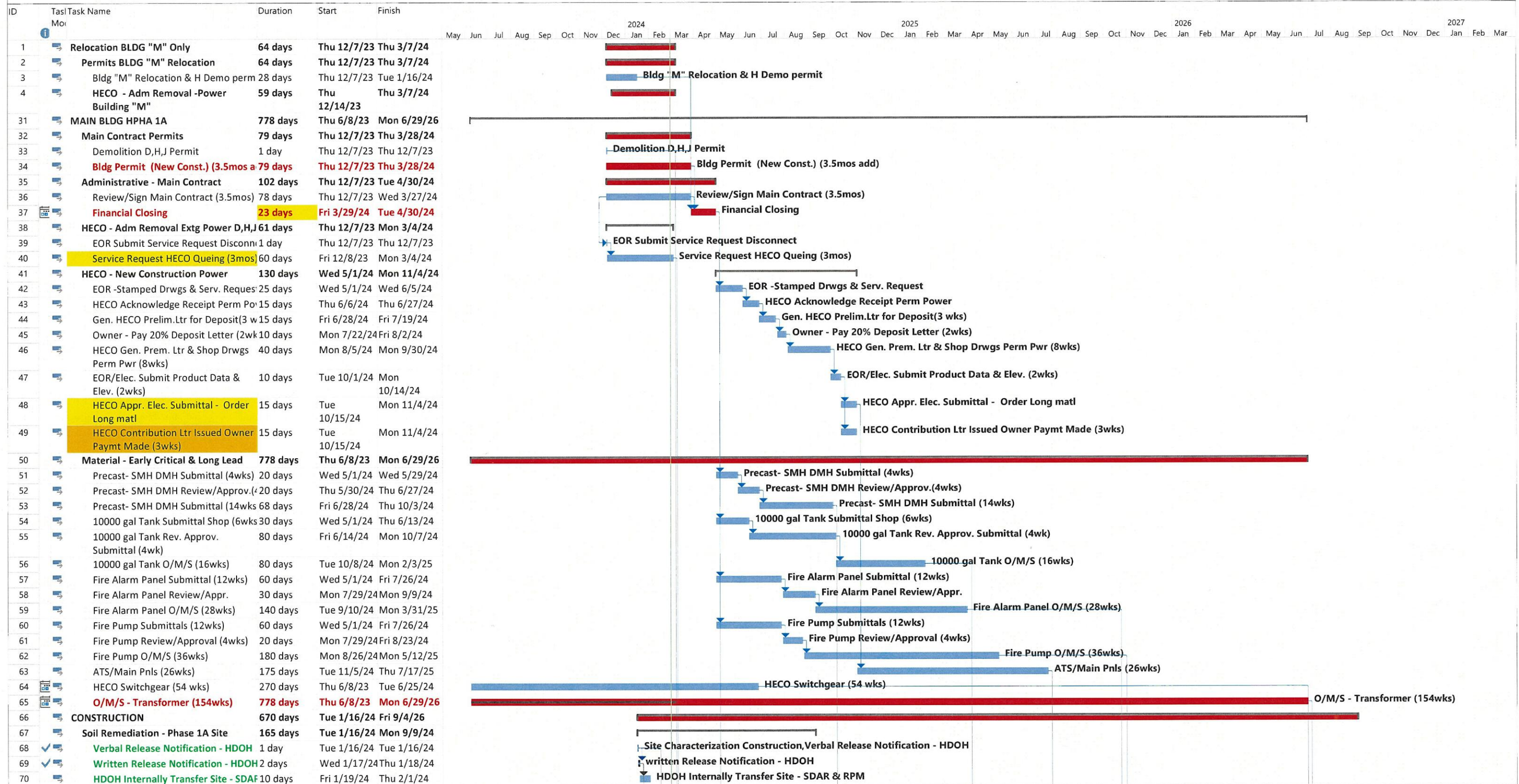
**EXHIBIT C**

**SCHEDULE OF PERFORMANCE**

[attached]



EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
 Dated 3.1.2024  
 Honolulu, HI



Project: HPHA 1A  
 Date: Fri 3/1/24





EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
 Dated 3.1.2024  
 Honolulu, HI

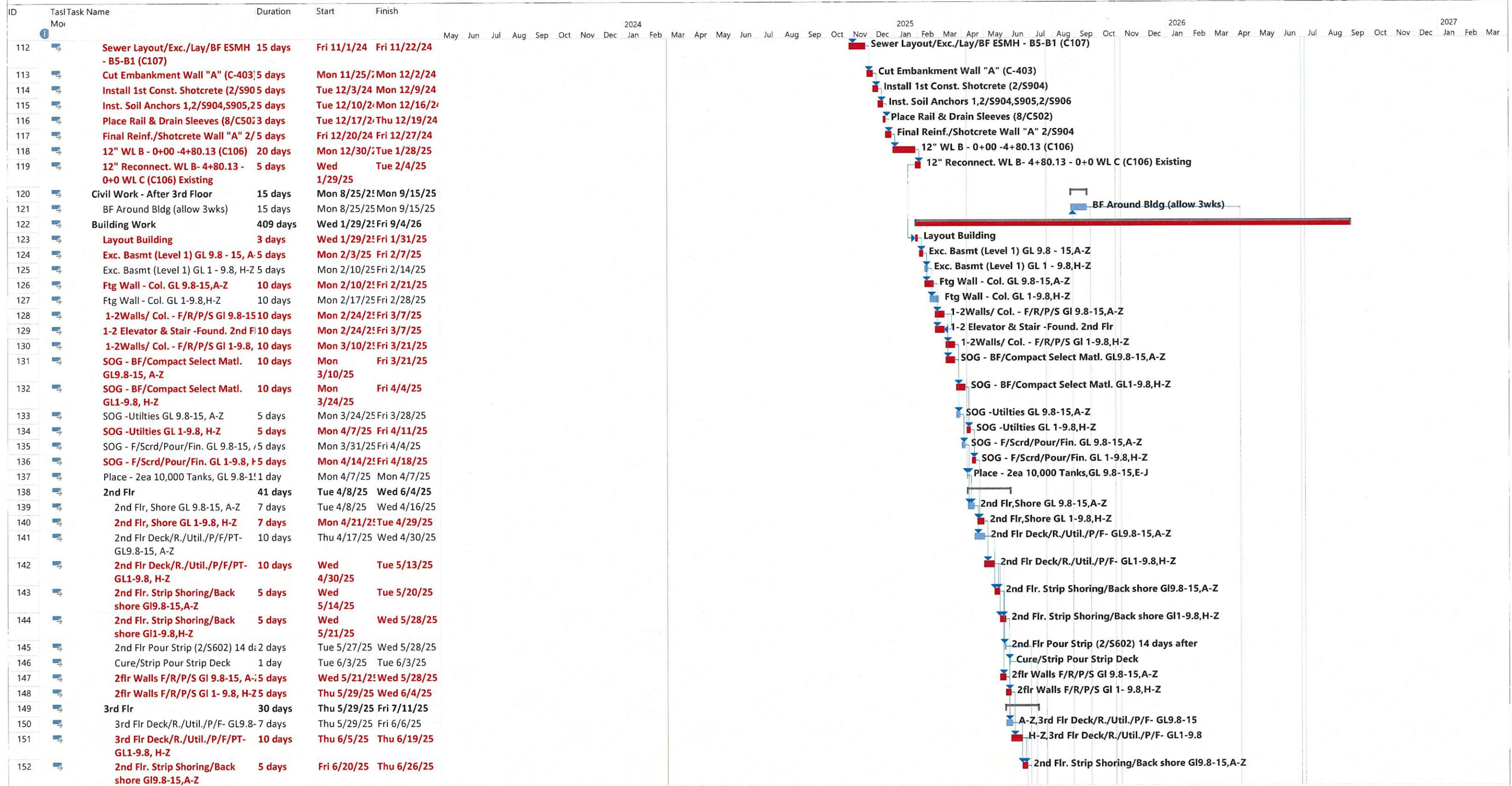
ID	Task Name	Duration	Start	Finish
71	<b>Soil Remediation - Ph 1A (OPEN Area Only)</b>	73 days	Fri 1/19/24	Wed 5/1/24
72	Review Site.Doc. Develop Sampling	5 days	Fri 1/19/24	Thu 1/25/24
73	Utility/One Call Check	5 days	Fri 1/19/24	Thu 1/25/24
74	Soil Sampling (OPEN AREAS)	5 days	Fri 1/26/24	Thu 2/1/24
75	Laboratory Anaylsis (OPEN AREAS) Mainland	5 days	Fri 2/2/24	Thu 2/8/24
76	Prepare Report on Soil sampling	5 days	Fri 2/9/24	Thu 2/15/24
77	C-EHMP Plan Development (Open	10 days	Fri 2/16/24	Fri 3/1/24
78	C-EHMP Plan Rev./Edit/Send (OPEN AREA)	7 days	Mon 3/4/24	Tue 3/12/24
79	C-EHMP Review Approval - DOH (C	21 days	Wed 3/13/24	Wed 4/10/24
80	Soil Remediation (OPEN Area Only)	15 days	Thu 4/11/24	Wed 5/1/24
81	<b>Soil Remediation - Ph-1A (Under BLD</b>	<b>95 days</b>	<b>Wed 4/24/24</b>	<b>Mon 9/9/24</b>
82	Utility/One Call Check (Under BLDGS)	5 days	Wed 4/24/24	Tue 4/30/24
83	Soil Sampling (Under BLDGS)	5 days	Wed 5/1/24	Tue 5/7/24
84	Laboratory Analysis (Under BLDGS) Mainland	5 days	Wed 5/8/24	Tue 5/14/24
85	Prepare Write Report Under BLDG	5 days	Wed 5/15/24	Tue 5/21/24
86	Update C-EHMP & Submit - HDOH	10 days	Wed 5/22/24	Wed 6/5/24
87	HDOH Review/Comment	20 days	Thu 6/6/24	Fri 7/5/24
88	Tetra Tech Respond DDOH Review	10 days	Mon 7/8/24	Fri 7/19/24
89	C-EHMP 2nd Review/Approval	25 days	Mon 7/22/24	Fri 8/23/24
90	2nd SOIL REMEDIATION Under BLDGS	10 days	Mon 8/26/24	Mon 9/9/24
91	<b>Construction -Relocate &amp; Demo Phase</b>	<b>40 days</b>	<b>Fri 3/8/24</b>	<b>Thu 5/2/24</b>
92	Demolition - D, H, J, Trash Encl.,Covered Pkg, Sheds	40 days	Fri 3/8/24	Thu 5/2/24
93	<b>Cut/Cap Util., Remove Meters Power Poles (HECO)</b>	<b>13 days</b>	<b>Fri 3/8/24</b>	<b>Tue 3/26/24</b>
94	Abate - Bldg D,H,J	10 days	Wed 3/27/24	Tue 4/9/24
95	Demolish/Haul Off D,H,J	10 days	Wed 4/10/24	Tue 4/23/24
96	<b>Must Start Grading MAY 5, 2024 Loss 201H</b>	1 day	Thu 5/2/24	Thu 5/2/24
97	<b>Current Grading Start Date (Restrict)</b>	1 day	Thu 5/2/24	Thu 5/2/24
98				
99	<b>Construction Phase IA (New)</b>	<b>16 days</b>	<b>Wed 4/10/24</b>	<b>Wed 5/1/24</b>
100	<b>BMP &amp; Mobilize Office</b>	<b>16 days</b>	<b>Wed 4/10/24</b>	<b>Wed 5/1/24</b>
101	Site BMP - Construction Fence/Filter Socks Etc. (C-102)	11 days	Wed 4/10/24	Wed 4/24/24
102	Mobilize Job Office/Laydown Area	5 days	Thu 4/25/24	Wed 5/1/24
103	<b>CONSTRUCTION PH 1A (BLDG - START MASS)</b>	<b>595 days</b>	<b>Wed 5/1/24</b>	<b>Fri 9/4/26</b>
104	<b>Civil Work - Prior Bldg Const.</b>	<b>191 days</b>	<b>Wed 5/1/24</b>	<b>Tue 2/4/25</b>
105	<b>Clear &amp; Grub Site</b>	<b>5 days</b>	<b>Wed 5/1/24</b>	<b>Tue 5/7/24</b>
106	<b>Partial Mass Grading'</b>	<b>15 days</b>	<b>Thu 5/2/24</b>	<b>Wed 5/22/24</b>
107	Rough Cut Ahiahi Roadway	15 days	Thu 5/16/24	Thu 6/6/24
108	<b>BALC. Mass Grading (Under Extg Bldg)</b>	<b>20 days</b>	<b>Tue 9/10/24</b>	<b>Mon 10/7/24</b>
109	<b>Sewer Layout/Exc./Lay/BF ESMH - SMH4-1 (C107)</b>	<b>10 days</b>	<b>Tue 10/8/24</b>	<b>Mon 10/21/24</b>
110	<b>Sewer Connect ESMH # 274199 (Street)</b>	<b>3 days</b>	<b>Tue 10/22/24</b>	<b>Thu 10/24/24</b>
111	<b>Drain - EDM- A5-A4 (C107)</b>	<b>5 days</b>	<b>Fri 10/25/24</b>	<b>Thu 10/31/24</b>

Project: HPHA 1A  
Date: Fri 3/1/24

Task		Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress	
Split		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
Critical		Project Summary		Inactive Summary		Manual Summary Rollup		Finish-only		Deadline			



EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
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 Honolulu, HI



Project: HPHA 1A  
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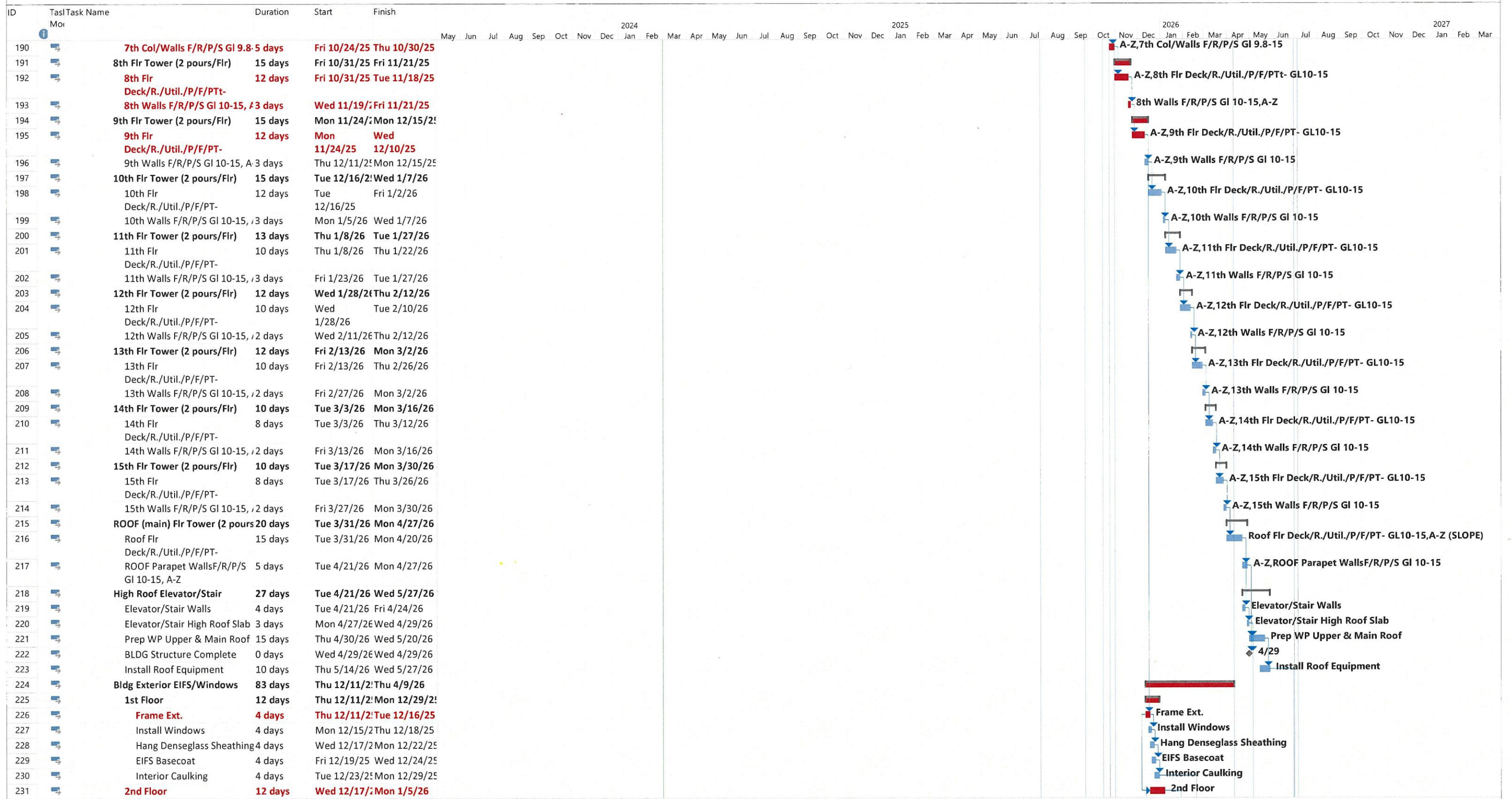








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 Honolulu, HI

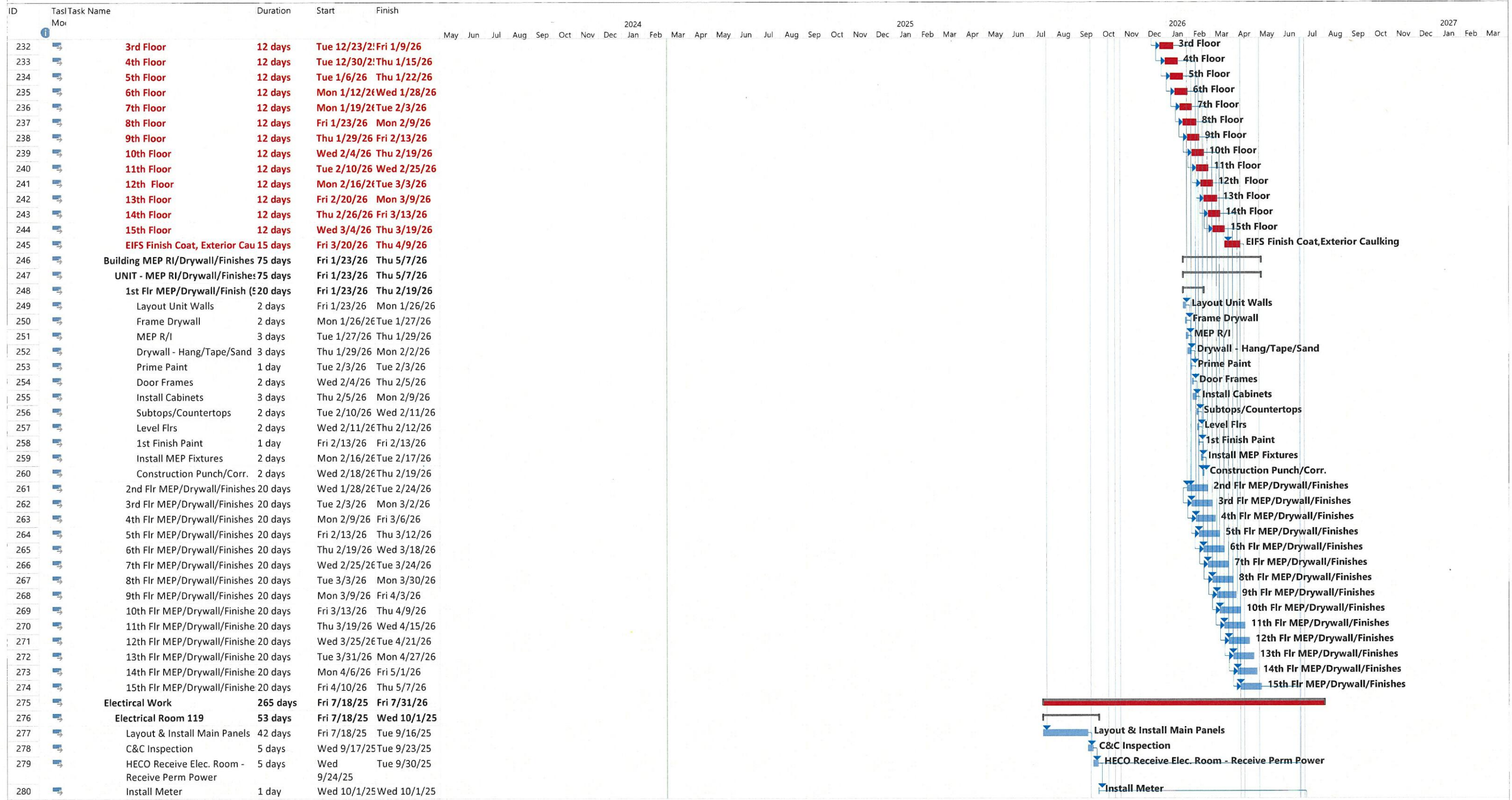


Project: HPHA 1A  
 Date: Fri 3/1/24

Task		Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress	
Split		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
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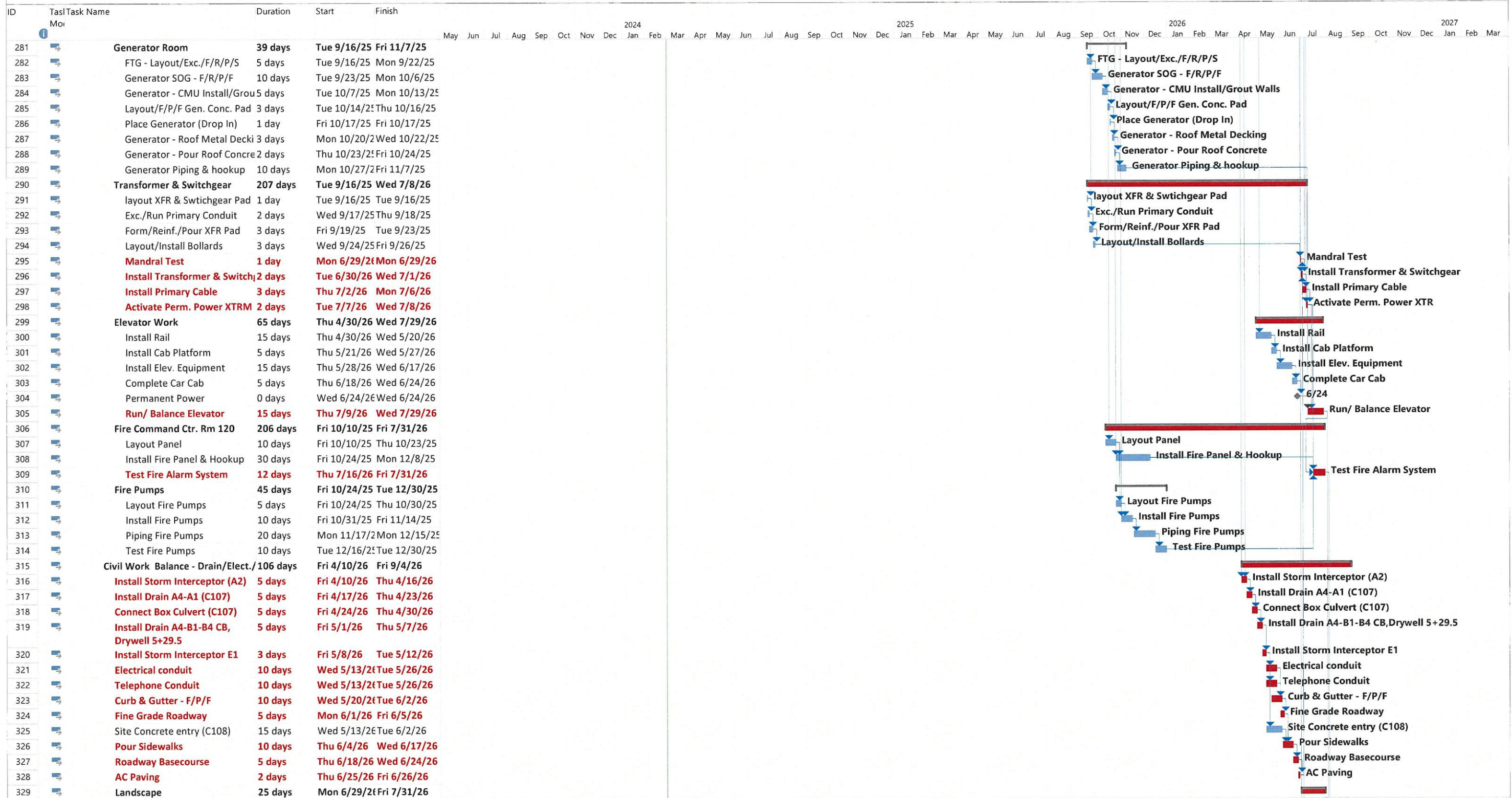


Project: HPHA 1A  
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 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
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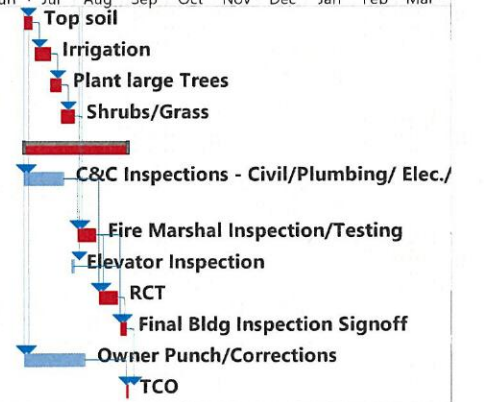


Project: HPHA 1A  
 Date: Fri 3/1/24

Task		Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress	
Split		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
Critical		Project Summary		Inactive Summary		Manual Summary Rollup		Finish-only		Deadline			

EXHIBIT D  
 School Street Senior Phase 1A (Preliminary Bid Schedule -Original) 154 weeks (Due Transformer) & Soil Remediation  
 Dated 3.1.2024  
 Honolulu, HI

ID	Task Name	Duration	Start	Finish
330	Top soil	5 days	Mon 6/29/26	Fri 7/3/26
331	Irrigation	8 days	Mon 7/6/26	Wed 7/15/26
332	Plant large Trees	5 days	Thu 7/16/26	Wed 7/22/26
333	Shrubs/Grass	7 days	Thu 7/23/26	Fri 7/31/26
334	Inspections/Signoffs	50 days	Mon 6/29/26	Fri 9/4/26
335	C&C Inspections - Civil/Plumbing/ Elec./Bldg	20 days	Mon 6/29/26	Fri 7/24/26
336	Fire Marshal Inspection/Test	10 days	Mon 8/3/26	Fri 8/14/26
337	Elevator Inspection	2 days	Thu 7/30/26	Fri 7/31/26
338	RCT	10 days	Mon 8/17/26	Fri 8/28/26
339	Final Bldg Inspection Signoff	4 days	Mon 8/31/26	Thu 9/3/26
340	Owner Punch/Corrections	30 days	Mon 6/29/26	Fri 8/7/26
341	TCO	1 day	Fri 9/4/26	Fri 9/4/26



Project: HPHA 1A  
 Date: Fri 3/1/24

Task		Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress	
Split		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
Critical		Project Summary		Inactive Summary		Manual Summary Rollup		Finish-only		Deadline			

**EXHIBIT D**  
**CONCEPT PLAN**

[attached]









**EXHIBIT E**  
**FINANCING PLAN**

[attached]

**The proposed Financing Structure is as follows:**

<b>Source</b>	<b>Interim</b>	<b>Permanent</b>
LIHTC Equity	\$ 7,283,259	\$ 72,832,593
HMMF Bond*	85,152,621	16,020,236
RHRF Loan	56,995,573	67,860,277
Deferred Developer Fee	14,000,000	7,500,000
Other Deferred Costs	781,653	–
<b>Total</b>	<b>\$ 164,213,106</b>	<b>\$ 164,213,106</b>

*\*Original requested HMMF amount of \$88,690,614 was adjusted by staff to \$85,152,621 to reduce the 50% test cushion to 5.55%*

**The updated proposed Use of Funds is as follows:**

<b>Budget/Cost Item</b>	<b>Amount</b>	<b>Cost/sf</b>	<b>Total Cost %</b>
Acquisition	\$ –	\$ –	0.00
Construction - Site Work	7,000,000	30.97	4.26%
Construction - Vertical/Rehabilitation	91,169,295	403.35	55.52%
Construction - Contractor Profit	13,692,322	60.58	8.34%
Interim and Soft Costs	12,386,735	54.80	7.54%
Financing and Syndication Costs	15,572,794	68.90	9.48%
Developer's Fee	14,000,000	61.94	8.53%
Developers Overhead and Other	1,000,000	4.42	0.61%
Project Reserves	781,653	3.46	0.48%
Contingency	8,610,307	38.09	5.24%
<b>Total</b>	<b>\$ 164,213,106</b>	<b>726.51</b>	<b>100.00%</b>

**EXHIBIT E-1**

**DEFINITION OF NET CASH FLOW**

[attached]

# School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

## Proposed CF Waterfall

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3) To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%

**EXHIBIT F**  
**GROUND LEASE**  
[attached]

**HPHA GROUND LEASE AGREEMENT**

**HPHA School Street Redevelopment Project  
(Phase 1A)**

**LANDLORD:**

Hawaii Public Housing Authority,  
a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:**

School Street I, LP,  
a Hawaii limited partnership

as of [insert date of closing]

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**HPHA GROUND LEASE  
BETWEEN THE HAWAII PUBLIC HOUSING AUTHORITY  
AND  
SCHOOL STREET I, LP**

**BASIC LEASE INFORMATION**

**DATE:** AS OF [insert date of closing]

**LANDLORD:** HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:** SCHOOL STREET I, LP, a Hawaii limited partnership

**PREMISES:** CERTAIN PREMISES SITUATED IN THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"

**ANNUAL BASE RENT:** \$[insert based on appraisal], increasing annually at the rate of \_\_\_\_ percent (\_\_.00%)

**COMMENCEMENT DATE:** [insert date of closing]

**TERM:** 65 years

**LANDLORD'S ADDRESS FOR NOTICES:** Hawaii Public Housing Authority  
1002 N School Street  
Honolulu, Hawaii 96817

**TENANT'S ADDRESS FOR NOTICES:** C/O HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC  
330 W. VICTORIA STREET  
GARDENA, CA 98445

WITH A COPY TO:

C/O RBC COMMUNITY INVESTMENTS, LLC  
600 SUPERIOR AVENUE  
SUITE 2300  
CLEVELAND, OHIO 44114  
ATTENTION: PRESIDENT AND GENERAL COUNSEL

WITH A COPY TO:

BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP  
633 WEST FIFTH STREET, SUITE 5880  
LOS ANGELES, CALIFORNIA 90071  
ATTENTION: KYLE ARNDT, ESQ.  
FACSIMILE NO.: (213) 559-0733

The Basic Lease Information is part of the Lease; however, if any of the Basic Lease Information contradicts any provision of the Lease, the provisions of the Lease will prevail.

## HPHA GROUND LEASE AGREEMENT

THIS HPHA GROUND LEASE AGREEMENT (the “Lease”) effective as of \_\_\_\_\_, \_\_\_\_\_ is by and between the HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic organized and existing pursuant to Chapter 356D of the Hawaii Revised Statutes, with a principal place of operation located at 1102 N School Street, Honolulu, HI 96817 (“Landlord”), and SCHOOL STREET I, LP, a Hawaii limited partnership, with a principal place of business located at 330 W. Victoria Street, Gardena, CA 98445 (“Tenant”).

### **ARTICLE 1- RECITALS**

Landlord is the fee simple owner of the land consisting of 83,451 square feet, located at 1002 North School Street, in the City and County of Honolulu, and State of Hawaii, identified as Tax Map Key No. (1) 1-6-009-012 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Demised Premises”).

Landlord selected Retirement Housing Foundation, a California nonprofit corporation (“RHF”) to undertake the redevelopment of the School Street Redevelopment Project (the “Redevelopment”). Landlord and RHF’s affiliate, RHF Foundation, Inc. (“RHFFI”) entered into that certain Master Development Agreement, effective on or about November 15, 2019 (“Master Development Agreement”), which Master Development Agreement was assigned to HCDC School Street LLC, a Hawaii limited liability company (“HCDC”), an experienced developer of affordable housing projects on January 11, 2024 pursuant to an Assignment and Assumption of Master Development Agreement. Tenant is an affiliate of HCDC.

Phase 1A of the Redevelopment will consist of two hundred fifty (250) residential rental units all as more particularly described and set forth in the Plans and Specifications.

Tenant wishes to ground lease from Landlord, pursuant to this Lease, the Demised Premises, on which Tenant will construct Phase 1A of the Redevelopment.

NOW, THEREFORE, in consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby enter into this Lease on the terms and conditions set forth herein.

### **ARTICLE 2- DEFINITIONS**

Capitalized terms used in this Lease and not otherwise defined shall have the meanings referred to below.

“Additional Rent” - See Section 18.1.

“AFR”- shall mean the long-term applicable federal rate pursuant to U.S. Internal Revenue Code Section 1274(d) in effect as of the date hereof.

“Assignment of Leases and Rents” - shall mean such assignments of leases and rent executed by the Tenant in favor of any Leasehold Mortgagee, whether the assignment is made in a document titled an “assignment of leases and rents” is contained within a mortgage.

“Base Rent” - See Section 7.1.

“City” - See Section 4.1.

“Commencement Date” - See Basic Lease Information.

“Completion Date” - shall mean [insert date at closing].

“Compliance Period” - shall mean the compliance period as defined in Internal Revenue Code Section 42(i)(1).

“Conversion Date” - shall mean the date upon which the Tenant converts from construction to permanent financing.

“Controlling Interest” - See Section 12.4.

“Demised Premises” - See Article 1.

“Environmental Laws” - See Exhibit C.

“Environmental Report” - See Section 5.1(g) and Exhibit E.

“Event of Default” - See Section 18.2.

“First Leasehold Mortgagee” - shall mean the first leasehold mortgagee during construction and prior to the conversion to permanent financing is First Hawaiian Bank and after conversion to permanent financing the first leasehold mortgagee shall be Citicorp USA, Inc.

“Governmental Authorities” - See Section 4.2.

“Hazardous Materials” - See Exhibit C.

“HPHA Affordability Requirement” - means the Landlord’s requirement as a condition for entering into this Lease that the Premises are used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

“Improvements” - means all buildings, structures and other permanent improvements now or hereafter erected on, over or under the Demised Premises, including all walkway and road improvements, parking areas and facilities, landscaping improvements of whatever nature, utility and sewage lines (to the extent of Tenant’s interest therein) and the appurtenances to all of the foregoing.

“Investor Member” or “Investor Limited Partner(s)” - shall mean the Tax Credit Investor(s), in its capacity as the investor member or partner(s) of tenant, and its successors and assigns.

“Landlord” - See Preamble.

“Lease” - See Preamble.

“Lease Year” - shall mean a calendar year.

“Leasehold Mortgage(s)” - shall mean a mortgage, or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which is promptly after execution delivered to Landlord and recorded in the Bureau of Conveyances of the State of Hawaii, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee’s name and Notice address; and (c) that is held by a Leasehold Mortgagee subject to the jurisdiction of the courts of the State of Hawai`i.

“Leasehold Mortgagee(s)” - shall mean a holder of a Leasehold Mortgage and its successor and assigns, provided that: (a) it is not an affiliate of Tenant; and (b) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“LIHTC” - shall mean Low Income Housing Tax Credits as provided in Section 42 of the Internal Revenue Code, as amended, or under State law.

“Limited Partnership Agreement” - shall mean that certain Amended and Restated Limited Partnership Agreement of Tenant of substantially even date herewith.

“Management Agent” - shall mean the management agent selected by Tenant and approved by Landlord, and its successors and assigns, which shall select the Property Manager to manage the Premises. The initial Management Agent shall be, and Landlord hereby approves, HCHP Property Management, LP, a California limited partnership (which shall have subcontracted management duties to Michaels Management-Affordable, LLC).

“Operating Expenses” - See Section 8.2

“Permitted Encumbrances - shall mean all mortgages, easements and other encumbrances permitted to exist with regard to the title to the Property, as set forth on Exhibit F, attached hereto and incorporated herein by this reference, or as otherwise jointly agreed to by Landlord and Tenant.

“Plans and Specifications” - shall mean all those plans and specifications for the Improvements to be constructed on the Demised Premises and all associated work, as approved by the Landlord.

“Premises” - shall mean the Demised Premises and the Improvements.

“Property Manager” - shall mean the property manager selected by the Management Agent and approved by Landlord, and its successors and assigns. The initial Property Manager shall be, and Landlord hereby approves, Michaels Management-Affordable, LLC, a New Jersey limited liability company.

“Regulatory Default” - See Article 18.4(a).

“Rent” - shall mean, collectively, Base Rent and Additional Rent.

“State” shall mean the State of Hawaii.

“Tax Credit Investor(s)” - shall mean RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “Limited Partner”), RBC Community Investments Manager II, Inc., a Delaware corporation, and its permitted successors and/or assigns (the “Special Limited Partner”) and RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “State Limited Partner”).

“Tax Credit Requirements” - shall mean any and all matters required by Section 42, the Hawaii Housing Finance and Development Corporation (HHFDC) or any agreement with a condition of receipt of tax credits, whether or not such requirement is explicitly stated in Section 42, regulations thereunder, or HHFDC requirements.

“Tax Credit Units” - See Section 4.1

“Tenant”- See Preamble

“Term” - See Section 6.1

“Transfer” - See Section 12.1

### **ARTICLE 3- DEMISE OF LEASEHOLD INTEREST**

Section 3.1 Lease to Tenant. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Demised Premises, upon the terms and conditions stated herein. The Demised Premises are leased (a) subject only to (i) any state of facts an accurate survey of the Premises would show, (ii) any state of facts a personal inspection would show, (iii) Permitted Encumbrances, (iv) present and future zoning laws, ordinances, resolutions and regulations of any governmental authority and all present and future ordinances, statutes, laws, regulations and orders of all boards, bureaus, departments, agencies, commissions and bodies of any municipal, county, state or federal sovereign, (v) the effect of all present and future municipal, state or federal laws, orders and regulations relating to the Tenant, sub-tenants or occupants of the Demised Premises; and (b) with the right to pass and repass over all permitted existing and future ways and public areas located on, in or appurtenant to the Demised Premises and/or shown on the ALTA/ACSM Land Title Survey Subdivision Map set forth in Exhibit A, and the right to use such other portions of the Demised Premises and all utilities and service conduits and facilities thereon to facilitate the construction of the Improvements pursuant to the Plans and Specifications.



Section 3.2 Services by Landlord. Except as otherwise provided herein, it is expressly agreed that Landlord is not and shall not be required under this Lease to render any services of any kind to Tenant. Nothing herein shall modify the terms of any separate agreement between Tenant and Landlord.

Section 3.3 Quiet Enjoyment. Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease, including Permitted Exceptions.

## **ARTICLE 4- IMPROVEMENTS**

Section 4.1 Improvements to be Constructed. Tenant shall construct the Improvements or cause the Improvements to be constructed on the Demised Premises, at its sole expense no later than the Completion Date. Upon completion, the Improvements shall, subject to a Force Majeure Event, include a total of two hundred fifty (250) housing units (which includes one manager's unit not subject to income restrictions), which shall be available for rental solely for (a) the period required by the Tax Credit Requirements to households with incomes at or below sixty percent (60%) of the area median income (the "Tax Credit Units") at initial occupancy and (b) the term of this Lease households with incomes at or below sixty percent (60%) of area median income at initial occupancy ("HPHA Affordability Requirement"). Tenant shall take no action to effectuate any material amendments, modifications or any other material alterations to the Plans and Specifications without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.1 Compliance with Laws. The Improvements shall be constructed in good and workmanlike manner and in conformance with all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments having jurisdiction over the Improvements (collectively, "Governmental Authorities"), including, insofar as applicable, Landlord, the United States Government, the State, and City and County of Honolulu (the "City").

Section 4.2 Approvals, Permits and Licenses. Tenant shall apply for, assume all costs of and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, utility easements, operation and occupancy of the Improvements, all in accordance with the Plans and Specifications. Landlord agrees to cooperate with and publicly support Tenant's efforts to obtain such permits and licenses that are substantially in accordance with the Plans and Specifications. If required, Landlord shall consent and allow Tenant to apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, operation, and occupation of the Improvements, in the name of Landlord, at Tenant's sole cost and expense.

Section 4.3 Ownership of Improvements. Landlord and Tenant acknowledge and agree that during the entire Term, Tenant shall be the owner of the Improvements, and as such, Tenant shall be entitled to all depreciation deductions and low-income housing tax credits or other benefits for income tax purposes relating to the Improvements. At the expiration of the Term or other

termination of this Lease, ownership of the Improvements shall, at the option of the Landlord, remain and become the property of the Landlord.

Section 4.4 Public Improvements. The Demised Premises are currently serviced by School Street which is a public street owned by the City.

## **ARTICLE 5- REPRESENTATIONS AND WARRANTIES**

Section 5.1 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns fee simple good and marketable title to the Demised Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances and the title exceptions listed in Exhibit F-1.
- (b) Landlord has full right, power and authority to make, execute, deliver, and perform its obligations under this Lease. Landlord has obtained all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach or default under any agreement or obligation to which Landlord is a party or by which it is bound.
- (c) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Demised Premises.
- (d) Except for the Purchase Option and Right of First Refusal executed on substantially even date herewith, Landlord is not obligated under any contract, lease, or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Demised Premises.
- (e) Except as disclosed to Tenant in writing, to the best of Landlord's knowledge, there is no action, suit, litigation, or proceeding pending or, to Landlord's knowledge, threatened against Landlord which could prevent or impair Landlord's entry into this Lease and/or performance of its obligations hereunder.
- (f) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.
- (g) Except as may be referenced in those environmental reports referenced at Exhibit E hereto (the "Environmental Report"), to the best of Landlord's information, knowledge and belief, there are no Hazardous Materials or

underground storage tanks located in, on or under the Premises. Except as may be referenced in the Environmental Report, to the best of Landlord's information, knowledge and belief, no notice from any governmental authority or any person has ever been issued to Landlord, its agents or employees, claiming any violation of any Environmental Law with respect to the Premises.

Section 5.2 Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord that:

- (a) Tenant is a duly organized, lawfully existing limited partnership and is in good standing under the laws of the State.
- (b) Tenant has the full right, power and authority to make, execute, deliver and perform its obligations under this Lease.
- (c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant and its general partner, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.
- (d) There is no action, suit, litigation, or proceeding pending or, to Tenant's knowledge, threatened against Tenant or any Tenant affiliate which could prevent or impair Tenant's entry into this Lease and/or the full and complete performance of its obligations hereunder.
- (e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

## **ARTICLE 6- TERM**

Section 6.1 Term of Lease. The term of this Lease shall be, unless sooner terminated in accordance with the provisions hereof, for a period of time commencing upon the Commencement Date and ending on [fill in 65 years from date of closing], 2089 (the "Term").

## **ARTICLE 7- PAYMENTS BY TENANT**

Section 7.1 Base Rent<sup>1</sup>. As consideration for this Lease and the use of the Demised Premises, the Tenant shall pay to the Landlord the Base Rent, as set forth in this Section 7.1. The term "Base Rent" shall mean the annual rent payment due from the Tenant to the Landlord on June 1 of each year of the Term beginning the Lease Year after the date of Conversion Date. The Base Rent shall be (i) in the initial amount of [insert based on appraisal] (\$\_\_\_\_\_), increasing annually at the rate of two percent (2.00%), beginning the Lease Year after the Conversion Date and continuing for \_\_\_\_\_ (\_\_\_\_) years and continuing for the remainder of the Term. Notwithstanding

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<sup>1</sup> Base rent amount to be determined by an appraisal. We expect to finalize this section by the HPHA board meeting on April 4, 2024.

the foregoing, prior to [May 1, 2089]<sup>2</sup>, such Base Rent shall be due and payable only to the extent of Net Cash Flow (as defined in Exhibit G) available annually for such purposes pursuant to the priority described in Exhibit G attached hereto. Any Base Rent for which the Parties have agreed there is not sufficient Cash Flow in any given year shall be deferred to the following year, and shall be paid from subsequent years' Cash Flow (in the same priority) until paid in full and shall bear interest at the AFR. All accrued and unpaid Base Rent plus interest (“Accrued Base Rent”), shall be due and payable in full by the Tenant on the earlier of (a) a sale of the Project and (b) [May 20\_\_] [and, thereafter, the Base Rent shall be paid currently.] The Landlord and Tenant acknowledge and agree that the Base Rent provided herein constitutes fair market rent for the right to use the Demised Premises and agree to account for payment thereof as an expense for tax and accounting purposes.

Section 7.2    Reserved.

Section 7.3    Payments by Tenant. Unless otherwise expressly set forth in this Lease, all costs, expenses, liabilities, charges, or other deductions whatsoever with respect to the Demised Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, or occupation of the Demised Premises or the Improvements or both, or with respect to any interest of Landlord in the Demised Premises or this Lease, shall be the responsibility of and paid by Tenant.

**ARTICLE 8- TAXES: OPERATING EXPENSES**

Section 8.1    Taxes. Tenant shall pay any and all real property taxes which are assessed against the Premises by any taxing authority and any payments required by any cooperation agreement providing for payments in lieu of taxes which now exist or at any time in the future may be entered into by Tenant with the City or other taxing authorities. Landlord shall pay all other local, state, or federal taxes assessed against Landlord, if any; local, state, or federal capital levy of Landlord, if any; or sales, excise, franchise, gift, estate, succession, inheritance taxes, of Landlord, if any.

Section 8.2    Property Operating Expenses. Tenant shall pay or cause to be paid all costs and expenses attributable to or incurred in connection with the operation, maintenance, and repair of the Demised Premises and the Improvements (collectively, “Operating Expenses”).

Section 8.3    Adjustments. Rents and other revenues, taxes and Operating Expenses, payable with respect to the Premises for the month in which the Commencement Date occurs shall be prorated as of the Commencement Date. Rents and other charges which at the Commencement Date are past due shall not be prorated and Tenant shall retain those amounts, as and when collected by Tenant. The right to receive and collect all rents and profits, delinquent or otherwise, shall be transferred to Tenant as of the Commencement Date.

All other income and Operating Expenses of the Premises, including, without limitation, public utility charges, maintenance, management, and other service charges, and all other normal operating charges shall be prorated as of the Commencement Date based upon the best available information. The obligation of the parties to adjust, Post-Commencement Date, operating

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<sup>2</sup> Subject to refinement based on appraisal. Year to be specified by the HPHA board meeting on April 4, 2024.

expenses as of the closing date, to the extent unknown or not provided for at the execution of this Lease, shall be paid by the party responsible therefor within thirty (30) days after written demand has been made. Such demand shall include a copy of the invoice(s) for which payment or reimbursement is sought.

## ARTICLE 9- INSURANCE

### Section 9.1    Tenant's Insurance.

- (a) Tenant agrees, at its sole expense, to procure and maintain at all times during the term of this Lease the types of insurance specified in Exhibit B hereto, and on the terms specified below, in order to protect Landlord from the liability arising from the negligence of the Tenant, its officers, subcontractors, joint venture, members, partners, agents or employees. The insurance carriers used by Tenant must be authorized to conduct business in the State of Hawaii and shall have a BEST Rating of not less than an "A-" except where noted. The insurance provided shall cover all operations under this Lease, whether performed by Tenant, its agents, or by its subcontractors. In the event of the failure or insolvency of any insurer of Tenant which results in the failure of such insurer to pay for a claim that would otherwise be covered under Tenant's policy of insurance with the same, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, suits, liability and damages which might result therefrom, including but not limited to attorneys' fees and the costs of defending the same.
  
- (b) Certificates of Insurance. Prior to Closing, Tenant and its subcontractors shall furnish Landlord with satisfactory evidence (subject to approval of Landlord) that Tenant and its subcontractors have the insurance coverage set forth in Exhibit B, and which shall name Landlord and the State of Hawaii as additional named insureds. Tenant will immediately provide written notice to the Landlord should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope or not renewed upon expiration.
  
- (c) All insurance policies shall contain the following clauses:
  - (i) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed on the Demised Premises."
  
  - (ii) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Tenant shall advise all insurers of the contract provisions regarding insurance and other requirements of this Lease. The failure of Tenant to

notify insurers of the contract provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions shall constitute a breach of this Lease and the Landlord retains the right to stop work until satisfactory evidence of insurance is provided.

- (d) Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Landlord prior to expiration of insurance coverage. At the Landlord's option, following non-compliance and reasonable opportunity to cure (but no less than fifteen (15) days) the Landlord may purchase insurance on behalf of Tenant and will charge back all costs to Tenant. The receipt of any certificate does not constitute agreement by the Landlord that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Lease. The Tenant shall provide thirty (30) days written notice to be given to Landlord in the event coverage is to be substantially changed, canceled or non-renewed.
- (e) If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Lease and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. Tenant shall maintain coverage for the duration of this Lease. Any extended reporting period premium (tail coverage) shall be paid by Tenant.
- (f) Not less than annually, Tenant shall provide to Landlord certificate of insurance naming Landlord as an additional insured, and a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Tenant shall provide Landlord thirty (30) days prior written notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non-renewal.
- (g) Tenant shall require all subcontractors to carry the insurance required herein or Tenant may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in this Section 9.1. Evidence of such coverage must be submitted to Landlord not later than fifteen (15) days prior to the date on which such subcontractor is to begin work on the Demised Premises.
- (h) Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by Landlord shall be only for the benefit of Landlord and shall apply in excess of and will not contribute with insurance provided by Tenant under this Lease.

Section 9.2 Waiver of Insured Claims. Each of Landlord and Tenant hereby waives right of recovery against the other for loss or injury against which the waiving party is protected by insurance, but only to the extent of such insurance.

**ARTICLE 10- USE OF DEMISED PREMISES: COVENANTS RUNNING WITH THE LAND**

Section 10.1 Permitted Use. Tenant will cause the Demised Premises to be used as residential rental housing consistent with the HPHA Affordability Requirement and in the manner permitted by any and all documents including modifications, renewals, or replacements required by the Tax Credit Requirements including the Extended Low-Income Housing Commitment of substantially even date herewith, which is recorded on the land records of the State, to which reference may be had. Such covenants contained herein are intended to create covenants running with the land and shall also be binding upon Tenant's successors and assigns, including any entity which succeeds to Tenant's interest in the Demised Premises by foreclosure or an instrument in lieu of foreclosure, so long as such covenant remains in effect.

Section 10.2 Compliance with Laws. Tenant shall not use or occupy or suffer or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirements. Tenant shall comply with applicable laws and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body having jurisdiction over the Premises.

**ARTICLE 11- ENVIRONMENTAL COVENANTS AND INDEMNITIES**

Section 11.1 Tenant's Environmental Covenants. Without limiting any of Tenant's other covenants, agreements and obligations set forth in this Lease, Tenant hereby specifically covenants and agrees to fulfill the obligations set forth below with respect to environmental matters:

- (a) Tenant shall comply with all applicable Environmental Laws (as defined in Exhibit C) applicable to Tenant's use of the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith. All Hazardous Materials present, handled or generated or used by Tenant on the Premises which are removed from the Premises by Tenant shall be transported and disposed of in a lawful manner.
- (b) Tenant shall provide Landlord with copies of all forms, notices and other information received by or on behalf of Tenant concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied to any government agency.
- (c) Tenant shall not itself, and Tenant shall not permit any other person, including third parties with whom Tenant contracts in regard to this Lease, to bring onto the Premises any Hazardous Materials (other than quantities

or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Improvements, and any repair, maintenance or replacement thereof). Tenant shall be responsible for proper removal and lawful disposal, at its sole cost and expense, any Hazardous Materials brought onto the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees, resulting from a default under this Section and shall be responsible for all costs and expenses associated with the remediation of any such Hazardous Materials on the Premises.

- (d) In the event that Tenant or any contractor or subcontractor encounters any Hazardous Materials on the Premises, Tenant shall immediately notify Landlord in writing and comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other public and quasi-public agencies, authorities and entities having jurisdiction over the same with respect thereto.

Section 11.2 Landlord's Environmental Covenants. Without limitation of any of Landlord's other covenants, agreements and obligations under this Lease, Landlord hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters:

- (a) Landlord shall not be liable for any Hazardous Materials on the Premises unless the Landlord or its agents, contractors or employees bring such Hazardous Materials on to the Premises after the Commencement Date, or the Landlord had actual knowledge of such Hazardous Materials and failed to disclose the same to Tenant in writing before the Commencement Date, or such Hazardous Materials are brought onto the Premises by the Landlord or any of its agents, contractors or employees after the Commencement Date.
- (b) Landlord shall comply with all Environmental Laws applicable to Landlord relative to the Premises. All required governmental permits and licenses issued to Landlord and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Landlord shall comply therewith.
- (c) Landlord shall provide Tenant with copies of all forms, notices and other information received by or on behalf of Landlord concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied by any governmental agency.
- (d) Without limiting any responsibilities of the Landlord and Tenant under this Lease, to the extent there are any unforeseen remediation costs with respect



to the Premises, Landlord will work in good faith with the Tenant to identify third-party funding sources to pay for such unforeseen remediation costs.

Section 11.3 Tenant's Environmental Indemnity Tenant covenants and agrees to and shall indemnify, defend, and hold Landlord free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including attorneys' fees and expenses) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against Landlord in connection with or arising from:

- (a) any Hazardous Materials which are first placed on, in, or under all or any portion of the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees during the period defined herein as the Term; or
- (b) any violation of any Environmental Laws by Tenant, or its employees, agents, contractors or subcontractors at or relating to the Premises.
- (c) Tenant shall indemnify and hold harmless Landlord, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant or its agents, contractors, subcontractors, servants, employees, or invitees, which shall constitute a breach of the Tenant's obligations under this Lease. If any party performing work for the Tenant on the Premises shall assert any claim against the Landlord on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Tenant, its agents, servants, employees, invitees or contractors (including, without limitation, its construction contractor), Tenant shall defend at its own expense any suit based upon such claim, and if any judgment or claim against Landlord shall be allowed, Tenant shall immediately pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. The obligations, indemnities, and liabilities of Tenant under this Section 11.3 shall not extend to any liability caused by (i) the negligence or willful misconduct of Landlord, or its employees, contractors or agents, (ii) Hazardous Materials with respect to which the Landlord had actual knowledge but did not disclose in writing to Tenant or (iii) pre-existing conditions existing prior to the Effective Date and discovered after the Effective Date and not previously disclosed to the Tenant. Tenant's liability hereunder shall not be limited to any provisions or limits of insurance set forth in this Lease. Tenant shall not be liable for any claims that result from the action or inaction of Landlord or its contractors, agents or employees with respect to their obligations under this Lease.

Section 11.4 Intentionally Omitted.

Section 11.5 Survival. The agreements, representations and warranties of Landlord and Tenant respectively in this Article 11 shall survive the expiration or early termination of this Lease.

## **ARTICLE 12- ASSIGNMENTS AND TRANSFERS**

Section 12.1 Consent Required. Except as expressly provided herein, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey this Lease or any interest herein or in the Premises or the Improvements (a “Transfer”), except insofar as permitted by, and subject to the terms and conditions of, applicable laws and regulations. Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential is permitted.

Section 12.2 Subsequent Assignment. In cases where Landlord’s consent is required, Landlord’s consent to one Transfer shall not be construed as a waiver of the requirement of its consent to any subsequent assignment.

Section 12.3 Request for Consent. If Tenant requests Landlord’s consent to a specific Transfer, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 12.4 Transfer by Tenant. It shall be deemed to be a Transfer requiring the approvals set forth in Section 12.1 above in the event of any attempt by Tenant to (a) demolish all or any material portion of the Improvements, or (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, hypothecation, encumbrance, or other transfer of any portion or all of the Demised Premises without the prior written consent of Landlord, which Landlord consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding anything in this Lease to the contrary, by its execution of this Lease, Landlord shall be deemed to have consented to (i) a lease of any unit in the Premises, (ii) the execution, delivery and recordation of the Leasehold Mortgages, and the liens created thereby, (iii) the transfer of Tenant’s leasehold interest in the Demised Premises and fee ownership interest in the Improvements by foreclosure or deed or assignment in lieu thereof (or any leasehold equivalent thereof) pursuant to a mortgage of the Premises that has been approved by Landlord (including the Leasehold Mortgages), and (iv) normal uses associated with the construction and operation of the Premises including but not limited to utility easements.

No transfer, conveyance, or assignment shall be made, without the prior written approval of the Landlord, of (i) any interest of a general partner, managing member or controlling stockholder (any such interest being referred to as a “Controlling Interest”) in Tenant, or (ii) a Controlling Interest in any entity which has a Controlling Interest in Tenant. Tenant may sell its interest in this Agreement to a general partner pursuant to the Option to Purchase Agreement between the Tenant and the Tenant’s general partner (the “GP Purchase Option Agreement”) or otherwise and Tenant may affect transfers that are expressly authorized by the Tenant’s Partnership Agreement, including without limitation, the removal of the general partner of Tenant for cause and the replacement thereof with a substitute general partner selected by the Tax Credit Investor or an affiliate thereof. The execution and delivery of the GP Purchase Option Agreement shall not constitute a default under this Lease. Transfers of the Tax Credit Investor’s interest in Tenant or

of interests in the Tax Credit Investor shall not be restricted by this Lease. For purposes of this Lease, “Non-Controlling Interest” means limited partnership or non-managing member interests in the Tenant and/or interests in the Tax Credit Investor.

Notwithstanding the foregoing, Landlord consent is not required for the transfer of (a) any interest in Tenant to an Affiliate of the General Partner, or (b) any Non-Controlling Interest (in the Tenant (regardless of whether payment in full of all equity contributions has been made to Tenant) provided that the Tenant: (i) provides the Landlord with prior written notice of such transfer (“Notice of Transfer – Non-Controlling Interest”) and (ii) certifies to the Landlord that the new partner, member or stockholder, as appropriate, remains obligated to fund its equity contribution in accordance with the terms of the Landlord-approved organizational documents of the Tenant. In addition, if the equity contributions have not been made to the Tenant in full, the Notice of Transfer – Non-Controlling Interest shall confirm that the transfer does not alter the obligation to contribute equity in accordance with the Limited Partnership Agreement.

Landlord will not unreasonably withhold, delay or condition a request by Tenant for consent to an internal reorganization of the corporate, company or partnership structure of Tenant or any members of Tenant, including the exercise by a partner of its right to remove the general partner and to designate a substitute general partner of tenant under the terms of Tenant’s Limited Partnership Agreement.

Notwithstanding the foregoing, the Landlord agrees that no prior approval is required for the exercise by the Investor or its affiliates of their rights to remove the general partner and to designate a substitute general partner of Tenant under the terms of the Tenant’s Limited Partnership Agreement, provided that the Landlord is given prior written notice of the default under the Limited Partnership Agreement and of the exercise of the removal and appointment right therein (the “Notice”).

The Landlord’s consent is not required for the pledge by the general partner of the Tenant to the Investor Limited Partner and Leasehold Mortgagees, and their successors and assigns, of the general partner’s interest in the Tenant, as security for the performance of all of the general partner’s obligations under the Limited Partnership Agreement and the approved mortgage loan (as and if applicable).

## **ARTICLE 13- LEASEHOLD FINANCING AND TAX CREDIT INVESTOR**

**Section 13.1 Right to Mortgage.** On or about even date herewith, Tenant has granted one or more mortgages of its interest in the Lease to lenders (each mortgage, a Leasehold Mortgage and together Leasehold Mortgages) and, in connection therewith, has collaterally assigned this Lease to such lenders. Future mortgages of the Premises shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In no event shall Landlord ever be required to execute any such mortgage or any note secured thereby or any other obligation securing any such note, or to subordinate Landlord’s fee interest in the Demised Premises or any portion thereof to the lien of any such mortgage. The Leasehold Mortgagee(s) as of the date hereof are listed on Exhibit D attached hereto and incorporated herein by this reference and each such Leasehold Mortgagee is entitled to the benefit of all protections

granted to Leasehold Mortgagees under this Lease. Landlord hereby consents to the Assignments of Leases and Rents to such Leasehold Mortgagees.

Section 13.2 Consent Required for Termination and Amendments.

- (a) No cancellation, termination, surrender or modification of this Lease by agreement between Landlord and Tenant, shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) The right of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute may not be exercised by the Tenant without the prior written consent of the Leasehold Mortgagee.

Section 13.3 Default Notice. Landlord, upon providing Tenant with any notice of default under this Lease shall at the same time provide a copy of such notice to every Leasehold Mortgagee of whom it has knowledge pursuant to notice from Tenant or pursuant to Exhibit D. From and after the date on which such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall, have the same cure period as Tenant plus an additional sixty (60) days, and shall have the option (but not the obligation) to remedy any default or cause the same to be remedied, as is given Tenant. Landlord shall accept such payment or performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes any and each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose; nevertheless, the parties agree that such entry does not constitute possession of the Premises by a Leasehold Mortgagee. Further, as to any non-monetary default, Leasehold Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Landlord, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced cure, foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default; and notwithstanding any other provision of this Lease, all rights of Landlord to terminate this Lease upon the default by Tenant are and shall continue to be at all times while Tenant is indebted to the Leasehold Mortgagee, subject to and conditioned upon Landlord's first having given Leasehold Mortgagee written notice of such default and Leasehold Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

The Tax Credit Investor shall be deemed a third-party beneficiary of the provisions of this Section 13.3 for the sole and exclusive purpose of entitling the Tax Credit Investor to exercise its rights to notice and cure, as expressly stated in this Section 13.3. The foregoing right of the Tax Credit Investor to be a third-party beneficiary under this Lease shall be the only right of the Tax Credit Investor (express or implied) to be a third-party beneficiary hereunder.

Section 13.4 Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary contained herein, if any default or failure to provide required insurance shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease except in accordance with the provisions of Section 18.3 hereof and this Article 13.

Section 13.5 Assumption of Tenant's Obligations. For purposes of this Article 13, the making of a leasehold mortgage to a Leasehold Mortgagee shall not be deemed to constitute a Transfer of this Lease or Tenant's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Tenant's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such Leasehold Mortgagee's actual possession of the Premises, but a Leasehold Mortgagee may become the holder of Tenant's leasehold estate and fee ownership of the Improvements and succeed to Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Tenant's interest in this Lease and Tenant's fee ownership interest in the Improvements.

Section 13.6 Non-curable Defaults. Nothing in this Article 13 shall require any Leasehold Mortgagee or its designee as a condition to the exercise of rights provided under this Article 13 to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the condition of the Premises or other similar matters requiring access to and/or control of the Premises from and after such time as such Leasehold Mortgagee acquires Tenant's interest in this Lease and actual possession of the Premises by foreclosure or otherwise.

Section 13.7 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagee(s) shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein shall not merge by operation of law but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 13.

Section 13.8 Landlord's Fee to Remain Unsubordinated. Landlord and Tenant expressly acknowledge and agree that Landlord shall have no obligation under this Lease or otherwise to subordinate the fee title of Landlord in the Demised Premises or any rights of Landlord in this Lease to the leasehold estate of Tenant created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner that would subordinate the fee title of Landlord in and to the Demised Premises or the interest of Landlord under this Lease.

Section 13.9 Sale, Mortgage or Conveyance of Demised Premises. In the event of any sale, mortgage or conveyance of the fee interest in the Demised Premises by Landlord during the

Term hereof, any such sale or conveyance of all or any part of the fee interest in the Demised Premises shall be subject to this Lease and all of the provisions hereof.

Section 13.10 Notice to Tax Credit Investor. So long as any Tax Credit Investor is an Investor partner of Tenant, Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such Tax Credit Investor; provided that a failure on the part of Landlord to give such notice to such Tax Credit Investor at its address set forth in Section 19.10 hereof, shall not affect the validity and effectiveness of the notice to the Tenant. Each Tax Credit Investor will have the same cure period as Tenant, plus thirty (30) days after the giving of the notice aforesaid to such Tax Credit Investor for remedying the default or causing the same to be remedied as is given Tenant after notice to such Tax Credit Investor plus an additional thirty (30) days, and Landlord agrees to accept such performance on the part of such Tax Credit Investor as though the same had been done or performed by Tenant.

Section 13.11 Tax Credit Investor's Opportunity to Replace Tenant's General Partner. Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each Tax Credit Investor named in Section 19.10 hereof or who has provided Landlord with written notice of such Tax Credit Investor's name and address, reasonable time, not to exceed sixty (60) days to replace Tenant's general partner and cause the new general partner to cure such default, provided, that (a) as a condition of such forbearance, the Landlord receives notice of the substitution of a new general partner of the Tenant within thirty (30) days following notice to the Tax Credit Investor, (b) the Tenant, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default, and (c) if the Event of Default relates to the completion of construction of the Demised Premises or any part thereof or occupancy thereof, then the extended cure period shall be limited to the period, if any, prior to the date by which the Improvements or parts thereof must be placed in service in order to preserve LIHTCs for the Premises.

Section 13.12 Leasehold Mortgagee's Right to New Lease. In the event of the termination of this Lease prior to this Lease's expiration date (except pursuant to Article 17 hereof), whether due to rejection by Tenant or Tenant's trustee in a bankruptcy proceeding or otherwise, or the occurrence of an incurable Event of Default, Landlord agrees, provided the Event of Default has been cured by the entitled party pursuant to Sections 13.3 or 13.10 above, or Section 13.6 applies, that it will enter into a new lease of the Demised Premises with the curing Leasehold Mortgagee for a period equal to the remainder of the Term, effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations herein contained; provided, however, such Leasehold Mortgagee (a) makes written request upon Landlord for such new lease within sixty (60) days from the date of notice of such termination, and (b) pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which at the time of the execution and delivery thereof be actually due under this Lease but for such termination, and pays or causes to be paid any and all expenses including actual and reasonable attorneys' fees, court costs and costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease. If Landlord receives more than one written request for a new lease in accordance with the provisions of this Section 13.12, then such new lease shall be entered pursuant to the request of the first lien leasehold mortgagee, and the rights hereunder of any leasehold mortgagee whose permitted mortgage is

subordinate to the first lienholder's permitted mortgage shall be subordinated in order of their respective recorded priority.

Any new lease made pursuant to this Section 13.12 shall be and remain an encumbrance on the fee title to the Demised Premises having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee of the Demised Premises created by Landlord.

Section 13.13 No Personal Liability. No Leasehold Mortgagee, any successor or assignee thereof, or any purchaser at any sale of Tenant's interest under this Lease in any foreclosure proceeding shall ever have any liability under this Lease before it acquires record title to the Tenant's interest in the Lease and only so long as it holds record title.

Section 13.14 Priority of Leasehold Mortgages. If at any time there is more than one Leasehold Mortgage in existence, the following provisions shall govern: (a) the most senior Leasehold Mortgagee may at its option exercise all rights of a Leasehold Mortgagee to the exclusion of any junior Leasehold Mortgagees should there be a conflict between Leasehold Mortgagees as to the exercise of such rights; (b) if the most senior Leasehold Mortgagee declines to exercise the rights granted hereunder or otherwise allows, any other Leasehold Mortgagee may exercise the rights, in order of priority. Any dispute among the Leasehold Mortgagees regarding priority shall be determined by a title insurance company licensed in the state where the Premises are located. Neither the title insurance company nor Landlord shall have any liability to Tenant or to any Leasehold Mortgagee for any such determination.

#### **ARTICLE 14- MAINTENANCE AND REPAIR**

Section 14.1 Tenant's Obligations. Tenant shall, at its sole cost and expense (but nevertheless as a portion of Operating Expenses), maintain the Improvements, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation, the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, structural, roof, walls, and foundations, and the fixtures and appurtenances to the Improvements as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, contractors, and subcontractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to the original work or installations, or otherwise consistent with the standard then applicable to residential apartment projects or similar commercial buildings (as applicable) within the geographical area of the Improvements at such time, but in no event of less quality or class than the original work or installations.

#### **ARTICLE 15- ALTERATIONS**

Section 15.1 Non-Structural Alterations. Except for the construction of the Improvements as currently planned, and subject to Section 3.5 hereof, Tenant may make any non-structural alterations, additions, or improvements to the Improvements, without Landlord's consent.

Section 15.2 Structural Alterations. Tenant shall obtain the prior written consent of Landlord, which Landlord consent shall not be unreasonably withheld or delayed, for any structural alterations, additions or improvements to the Improvements having a cost in excess of [\$100,000] (such consent shall not be unreasonably withheld), unless carried out in accordance with the Plans and Specifications.

Section 15.3 No Liens. Except as expressly provided in this Lease, Tenant shall not have any right, authority or power to bind Landlord, the Premises or any other interest of Landlord in the Demised Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Any lien that is not released or bonded over within ninety (90) days after the filing thereof shall constitute an Event of Default under Section 18.2. Landlord shall have the right to remove any and all such liens against the Premises, and to defend any action against the same, and Tenant shall reimburse Landlord for the cost of such removal, the costs of defending the same, including, but not limited to, attorneys fees in connection therewith.

## **ARTICLE 16- SURRENDER**

Section 16.1 Expiration of Term. At the end of the Term of this Lease (whether upon the expiration or other termination), Tenant shall surrender the Demised Premises, together with the Improvements in their then “as-is” condition, provided that Tenant has maintained the Demised Premises, (including without limitation any required casualty/condemnation restoration) pursuant to the terms of this Lease. At Landlord’s option, Tenant shall execute a deed and a bill of sale for the Improvements at the time of such surrender.

## **ARTICLE 17- CASUALTY: CONDEMNATION**

Section 17.1 Restoration , Casualty, or Condemnation. If any act or occurrence of any kind or nature (including any taking by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively, “Condemnation”)), or the Improvements are damaged or destroyed by fire, earthquake, flood, act of God or other casualty (collectively “Casualty”), shall result in damage to or loss or destruction of the Improvements, in whole or in part, and without diminution of any obligation of the Tenant in respect thereof under the approved Leasehold Mortgages, the Tenant, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available (including, without limitation, by further advance pursuant to the approved Leasehold Mortgages) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Improvements as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The First Leasehold Mortgagee shall have the right to participate in adjustment of losses as to Casualty insurance proceeds and all insurance proceeds shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. In the event of a Condemnation, the amount to which Tenant is entitled shall be no less than the total amount of the award reduced by the value of the land and Landlord’s reversionary interest in the Improvements and Tenant’s portion shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. Landlord’s portion shall be limited to the



value of the land and its reversionary interest in the Improvements. The First Leasehold Mortgagee shall have the right to supervise and control the receipt and disbursement of Condemnation awards, and the right to participate in any Condemnation proceedings and settlement discussions. Notwithstanding the foregoing, in the event of any total or substantial loss of the Improvements due to a Casualty that occurs after the initial Compliance Period, Tenant may, with the consent of the First Leasehold Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Tenant shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Landlord to be paid the balance of the proceeds.

Landlord shall have no right to terminate this Lease as a result of any Condemnation or Casualty without the written approval of the First Leasehold Mortgagee.

### **ARTICLE 18- DEFAULT; REMEDIES**

#### **Section 18.1 Landlord's Right to Perform.**

- (a) **Landlord's Option.** If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation.
- (b) **Additional Rent.** All amounts so paid by Landlord and all out-of-pocket costs and expenses including actual and reasonable attorney's fees and the costs of Landlord to enforce its rights hereunder, incurred by Landlord in connection with the performance of any such obligations shall be payable by Tenant to Landlord within thirty (30) days after demand therefore and shall constitute "**Additional Rent**" with interest thereon at the rate of twelve percent (12%) per annum from the date of Landlord's having made each such payment or incurred each such cost or expense, and shall be payable by Tenant to Landlord. Landlord shall provide Tenant with invoices and other reasonable evidence of the amounts paid or incurred by Landlord in connection with its exercise of its rights pursuant to this Article.

**Section 18.2 Events of Default.** At the option of Landlord, the occurrence and continuation of any of the following events shall constitute an Event of Default by Tenant:

- (a) Tenant defaults in the due and punctual payment of any Additional Rent, and such default continues for thirty (30) days after written notice from Landlord;
- (b) Tenant abandons the Demised Premises for a period of more than thirty (30) consecutive days;

- (c) This Lease or the Demised Premises or any part of the Demised Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged or bonded within thirty (30) days after its levy;
- (d) Tenant makes any assignment in violation of this Lease which is not cured within thirty (30) days after notice thereof to Tenant;
- (e) Subject to Section 18.4 with respect to any Regulatory Default (as defined herein), the failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant other than those described in subsections (a) through (e) of this Section, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within such thirty (30) day period, no default shall be deemed to exist if Tenant commences the curing of the default promptly within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The thirty (30) day notice described herein shall be in lieu of and not in addition to, any notice required under law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Notwithstanding the foregoing, a notice of intent to cancel insurance coverage by an insurer shall be an Event of Default for which there shall be a fifteen (15) day cure period.
- (f) Tenant has filed against it a petition for bankruptcy, insolvency or similar action pursuant to state or federal law, and such petition shall not have been vacated within ninety (90) calendar days after filing; or is adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, either state or federal, and such judgment or decree is not vacated or set aside within ninety (90) calendar days after such determination.
- (g) Tenant makes an assignment for the benefit of creditors or shall submit in writing its inability to pay its debts generally as they become due.
- (h) Any attachment, execution or lien, other than a mortgage preapproved by Landlord, whether voluntary or involuntary, including mechanics liens, is filed against the Leased Premises and is not discharged or dissolved by a bond within ninety (90) calendar days.
- (i) Tenant files a voluntary petition for bankruptcy, insolvency or similar action pursuant to state or federal law; or Tenant consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Tenant, or of the whole or any substantial part of the property or assets of Tenant, and such order, judgment or decree

shall remain unvacated or not set aside or unstayed for ninety (90) calendar days; and

- (j) Tenant fails to comply with the insurance requirements under Article 9.

Section 18.3 Landlord's Right To Terminate Upon Tenant Default. Subject to Leasehold Mortgagee's rights under Article 13 (including the right to notice and cure), in the event any Event of Default by Tenant exists as provided in Section 18.2 above, Landlord shall have the right without further notice or demand to Tenant except as provided in Section 18.2 (Tenant hereby irrevocably waiving all notices and demands except as provided in Section 18.2, statutory or otherwise), to terminate this Lease and Tenant's right to possession of the Demised Premises without terminating Tenant's liabilities under this Lease, in which event ownership of all of the Improvements shall immediately vest in Landlord and Landlord shall be entitled to receive from Tenant such amounts as may be permitted from time to time by applicable law. Notwithstanding anything herein to the contrary, if an Event of Default occurs under this Lease as a result of a bankruptcy filing by or against Tenant, the Landlord hereby agrees to terminate the Tenant's interest in this Lease and the Demised Premises while maintaining the existence of the Lease itself with the applicable Leasehold Mortgagee (at its option) in order of priority acting as tenant.

Landlord agrees not to take any action to terminate this Lease or exercise any other remedy with respect to the Premises at any time during the Compliance Period with respect to any building consisting a part of the Improvements, excluding any action for specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by Tenant with the terms of this Lease.

Section 18.4 Regulatory Default. Notwithstanding anything herein to the contrary, the following shall apply to any failure by Tenant to observe or perform any provision of this Lease which would constitute an Event of Default under Article 10 hereof if not cured within the time period specified therein:

- (a) Upon a determination by Landlord that Tenant has materially breached or defaulted on any obligation under Article 10 hereof (a "Regulatory Default"), Landlord shall notify Tenant of (i) the nature of the Regulatory Default, (ii) the actions required to be taken by Tenant in order to cure the Regulatory Default, and (iii) the time (a minimum of thirty (30) days or such additional time period as may be reasonable under the circumstances but in no event more than ninety (90) days), within which Tenant shall respond with reasonable evidence to Landlord that all such required actions have been taken. During any period in which a Leasehold Mortgage is in place, Landlord shall give any and all Leasehold Mortgagee(s) of which Landlord has received notice from Tenant a duplicate copy of any notice described in this subsection in accordance with the provisions of Section 19.10 hereof, and Landlord shall grant to any and all such Leasehold Mortgagee(s) the right to cure the Regulatory Default in accordance with the provisions of this Lease.

- (b) If Tenant, the Management Agent (if applicable), or the Leasehold Mortgagee (if applicable) shall have failed to respond or take the appropriate corrective action with respect to a Regulatory Default to the reasonable satisfaction of Landlord, the First Leasehold Mortgagee and the Tax Credit Investor within the applicable time period, then Landlord shall have the right to seek appropriate equitable remedies (such as specific performance, injunctive relief, or the appointment of a receiver to take over and operate the Property from any court having jurisdiction), in order to cause the Demised Premises to once again be in compliance with Article 10 and Section 18.4.
- (c) In addition to and not in limitation of the foregoing, if Landlord shall determine that a Regulatory Default shall have occurred by reason of a default by Management Agent, and that Tenant (or, as applicable, the Management Agent) and the Leasehold Mortgagee(s) have failed to respond or take corrective action to the reasonable satisfaction of Landlord within the applicable cure period, then Landlord may require Tenant to, and Tenant shall promptly, take such actions as are necessary in order to terminate the appointment of Management Agent pursuant to the terms of its management agreement and to appoint a successor Management Agent of the Demised Premises, subject to any requirements of any Leasehold Mortgagee(s) and the Tax Credit Investor.
- (d) The provisions of this Section 18.4 shall constitute the exclusive remedy of Landlord hereunder in the event of any such Regulatory Default (provided that such Regulatory Default, other than a default under Article 10 of this Lease, does not otherwise constitute a default under this Lease (i.e. Tenant's failure to maintain insurance would otherwise constitute a default hereunder), and provided further that nothing herein shall impair or waive Landlord's rights under separate agreements between the parties). Accordingly, notwithstanding any provision to the contrary contained in this Agreement, the rights and remedies of Landlord by reason of the occurrence of any such Regulatory Default, shall be limited to those expressly set forth in this Section 18.4.

Section 18.5 Force Majeure Event. If the Landlord or Tenant fails to perform one or more of its obligations pursuant to this Agreement, then that party's performance of that term, covenant or act is excused for the period of the delay and the party delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay, if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the execution of this Lease; and (c) that it could not reasonably have avoided or overcome the effects of the impediment. The party invoking this clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act

of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party (“Force Majeure Event”). This provision shall become effective only if the party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event, and takes all reasonable steps to minimize damages and resume performance.

Section 18.6 Intentionally Omitted.

**ARTICLE 19- MISCELLANEOUS**

Section 19.1 No Brokers. Landlord and Tenant represent and warrant to each to the other that neither has dealt with any broker or finder with regard to the Demised Premises or this Lease. Landlord and Tenant will each indemnify, defend and hold the other harmless from and against any loss, liability and expense (including attorneys’ fees and court costs) arising out of claims for fees or commissions in connection with this Lease. This indemnification shall survive termination of this Lease.

Section 19.2 Recordation. Landlord and Tenant shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the Term, Landlord and Tenant shall execute a quitclaim termination of Tenant’s interest in this Lease.

Section 19.3 Transfer of Landlord’s Interest. Landlord shall not voluntarily transfer all or any portion of its interest in Landlord’s estate if the same would cause a violation or breach of any legal requirement or any agreement or contract to which Landlord is a party by which Landlord is bound.

Section 19.4 No Waiver. No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Landlord or Landlord’s agents during the Term will be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Additional Rent, or other charges or fees due as stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction. Landlord

will accept such check for payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Demised Premises or any part of the Demised Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

Section 19.5 Joint and Several Liability. If Tenant or Landlord is composed of more than one signatory to this Lease, each party will be jointly and severally liable with each other party for payment and performance according to this Lease.

Section 19.6 Captions, Exhibits, Gender, Etc. The captions are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Lease. The exhibits to this Lease are incorporated into this Lease and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

Section 19.7 Entire Agreement. This Lease, including all attached exhibits, contains the entire agreement between Landlord and Tenant with respect to its subject matter. Except for those which are specifically set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease. In the event of any inconsistency between this Lease and the documents executed in connection with any Leasehold Mortgage with Landlord acting as the Leasehold Mortgagee, this Lease shall control.

Section 19.8 Amendment. This Lease may be amended only by a written instrument executed by Landlord and Tenant (subject to the rights of any Leasehold Mortgagee, and/or the Tax Credit Investor, as applicable), the approval of which both Landlord and Tenant mutually agree not to unreasonably withhold, delay or condition.

Section 19.9 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected and shall continue in full force and effect; and in lieu of each provision found to be illegal, invalid, or unenforceable, there will be added to this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible.

Section 19.10 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be in writing and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, (iii) sent by recognized overnight delivery service such as Federal Express, or (iv) transmitted by electronic mail, provided such notice is also sent simultaneously in the manner provided for in (i), (ii), or (iii) above, addressed as follows:

If to Tenant:	School Street I, LP c/o HCDC School Street LLC 330 West Victoria Street
---------------	---

Gardena, California 90248  
Attn: Mohannad H. Mohanna  
Email: moe.mohanna@hcosta.com

*With copies to:* Settle Meyer Law LLLC  
Pioneer Plaza,  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawai'i 96813  
Attn: Scott W. Settle  
Email: ssettle@settlemyerlaw.com

*And:* Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois  
Email: cdubois@coxcastle.com

If to Landlord: Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director  
Fax: (808) 832-4679

*With copies to:* Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

If to Investor Limited  
Partner: c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attn: President and General Counsel

*With a copy to:* Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attn: Kyle Arndt, Esq.

If to Leasehold  
Mortgagee: As listed in Exhibit D

A party may change its address by giving written notice to the other party as specified herein. Set forth in Exhibit D attached hereto are notice addresses for the Leasehold Mortgagee(s), as of the date hereof.

Section 19.11 Litigation Fees. Tenant shall be liable for the actual legal expenses of Landlord in connection with any collection of Additional Rent or other impositions owed under this Lease, the remedying of any default under this Lease, or any termination of this Lease where such collection, remedying or termination results from an Event of Default. Payment of any litigation cost or expense shall be determined by applicable state and federal law.

Section 19.12 Waiver of Jury Trial. Landlord and Tenant may waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease.

Section 19.13 Governing Law and Venue. This Lease will be governed by and construed in accordance with the internal laws of the State of Hawaii, without regard to principles of conflicts of laws. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in a Hawaii state court in the City and County of Honolulu.

Section 19.14 Binding Effect. This Lease will inure to the benefit of, and will be binding upon, Landlord's successors and assigns except as otherwise provided in this Lease. This Lease will inure to the benefit of; and will be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted pursuant to the terms of this Lease. Leasehold Mortgagees and Tax Credit Investor are intended third-party beneficiaries of this Lease.

Section 19.15 Cumulative Rights. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.16 Relationship of Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto, nor any act of Landlord or Tenant will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship.

Section 19.17 Non-Merger. Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or Tenant's estate created hereunder with the fee estate of the Demised Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (x) this Lease, Tenant's estate created hereunder or any interest in this Lease or Tenant's estate (including the Improvements), and (y) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (1) this Lease or Tenant's estate created hereunder, and (2) the fee estate in the Demised Premises or any part thereof; shall join in a written instrument effecting such merger and shall duly record the same.



Section 19.18 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 19.19 Limited Liability. Tenant shall look solely to Landlord's interest in the Demised Premises for the satisfaction of any claims against Landlord or its employees, agents, or assigns for the satisfaction of any claims arising pursuant to the Lease. No officer, employee, director, shareholder, manager or partner of Tenant or of any affiliate of Tenant shall be personally liable to Landlord, or any successor in interest or person claiming by, through or under Landlord, in the event of any default or breach of this Lease, except as otherwise set forth in a written guaranty agreement.

Section 19.20 Cooperation. Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Demised Premises. From time to time, Tenant may request modifications to the Lease to satisfy the requirements of financing sources, which financing sources include without limitation, private lenders, equity sources, and government agencies. Landlord will use all reasonable efforts to accommodate the requests of such financing sources and will not unreasonably withhold or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to the Lease which would violate or contravene any applicable laws or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, but not more frequently than once a year, enter into an amended and restated lease combining into one document the entire Lease and all amendments and modifications theretofore entered into.

Section 19.21 Estoppel Certificate. Each party agrees from time to time, upon no less than twenty (20) days' prior notice from the other or upon request from any Leasehold Mortgagee or any permitted assignee, to execute, acknowledge and deliver to the other or to such Leasehold Mortgagee or assignee a statement certifying to its knowledge that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same); and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim. Any such statement delivered pursuant to this Section 19.21 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder from Tenant or any prospective assignee of any such holder of a Leasehold Mortgage.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease as of the effective date of the Lease set forth above.

Approved as to form:

\_\_\_\_\_  
Linda L. W. Chow  
Deputy Attorney General

**LANDLORD:**  
HAWAII PUBLIC HOUSING AUTHORITY

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

SCHOOL STREET I, LP,  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its general partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware  
limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) ss.

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) ss.

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PREMISES

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;

27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

#### EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of thus easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37

10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;

28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.



Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;

15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;

9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue

2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning and containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

EXHIBIT B

INSURANCE REQUIREMENTS

- A. The Tenant will provide Comprehensive General Liability, Comprehensive Automobile Liability, Employers Liability and Errors and Omissions Liability coverage to protect itself and the Landlord. The State of Hawaii, the Landlord, its employees and representatives must be included as an additional insured on all policies. The policies will provide limits of coverage acceptable to the Landlord and will be provided by highly rated insurance companies acceptable to the Landlord.

Prior to the execution of the Lease, the Tenant shall furnish to the Landlord certificate(s) of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified. This insurance must be maintained throughout the entire Term.

i. Workers' Compensation

The Tenant shall carry Workers' Compensation insurance in such form and amount to satisfy, the applicable the State Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

ii. Fidelity Bond

The Tenant shall obtain and maintain, at its sole expense during the term of this Contract, a fidelity bond at a minimum of \$500,000.00, or the minimum amount required by the applicable program, which shall cover all officers, employees, and agents of the Tenant and which shall protect the Tenant against loss by reason of, including but not limited to, fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misappropriation or any other dishonest criminal or fraudulent act, wherever committed and whether committed directly or with others. The Tenant shall furnish, at no cost or expense to the Landlord, a certificate of such coverage, within thirty days from the award of the Contract.

iii. Errors and Omissions

The Tenant shall cause the Management Agent to obtain and maintain errors and omissions professional liability coverage at its own expense at a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate.

iv. Liability Insurance

The Tenant shall maintain the following minimum insurance limits and coverage:

<u>Coverages</u>	<u>Limits</u>
Commercial General Liability	\$2,000,000 single limits per occurrence for bodily injury and personal property damage
Personal Injury Liability	\$1,000,000.00 single limits per occurrence. \$2,000,000.00 for general aggregate
Automobile Insurance	Bodily injury liability limits of \$1,000,000.00 each person and \$1,000,000.00 per accident and property damage liability limits of \$1,000,000.00 per accident OR \$2,000,000.00 combined single limit
Workers' Compensation as required by laws of the State of Hawaii	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Tenant and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all its employees

## EXHIBIT C

### CERTAIN DEFINITIONS

“Environmental Laws” means any applicable present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (“TOSCA”); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (“OSHA”), and Chapter 343 of the Hawaii Revised Statutes, as each is from time to time amended and hereafter in effect

“Hazardous Materials” means:

- (a) “hazardous substances” as defined by CERCLA;
- (b) “hazardous wastes,” as defined by RCRA;
- (c) any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limited or otherwise regulating the use~ exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;
- (d) petroleum crude oil or fraction thereof;
- (e) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof;
- (f) asbestos-containing materials in any form or condition; or
- (g) polychlorinated biphenyls in any form or condition.



EXHIBIT D

LEASEHOLD MORTGAGEES & NOTICE PROVISIONS

**First Leasehold Mortgagee during Construction and Before Conversion to Permanent Financing:**

First Hawaiian Bank  
999 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
Attention: Commercial Real Estate Division

With a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

And a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

and a copy of any default notice to:

Citicorp USA, Inc.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

**1. Junior Leasehold Mortgagee (Construction to Permanent):**

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Attention: Executive Director

**2. First Leasehold Mortgagee After Conversion to Permanent Financing:**

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And for notices of default only:

Citicorp USA, Inc.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

EXHIBIT E

ENVIRONMENTAL REPORTS

[To be confirmed]

1. Final Environmental Impact Statement, prepared by PBR Hawaii & Associates Inc., dated April 2018, and accepted and signed by the Governor of the State of Hawaii by letter dated on July 17, 2018.
2. Phase I Environmental Site Assessment Report, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023.
3. Phase II Subsurface Investigation Report, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024.
4. Draft Construction-Environmental Management Plan (C-EMP) dated \_\_\_\_ and submitted to the Hazard Evaluation & Emergency Response Office within the State Department of Health on \_\_\_\_\_.

EXHIBIT F

PERMITTED ENCUMBRANCES

Permitted Encumbrances shall be as set forth in Schedule B to the Owner's Title Policy in the amount of [insert from title policy], File No. [insert from title policy], as issued by Old Republic Title & Escrow of Hawaii.

Exhibit F-1

[Encumbrances existing prior to this closing. Subject to refinement after issuance of title policy.]

1. Quitclaim Deed (Sewer Easement) A-72490859
2. Grant of Easement (Electric Lines) BK 8840, PG 125
3. 201H Agreement A-85000-80
4. Encroachment Agreement A-85570249
5. Affidavit of Surveyor A-87120585

EXHIBIT G

NET CASH FLOW WATERFALL

[Attached]

[Definition of net cash flow and waterfall to be inserted from LPA]

<b>School Street Apts Phase 1A</b>				
<b>Cash Flow Waterfall (draft, subject to HPHA approval)</b>				
<b>3/21/2024</b>				
		<b>Proposed CF Waterfall</b>		
	<b>1)</b>	To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP		
	<b>2)</b>	To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)		
	<b>3)</b>	To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis		
	<b>4)</b>	To replenish the Operating Reserve up to original balance		
	<b>5)</b>	To repay the Deferred Developer Fee until paid in full		
	<b>6)</b>	To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)		
	<b>7)</b>	To repay any GP or Developer Loans		
	<b>8)</b>	Of the remaining balance:		
		a) 75% to repay the RHRF Loan until paid in full, and then		
		b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease		
	<b>9)</b>	Of the remaining balance:		
		(i) 45% to the GP as Incentive Management Fee		
		(ii) 45% to pay the current and accrued Base Rent due on the Ground Lease		
	<b>10)</b>	Of the remaining balance:		
		(i) 0.01% to the GP		0.0100%
		(ii) 0.001% to the Special LP		0.0010%
		(iii) 1% to the State LP		1.0000%
		(iv) 98.989% to the Federal LP		98.9890%
				100.0000%

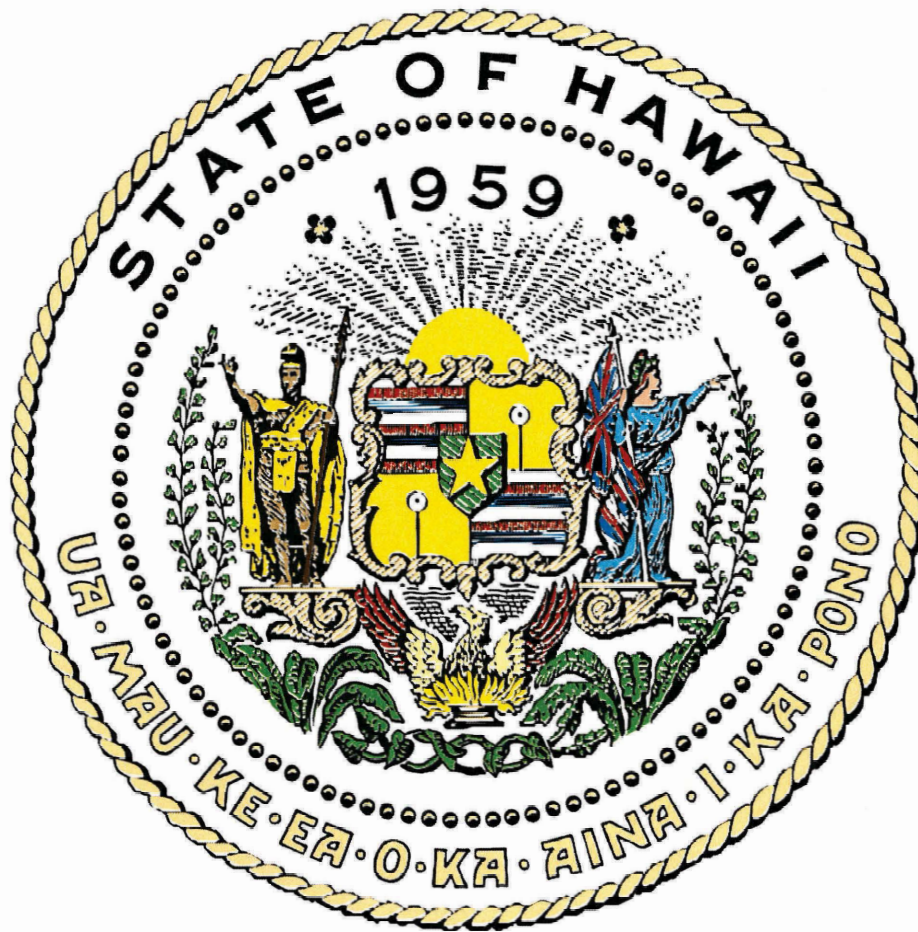
**EXHIBIT G**

**PROJECT LABOR AGREEMENT**

[attached]



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**PROJECT LABOR AGREEMENT**

For the State of Hawaii

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## **PROJECT LABOR AGREEMENT**

This agreement is entered into by and between the State of Hawaii (“State”), the Hawaii Construction Alliance and its affiliated labor unions, and the Unions that become signatory to this Agreement for any construction project covered by this Agreement (hereinafter referred to as the “Union” or “Unions” individually or collectively, as the context may require).

### **ARTICLE I – Purpose and Findings**

Public works projects involve numerous contractors and employees in different trades, have critical timelines for completion, and require skilled and properly trained workers to successfully complete the work in a safe and timely manner. To avoid delays and additional expense to the State of Hawaii, it is essential that the most critical public works projects proceed without labor disruptions, whether due to external labor relations factors or the frictions that can arise when a large number of contractors and their employees and subcontractors work in proximity to one another on a job site.

As the State grows in size and connects more communities via infrastructure development, the State has an overriding interest in maintaining the continuity of efficient construction work by using skilled and trained labor. In a complex environment such as the State of Hawaii, it is essential to avoid delay in completing critical public works projects so that public funds are utilized prudently and residents and visitors are not adversely impacted by interruption in public services or delay in the use of facilities that are important to the essential operations or infrastructure of the State.

A Project Labor Agreement (“PLA”), is a construction industry collective bargaining agreement applied to a particular public works project or set of projects. PLAs have been used for many years to achieve high-quality construction performance and the economic benefits that result from having a guaranteed source of skilled workers and avoiding work disruptions.

In the private sector, PLAs have been and are being used successfully on a variety of projects, such as the United States Navy's privatized military housing stabilization agreement, and other large and small private developments, including the retrofitting and remodeling of existing buildings and facilities. On public works projects, PLAs have been and are being used successfully by governmental entities, including the Honolulu Authority for Rapid Transportation.

PLAs on public works projects are open to both union and non-union contractors. A public agency awarding a project covered by a PLA may select any qualified bidder for the award, without regard to whether it is otherwise a signatory to a union collective bargaining agreement.

PLAs are effective mechanisms for controlling construction costs, ensuring efficient completion of projects, and establishing fair wages and benefits for all workers.

PLAs also help ensure worker health and safety protections while providing a unique opportunity for workforce development

PLAs on public works projects also promote government efficiency, thus lowering costs, in a number of ways. They prevent labor strikes or slowdowns during the life of the agreement; set work rules, schedules and conditions; build jobsite harmony by placing all contractors and workers on a level playing field; and provide for arbitration procedures to resolve grievances and jurisdictional disputes. They also increase public confidence in government procurement and improve transparency in the competitive bidding process.

The construction crafts needed on public works projects require a supply of new apprentices to perpetuate those crafts into the future. It is essential to train a local pool of skilled labor in the construction sector who will be able to competently and safely construct future public works projects. Through their apprenticeships, local construction unions provide genuine opportunities for long-term, well-paid careers in the construction industry. Entry into and employment through these apprenticeships can be facilitated by a formal understanding between the State and the local construction unions who fund and operate such apprenticeships.

In addition, veterans may be seeking employment on public works projects and training opportunities for entrance into the construction industry. Such training opportunities are available through programs such as "Helmets to Hardhats."

PLAs have proven to be a valuable mechanism across the United States in addressing many of these issues and have been a major factor in producing high quality construction work and projects that are completed on time, within budget, and without labor strife or disruptions. This PLA is intended to promote labor harmony, prevent labor disputes and slowdowns, achieve and promote efficient, high-quality construction that meets strict construction deadlines, improve State services, and ensure a steady local supply of skilled and trained labor on proprietary construction projects.

## **ARTICLE II – Definitions**

As used in this Agreement:

"Agreement To Be Bound" means the acceptance agreement signed by each Contractor, agreeing to be bound by the terms of this PLA, in the form attached hereto as Attachment "A."

"Project Labor Agreement" or "PLA" means this multi-craft collective bargaining agreement between the State, the Hawaii Construction Alliance and its affiliated labor unions, and the Unions signatory to this Agreement, which shall be approved for use on Covered Projects by the Chief Procurement Officers of the State.

"Contractor" means any individual, firm, partnership, corporation, or other business entity (including but not limited to a general contractor, project manager,

construction manager, or primary employer, or combination thereof), including joint ventures, and any successors and assigns of the foregoing, that has entered into a contract to perform, assign, award, or subcontract any part of the construction work on a Covered Project, and all contractors and subcontractors of any tier.

"Covered Work" means on site construction work covered by each respective Master Agreements of the Unions signatory to this Agreement for a Covered Project., including facilities dedicated exclusively to supplying products to Covered Projects.

"Covered Project" means all large-scale public works projects in excess of one million five hundred thousand dollars (\$1,500,000) for the building, erection, installation, or assembly of a structure, building, or facility, or infrastructure, including any such projects receiving funding from a bond issuance of the State, and any other public works project where the State has determined that delay in completing the project may lead to interruption or delay of services or use of facilities that are important to the essential operations or infrastructure of the State; provided, however, that the term does not include the routine operation or maintenance of a structure, building, or facility, or of new infrastructure.

"Maintenance" means the upkeep of a structure, building, or facility, or of infrastructure, to preserve the original functional and operational state of the structure, building, facility, or infrastructure, and includes any task that has been traditionally and historically performed by public workers in or upon structures, buildings, facilities, and infrastructure.

"Master Agreement" means the master collective bargaining agreement of each Union signatory to the Project Labor Agreement.

"Operation" means activities related to the normal performance of the functions for which a structure, building, facility, or infrastructure is intended to be used.

"Union" or "Unions" includes the Hawaii Construction Alliance ("HCA"), and their affiliated labor organizations, and the Unions signatory to this Agreement, acting on their own behalf and on behalf of their own respective affiliates and member organizations whose names are subscribed to the Project Labor Agreement. The parties to the Project Labor Agreement may mutually agree, in writing, to amend or modify the list of affiliated labor organizations in the event there is a change in affiliation. Nothing in this article is intended to imply that the state has the authority to approve which local unions may affiliate with the HCA.

"Work Disruption" means any strike, lockout, sympathy strike, slowdown, work stoppage, boycotting, picketing or similar activity that interferes with work on a Covered Project.

### **ARTICLE III – Scope of Agreement**

The State shall require all Contractors to agree to be bound by this PLA by executing an Agreement To Be Bound as a condition of any future request for proposal issued on or after the effective date of this PLA for a Covered Project. The Unions agree that this PLA will be available to, and will fully apply to, any successful bidder for the project work for a Covered Project, without regard to whether the successful bidder performs work at other sites as either a union or non-union Contractor, and without regard to whether employees of such bidder are or are not members of any union.

It is understood that this PLA constitutes a stand-alone agreement, and by virtue of executing an Agreement To Be Bound, Contractor will not be obligated to sign any other collective bargaining agreement as a condition of performing work within the scope of this PLA.

All Contractors on all Covered Projects must execute an Agreement to be Bound by this PLA as a precondition of performing, assigning, awarding, or subcontracting work on the Covered Project.

It is understood that each party to this PLA acts independently of the other, and this PLA does not give rise to any joint and several liability between or amongst the parties. The Unions agree that this PLA does not have the effect of creating any joint employment status between and among the State and any Contractor.

### **ARTICLE IV – Appointment of Administrator**

It is understood that the parties hereto support the active and effective administration and enforcement of the terms of this PLA by all signatory parties to ensure that the benefits envisioned from it flow to all intended parties. In furtherance thereof, the Joint Administrative Committee (as such term is defined in Article XVIII hereof) shall appoint the Director or Deputy Director of the Department of Labor and Industrial Relations, or its Interim Director if appropriate, as the administrator (the “Administrator”), to oversee the parties’ compliance with this PLA and, subject to the provisions of Article XVIII hereof pertaining to the authority of the Joint Administrative Committee, to interpret, monitor and enforce the terms and conditions of this PLA. For such purposes, the Administrator shall be considered a party in interest in all matters related to this PLA, except the resolution of grievances and jurisdictional disputes.

### **ARTICLE V – Union Recognition**

The Contractor recognizes the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on Covered Projects.

There shall be no discrimination against any Employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant,



or any other factor prohibited by state or federal law.

The Contractor agrees to deduct dues and fees in the amount designated by a particular Union, subject to applicable law, provided that the Employee has executed a written assignment calling for such a deduction, which is provided to the Contractor, and provided further that the form of the written assignment is that form that is used for all operations by the particular Union for its members in the State of Hawaii. The Contractor will remit to the Union the dues and fees deducted in the manner set forth in the applicable Master Agreement. All Employees of Contractor who are not member of any Union shall pay dues and uniform assessments in accordance with the requirements of the applicable Union and applicable law. Such dues and assessments shall be limited to fees necessary for the performance for the Union's representation duties. Any employee failing to meet the above condition of employment shall upon written notice by the Union be discharged by the Contractor within five (5) working days, if permitted by existing law.

This PLA shall not unlawfully deprive, nor shall it be construed to unlawfully deprive, any non-union or union employee of his or her rights under federal and state laws.

Each Union shall have the right to designate a working craft employee as steward for each Contractor employing such craft on the Covered Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of the craft. The steward shall not perform supervisory duties. Under no circumstances shall there be a non-working steward. Stewards shall be permitted a reasonable amount of time during work hours to perform applicable Union duties related to the work being performed by the craft employees of his or her Contractor and not to the work being performed by the other Contractors or their employees.

Authorized representatives of the Union shall have access to the Project, provided that such representatives fully comply with the posted visitor, security, and safety rules and the environmental compliance requirements of the Project, provided they do not unnecessarily interfere with the employees or cause them to neglect their work. The Contractor recognizes the right of access set forth in this Section and such access will not unreasonably be withheld from an authorized representative of the Union.

To the extent this PLA addresses a subject, it represents the complete agreement of the parties on that subject. To the extent the PLA does not address a subject, the terms and conditions of the respective Master Agreement for the appropriate craft shall apply to that subject.

#### **ARTICLE VI – Management Rights of Contractors**

Contractors retain full and exclusive authority for the management of their respective operations except as specifically set forth in this PLA. The Contractors shall have the right to direct its work forces at their sole discretion, including, but not limited to, hiring, promotion, determining competency to perform work, transfer, lay-off, discipline or discharge for just cause; the selection of foreman and general foreman; the



assignment and scheduling of work; the requirement of overtime work; the determination of when work will be done; and the number and identity of employees engaged to perform such work.

The Contractor may, in its sole discretion, utilize the most effective method or techniques of construction, tools, or other labor-saving devices. Except as otherwise expressly stated in this PLA, there shall be no limitation or restriction upon the Contractor's choice of materials or design, nor upon the full use and installation and utilization of equipment, machinery, tools, or other labor-saving devices. If there is any disagreement between the Contractor and a Union concerning the manner or implementation of such device or methods of work, the implementation shall proceed as directed by the Contractor and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article VIII of this PLA.

### **ARTICLE VII -- Hiring Procedures**

Unless otherwise required by this PLA, Contractors shall utilize the job referral system of the appropriate signatory Union to acquire employees to work on the Project. The job referral system will be operated in a non-discriminatory manner and in full compliance with federal, State, and local laws and regulations which require equal employment opportunities and non-discrimination.

A probationary period of ten (10) working days shall be established for all new employees; during such time period such named employees may be summarily discharged and such discharge is not subject to the grievance and arbitration process. Notwithstanding the above, the Contractor may reject any referral for any lawful nondiscriminatory reason provided it complies with this Article. All disputes involving the discipline and/or discharge of an employee working on a Covered Project shall be resolved through the grievance and arbitration provisions. The Contractors shall have the right to reject any applicant referred by a Union, in accordance with the applicable Master Agreement.

In the event a Union is unable to fill a request for qualified employees within forty-eight (48) hours after such request is made by a Contractor (Saturdays, Sundays and Holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union of the name and social security number of any applicant hired from the other sources and shall refer the applicant to the Union for dispatch to the Project within twenty-four (24) hours after hiring.

Except as required by law, the Unions shall not knowingly refer an employee currently employed by any Contractor working under this PLA to any other Contractor. This provision shall not be applicable in any case in which the Covered Employee has given notice to the Contractor- Employer of his or her intent to quit.

The selection of craft foremen and/or general foreman and the number of such foremen and/or general foreman required shall be entirely the responsibility of the Contractor, and Craft foremen shall be designated working foremen at the request of the Contractor and once so designated shall be allowed to perform work on the Project in

their respective crafts.

The parties recognize the State's interest in providing opportunities to participate on the Project to emerging Contractors, as well as other enterprises which may not have previously had a relationship with the Unions signatory to this PLA. To ensure that Contractors will have an opportunity to employ their "core" employees on this Project, all "core" employees must register with the appropriate Union prior to employment. The parties agree that such Contractor may request by name, and the Union will honor, referral of such persons who have registered with the appropriate Union for Project work and who demonstrate the following qualifications:

- (a) possess any license required by State or federal law for the Project work to be performed;
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (c) were on the Contractor's active payroll for at least sixty (60) out of one hundred eighty (180) calendar days prior to the contract award; and
- (d) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired seven (7) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s), if available. For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, covered Employees shall be reduced in the same ratio of "core" covered Employees to hiring hall referrals as was applied in the initial hiring.

It is understood that Contractors that do not follow this process shall be subject to the Grievance Procedure of the PLA.

#### **ARTICLE VIII – Work Stoppages**

During the term of this PLA, there shall be no strikes, picketing, work stoppages, slow-downs, or other work disruption for any reason by the Union, its applicable Local Union or by an Employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union, or Employee to cross any picket line established at the Project site is a violation of this Article.

In the case of nonpayment of wages or benefits on a Covered Project, the Union shall give the State and the Contractor three (3) business days' notice should the Union intend to withhold labor from the Contractor's workforce, during which time the

Contractor or its upper tier contractor or the State may take action to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor who has failed to pay wages or benefits shall not be considered a violation of this Article.

If the State or any Contractor contends that any Union signatory to this Agreement has violated this Article, it will so notify in writing the senior executive of the Union, setting forth the facts alleged to violate this Article. The HCA or the Union in violation of this Article and signatory to this Agreement will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

### **ARTICLE IX – Grievance Procedure**

This PLA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Covered Project for the purpose of completing the construction of the project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

It is understood that the Contractors, the Unions, and the Contractors' Employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the project and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any Contractor's Employee feels he or she is aggrieved by a violation of this PLA, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after becoming aware of the dispute, but in no event more than thirty (30) business days after the Employee reasonably should have become aware of the event giving rise to the dispute, give notice to the work-site representative of the involved Contractor, stating the provision(s) alleged to have been violated. The business representative of the local Union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information

concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the PLA alleged to have been violated.

(b) Should the Local Union(s) or the Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union Representative, and other representatives as needed, and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to the appropriate Arbitrator from the list of the permanent panel of Arbitrators, as described herein. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

The Contractors and the Unions agree to the following permanent panel of five (5) arbitrators from which an Arbitrator shall be selected to hear and decide disputes arising under this Article. The members of the panel are:

Eden Hifo  
Louis Chang  
Lori Aquino  
Ron Brown  
James Duffy

In the event any panel member is no longer available to serve under this PLA, the State and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of five (5) individuals from which the State and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

Selection of the Arbitrator from the panel shall be by mutual agreement of the Contractor and the Union(s) involved in the dispute. If an Arbitrator cannot mutually be agreed to by the parties, each party shall have an alternating and equal amount of strikes

from the panel of five (5) and the remaining panel member shall serve in the dispute. The Contractor or Union(s) invoking this procedure shall notify the Arbitrator selected. In the event that the selected Arbitrator is unavailable, the Contractor and Union(s) shall mutually agree upon another Arbitrator.

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

The Project Contractor shall be notified of all actions at Steps 2 and 3.

The time limits in this Article may be extended by mutual written agreement of the parties to the grievance.

Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit trust funds to collect delinquent wages or Trust Fund contributions from Contractors on the Project.

#### **ARTICLE X – Pre-Job Conferences**

The Contractor shall conduct a pre-job conference with the designated representatives for the HCA, and the Unions signatory to this agreement within thirty (30) days after the execution of the Contractor's contract with the State. The Contractor shall provide such representatives with a list of subcontractors seven (7) days prior to the pre-job conference.

#### **ARTICLE XI – Jurisdictional Disputes**

The Contractor performing the work shall be responsible for the assignment of work within the scope of work they will perform.

Should a jurisdictional dispute arise, including based on the assignment of work by the Contractor performing the work, there shall first be an attempt to resolve the dispute at the Project level by the Contractor and the Unions involved in the dispute by no later than seven (7) calendar days from the date a written notice of the dispute was received by the Contractor. If the dispute is not resolved within seven (7) calendar days, it shall be settled and adjudicated according to the following process. The decision rendered in the Plan proceeding described below or arbitration shall be final, binding and conclusive on the Contractor and Unions parties to the Plan proceeding or arbitration. A decision in any Plan proceeding or arbitration proceeding shall not create or be perceived to create a

precedent for future disputes. It is understood that the Joint Administrative Committee has no authority to rule on any issue involved in the jurisdictional dispute. Each signatory union to this PLA agrees to make a good faith effort to avoid jurisdictional disputes.

Jurisdictional disputes between Unions signatory to this Agreement who are members of the Hawaii Building and Construction Trades Council ("HBCTC") may be settled and adjudicated according to the current Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") established by the North America's Building Trades Unions ("NABTU") or any other dispute resolution plan or procedure that may be adopted in the future by the HBCTC if all such unions agree. If there is no mutual agreement, then the dispute shall be resolved as set forth below.

Unions that are not members of the HBCTC, or HBCTC members who are also members of the Hawaii Construction Alliance ("HCA") and decide not to use the procedure set forth in the immediately preceding paragraph or jurisdictional disputes between a member of HBCTC and a member of HCA shall utilize the following procedure. An arbitrator, based upon a review of Hawaii local industry standards and applying the other factors utilized by the National Labor Relations Board to resolve jurisdictional disputes, such as NLRB certification, collective bargaining agreements with the contractor, relative skills and training, past practice of employer, performance of employees, employer performance, and economy and efficiency of operations, shall determine the jurisdictional dispute.

- (a) Either party may request, in writing, that the dispute be submitted to arbitration, before a single arbitrator, in accordance with the Arbitration Rules, Procedures and Protocols of Dispute Prevention & Resolution, Inc. ("DPR"), or its successors, then in effect, a current copy of which is attached hereto as Exhibit A, and the provisions of the Federal Arbitration Act, as amended (collectively, the "Required Arbitration Procedures").
- (b) The arbitrator shall be selected in accordance with the Required Arbitration Procedures.
- (c) The arbitration on the dispute shall be held at a mutually acceptable location in Honolulu, Hawaii. The decision of the arbitrator rendered in any such arbitration shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction thereof. The cost of the arbitration service and the fees of the arbitrator shall be shared equally and paid by the parties to the arbitration. Each party to the arbitration shall bear its own attorneys' fees and costs in the defense or prosecution thereof. Such arbitration award or decision shall not constitute a precedent for any future dispute.

All jurisdictional disputes between Unions signatory to this Agreement shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved by agreement, Plan proceeding or arbitration award covering all employees who are involved. The Arbitrator is not authorized to award back pay or any other damages for a misassignment of work, except that a party may seek back pay or damages for the period of non-compliance with an Arbitrator's decision from any party that fails to comply with such decision within seven (7) business days of the issuance of the Arbitrator's decision.

## **ARTICLE XII – General Work Rules: Obligations of Contractor and Unions**

Slowdowns, standby crews, and featherbedding practices will not be tolerated.

It is understood that the Project Contractor may establish reasonable project rules that will be uniformly applied and adhered to by all Contractors, the Unions, and all employees. These rules will be provided to all Contractors for the Contractor's pre-job conference and made available in writing to their Covered Employees. These rules shall be provided to the Unions.

Security procedures for the control of tools, equipment, and materials are the responsibility of the Contractor. Covered Employees having in their possession without authorization any property of the Contractor or of another employee shall be subject to immediate discharge by the Contractor. The Contractor will be responsible for the establishment of reasonable security measures for the protection of personal, company, and Contractor property.

There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb, or property; or on the use of any tools or equipment for the performance of work within the Union's jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

The selection of a craft foreman and general foreman and the number of same required shall be entirely the right and responsibility of the Contractor.

The Contractor has the sole and exclusive right to assign specific Covered Employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job. The overtime work shall be assigned to Covered Employees and/or crew(s), to the extent needed, who performed the work involved during the regular work day or work shift.

The Contractor shall provide a convenient and sanitary supply of drinking water and sanitary drinking cups.

The Contractor shall provide adequate sanitary toilet facilities, water, and clean up facilities to Covered Employees.



The Contractor shall provide a safe and secure place for storage of tools.

All required safety equipment will be provided by the Contractor.

### **ARTICLE XIII – Safety, Environmental and Health**

It shall be the responsibility of the Contractor to ensure safe working conditions and employee compliance with any safety rules herein or established by the Contractor.

Covered Employees shall be bound by the safety, security and site access rules established by the Contractor for the Project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the Project.

The Contractor shall conduct safety meetings at least once a week for all Covered Employees. Such mandatory meetings will be conducted on paid time. Attendance at such meetings is mandatory and employees who do not attend may be subject to disciplinary action.

Covered Employees shall use, maintain, and care for personal protective equipment and other health and safety equipment issued or assigned them. Proper use of the equipment is mandatory, and failure to do so may result in disciplinary action up to and including discharge.

To further the health, safety and security of the workplace, the Contractor and Unions agree to implement the policy covering drugs and other controlled substances pursuant to Article XII.

### **ARTICLE XIV – Substance Abuse Policy and Drug and Alcohol Testing Procedure**

The parties to this PLA acknowledge the prohibition of the use, sale, transfer, purchase, and/or possession of a controlled substance, alcohol, and/or firearms while on Project premises. Additionally, all parties to this PLA agree to a “drug free” workplace policy, which prohibits those working on this Project from having a level of alcohol which could indicate impairment, and/or any level of controlled substances (i.e., illegal drugs) in their system. No employee shall be permitted to work on the Project under the influence of intoxicants or drugs and shall be removed from the Project if found under the influence of intoxicants or drugs.

To that end, the parties agree that all employees performing work under this PLA shall be obligated and bound to their employer’s drug and alcohol prevention policies and programs, whether those policies and procedures are contained in separate collective bargaining agreement between the Union and Contractor or policies and procedures of a contractor that has no separate collective bargaining agreement with the union. If a Contractor with no separate collective bargaining agreement with a union has drug and alcohol prevention policies and procedures, those policies and procedures shall be just as



effective in preventing drug and alcohol abuse as the policies and procedures contained in the corresponding collective bargaining agreement with the union, and shall have no lower testing standards than contained in that agreement. The Contractor shall provide a copy of those policies and procedures to the Union upon request. If a Contractor with no separate collective bargaining agreement with a union has no drug and alcohol prevention policies and procedures, those policies and procedures contained in the corresponding collective bargaining agreement with the union shall apply.

#### **ARTICLE XV – Apprenticeship Program**

All apprentices must be indentured in a State-approved apprenticeship program.

Contractors shall employ apprentices in their respective craft to perform work customarily performed by the craft in which they are apprenticed and within their capabilities.

To promote training and employment opportunities for military veterans who are interested in careers in the building and construction trades, the Contractor-Employer and Unions agree, when appropriate, to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment in the Center’s “Helmets for Hardhats” program to serve as a resource for assessment for construction aptitude of the military veterans and for possible referral to apprenticeship programs.

Consistent with any restriction contained in applicable federal and state law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the Contractor may employ registered apprentices.

Apprentice pay scales and ratios shall be governed by the appropriate Union’s joint apprenticeship program.

#### **ARTICLE XVI – Wages, Hours, Etc.**

The wages, hours, shift schedules, holidays, and other terms and conditions of employment will be governed by the master agreement of the applicable craft.

#### **ARTICLE XVII – Subcontracting: Obligations of Contractors**

Contractor agrees that it will not subcontract any Covered Work to be performed on a Covered Project, except to an individual firm, partnership, corporation, or any combination thereof or joint venture that signs an Agreement To Be Bound and thereby agrees to become a Contractor subject to this PLA.

#### **ARTICLE XVIII – Joint Administrative Committee**

The parties to this PLA shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of two

(2) representatives selected by the State, including one Contractor who has signed the Agreement To Be Bound during the term of this PLA; and a labor party made up of two (2) representatives from the Unions signatory to this Agreement of which one representative shall be a member in good standing, officer or administrator of the Hawaii Construction Alliance. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this PLA.

The JAC shall not be involved in or rule upon any individual grievances or on any issue involved in a jurisdictional dispute. Outside of the context of an individual grievance or a jurisdictional dispute, the JAC will resolve any interpretations or clarifications of this PLA that may be required by the Unions and/or the Contractor by majority vote with such resolutions to be binding on all signatories of this PLA as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this PLA, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this PLA. If the JAC fails to resolve any questions regarding the meaning, interpretation, or application of the provisions of this PLA within its authority, the Administrator shall have the authority to resolve such question. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC. In addition to its charter to rule on interpretations or clarifications to this PLA, the JAC shall annually review the effectiveness of the PLA in meeting the PLA goals of:

- a. No construction Work Disruption on this Project.
- b. Reducing friction that may arise when union and open shop employees are working at a common jobsite.
- c. High quality, cost effective construction work.
- d. Providing training opportunities for local craft workers.
- e. Ensuring compliance with health and safety policies and laws.

#### **ARTICLE XIX – No Discrimination**

The Contractor and Unions shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, ancestry, arrest or court record, or any other protected status pursuant to federal or state law or regulations.

All covered projects shall comply with and be in accordance with the right to organize for the purpose of collective bargaining guaranteed under Article XIII, Sections 1 and 2, of the State Constitution, and the operation and maintenance of facilities that are constructed pursuant to this PLA shall be consistent with the merit principle under Article XVI, Section 1, of the State Constitution.

Contractor agrees that it will not subcontract any Covered Work to be performed on a Covered Project, except to an individual firm, partnership, corporation, or any combination thereof or joint venture that signs an Agreement To Be Bound and thereby agrees to become a Contractor subject to this PLA. Any Contractor working on a Covered Project shall, as a condition to working on said Project, perform all work under the terms of Article XV – Subcontracting: Obligations of Contractors.

#### **ARTICLE XX – Savings Clause**

This document contains the entire agreement of the parties, and no party has made any representations to another party which are not contained herein. This PLA is intended to fully conform to all applicable statutes, regulations, and Executive Orders. Should any provision herein contained be rendered or declared invalid by reason of any existing legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this PLA shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties shall immediately meet to renegotiate the portion or portions thereof rendered invalid.

#### **ARTICLE XXI – Duration**

The PLA shall become effective upon the execution by the State, the HCA, and the Unions signatory to this Agreement. The PLA shall remain in full force and effect until December 31, 2026 and, unless extended by the parties to the PLA, shall terminate thereafter. Amendments and modifications to the PLA must be made by mutual agreement of all the parties.

The PLA shall apply until the completion of any individual Covered Project regardless of the PLA term.

#### **ARTICLE XXII – Execution in Counterparts**

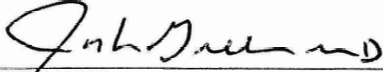
This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

#### **ARTICLE XXIII – Annual Review upon Request**

At each anniversary of the commencement date of the PLA, any signatory union (the “Requesting Party”) may request a review of any issues of concern arising under the PLA to determine whether such issues can be resolved. If the Requesting Party is not satisfied with the outcome of the review process, the Requesting Party shall have the right to terminate its participation in the PLA upon thirty (30) days advance written notice to the Administrator.

This Project Labor Agreement is executed on this 22 day of December, 2023,  
Honolulu, Hawaii.

State of Hawaii

  
\_\_\_\_\_  
Governor

Hawaii Construction Alliance

\_\_\_\_\_

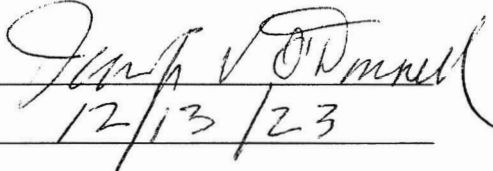
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**UNION SIGNATURES**

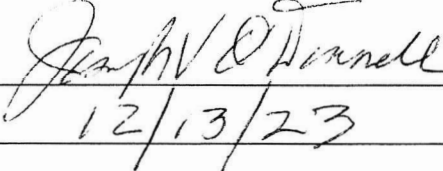
The undersigned Unions hereby agree to comply with all of the terms and conditions of Covered Projects.

It is understood that this signing shall be as binding on the undersigned Unions as though they signed the above-referenced Project Labor Agreement.

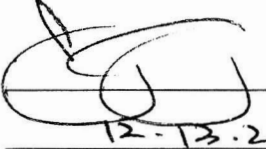
Iron Workers Local 625

  
\_\_\_\_\_  
12/13/23  
\_\_\_\_\_  
Date

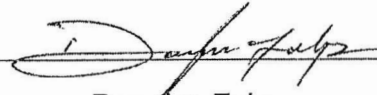
Ironworkers Local 625S

  
\_\_\_\_\_  
12/13/23  
\_\_\_\_\_  
Date


United Union of Roofers,  
Waterproofers & Allied Workers  
Local 221

  
\_\_\_\_\_  
12-13-23  
\_\_\_\_\_  
Date


International Union of Heat &  
Frost Insulators & Allied  
Workers Local 132

  
\_\_\_\_\_  
Douglas Fulp  
\_\_\_\_\_  
Date 12/15/2023


IBUAC, AFL-CIO Local 1 Hawaii

  
\_\_\_\_\_  
12 | 13 | 2023  
\_\_\_\_\_  
Date

Plumbers & Fitters UA Local 675

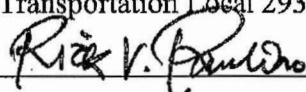
  
\_\_\_\_\_  
Valentino CERIA  
\_\_\_\_\_  
Date 12/28/23

International Brotherhood of  
Electrical Workers Local 1186

  
\_\_\_\_\_

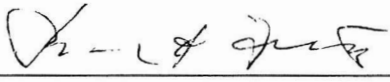
Date 12/13/23

International Association of Sheet  
Metal, Air, Rail &  
Transportation Local 293

  
\_\_\_\_\_

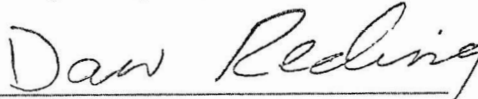
Date  
12/20/2023

Hawaii Regional Council of  
Carpenters

  
\_\_\_\_\_


Date  
12/14/23

International Union of  
Operating Engineers Local 3

  
\_\_\_\_\_

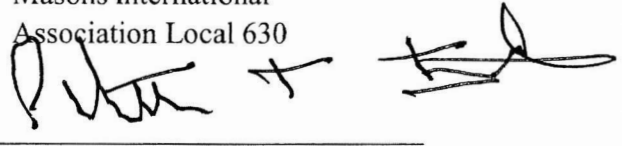
Date  
1/31/2024

Laborers' International Union of  
North America Local 368

  
\_\_\_\_\_

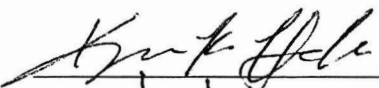
Date  
12/14/23

Operative Plasterer's & Cement  
Masons International  
Association Local 630

  
\_\_\_\_\_

Date

Hawaii Teamsters & Allied  
Workers Local 996

  
\_\_\_\_\_


Date  
12/13/23

International Union of Elevator  
Constructors Local 126

\_\_\_\_\_  
\_\_\_\_\_

Date

International Brotherhood of  
Boilermakers Local 627

  
December 13, 2023

Date

International Brotherhood of  
Electrical Workers Local 1260

\_\_\_\_\_  
\_\_\_\_\_

Date

District Council 50  
International Union of  
Painters & Allied Trades  
Local 1791  
Glaziers, Architectural  
Metal & Glass Workers  
Local 1889 Carpet,  
Linoleum & Soft Tile  
Local 1926  
Drywall, Tapers &  
Finishers Local 1944

\_\_\_\_\_  
\_\_\_\_\_

Date

**ATTACHMENT "A"**  
**AGREEMENT TO BE**  
**BOUND**

This is to certify that the undersigned Contractor has examined a copy of the Project Labor Agreement between the State of Hawaii, the Hawaii Construction Alliance, and its Affiliated Labor Unions, and the Unions signatory to this Agreement ("PLA"). The undersigned Contractor hereby agrees to comply with all of the terms and conditions of the PLA on this Covered Project, entitled \_[Name of Project]\_.

It is understood that the signing of this Agreement To Be Bound shall be as binding on the undersigned Contractor as though the Contractor had signed the above-referenced PLA. The Contractor further agrees that all of its subcontractors, of whatever tier, shall execute this Agreement To Be Bound and agree to be bound by the PLA for all work within the scope of this Covered Project, entitled \_[Name of Project]\_.

The Contractor agrees to pay contributions to the bona fide fringe benefit trust funds established by the applicable Master Agreement(s) for each hour worked on the Covered Project, in the amounts designated in the applicable Master Agreement(s). By signing this Agreement To Be Bound, the Contractor adopts and agrees to be bound by the legally established trust agreements governing such trust funds, which may from time to time be amended. The Contractor authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed. The Contractor agrees to execute a separate subscription agreement in the event the trust funds so require.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Contractor State License # or Motor Carrier Permit #: \_\_\_\_\_

Name of Authorized Person (print): \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

Telephone Number of Authorized Person: \_\_\_\_\_

Address of Authorized Person: \_\_\_\_\_

---



**EXHIBIT H**

**SUSTAINABILITY PLAN**

[attached]

## **Sustainability Plan**

In addition to meeting all the requirements of the 201H Agreement dated March 13, 2023, the energy-efficiency requirements of the State of Hawaii as well as the City and County of Honolulu, The Developer and The Authority will endeavor to include the following sustainability features in the Project. Both parties acknowledge that this list is subject to change and the final sustainability features will be limited to those included in the final building permit set of plans.

- Building Placement that maximizes prevailing trade winds and natural patterns of the sun, thereby reducing need for air conditioning.
- Natural ventilation
- Buildings that minimize weather infiltration and inhibit intrusion from mold and pests.
- Water use reductions in accordance with the Energy Policy Act and Low Flow Faucets and Fixtures
- Natural lighting to minimize the need for interior lighting and thus reducing electrical use for artificial lighting.
- High efficiency lighting, such as compact fluorescent and LED fixtures and bulbs.
- Building insulation that will reduce need for air conditioning.
- Installation of native and climate-adapted plants for landscaping
- Integrated landscape and site design options that employ low impact storm water management techniques.
- Automated irrigation to prevent overwatering.

**EXHIBIT I**

**HAWAII GENERAL CONDITIONS**

[attached]

# GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and



necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

#### 14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.



34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

**02. Ground Lease –  
School Street Phase 1A  
(Lot 2)**

**HPHA GROUND LEASE AGREEMENT**

**HPHA School Street Redevelopment Project  
(Phase 1A)**

**LANDLORD:**

Hawaii Public Housing Authority,  
a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:**

School Street I, LP,  
a Hawaii limited partnership

as of [insert date of closing]

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**HPHA GROUND LEASE  
BETWEEN THE HAWAII PUBLIC HOUSING AUTHORITY  
AND  
SCHOOL STREET I, LP**

**BASIC LEASE INFORMATION**

**DATE:** AS OF [insert date of closing]

**LANDLORD:** HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic, organized under the laws of the State of Hawaii

**TENANT:** SCHOOL STREET I, LP, a Hawaii limited partnership

**PREMISES:** CERTAIN PREMISES SITUATED IN THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A"

**ANNUAL BASE RENT:** \$[insert based on appraisal], increasing annually at the rate of \_\_\_\_ percent (\_\_.00%)

**COMMENCEMENT DATE:** [insert date of closing]

**TERM:** 65 years

**LANDLORD'S ADDRESS FOR NOTICES:** Hawaii Public Housing Authority  
1002 N School Street  
Honolulu, Hawaii 96817

**TENANT'S ADDRESS FOR NOTICES:** C/O HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC  
330 W. VICTORIA STREET  
GARDENA, CA 98445

WITH A COPY TO:

C/O RBC COMMUNITY INVESTMENTS, LLC  
600 SUPERIOR AVENUE  
SUITE 2300  
CLEVELAND, OHIO 44114  
ATTENTION: PRESIDENT AND GENERAL COUNSEL

WITH A COPY TO:

BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP  
633 WEST FIFTH STREET, SUITE 5880  
LOS ANGELES, CALIFORNIA 90071  
ATTENTION: KYLE ARNDT, ESQ.  
FACSIMILE NO.: (213) 559-0733

The Basic Lease Information is part of the Lease; however, if any of the Basic Lease Information contradicts any provision of the Lease, the provisions of the Lease will prevail.

## HPHA GROUND LEASE AGREEMENT

THIS HPHA GROUND LEASE AGREEMENT (the “Lease”) effective as of \_\_\_\_\_, \_\_\_\_\_ is by and between the HAWAII PUBLIC HOUSING AUTHORITY, a public body corporate and politic organized and existing pursuant to Chapter 356D of the Hawaii Revised Statutes, with a principal place of operation located at 1102 N School Street, Honolulu, HI 96817 (“Landlord”), and SCHOOL STREET I, LP, a Hawaii limited partnership, with a principal place of business located at 330 W. Victoria Street, Gardena, CA 98445 (“Tenant”).

### **ARTICLE 1- RECITALS**

Landlord is the fee simple owner of the land consisting of 83,451 square feet, located at 1002 North School Street, in the City and County of Honolulu, and State of Hawaii, identified as Tax Map Key No. (1) 1-6-009-012 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Demised Premises”).

Landlord selected Retirement Housing Foundation, a California nonprofit corporation (“RHF”) to undertake the redevelopment of the School Street Redevelopment Project (the “Redevelopment”). Landlord and RHF’s affiliate, RHF Foundation, Inc. (“RHFFI”) entered into that certain Master Development Agreement, effective on or about November 15, 2019 (“Master Development Agreement”), which Master Development Agreement was assigned to HCDC School Street LLC, a Hawaii limited liability company (“HCDC”), an experienced developer of affordable housing projects on January 11, 2024 pursuant to an Assignment and Assumption of Master Development Agreement. Tenant is an affiliate of HCDC.

Phase 1A of the Redevelopment will consist of two hundred fifty (250) residential rental units all as more particularly described and set forth in the Plans and Specifications.

Tenant wishes to ground lease from Landlord, pursuant to this Lease, the Demised Premises, on which Tenant will construct Phase 1A of the Redevelopment.

NOW, THEREFORE, in consideration of these presents, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby enter into this Lease on the terms and conditions set forth herein.

### **ARTICLE 2- DEFINITIONS**

Capitalized terms used in this Lease and not otherwise defined shall have the meanings referred to below.

“Additional Rent” - See Section 18.1.

“AFR”- shall mean the long-term applicable federal rate pursuant to U.S. Internal Revenue Code Section 1274(d) in effect as of the date hereof.

“Assignment of Leases and Rents” - shall mean such assignments of leases and rent executed by the Tenant in favor of any Leasehold Mortgagee, whether the assignment is made in a document titled an “assignment of leases and rents” is contained within a mortgage.

“Base Rent” - See Section 7.1.

“City” - See Section 4.1.

“Commencement Date” - See Basic Lease Information.

“Completion Date” - shall mean [insert date at closing].

“Compliance Period” - shall mean the compliance period as defined in Internal Revenue Code Section 42(i)(1).

“Conversion Date” - shall mean the date upon which the Tenant converts from construction to permanent financing.

“Controlling Interest” - See Section 12.4.

“Demised Premises” - See Article 1.

“Environmental Laws” - See Exhibit C.

“Environmental Report” - See Section 5.1(g) and Exhibit E.

“Event of Default” - See Section 18.2.

“First Leasehold Mortgagee” - shall mean the first leasehold mortgagee during construction and prior to the conversion to permanent financing is First Hawaiian Bank and after conversion to permanent financing the first leasehold mortgagee shall be Citicorp USA, Inc.

“Governmental Authorities” - See Section 4.2.

“Hazardous Materials” - See Exhibit C.

“HPHA Affordability Requirement” - means the Landlord’s requirement as a condition for entering into this Lease that the Premises are used to provide residential housing for households at or below sixty percent (60%) of the U.S. Department of Housing and Urban Development area median income for the City, adjusted for household size (except for the manager’s unit).

“Improvements” - means all buildings, structures and other permanent improvements now or hereafter erected on, over or under the Demised Premises, including all walkway and road improvements, parking areas and facilities, landscaping improvements of whatever nature, utility and sewage lines (to the extent of Tenant’s interest therein) and the appurtenances to all of the foregoing.

“Investor Member” or “Investor Limited Partner(s)” - shall mean the Tax Credit Investor(s), in its capacity as the investor member or partner(s) of tenant, and its successors and assigns.

“Landlord” - See Preamble.

“Lease” - See Preamble.

“Lease Year” - shall mean a calendar year.

“Leasehold Mortgage(s)” - shall mean a mortgage, or other security instrument (a) that encumbers the Leasehold Estate or any interest in the Leasehold Estate; (b) a copy of which is promptly after execution delivered to Landlord and recorded in the Bureau of Conveyances of the State of Hawaii, with a certification by Leasehold Mortgagee that the copy is accurate and stating Leasehold Mortgagee’s name and Notice address; and (c) that is held by a Leasehold Mortgagee subject to the jurisdiction of the courts of the State of Hawai`i.

“Leasehold Mortgagee(s)” - shall mean a holder of a Leasehold Mortgage and its successor and assigns, provided that: (a) it is not an affiliate of Tenant; and (b) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“LIHTC” - shall mean Low Income Housing Tax Credits as provided in Section 42 of the Internal Revenue Code, as amended, or under State law.

“Limited Partnership Agreement” - shall mean that certain Amended and Restated Limited Partnership Agreement of Tenant of substantially even date herewith.

“Management Agent” - shall mean the management agent selected by Tenant and approved by Landlord, and its successors and assigns, which shall select the Property Manager to manage the Premises. The initial Management Agent shall be, and Landlord hereby approves, HCHP Property Management, LP, a California limited partnership (which shall have subcontracted management duties to Michaels Management-Affordable, LLC).

“Operating Expenses” - See Section 8.2

“Permitted Encumbrances - shall mean all mortgages, easements and other encumbrances permitted to exist with regard to the title to the Property, as set forth on Exhibit F, attached hereto and incorporated herein by this reference, or as otherwise jointly agreed to by Landlord and Tenant.

“Plans and Specifications” - shall mean all those plans and specifications for the Improvements to be constructed on the Demised Premises and all associated work, as approved by the Landlord.

“Premises” - shall mean the Demised Premises and the Improvements.

“Property Manager” - shall mean the property manager selected by the Management Agent and approved by Landlord, and its successors and assigns. The initial Property Manager shall be, and Landlord hereby approves, Michaels Management-Affordable, LLC, a New Jersey limited liability company.

“Regulatory Default” - See Article 18.4(a).

“Rent” - shall mean, collectively, Base Rent and Additional Rent.

“State” shall mean the State of Hawaii.

“Tax Credit Investor(s)” - shall mean RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “Limited Partner”), RBC Community Investments Manager II, Inc., a Delaware corporation, and its permitted successors and/or assigns (the “Special Limited Partner”) and RBC Community Investments, LLC, an Illinois limited liability company, and its permitted successors and/or assigns (the “State Limited Partner”).

“Tax Credit Requirements” - shall mean any and all matters required by Section 42, the Hawaii Housing Finance and Development Corporation (HHFDC) or any agreement with a condition of receipt of tax credits, whether or not such requirement is explicitly stated in Section 42, regulations thereunder, or HHFDC requirements.

“Tax Credit Units” - See Section 4.1

“Tenant”- See Preamble

“Term” - See Section 6.1

“Transfer” - See Section 12.1

### **ARTICLE 3- DEMISE OF LEASEHOLD INTEREST**

Section 3.1 Lease to Tenant. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Demised Premises, upon the terms and conditions stated herein. The Demised Premises are leased (a) subject only to (i) any state of facts an accurate survey of the Premises would show, (ii) any state of facts a personal inspection would show, (iii) Permitted Encumbrances, (iv) present and future zoning laws, ordinances, resolutions and regulations of any governmental authority and all present and future ordinances, statutes, laws, regulations and orders of all boards, bureaus, departments, agencies, commissions and bodies of any municipal, county, state or federal sovereign, (v) the effect of all present and future municipal, state or federal laws, orders and regulations relating to the Tenant, sub-tenants or occupants of the Demised Premises; and (b) with the right to pass and repass over all permitted existing and future ways and public areas located on, in or appurtenant to the Demised Premises and/or shown on the ALTA/ACSM Land Title Survey Subdivision Map set forth in Exhibit A, and the right to use such other portions of the Demised Premises and all utilities and service conduits and facilities thereon to facilitate the construction of the Improvements pursuant to the Plans and Specifications.

Section 3.2 Services by Landlord. Except as otherwise provided herein, it is expressly agreed that Landlord is not and shall not be required under this Lease to render any services of any kind to Tenant. Nothing herein shall modify the terms of any separate agreement between Tenant and Landlord.

Section 3.3 Quiet Enjoyment. Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease, including Permitted Exceptions.

## **ARTICLE 4- IMPROVEMENTS**

Section 4.1 Improvements to be Constructed. Tenant shall construct the Improvements or cause the Improvements to be constructed on the Demised Premises, at its sole expense no later than the Completion Date. Upon completion, the Improvements shall, subject to a Force Majeure Event, include a total of two hundred fifty (250) housing units (which includes one manager's unit not subject to income restrictions), which shall be available for rental solely for (a) the period required by the Tax Credit Requirements to households with incomes at or below sixty percent (60%) of the area median income (the "Tax Credit Units") at initial occupancy and (b) the term of this Lease households with incomes at or below sixty percent (60%) of area median income at initial occupancy ("HPHA Affordability Requirement"). Tenant shall take no action to effectuate any material amendments, modifications or any other material alterations to the Plans and Specifications without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.1 Compliance with Laws. The Improvements shall be constructed in good and workmanlike manner and in conformance with all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments having jurisdiction over the Improvements (collectively, "Governmental Authorities"), including, insofar as applicable, Landlord, the United States Government, the State, and City and County of Honolulu (the "City").

Section 4.2 Approvals, Permits and Licenses. Tenant shall apply for, assume all costs of and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, utility easements, operation and occupancy of the Improvements, all in accordance with the Plans and Specifications. Landlord agrees to cooperate with and publicly support Tenant's efforts to obtain such permits and licenses that are substantially in accordance with the Plans and Specifications. If required, Landlord shall consent and allow Tenant to apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use, operation, and occupation of the Improvements, in the name of Landlord, at Tenant's sole cost and expense.

Section 4.3 Ownership of Improvements. Landlord and Tenant acknowledge and agree that during the entire Term, Tenant shall be the owner of the Improvements, and as such, Tenant shall be entitled to all depreciation deductions and low-income housing tax credits or other benefits for income tax purposes relating to the Improvements. At the expiration of the Term or other

termination of this Lease, ownership of the Improvements shall, at the option of the Landlord, remain and become the property of the Landlord.

Section 4.4 Public Improvements. The Demised Premises are currently serviced by School Street which is a public street owned by the City.

## **ARTICLE 5- REPRESENTATIONS AND WARRANTIES**

Section 5.1 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that:

- (a) Landlord owns fee simple good and marketable title to the Demised Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances and the title exceptions listed in Exhibit F-1.
- (b) Landlord has full right, power and authority to make, execute, deliver, and perform its obligations under this Lease. Landlord has obtained all required and necessary consents and approvals to enter into this Lease with Tenant. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach or default under any agreement or obligation to which Landlord is a party or by which it is bound.
- (c) There are no unpaid special assessments of which Landlord has received notice, or of which Landlord is otherwise aware for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Demised Premises.
- (d) Except for the Purchase Option and Right of First Refusal executed on substantially even date herewith, Landlord is not obligated under any contract, lease, or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Demised Premises.
- (e) Except as disclosed to Tenant in writing, to the best of Landlord's knowledge, there is no action, suit, litigation, or proceeding pending or, to Landlord's knowledge, threatened against Landlord which could prevent or impair Landlord's entry into this Lease and/or performance of its obligations hereunder.
- (f) The person signing this Lease on behalf of Landlord is duly and validly authorized to do so.
- (g) Except as may be referenced in those environmental reports referenced at Exhibit E hereto (the "Environmental Report"), to the best of Landlord's information, knowledge and belief, there are no Hazardous Materials or



underground storage tanks located in, on or under the Premises. Except as may be referenced in the Environmental Report, to the best of Landlord's information, knowledge and belief, no notice from any governmental authority or any person has ever been issued to Landlord, its agents or employees, claiming any violation of any Environmental Law with respect to the Premises.

Section 5.2 Tenant's Representations and Warranties. Tenant hereby warrants and represents to Landlord that:

- (a) Tenant is a duly organized, lawfully existing limited partnership and is in good standing under the laws of the State.
- (b) Tenant has the full right, power and authority to make, execute, deliver and perform its obligations under this Lease.
- (c) Tenant's execution and delivery of this Lease has been authorized by all requisite action on the part of Tenant and its general partner, and the execution and delivery of this Lease by Tenant and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Tenant is a party or by which it is bound.
- (d) There is no action, suit, litigation, or proceeding pending or, to Tenant's knowledge, threatened against Tenant or any Tenant affiliate which could prevent or impair Tenant's entry into this Lease and/or the full and complete performance of its obligations hereunder.
- (e) The person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

## **ARTICLE 6- TERM**

Section 6.1 Term of Lease. The term of this Lease shall be, unless sooner terminated in accordance with the provisions hereof, for a period of time commencing upon the Commencement Date and ending on [fill in 65 years from date of closing], 2089 (the "Term").

## **ARTICLE 7- PAYMENTS BY TENANT**

Section 7.1 Base Rent<sup>1</sup>. As consideration for this Lease and the use of the Demised Premises, the Tenant shall pay to the Landlord the Base Rent, as set forth in this Section 7.1. The term "Base Rent" shall mean the annual rent payment due from the Tenant to the Landlord on June 1 of each year of the Term beginning the Lease Year after the date of Conversion Date. The Base Rent shall be (i) in the initial amount of [insert based on appraisal] (\$\_\_\_\_\_), increasing annually at the rate of two percent (2.00%), beginning the Lease Year after the Conversion Date and continuing for \_\_\_\_\_ (\_\_\_\_) years and continuing for the remainder of the Term. Notwithstanding

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<sup>1</sup> Base rent amount to be determined by an appraisal. We expect to finalize this section by the HPHA board meeting on April 4, 2024.

the foregoing, prior to [May 1, 2089]<sup>2</sup>, such Base Rent shall be due and payable only to the extent of Net Cash Flow (as defined in Exhibit G) available annually for such purposes pursuant to the priority described in Exhibit G attached hereto. Any Base Rent for which the Parties have agreed there is not sufficient Cash Flow in any given year shall be deferred to the following year, and shall be paid from subsequent years' Cash Flow (in the same priority) until paid in full and shall bear interest at the AFR. All accrued and unpaid Base Rent plus interest (“Accrued Base Rent”), shall be due and payable in full by the Tenant on the earlier of (a) a sale of the Project and (b) [May 20\_\_] [and, thereafter, the Base Rent shall be paid currently.] The Landlord and Tenant acknowledge and agree that the Base Rent provided herein constitutes fair market rent for the right to use the Demised Premises and agree to account for payment thereof as an expense for tax and accounting purposes.

Section 7.2    Reserved.

Section 7.3    Payments by Tenant. Unless otherwise expressly set forth in this Lease, all costs, expenses, liabilities, charges, or other deductions whatsoever with respect to the Demised Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, or occupation of the Demised Premises or the Improvements or both, or with respect to any interest of Landlord in the Demised Premises or this Lease, shall be the responsibility of and paid by Tenant.

**ARTICLE 8- TAXES: OPERATING EXPENSES**

Section 8.1    Taxes. Tenant shall pay any and all real property taxes which are assessed against the Premises by any taxing authority and any payments required by any cooperation agreement providing for payments in lieu of taxes which now exist or at any time in the future may be entered into by Tenant with the City or other taxing authorities. Landlord shall pay all other local, state, or federal taxes assessed against Landlord, if any; local, state, or federal capital levy of Landlord, if any; or sales, excise, franchise, gift, estate, succession, inheritance taxes, of Landlord, if any.

Section 8.2    Property Operating Expenses. Tenant shall pay or cause to be paid all costs and expenses attributable to or incurred in connection with the operation, maintenance, and repair of the Demised Premises and the Improvements (collectively, “Operating Expenses”).

Section 8.3    Adjustments. Rents and other revenues, taxes and Operating Expenses, payable with respect to the Premises for the month in which the Commencement Date occurs shall be prorated as of the Commencement Date. Rents and other charges which at the Commencement Date are past due shall not be prorated and Tenant shall retain those amounts, as and when collected by Tenant. The right to receive and collect all rents and profits, delinquent or otherwise, shall be transferred to Tenant as of the Commencement Date.

All other income and Operating Expenses of the Premises, including, without limitation, public utility charges, maintenance, management, and other service charges, and all other normal operating charges shall be prorated as of the Commencement Date based upon the best available information. The obligation of the parties to adjust, Post-Commencement Date, operating

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<sup>2</sup> Subject to refinement based on appraisal. Year to be specified by the HPHA board meeting on April 4, 2024.

expenses as of the closing date, to the extent unknown or not provided for at the execution of this Lease, shall be paid by the party responsible therefor within thirty (30) days after written demand has been made. Such demand shall include a copy of the invoice(s) for which payment or reimbursement is sought.

## ARTICLE 9- INSURANCE

### Section 9.1    Tenant's Insurance.

- (a) Tenant agrees, at its sole expense, to procure and maintain at all times during the term of this Lease the types of insurance specified in Exhibit B hereto, and on the terms specified below, in order to protect Landlord from the liability arising from the negligence of the Tenant, its officers, subcontractors, joint venture, members, partners, agents or employees. The insurance carriers used by Tenant must be authorized to conduct business in the State of Hawaii and shall have a BEST Rating of not less than an "A-" except where noted. The insurance provided shall cover all operations under this Lease, whether performed by Tenant, its agents, or by its subcontractors. In the event of the failure or insolvency of any insurer of Tenant which results in the failure of such insurer to pay for a claim that would otherwise be covered under Tenant's policy of insurance with the same, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, suits, liability and damages which might result therefrom, including but not limited to attorneys' fees and the costs of defending the same.
  
- (b) Certificates of Insurance. Prior to Closing, Tenant and its subcontractors shall furnish Landlord with satisfactory evidence (subject to approval of Landlord) that Tenant and its subcontractors have the insurance coverage set forth in Exhibit B, and which shall name Landlord and the State of Hawaii as additional named insureds. Tenant will immediately provide written notice to the Landlord should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope or not renewed upon expiration.
  
- (c) All insurance policies shall contain the following clauses:
  - (i) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed on the Demised Premises."
  
  - (ii) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Tenant shall advise all insurers of the contract provisions regarding insurance and other requirements of this Lease. The failure of Tenant to

notify insurers of the contract provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions shall constitute a breach of this Lease and the Landlord retains the right to stop work until satisfactory evidence of insurance is provided.

- (d) Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Landlord prior to expiration of insurance coverage. At the Landlord's option, following non-compliance and reasonable opportunity to cure (but no less than fifteen (15) days) the Landlord may purchase insurance on behalf of Tenant and will charge back all costs to Tenant. The receipt of any certificate does not constitute agreement by the Landlord that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Lease. The Tenant shall provide thirty (30) days written notice to be given to Landlord in the event coverage is to be substantially changed, canceled or non-renewed.
- (e) If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Lease and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. Tenant shall maintain coverage for the duration of this Lease. Any extended reporting period premium (tail coverage) shall be paid by Tenant.
- (f) Not less than annually, Tenant shall provide to Landlord certificate of insurance naming Landlord as an additional insured, and a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Tenant shall provide Landlord thirty (30) days prior written notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non-renewal.
- (g) Tenant shall require all subcontractors to carry the insurance required herein or Tenant may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in this Section 9.1. Evidence of such coverage must be submitted to Landlord not later than fifteen (15) days prior to the date on which such subcontractor is to begin work on the Demised Premises.
- (h) Tenant expressly understands and agrees that any insurance or self-insurance programs maintained by Landlord shall be only for the benefit of Landlord and shall apply in excess of and will not contribute with insurance provided by Tenant under this Lease.

Section 9.2 Waiver of Insured Claims. Each of Landlord and Tenant hereby waives right of recovery against the other for loss or injury against which the waiving party is protected by insurance, but only to the extent of such insurance.

**ARTICLE 10- USE OF DEMISED PREMISES: COVENANTS RUNNING WITH THE LAND**

Section 10.1 Permitted Use. Tenant will cause the Demised Premises to be used as residential rental housing consistent with the HPHA Affordability Requirement and in the manner permitted by any and all documents including modifications, renewals, or replacements required by the Tax Credit Requirements including the Extended Low-Income Housing Commitment of substantially even date herewith, which is recorded on the land records of the State, to which reference may be had. Such covenants contained herein are intended to create covenants running with the land and shall also be binding upon Tenant's successors and assigns, including any entity which succeeds to Tenant's interest in the Demised Premises by foreclosure or an instrument in lieu of foreclosure, so long as such covenant remains in effect.

Section 10.2 Compliance with Laws. Tenant shall not use or occupy or suffer or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirements. Tenant shall comply with applicable laws and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body having jurisdiction over the Premises.

**ARTICLE 11- ENVIRONMENTAL COVENANTS AND INDEMNITIES**

Section 11.1 Tenant's Environmental Covenants. Without limiting any of Tenant's other covenants, agreements and obligations set forth in this Lease, Tenant hereby specifically covenants and agrees to fulfill the obligations set forth below with respect to environmental matters:

- (a) Tenant shall comply with all applicable Environmental Laws (as defined in Exhibit C) applicable to Tenant's use of the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith. All Hazardous Materials present, handled or generated or used by Tenant on the Premises which are removed from the Premises by Tenant shall be transported and disposed of in a lawful manner.
- (b) Tenant shall provide Landlord with copies of all forms, notices and other information received by or on behalf of Tenant concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied to any government agency.
- (c) Tenant shall not itself, and Tenant shall not permit any other person, including third parties with whom Tenant contracts in regard to this Lease, to bring onto the Premises any Hazardous Materials (other than quantities

or such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Improvements, and any repair, maintenance or replacement thereof). Tenant shall be responsible for proper removal and lawful disposal, at its sole cost and expense, any Hazardous Materials brought onto the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees, resulting from a default under this Section and shall be responsible for all costs and expenses associated with the remediation of any such Hazardous Materials on the Premises.

- (d) In the event that Tenant or any contractor or subcontractor encounters any Hazardous Materials on the Premises, Tenant shall immediately notify Landlord in writing and comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other public and quasi-public agencies, authorities and entities having jurisdiction over the same with respect thereto.

Section 11.2 Landlord's Environmental Covenants. Without limitation of any of Landlord's other covenants, agreements and obligations under this Lease, Landlord hereby specifically covenants and agrees to fulfill the responsibilities set forth below with respect to environmental matters:

- (a) Landlord shall not be liable for any Hazardous Materials on the Premises unless the Landlord or its agents, contractors or employees bring such Hazardous Materials on to the Premises after the Commencement Date, or the Landlord had actual knowledge of such Hazardous Materials and failed to disclose the same to Tenant in writing before the Commencement Date, or such Hazardous Materials are brought onto the Premises by the Landlord or any of its agents, contractors or employees after the Commencement Date.
- (b) Landlord shall comply with all Environmental Laws applicable to Landlord relative to the Premises. All required governmental permits and licenses issued to Landlord and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Landlord shall comply therewith.
- (c) Landlord shall provide Tenant with copies of all forms, notices and other information received by or on behalf of Landlord concerning any releases, spills or other incidents relating to Hazardous Materials or any violations of Environmental Laws at or relating to the Premises when and as supplied by any governmental agency.
- (d) Without limiting any responsibilities of the Landlord and Tenant under this Lease, to the extent there are any unforeseen remediation costs with respect

to the Premises, Landlord will work in good faith with the Tenant to identify third-party funding sources to pay for such unforeseen remediation costs.

Section 11.3 Tenant's Environmental Indemnity Tenant covenants and agrees to and shall indemnify, defend, and hold Landlord free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses (including attorneys' fees and expenses) which may at any time be imposed upon, reasonably incurred by or asserted or awarded against Landlord in connection with or arising from:

- (a) any Hazardous Materials which are first placed on, in, or under all or any portion of the Premises by Tenant, its agents, contractors, subcontractors, servants, employees, or invitees during the period defined herein as the Term; or
- (b) any violation of any Environmental Laws by Tenant, or its employees, agents, contractors or subcontractors at or relating to the Premises.
- (c) Tenant shall indemnify and hold harmless Landlord, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by an act or omission of Tenant or its agents, contractors, subcontractors, servants, employees, or invitees, which shall constitute a breach of the Tenant's obligations under this Lease. If any party performing work for the Tenant on the Premises shall assert any claim against the Landlord on account of any damage alleged to have been caused by reason of the negligent acts or intentional misconduct of the Tenant, its agents, servants, employees, invitees or contractors (including, without limitation, its construction contractor), Tenant shall defend at its own expense any suit based upon such claim, and if any judgment or claim against Landlord shall be allowed, Tenant shall immediately pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith. The obligations, indemnities, and liabilities of Tenant under this Section 11.3 shall not extend to any liability caused by (i) the negligence or willful misconduct of Landlord, or its employees, contractors or agents, (ii) Hazardous Materials with respect to which the Landlord had actual knowledge but did not disclose in writing to Tenant or (iii) pre-existing conditions existing prior to the Effective Date and discovered after the Effective Date and not previously disclosed to the Tenant. Tenant's liability hereunder shall not be limited to any provisions or limits of insurance set forth in this Lease. Tenant shall not be liable for any claims that result from the action or inaction of Landlord or its contractors, agents or employees with respect to their obligations under this Lease.

Section 11.4 Intentionally Omitted.

Section 11.5 Survival. The agreements, representations and warranties of Landlord and Tenant respectively in this Article 11 shall survive the expiration or early termination of this Lease.

## **ARTICLE 12- ASSIGNMENTS AND TRANSFERS**

Section 12.1 Consent Required. Except as expressly provided herein, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey this Lease or any interest herein or in the Premises or the Improvements (a “Transfer”), except insofar as permitted by, and subject to the terms and conditions of, applicable laws and regulations. Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential is permitted.

Section 12.2 Subsequent Assignment. In cases where Landlord’s consent is required, Landlord’s consent to one Transfer shall not be construed as a waiver of the requirement of its consent to any subsequent assignment.

Section 12.3 Request for Consent. If Tenant requests Landlord’s consent to a specific Transfer, Tenant shall provide to Landlord such information as may reasonably be required by Landlord.

Section 12.4 Transfer by Tenant. It shall be deemed to be a Transfer requiring the approvals set forth in Section 12.1 above in the event of any attempt by Tenant to (a) demolish all or any material portion of the Improvements, or (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, hypothecation, encumbrance, or other transfer of any portion or all of the Demised Premises without the prior written consent of Landlord, which Landlord consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding anything in this Lease to the contrary, by its execution of this Lease, Landlord shall be deemed to have consented to (i) a lease of any unit in the Premises, (ii) the execution, delivery and recordation of the Leasehold Mortgages, and the liens created thereby, (iii) the transfer of Tenant’s leasehold interest in the Demised Premises and fee ownership interest in the Improvements by foreclosure or deed or assignment in lieu thereof (or any leasehold equivalent thereof) pursuant to a mortgage of the Premises that has been approved by Landlord (including the Leasehold Mortgages), and (iv) normal uses associated with the construction and operation of the Premises including but not limited to utility easements.

No transfer, conveyance, or assignment shall be made, without the prior written approval of the Landlord, of (i) any interest of a general partner, managing member or controlling stockholder (any such interest being referred to as a “Controlling Interest”) in Tenant, or (ii) a Controlling Interest in any entity which has a Controlling Interest in Tenant. Tenant may sell its interest in this Agreement to a general partner pursuant to the Option to Purchase Agreement between the Tenant and the Tenant’s general partner (the “GP Purchase Option Agreement”) or otherwise and Tenant may affect transfers that are expressly authorized by the Tenant’s Partnership Agreement, including without limitation, the removal of the general partner of Tenant for cause and the replacement thereof with a substitute general partner selected by the Tax Credit Investor or an affiliate thereof. The execution and delivery of the GP Purchase Option Agreement shall not constitute a default under this Lease. Transfers of the Tax Credit Investor’s interest in Tenant or



of interests in the Tax Credit Investor shall not be restricted by this Lease. For purposes of this Lease, “Non-Controlling Interest” means limited partnership or non-managing member interests in the Tenant and/or interests in the Tax Credit Investor.

Notwithstanding the foregoing, Landlord consent is not required for the transfer of (a) any interest in Tenant to an Affiliate of the General Partner, or (b) any Non-Controlling Interest (in the Tenant (regardless of whether payment in full of all equity contributions has been made to Tenant) provided that the Tenant: (i) provides the Landlord with prior written notice of such transfer (“Notice of Transfer – Non-Controlling Interest”) and (ii) certifies to the Landlord that the new partner, member or stockholder, as appropriate, remains obligated to fund its equity contribution in accordance with the terms of the Landlord-approved organizational documents of the Tenant. In addition, if the equity contributions have not been made to the Tenant in full, the Notice of Transfer – Non-Controlling Interest shall confirm that the transfer does not alter the obligation to contribute equity in accordance with the Limited Partnership Agreement.

Landlord will not unreasonably withhold, delay or condition a request by Tenant for consent to an internal reorganization of the corporate, company or partnership structure of Tenant or any members of Tenant, including the exercise by a partner of its right to remove the general partner and to designate a substitute general partner of tenant under the terms of Tenant’s Limited Partnership Agreement.

Notwithstanding the foregoing, the Landlord agrees that no prior approval is required for the exercise by the Investor or its affiliates of their rights to remove the general partner and to designate a substitute general partner of Tenant under the terms of the Tenant’s Limited Partnership Agreement, provided that the Landlord is given prior written notice of the default under the Limited Partnership Agreement and of the exercise of the removal and appointment right therein (the “Notice”).

The Landlord’s consent is not required for the pledge by the general partner of the Tenant to the Investor Limited Partner and Leasehold Mortgagees, and their successors and assigns, of the general partner’s interest in the Tenant, as security for the performance of all of the general partner’s obligations under the Limited Partnership Agreement and the approved mortgage loan (as and if applicable).

## **ARTICLE 13- LEASEHOLD FINANCING AND TAX CREDIT INVESTOR**

**Section 13.1 Right to Mortgage.** On or about even date herewith, Tenant has granted one or more mortgages of its interest in the Lease to lenders (each mortgage, a Leasehold Mortgage and together Leasehold Mortgages) and, in connection therewith, has collaterally assigned this Lease to such lenders. Future mortgages of the Premises shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In no event shall Landlord ever be required to execute any such mortgage or any note secured thereby or any other obligation securing any such note, or to subordinate Landlord’s fee interest in the Demised Premises or any portion thereof to the lien of any such mortgage. The Leasehold Mortgagee(s) as of the date hereof are listed on Exhibit D attached hereto and incorporated herein by this reference and each such Leasehold Mortgagee is entitled to the benefit of all protections

granted to Leasehold Mortgagees under this Lease. Landlord hereby consents to the Assignments of Leases and Rents to such Leasehold Mortgagees.

Section 13.2 Consent Required for Termination and Amendments.

- (a) No cancellation, termination, surrender or modification of this Lease by agreement between Landlord and Tenant, shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) The right of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute may not be exercised by the Tenant without the prior written consent of the Leasehold Mortgagee.

Section 13.3 Default Notice. Landlord, upon providing Tenant with any notice of default under this Lease shall at the same time provide a copy of such notice to every Leasehold Mortgagee of whom it has knowledge pursuant to notice from Tenant or pursuant to Exhibit D. From and after the date on which such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall, have the same cure period as Tenant plus an additional sixty (60) days, and shall have the option (but not the obligation) to remedy any default or cause the same to be remedied, as is given Tenant. Landlord shall accept such payment or performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes any and each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose; nevertheless, the parties agree that such entry does not constitute possession of the Premises by a Leasehold Mortgagee. Further, as to any non-monetary default, Leasehold Mortgagee shall have one hundred eighty (180) days after receipt of such written notice from Landlord, and a reasonable time after the expiration of said one hundred eighty (180) days if it shall have commenced cure, foreclosure or other appropriate proceeding in the nature thereof within said one hundred eighty (180) day period and is diligently prosecuting the same, within which to endeavor to cure such default; and notwithstanding any other provision of this Lease, all rights of Landlord to terminate this Lease upon the default by Tenant are and shall continue to be at all times while Tenant is indebted to the Leasehold Mortgagee, subject to and conditioned upon Landlord's first having given Leasehold Mortgagee written notice of such default and Leasehold Mortgagee's failure to cure such default within the time and upon the conditions stated above after receiving such written notice of default.

The Tax Credit Investor shall be deemed a third-party beneficiary of the provisions of this Section 13.3 for the sole and exclusive purpose of entitling the Tax Credit Investor to exercise its rights to notice and cure, as expressly stated in this Section 13.3. The foregoing right of the Tax Credit Investor to be a third-party beneficiary under this Lease shall be the only right of the Tax Credit Investor (express or implied) to be a third-party beneficiary hereunder.

Section 13.4 Notice to Leasehold Mortgagee. Notwithstanding anything to the contrary contained herein, if any default or failure to provide required insurance shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease except in accordance with the provisions of Section 18.3 hereof and this Article 13.

Section 13.5 Assumption of Tenant's Obligations. For purposes of this Article 13, the making of a leasehold mortgage to a Leasehold Mortgagee shall not be deemed to constitute a Transfer of this Lease or Tenant's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Tenant's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such Leasehold Mortgagee's actual possession of the Premises, but a Leasehold Mortgagee may become the holder of Tenant's leasehold estate and fee ownership of the Improvements and succeed to Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Tenant's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Tenant's interest in this Lease and Tenant's fee ownership interest in the Improvements.

Section 13.6 Non-curable Defaults. Nothing in this Article 13 shall require any Leasehold Mortgagee or its designee as a condition to the exercise of rights provided under this Article 13 to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the condition of the Premises or other similar matters requiring access to and/or control of the Premises from and after such time as such Leasehold Mortgagee acquires Tenant's interest in this Lease and actual possession of the Premises by foreclosure or otherwise.

Section 13.7 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagee(s) shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein shall not merge by operation of law but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 13.

Section 13.8 Landlord's Fee to Remain Unsubordinated. Landlord and Tenant expressly acknowledge and agree that Landlord shall have no obligation under this Lease or otherwise to subordinate the fee title of Landlord in the Demised Premises or any rights of Landlord in this Lease to the leasehold estate of Tenant created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner that would subordinate the fee title of Landlord in and to the Demised Premises or the interest of Landlord under this Lease.

Section 13.9 Sale, Mortgage or Conveyance of Demised Premises. In the event of any sale, mortgage or conveyance of the fee interest in the Demised Premises by Landlord during the

Term hereof, any such sale or conveyance of all or any part of the fee interest in the Demised Premises shall be subject to this Lease and all of the provisions hereof.

Section 13.10 Notice to Tax Credit Investor. So long as any Tax Credit Investor is an Investor partner of Tenant, Landlord agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to such Tax Credit Investor; provided that a failure on the part of Landlord to give such notice to such Tax Credit Investor at its address set forth in Section 19.10 hereof, shall not affect the validity and effectiveness of the notice to the Tenant. Each Tax Credit Investor will have the same cure period as Tenant, plus thirty (30) days after the giving of the notice aforesaid to such Tax Credit Investor for remedying the default or causing the same to be remedied as is given Tenant after notice to such Tax Credit Investor plus an additional thirty (30) days, and Landlord agrees to accept such performance on the part of such Tax Credit Investor as though the same had been done or performed by Tenant.

Section 13.11 Tax Credit Investor's Opportunity to Replace Tenant's General Partner. Landlord agrees that it will take no action to effect a termination of this Lease by reason of any Event of Default without first giving to each Tax Credit Investor named in Section 19.10 hereof or who has provided Landlord with written notice of such Tax Credit Investor's name and address, reasonable time, not to exceed sixty (60) days to replace Tenant's general partner and cause the new general partner to cure such default, provided, that (a) as a condition of such forbearance, the Landlord receives notice of the substitution of a new general partner of the Tenant within thirty (30) days following notice to the Tax Credit Investor, (b) the Tenant, following such substitution of general partner, shall thereupon proceed with due diligence to cure such Event of Default, and (c) if the Event of Default relates to the completion of construction of the Demised Premises or any part thereof or occupancy thereof, then the extended cure period shall be limited to the period, if any, prior to the date by which the Improvements or parts thereof must be placed in service in order to preserve LIHTCs for the Premises.

Section 13.12 Leasehold Mortgagee's Right to New Lease. In the event of the termination of this Lease prior to this Lease's expiration date (except pursuant to Article 17 hereof), whether due to rejection by Tenant or Tenant's trustee in a bankruptcy proceeding or otherwise, or the occurrence of an incurable Event of Default, Landlord agrees, provided the Event of Default has been cured by the entitled party pursuant to Sections 13.3 or 13.10 above, or Section 13.6 applies, that it will enter into a new lease of the Demised Premises with the curing Leasehold Mortgagee for a period equal to the remainder of the Term, effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations herein contained; provided, however, such Leasehold Mortgagee (a) makes written request upon Landlord for such new lease within sixty (60) days from the date of notice of such termination, and (b) pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which at the time of the execution and delivery thereof be actually due under this Lease but for such termination, and pays or causes to be paid any and all expenses including actual and reasonable attorneys' fees, court costs and costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease. If Landlord receives more than one written request for a new lease in accordance with the provisions of this Section 13.12, then such new lease shall be entered pursuant to the request of the first lien leasehold mortgagee, and the rights hereunder of any leasehold mortgagee whose permitted mortgage is

subordinate to the first lienholder's permitted mortgage shall be subordinated in order of their respective recorded priority.

Any new lease made pursuant to this Section 13.12 shall be and remain an encumbrance on the fee title to the Demised Premises having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee of the Demised Premises created by Landlord.

Section 13.13 No Personal Liability. No Leasehold Mortgagee, any successor or assignee thereof, or any purchaser at any sale of Tenant's interest under this Lease in any foreclosure proceeding shall ever have any liability under this Lease before it acquires record title to the Tenant's interest in the Lease and only so long as it holds record title.

Section 13.14 Priority of Leasehold Mortgages. If at any time there is more than one Leasehold Mortgage in existence, the following provisions shall govern: (a) the most senior Leasehold Mortgagee may at its option exercise all rights of a Leasehold Mortgagee to the exclusion of any junior Leasehold Mortgagees should there be a conflict between Leasehold Mortgagees as to the exercise of such rights; (b) if the most senior Leasehold Mortgagee declines to exercise the rights granted hereunder or otherwise allows, any other Leasehold Mortgagee may exercise the rights, in order of priority. Any dispute among the Leasehold Mortgagees regarding priority shall be determined by a title insurance company licensed in the state where the Premises are located. Neither the title insurance company nor Landlord shall have any liability to Tenant or to any Leasehold Mortgagee for any such determination.

#### **ARTICLE 14- MAINTENANCE AND REPAIR**

Section 14.1 Tenant's Obligations. Tenant shall, at its sole cost and expense (but nevertheless as a portion of Operating Expenses), maintain the Improvements, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation, the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, structural, roof, walls, and foundations, and the fixtures and appurtenances to the Improvements as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, contractors, and subcontractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to the original work or installations, or otherwise consistent with the standard then applicable to residential apartment projects or similar commercial buildings (as applicable) within the geographical area of the Improvements at such time, but in no event of less quality or class than the original work or installations.

#### **ARTICLE 15- ALTERATIONS**

Section 15.1 Non-Structural Alterations. Except for the construction of the Improvements as currently planned, and subject to Section 3.5 hereof, Tenant may make any non-structural alterations, additions, or improvements to the Improvements, without Landlord's consent.

Section 15.2 Structural Alterations. Tenant shall obtain the prior written consent of Landlord, which Landlord consent shall not be unreasonably withheld or delayed, for any structural alterations, additions or improvements to the Improvements having a cost in excess of [\$100,000] (such consent shall not be unreasonably withheld), unless carried out in accordance with the Plans and Specifications.

Section 15.3 No Liens. Except as expressly provided in this Lease, Tenant shall not have any right, authority or power to bind Landlord, the Premises or any other interest of Landlord in the Demised Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Any lien that is not released or bonded over within ninety (90) days after the filing thereof shall constitute an Event of Default under Section 18.2. Landlord shall have the right to remove any and all such liens against the Premises, and to defend any action against the same, and Tenant shall reimburse Landlord for the cost of such removal, the costs of defending the same, including, but not limited to, attorneys fees in connection therewith.

## **ARTICLE 16- SURRENDER**

Section 16.1 Expiration of Term. At the end of the Term of this Lease (whether upon the expiration or other termination), Tenant shall surrender the Demised Premises, together with the Improvements in their then “as-is” condition, provided that Tenant has maintained the Demised Premises, (including without limitation any required casualty/condemnation restoration) pursuant to the terms of this Lease. At Landlord’s option, Tenant shall execute a deed and a bill of sale for the Improvements at the time of such surrender.

## **ARTICLE 17- CASUALTY: CONDEMNATION**

Section 17.1 Restoration , Casualty, or Condemnation. If any act or occurrence of any kind or nature (including any taking by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively, “Condemnation”)), or the Improvements are damaged or destroyed by fire, earthquake, flood, act of God or other casualty (collectively “Casualty”), shall result in damage to or loss or destruction of the Improvements, in whole or in part, and without diminution of any obligation of the Tenant in respect thereof under the approved Leasehold Mortgages, the Tenant, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available (including, without limitation, by further advance pursuant to the approved Leasehold Mortgages) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Improvements as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The First Leasehold Mortgagee shall have the right to participate in adjustment of losses as to Casualty insurance proceeds and all insurance proceeds shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. In the event of a Condemnation, the amount to which Tenant is entitled shall be no less than the total amount of the award reduced by the value of the land and Landlord’s reversionary interest in the Improvements and Tenant’s portion shall be delivered to the First Leasehold Mortgagee to be applied as provided in the First Leasehold Mortgagee’s loan documents. Landlord’s portion shall be limited to the

value of the land and its reversionary interest in the Improvements. The First Leasehold Mortgagee shall have the right to supervise and control the receipt and disbursement of Condemnation awards, and the right to participate in any Condemnation proceedings and settlement discussions. Notwithstanding the foregoing, in the event of any total or substantial loss of the Improvements due to a Casualty that occurs after the initial Compliance Period, Tenant may, with the consent of the First Leasehold Mortgagee, surrender this Lease and pay the balance owing on any mortgage and Tenant shall then receive that portion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, Landlord to be paid the balance of the proceeds.

Landlord shall have no right to terminate this Lease as a result of any Condemnation or Casualty without the written approval of the First Leasehold Mortgagee.

### **ARTICLE 18- DEFAULT; REMEDIES**

#### **Section 18.1 Landlord's Right to Perform.**

- (a) **Landlord's Option.** If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) days' prior written notice to Tenant and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation.
- (b) **Additional Rent.** All amounts so paid by Landlord and all out-of-pocket costs and expenses including actual and reasonable attorney's fees and the costs of Landlord to enforce its rights hereunder, incurred by Landlord in connection with the performance of any such obligations shall be payable by Tenant to Landlord within thirty (30) days after demand therefore and shall constitute "**Additional Rent**" with interest thereon at the rate of twelve percent (12%) per annum from the date of Landlord's having made each such payment or incurred each such cost or expense, and shall be payable by Tenant to Landlord. Landlord shall provide Tenant with invoices and other reasonable evidence of the amounts paid or incurred by Landlord in connection with its exercise of its rights pursuant to this Article.

**Section 18.2 Events of Default.** At the option of Landlord, the occurrence and continuation of any of the following events shall constitute an Event of Default by Tenant:

- (a) Tenant defaults in the due and punctual payment of any Additional Rent, and such default continues for thirty (30) days after written notice from Landlord;
- (b) Tenant abandons the Demised Premises for a period of more than thirty (30) consecutive days;

- (c) This Lease or the Demised Premises or any part of the Demised Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged or bonded within thirty (30) days after its levy;
- (d) Tenant makes any assignment in violation of this Lease which is not cured within thirty (30) days after notice thereof to Tenant;
- (e) Subject to Section 18.4 with respect to any Regulatory Default (as defined herein), the failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant other than those described in subsections (a) through (e) of this Section, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within such thirty (30) day period, no default shall be deemed to exist if Tenant commences the curing of the default promptly within such thirty (30) day period and thereafter diligently prosecutes the same to completion. The thirty (30) day notice described herein shall be in lieu of and not in addition to, any notice required under law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Notwithstanding the foregoing, a notice of intent to cancel insurance coverage by an insurer shall be an Event of Default for which there shall be a fifteen (15) day cure period.
- (f) Tenant has filed against it a petition for bankruptcy, insolvency or similar action pursuant to state or federal law, and such petition shall not have been vacated within ninety (90) calendar days after filing; or is adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, either state or federal, and such judgment or decree is not vacated or set aside within ninety (90) calendar days after such determination.
- (g) Tenant makes an assignment for the benefit of creditors or shall submit in writing its inability to pay its debts generally as they become due.
- (h) Any attachment, execution or lien, other than a mortgage preapproved by Landlord, whether voluntary or involuntary, including mechanics liens, is filed against the Leased Premises and is not discharged or dissolved by a bond within ninety (90) calendar days.
- (i) Tenant files a voluntary petition for bankruptcy, insolvency or similar action pursuant to state or federal law; or Tenant consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Tenant, or of the whole or any substantial part of the property or assets of Tenant, and such order, judgment or decree



shall remain unvacated or not set aside or unstayed for ninety (90) calendar days; and

- (j) Tenant fails to comply with the insurance requirements under Article 9.

Section 18.3 Landlord's Right To Terminate Upon Tenant Default. Subject to Leasehold Mortgagee's rights under Article 13 (including the right to notice and cure), in the event any Event of Default by Tenant exists as provided in Section 18.2 above, Landlord shall have the right without further notice or demand to Tenant except as provided in Section 18.2 (Tenant hereby irrevocably waiving all notices and demands except as provided in Section 18.2, statutory or otherwise), to terminate this Lease and Tenant's right to possession of the Demised Premises without terminating Tenant's liabilities under this Lease, in which event ownership of all of the Improvements shall immediately vest in Landlord and Landlord shall be entitled to receive from Tenant such amounts as may be permitted from time to time by applicable law. Notwithstanding anything herein to the contrary, if an Event of Default occurs under this Lease as a result of a bankruptcy filing by or against Tenant, the Landlord hereby agrees to terminate the Tenant's interest in this Lease and the Demised Premises while maintaining the existence of the Lease itself with the applicable Leasehold Mortgagee (at its option) in order of priority acting as tenant.

Landlord agrees not to take any action to terminate this Lease or exercise any other remedy with respect to the Premises at any time during the Compliance Period with respect to any building consisting a part of the Improvements, excluding any action for specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by Tenant with the terms of this Lease.

Section 18.4 Regulatory Default. Notwithstanding anything herein to the contrary, the following shall apply to any failure by Tenant to observe or perform any provision of this Lease which would constitute an Event of Default under Article 10 hereof if not cured within the time period specified therein:

- (a) Upon a determination by Landlord that Tenant has materially breached or defaulted on any obligation under Article 10 hereof (a "Regulatory Default"), Landlord shall notify Tenant of (i) the nature of the Regulatory Default, (ii) the actions required to be taken by Tenant in order to cure the Regulatory Default, and (iii) the time (a minimum of thirty (30) days or such additional time period as may be reasonable under the circumstances but in no event more than ninety (90) days), within which Tenant shall respond with reasonable evidence to Landlord that all such required actions have been taken. During any period in which a Leasehold Mortgage is in place, Landlord shall give any and all Leasehold Mortgagee(s) of which Landlord has received notice from Tenant a duplicate copy of any notice described in this subsection in accordance with the provisions of Section 19.10 hereof, and Landlord shall grant to any and all such Leasehold Mortgagee(s) the right to cure the Regulatory Default in accordance with the provisions of this Lease.

- (b) If Tenant, the Management Agent (if applicable), or the Leasehold Mortgagee (if applicable) shall have failed to respond or take the appropriate corrective action with respect to a Regulatory Default to the reasonable satisfaction of Landlord, the First Leasehold Mortgagee and the Tax Credit Investor within the applicable time period, then Landlord shall have the right to seek appropriate equitable remedies (such as specific performance, injunctive relief, or the appointment of a receiver to take over and operate the Property from any court having jurisdiction), in order to cause the Demised Premises to once again be in compliance with Article 10 and Section 18.4.
- (c) In addition to and not in limitation of the foregoing, if Landlord shall determine that a Regulatory Default shall have occurred by reason of a default by Management Agent, and that Tenant (or, as applicable, the Management Agent) and the Leasehold Mortgagee(s) have failed to respond or take corrective action to the reasonable satisfaction of Landlord within the applicable cure period, then Landlord may require Tenant to, and Tenant shall promptly, take such actions as are necessary in order to terminate the appointment of Management Agent pursuant to the terms of its management agreement and to appoint a successor Management Agent of the Demised Premises, subject to any requirements of any Leasehold Mortgagee(s) and the Tax Credit Investor.
- (d) The provisions of this Section 18.4 shall constitute the exclusive remedy of Landlord hereunder in the event of any such Regulatory Default (provided that such Regulatory Default, other than a default under Article 10 of this Lease, does not otherwise constitute a default under this Lease (i.e. Tenant's failure to maintain insurance would otherwise constitute a default hereunder), and provided further that nothing herein shall impair or waive Landlord's rights under separate agreements between the parties). Accordingly, notwithstanding any provision to the contrary contained in this Agreement, the rights and remedies of Landlord by reason of the occurrence of any such Regulatory Default, shall be limited to those expressly set forth in this Section 18.4.

Section 18.5 Force Majeure Event. If the Landlord or Tenant fails to perform one or more of its obligations pursuant to this Agreement, then that party's performance of that term, covenant or act is excused for the period of the delay and the party delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay, if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the execution of this Lease; and (c) that it could not reasonably have avoided or overcome the effects of the impediment. The party invoking this clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act

of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party (“Force Majeure Event”). This provision shall become effective only if the party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Force Majeure Event, and takes all reasonable steps to minimize damages and resume performance.

Section 18.6 Intentionally Omitted.

**ARTICLE 19- MISCELLANEOUS**

Section 19.1 No Brokers. Landlord and Tenant represent and warrant to each to the other that neither has dealt with any broker or finder with regard to the Demised Premises or this Lease. Landlord and Tenant will each indemnify, defend and hold the other harmless from and against any loss, liability and expense (including attorneys’ fees and court costs) arising out of claims for fees or commissions in connection with this Lease. This indemnification shall survive termination of this Lease.

Section 19.2 Recordation. Landlord and Tenant shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the Term, Landlord and Tenant shall execute a quitclaim termination of Tenant’s interest in this Lease.

Section 19.3 Transfer of Landlord’s Interest. Landlord shall not voluntarily transfer all or any portion of its interest in Landlord’s estate if the same would cause a violation or breach of any legal requirement or any agreement or contract to which Landlord is a party by which Landlord is bound.

Section 19.4 No Waiver. No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by Landlord or Landlord’s agents during the Term will be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. No payment by Tenant, nor receipt from Landlord, of a lesser amount than the Additional Rent, or other charges or fees due as stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction. Landlord

will accept such check for payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Demised Premises or any part of the Demised Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

Section 19.5 Joint and Several Liability. If Tenant or Landlord is composed of more than one signatory to this Lease, each party will be jointly and severally liable with each other party for payment and performance according to this Lease.

Section 19.6 Captions, Exhibits, Gender, Etc. The captions are inserted in this Lease only for convenience of reference and do not define, limit, or describe the scope or intent of any provisions of this Lease. The exhibits to this Lease are incorporated into this Lease and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

Section 19.7 Entire Agreement. This Lease, including all attached exhibits, contains the entire agreement between Landlord and Tenant with respect to its subject matter. Except for those which are specifically set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to one another with respect to this Lease. In the event of any inconsistency between this Lease and the documents executed in connection with any Leasehold Mortgage with Landlord acting as the Leasehold Mortgagee, this Lease shall control.

Section 19.8 Amendment. This Lease may be amended only by a written instrument executed by Landlord and Tenant (subject to the rights of any Leasehold Mortgagee, and/or the Tax Credit Investor, as applicable), the approval of which both Landlord and Tenant mutually agree not to unreasonably withhold, delay or condition.

Section 19.9 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected and shall continue in full force and effect; and in lieu of each provision found to be illegal, invalid, or unenforceable, there will be added to this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible.

Section 19.10 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be in writing and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, (iii) sent by recognized overnight delivery service such as Federal Express, or (iv) transmitted by electronic mail, provided such notice is also sent simultaneously in the manner provided for in (i), (ii), or (iii) above, addressed as follows:

If to Tenant:	School Street I, LP c/o HCDC School Street LLC 330 West Victoria Street
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Gardena, California 90248  
Attn: Mohannad H. Mohanna  
Email: moe.mohanna@hcosta.com

*With copies to:* Settle Meyer Law LLLC  
Pioneer Plaza,  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawai'i 96813  
Attn: Scott W. Settle  
Email: ssettle@settlemyerlaw.com

*And:* Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois  
Email: cdubois@coxcastle.com

If to Landlord: Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director  
Fax: (808) 832-4679

*With copies to:* Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

If to Investor Limited  
Partner: c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attn: President and General Counsel

*With a copy to:* Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attn: Kyle Arndt, Esq.

If to Leasehold  
Mortgagee: As listed in Exhibit D

A party may change its address by giving written notice to the other party as specified herein. Set forth in Exhibit D attached hereto are notice addresses for the Leasehold Mortgagee(s), as of the date hereof.

Section 19.11 Litigation Fees. Tenant shall be liable for the actual legal expenses of Landlord in connection with any collection of Additional Rent or other impositions owed under this Lease, the remedying of any default under this Lease, or any termination of this Lease where such collection, remedying or termination results from an Event of Default. Payment of any litigation cost or expense shall be determined by applicable state and federal law.

Section 19.12 Waiver of Jury Trial. Landlord and Tenant may waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease.

Section 19.13 Governing Law and Venue. This Lease will be governed by and construed in accordance with the internal laws of the State of Hawaii, without regard to principles of conflicts of laws. Any lawsuit to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement shall be filed in a Hawaii state court in the City and County of Honolulu.

Section 19.14 Binding Effect. This Lease will inure to the benefit of, and will be binding upon, Landlord's successors and assigns except as otherwise provided in this Lease. This Lease will inure to the benefit of; and will be binding upon, Tenant's successors and assigns so long as the succession or assignment is permitted pursuant to the terms of this Lease. Leasehold Mortgagees and Tax Credit Investor are intended third-party beneficiaries of this Lease.

Section 19.15 Cumulative Rights. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 19.16 Relationship of Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto, nor any act of Landlord or Tenant will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship.

Section 19.17 Non-Merger. Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or Tenant's estate created hereunder with the fee estate of the Demised Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (x) this Lease, Tenant's estate created hereunder or any interest in this Lease or Tenant's estate (including the Improvements), and (y) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord, having an interest in (1) this Lease or Tenant's estate created hereunder, and (2) the fee estate in the Demised Premises or any part thereof; shall join in a written instrument effecting such merger and shall duly record the same.

Section 19.18 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 19.19 Limited Liability. Tenant shall look solely to Landlord's interest in the Demised Premises for the satisfaction of any claims against Landlord or its employees, agents, or assigns for the satisfaction of any claims arising pursuant to the Lease. No officer, employee, director, shareholder, manager or partner of Tenant or of any affiliate of Tenant shall be personally liable to Landlord, or any successor in interest or person claiming by, through or under Landlord, in the event of any default or breach of this Lease, except as otherwise set forth in a written guaranty agreement.

Section 19.20 Cooperation. Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Demised Premises. From time to time, Tenant may request modifications to the Lease to satisfy the requirements of financing sources, which financing sources include without limitation, private lenders, equity sources, and government agencies. Landlord will use all reasonable efforts to accommodate the requests of such financing sources and will not unreasonably withhold or delay its approval and execution of modifications to this Lease which do not materially and adversely alter the basic terms hereof. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to the Lease which would violate or contravene any applicable laws or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, but not more frequently than once a year, enter into an amended and restated lease combining into one document the entire Lease and all amendments and modifications theretofore entered into.

Section 19.21 Estoppel Certificate. Each party agrees from time to time, upon no less than twenty (20) days' prior notice from the other or upon request from any Leasehold Mortgagee or any permitted assignee, to execute, acknowledge and deliver to the other or to such Leasehold Mortgagee or assignee a statement certifying to its knowledge that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same); and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim. Any such statement delivered pursuant to this Section 19.21 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder from Tenant or any prospective assignee of any such holder of a Leasehold Mortgage.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landlord and Tenant have executed this Lease as of the effective date of the Lease set forth above.

Approved as to form:

\_\_\_\_\_  
Linda L. W. Chow  
Deputy Attorney General

**LANDLORD:**  
HAWAII PUBLIC HOUSING AUTHORITY

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

SCHOOL STREET I, LP,  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its general partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware  
limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President



STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

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

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Ground Lease is dated \_\_\_\_\_, and contained \_\_\_\_ pages at the time of this acknowledgment/certification in the First Circuit of the State of Hawaii.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PREMISES

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being; 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;

27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

#### EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of thus easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37

10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;

28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;

15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

#### EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;



9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

#### EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

#### EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue

2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning and containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

EXHIBIT B

INSURANCE REQUIREMENTS

- A. The Tenant will provide Comprehensive General Liability, Comprehensive Automobile Liability, Employers Liability and Errors and Omissions Liability coverage to protect itself and the Landlord. The State of Hawaii, the Landlord, its employees and representatives must be included as an additional insured on all policies. The policies will provide limits of coverage acceptable to the Landlord and will be provided by highly rated insurance companies acceptable to the Landlord.

Prior to the execution of the Lease, the Tenant shall furnish to the Landlord certificate(s) of insurance as evidence of the existence of the following insurance coverage in amounts not less than the amounts specified. This insurance must be maintained throughout the entire Term.

i. Workers' Compensation

The Tenant shall carry Workers' Compensation insurance in such form and amount to satisfy, the applicable the State Workers' Compensation Law. Workers' Compensation must be issued by an admitted carrier authorized to do business in the State of Hawaii.

ii. Fidelity Bond

The Tenant shall obtain and maintain, at its sole expense during the term of this Contract, a fidelity bond at a minimum of \$500,000.00, or the minimum amount required by the applicable program, which shall cover all officers, employees, and agents of the Tenant and which shall protect the Tenant against loss by reason of, including but not limited to, fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction or misappropriation or any other dishonest criminal or fraudulent act, wherever committed and whether committed directly or with others. The Tenant shall furnish, at no cost or expense to the Landlord, a certificate of such coverage, within thirty days from the award of the Contract.

iii. Errors and Omissions

The Tenant shall cause the Management Agent to obtain and maintain errors and omissions professional liability coverage at its own expense at a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate.

iv. Liability Insurance

The Tenant shall maintain the following minimum insurance limits and coverage:

<u>Coverages</u>	<u>Limits</u>
Commercial General Liability	\$2,000,000 single limits per occurrence for bodily injury and personal property damage
Personal Injury Liability	\$1,000,000.00 single limits per occurrence. \$2,000,000.00 for general aggregate
Automobile Insurance	Bodily injury liability limits of \$1,000,000.00 each person and \$1,000,000.00 per accident and property damage liability limits of \$1,000,000.00 per accident OR \$2,000,000.00 combined single limit
Workers' Compensation as required by laws of the State of Hawaii	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Tenant and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all its employees

## EXHIBIT C

### CERTAIN DEFINITIONS

“Environmental Laws” means any applicable present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (“TOSCA”); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (“OSHA”), and Chapter 343 of the Hawaii Revised Statutes, as each is from time to time amended and hereafter in effect

“Hazardous Materials” means:

- (a) “hazardous substances” as defined by CERCLA;
- (b) “hazardous wastes,” as defined by RCRA;
- (c) any hazardous, dangerous or toxic chemical, waste, pollutant, contaminant or substance (“pollutant”) within the meaning of any Environmental Law prohibiting, limited or otherwise regulating the use~ exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;
- (d) petroleum crude oil or fraction thereof;
- (e) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof;
- (f) asbestos-containing materials in any form or condition; or
- (g) polychlorinated biphenyls in any form or condition.

EXHIBIT D

LEASEHOLD MORTGAGEES & NOTICE PROVISIONS

**First Leasehold Mortgagee during Construction and Before Conversion to Permanent Financing:**

First Hawaiian Bank  
999 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
Attention: Commercial Real Estate Division

With a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

And a copy to:

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

and a copy of any default notice to:

Citicorp USA, Inc.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal ID No. 50010918

**1. Junior Leasehold Mortgagee (Construction to Permanent):**

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Attention: Executive Director

**2. First Leasehold Mortgagee After Conversion to Permanent Financing:**

Citicorp USA, Inc.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And

Citicorp USA, Inc.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918

And for notices of default only:

Citicorp USA, Inc.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel's Office

Re: HPHA School Street Redevelopment Phase 1A, Deal No. 50010918



EXHIBIT E

ENVIRONMENTAL REPORTS

[To be confirmed]

1. Final Environmental Impact Statement, prepared by PBR Hawaii & Associates Inc., dated April 2018, and accepted and signed by the Governor of the State of Hawaii by letter dated on July 17, 2018.
2. Phase I Environmental Site Assessment Report, prepared by Partner Engineering and Science, Inc. and dated December 12, 2023.
3. Phase II Subsurface Investigation Report, prepared by Partner Engineering and Science, Inc. and dated January 4, 2024.
4. Draft Construction-Environmental Management Plan (C-EMP) dated \_\_\_\_ and submitted to the Hazard Evaluation & Emergency Response Office within the State Department of Health on \_\_\_\_\_.

EXHIBIT F

PERMITTED ENCUMBRANCES

Permitted Encumbrances shall be as set forth in Schedule B to the Owner's Title Policy in the amount of [insert from title policy], File No. [insert from title policy], as issued by Old Republic Title & Escrow of Hawaii.

Exhibit F-1

[Encumbrances existing prior to this closing. Subject to refinement after issuance of title policy.]

1. Quitclaim Deed (Sewer Easement) A-72490859
2. Grant of Easement (Electric Lines) BK 8840, PG 125
3. 201H Agreement A-85000-80
4. Encroachment Agreement A-85570249
5. Affidavit of Surveyor A-87120585

EXHIBIT G

NET CASH FLOW WATERFALL

[Attached]

[Definition of net cash flow and waterfall to be inserted from LPA]

<b>School Street Apts Phase 1A</b>			
<b>Cash Flow Waterfall (draft, subject to HPHA approval)</b>			
<b>3/21/2024</b>			
	<b>Proposed CF Waterfall</b>		
	<b>1)</b> To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP		
	<b>2)</b> To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)		
	<b>3)</b> To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis		
	<b>4)</b> To replenish the Operating Reserve up to original balance		
	<b>5)</b> To repay the Deferred Developer Fee until paid in full		
	<b>6)</b> To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)		
	<b>7)</b> To repay any GP or Developer Loans		
	<b>8)</b> Of the remaining balance:		
	a) 75% to repay the RHRF Loan until paid in full, and then		
	b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease		
	<b>9)</b> Of the remaining balance:		
	(i) 45% to the GP as Incentive Management Fee		
	(ii) 45% to pay the current and accrued Base Rent due on the Ground Lease		
	<b>10)</b> Of the remaining balance:		
	(i) 0.01% to the GP		0.0100%
	(ii) 0.001% to the Special LP		0.0010%
	(iii) 1% to the State LP		1.0000%
	(iv) 98.989% to the Federal LP		98.9890%
			100.0000%

## 03. Memorandum of Ground Lease

After Recordation, Return By Mail ( ) Pick Up ( )

Department of the Attorney  
General, State of Hawai`i  
425 Queen Street  
Honolulu, Hawai`i 96813  
Attention: Linda L.W. Chow

Tax Map Key No.: (1) 1-6-009-012

Total Pages: 12

**Title of Document: Memorandum of Ground Lease**

**Parties to Document:**

**Landlord:** **Hawaii Public Housing Authority**, a public body and a body corporate and politic of the State of Hawaii, with an address at 1002 N. School St., Honolulu, Hawaii 96817

**Tenant:** **School Street I, LP**, a Hawaii limited partnership with an address at 330 W. Victoria Street, Gardena, California 90248

## MEMORANDUM OF GROUND LEASE

### HPHA School Street Redevelopment Phase 1A

THIS MEMORANDUM OF GROUND LEASE is made as of \_\_\_\_\_, 2024 between HAWAII PUBLIC HOUSING AUTHORITY, a public body and a body corporate and politic of the State of Hawaii (“**Landlord**”), with an address at 1002 N. School St., P.O. Box 17907, Honolulu, Hawaii and **School Street I, LP**, a Hawaii limited partnership (“**Tenant**”), with an address at 330 W. Victoria Street, Gardena, California 90248.

### BACKGROUND

WHEREAS, Landlord and Tenant entered into the HPHA Ground Lease Agreement, dated as of [insert date of closing] (the “**Lease**”), pursuant to which Landlord has leased to Tenant the parcel of real property in the City and County of Honolulu more particularly described on Exhibit A attached hereto and made a part hereof, together with the improvements, rights, easements, licenses, privileges and appurtenances thereunto attached or in any way belonging thereto; and

WHEREAS, the parties hereto desire to enter into this Memorandum of Lease in order to provide public record notice of the Lease and certain provisions, rights and obligations pertaining to the Demised Premises.

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of Ten and No/100 Dollars \$10.00 the covenants, representations, warranties and agreements set forth in the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree that the information as contained in the Lease is as follows:

1. All capitalized terms used and not otherwise defined herein are used herein with the same meaning ascribed to such terms in the Lease.
2. The name of the Landlord in the Lease is Hawaii Public Housing Authority.
3. The name of the Tenant in the Lease is School Street I, LP.
4. The addresses of the parties set forth in the Lease are:  
  
Landlord:           1002 N. School Street  
                          P.O. Box 17907  
                          Honolulu, Hawaii 96817  
  
Tenant:             330 W. Victoria Street  
                          Gardena, California 90248
5. The Lease is dated as of [insert date of closing].
6. The Demised Premises are described in the Lease as set forth in Exhibit A.



7. The Lease shall commence on [insert date of closing] (the “**Commencement Date**”).
8. The term of the Lease shall end on the date which is [sixty-five (65) years] after the Commencement Date, unless soon terminated as provided in the Lease.
9. As set forth in Article 12 of the Lease, except as expressly provided in the Lease, Tenant shall not, without the prior written consent of Landlord, assign, transfer or otherwise convey the Lease or any interest therein or in the Premises or the Improvements (a “**Transfer**”). Any attempted assignment by Tenant without such consents, except for a transfer to Landlord, shall be null and void without further action required by Landlord. Subleases of the residential units in the Improvements to residential tenants, is permitted.
10. This Memorandum may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this document, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(SIGNATURE PAGES TO FOLLOW)

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Ground Lease as of the date and year first above mentioned.

**LANDLORD:**

Approved as to Form:

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body and a body corporate and politic  
of the State of Hawaii

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**TENANT:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company, its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company, its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President

*[NOTARY BLOCKS ON NEXT PAGE]*

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me appeared Hakim Ouansafi, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Memorandum of Ground Lease is dated \_\_\_\_ and contained \_\_\_\_ pages at the time of this acknowledgement/certification in the First Circuit of the State of Hawaii.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
CITY AND COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me appeared Mohannad H. Mohanna, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

NOTARY CERTIFICATION: The foregoing instrument is identified or described as the Memorandum of Ground Lease is dated \_\_\_\_ and contained \_\_\_\_ pages at the time of this acknowledgement/certification in the \_\_\_\_\_ Circuit of the State of \_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

LOT 2  
HPHA SCHOOL STREET SENIOR AFFORDABLE HOUSING  
REDEVELOPMENT PHASE 1A

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;

12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

## EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being:  $267^{\circ} 19' 93''$  12.94 feet;
2.  $241^{\circ} 56' 41''$  35.07 feet along the remainder of Former Lanakila Emergency Homes;
3.  $247^{\circ} 38' 38''$  20.14 feet along same;
4.  $241^{\circ} 56' 41''$  81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being:  $283^{\circ} 18' 25''$  45.50 feet;
6.  $324^{\circ} 40' 09''$  64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being:  $301^{\circ} 57' 23''$  45.95 feet;
8.  $279^{\circ} 14' 37''$  60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being:  $305^{\circ} 34' 40''$  40.37
10.  $331^{\circ} 54' 43''$  42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being:  $13^{\circ} 27' 19''$  66.98;

12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;
29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;

31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;



3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;
16. 61° 56' 41" 47.84 feet along the remainder of Former Lanakila Emergency Homes;
17. 151° 56' 41" 10.00 feet along the same to the point of beginning containing an Area of 1208 square feet.

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

## EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.

SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

## EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue
2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;
3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

# 04. Purchase Option and Right of First Refusal Agreement

**PURCHASE OPTION AND**  
**RIGHT OF FIRST REFUSAL AGREEMENT**  
**(Hawaii Public Housing Authority – HPHA School Street Redevelopment Phase 1A)**

This Purchase Option and Right of First Refusal Agreement (this “**Purchase Agreement**”), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by School Street I, LP limited partnership, a Hawaii limited partnership (the "**Partnership**"), and HCDC School Street LLC, a Hawaii limited liability company (the "**General Partner**"), and the Hawaii Public Housing Authority, a public body corporate and politic, existing under the laws of the State of Hawaii (the “**Grantee**” and/or “**HPHA**”) and is consented to hereinbelow by RBC Community Investments, LLC, an Illinois limited liability company, in its capacity as the limited partner, and its successors and/or assigns (“**Consenting Limited Partner**”) and RBC Community Investments Manager II, Inc., a Delaware corporation and its successors and/or assigns (“**Consenting Special Limited Partner**”) and RBC Community Investments, LLC, an Illinois limited liability company, in its capacity as the state limited partner, and its successors and/or assigns (the “**Consenting State Limited Partner**” together with the Consenting Limited Partner and the Consenting Special Limited Partner the "**Consenting Limited Partners**"). The General Partner and the Consenting Limited Partners shall be referred to together herein as the “**Partners.**”

Whereas, the General Partner and one or more other parties, concurrently with the execution and delivery of this Purchase Agreement, are entering into that certain Amended and Restated Agreement of Limited Partnership dated as of the date hereof (the "**Partnership Agreement**") continuing the Partnership by amending and restating a prior partnership agreement; and

Whereas, the Project is or will be subject to one or more governmental agency regulatory agreements (collectively, the "**Regulatory Agreements**") and the ground lease between the HPHA and the Partnership restricting its use to low-income housing (the Regulatory Agreements and the Ground Lease referred to collectively herein as the "**Use Restrictions**"); and

Whereas, the Grantee and the General Partner desire to provide for the continuation of the Project as low-income housing upon termination of the Partnership by Grantee purchasing the Project at the applicable price determined under this Purchase Agreement and operating the Project in accordance with the Use Restrictions; and

Whereas, as a condition precedent to the formation or continuation of the Partnership pursuant to the Partnership Agreement, the Grantee and the General Partner have negotiated and required that the Partnership shall execute and deliver this Purchase Agreement in order to provide for such low-income housing, and the Consenting Limited Partners have consented to this Purchase Agreement in order to induce the General Partner to execute and deliver this Purchase Agreement and to induce the Grantee to execute the Ground Lease;

Now, therefore, in consideration of the execution and delivery of the Partnership Agreement and the payment by the Grantee to the Partnership of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Option.** The Partnership hereby grants to Grantee an option to either (a) purchase the Project, including any and all real estate, improvements, fixtures, and personal property comprising the Project or associated with the physical operation thereof, located on the property described in the Ground Lease and owned by the Partnership at the time of purchase (collectively, the “**Property**”) (the “**Project Option**”), or (b) purchase the Consenting Limited Partner’s, the Consenting Special Limited Partner’s, and the Consenting State Limited Partner’s interests in the Partnership (collectively, the “**Limited Partner Partnership Interests**”) or should the Grantee desire to purchase the General Partner’s interest in the Partnership, such purchase will be coupled with the purchase of the Consenting Limited Partner’s, the Consenting Special Limited Partners, and the Consenting State Limited Partner’s interests in the Partnership (collectively, the “**Partner Partnership Interests**”) (each the “**Interest Option**”) (the Project Option and Interest Option shall collectively be known as the “**HPHA Option**”) after the close of the fifteen (15) year compliance period for the low-income housing tax credit for the Project (the “**Compliance Period**”) as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and continuing until the date that is two years after the close of the Compliance Period (“**Compliance Option Period**”), on the terms and conditions set forth in this Purchase Agreement and subject to the conditions precedent to exercise of the HPHA Option specified herein. The Project real estate is legally described in Exhibit A attached hereto and made a part hereof. The Regulatory Agreements are listed in Exhibit B. Notwithstanding any provisions to the contrary set forth elsewhere herein, this Purchase Agreement and the rights of the Grantee hereunder shall be subject and subordinate to (i) the lien, security interest and rights of Leasehold Mortgagee, (ii) all advances or charges made or accruing under the Leasehold Mortgagee loan documents, and (iii) any extensions, modifications or renewals of the indebtedness secured by the Leasehold Mortgagee loan documents. Reference is made to a separate Purchase Option Agreement between the Partnership, the General Partner, and the Consenting Limited Partner dated as of even date herewith (“**GP Purchase Option**”), which provides the General Partner with an option to purchase the same interests upon different terms. The GP Purchase Option of the Property and the Consenting Limited Partner and Consenting Special Limited Partner interests begins prior to the end of the Compliance Period and continues for an eighteen month period after the end of the Compliance Period. For purposes of this Purchase Agreement, the eighteen months following the end of the Compliance Period will be referred to as the “**Overlap Period.**” The General Partner agrees that, upon the end of the Compliance Period and during the Overlap Period, its GP Purchase Option is subordinate to the HPHA Option and that the General Partner cannot exercise the GP Purchase Option without first obtaining the written consent of the HPHA.

2. **Grant of Refusal Right.** For a period of three (3) years after the close of the Compliance Period (the “**ROFR Period**”), in the event that the Partnership elects, in its sole discretion, to market the Property and receives an offer to purchase the Project from a bona fide third party purchaser that it intends to accept, Grantee shall have a right of first refusal to purchase

the Property (the "**Refusal Right**") on the terms and conditions set forth in this Purchase Agreement and subject to the conditions precedent to exercise of the Refusal Right specified herein. Notwithstanding anything to the contrary herein, the period in which Grantee must exercise its Refusal Right shall be extended for a reasonable period if there is a delay obtaining consents from the State Agency and/or Project Lenders. In addition to all other applicable conditions set forth in this Purchase Agreement, (a) the foregoing grant of the Refusal Right shall be effective only if Grantee is currently a government agency or a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, until the earlier of (i) the Refusal Right has been exercised and the resulting purchase and sale has been closed, (ii) the Refusal Right has been assigned to a Permitted Assignee described in Section 10 hereof, or (iii) the end of the ROFR Period, and (b) any assignment of the Refusal Right permitted under this Purchase Agreement and the Refusal Right so assigned shall be effective only if the assignee is at the time of the assignment and remains at all times thereafter, until the Refusal Right has been exercised and the resulting purchase and sale has been closed, a Permitted Assignee described in Section 10 hereof meeting the requirements of Section 42(i)(7)(A) of the Code as determined in its judgment by tax counsel to the Consenting Limited Partners. In the event the Partnership elects to market the Project and receives an offer, the Partnership shall notify Grantee, the General Partner, and the Consenting Limited Partners of such offer and deliver to each of them a copy thereof. The Partnership shall not accept any such offer unless and until the Refusal Right has expired without exercise by Grantee under Section 6 hereof. An offer made on commercially reasonable terms from a third-party who does not bear a relationship to the Grantee that would be deemed a related party within the meaning of Section 267 or 707 of the Code and with resources (or access to resources from governmental agencies, lenders or investors) to complete the purchase pursuant to such offer shall constitute an "offer" for purposes of this Section 2 notwithstanding the fact that the offeror knows that the Grantee has (and is likely to exercise) the Refusal Right.

### **3. Purchase Price Under Project Option.**

- a. The purchase price for the Property pursuant to the Project Option shall be the greater of the following amounts:
  - i. **Debt and Taxes.** An amount sufficient (i) to pay all debts (including partner loans) and liabilities of the Partnership upon its termination and liquidation as projected to occur immediately following a sale pursuant to the HPHA Option, (ii) the Developer Reimbursement (as defined below) and (iii) to distribute to the Partners, after payments under [Section 11.04(a) through (d) of the Partnership Agreement], cash proceeds equal to all taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Project Option, [all as more fully stated in Section 11.04 of the Partnership Agreement], including without limitation any taxes on tax gross up, which is hereby incorporated herein by reference; or
  - ii. **Fair Market Value.** The Developer Reimbursement, plus, the fair market value of the Property, appraised as low-income housing to the extent continuation of such use is required under the Use Restrictions, any such appraisal to be made by a licensed appraiser, selected by pursuant to Section



12 of this Purchase Agreement, who is a member of the Master Appraiser Institute and who has experience in the geographic area in which the Project is located.

- b. The purchase price for the Limited Partner Partnership Interests or the Partner Partnership Interests pursuant to the Interest Option shall be the greater of the following amounts:

i. **Debt and Taxes.** An amount sufficient (i) to distribute to the Partners cash proceeds equal to all taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Interest Option, including without limitation any taxes on tax gross up; and (ii) the Developer Reimbursement (as defined below); and (iii) to pay any Unpaid Tax Credit Shortfall (as defined in the Partnership Agreement), any outstanding General Partner and/or Limited Partner Loans, and any other amounts due and owing to the General Partner, Consenting Limited Partners and/or Special Limited Partner pursuant to the Partnership Agreement; or

ii. **Fair Market Value.** The Developer Reimbursement, plus, the fair market value of the Limited Partner Partnership Interests or the Partner Partnership Interests, which amount, subject to the last sentence in this Section 3(b)(ii), shall be determined by a licensed appraiser selected in accordance with Section 12 of this Purchase Agreement. When determining the fair market value of the Limited Partner Partnership Interests or the Partner Partnership Interests pursuant to this section, the Partners acknowledge the appraiser may, in its professional judgment, consider such factors that the appraiser may deem relevant to properly determine the fair market value. In no event shall the fair market value Limited Partner Partnership Interests or the Partner Partnership Interests be appraised at less than the amount which would be payable and/or distributable to the General Partner, Consenting Limited Partners or Special Limited Partner, as applicable, following any sale of the Project under the Project Option at the purchase price set forth in Section 3(a)(ii) above and assuming for all purposes such distributions are made in accordance with [Sections 11.04 (a) - (f) of the Partnership Agreement but without regard to Section 12.02(b)].

“Developer Reimbursement” means an amount equal to fifty percent (50%) of all taxes projected to be imposed and/or previously imposed on Developer (as defined in the Partnership Agreement) with respect to any portion of Development Fee (as defined in the Partnership Agreement) paid from the proceeds of any capital contributions made by the General Partner to the Partnership, including without limitation any taxes on tax gross up. Any Developer Reimbursement payable under this Purchase Agreement shall, at General Partner’s option, be paid directly to General Partner or Developer.

**4. Purchase Price Under Refusal Right.** The purchase price for the Property pursuant to the Refusal Right shall be equal to the sum of (a) an amount sufficient to pay all debts

(including partner loans) and liabilities of the Partnership upon its termination and liquidation as projected to occur immediately following the sale pursuant to the Refusal Right, (b) the Developer Reimbursement and (c) an amount sufficient to distribute to the Partners, after payments under [Section 11.04(a) through (d) of the Partnership Agreement], cash proceeds equal (on an after-Federal and after-State income tax basis) to the taxes projected to be imposed on the Partners of the Partnership as a result of the sale pursuant to the Refusal Right, all as more fully stated in [Section 11.04 of the Partnership Agreement], which is hereby incorporated herein by reference.

**5. Conditions Precedent.** Notwithstanding anything in this Purchase Agreement to the contrary, the HPHA Option and the Refusal Right granted hereunder shall be contingent on the Regulatory Agreements being entered into and remaining in full force and effect, and those Use Restrictions to be contained therein, as heretofore approved in writing by the General Partner and Consenting Limited Partners, shall have remained unmodified without its prior written consent, or if the Use Restrictions are no longer in effect due to reasons other than a default thereunder by the Partnership, such Use Restrictions, as so approved and unmodified, shall have remained in effect by other means and shall continue in effect by filing a replacement covenant that runs with the land enforcing substantially the same restrictions. If the conditions precedent have not been met, the HPHA Option and the Refusal Right shall not be exercisable.

**6. Exercise of Option or Refusal Right.** The HPHA Option and the Refusal Right may be exercised by the Grantee, by (a) giving prior written notice of its intent to exercise the HPHA Option or the Refusal Right to the Partnership and each of its partners in the manner provided in Section 11 herein and in compliance with the requirements of this Section 6, and (b) complying with the contract and closing requirements of Section 8 hereof. Any such notice of intent to exercise the HPHA Option shall be given during the Compliance Option Period. Any such notice of intent to exercise the Refusal Right shall be given within 120 days after Grantee has received the Partnership's notice of a bona fide offer pursuant to Section 2 hereof. In either case, the notice of intent shall specify a closing date within 120 days of the date of exercise. If the foregoing requirements (including those of Section 9 hereof) are not met as and when provided herein, the HPHA Option or the Refusal Right shall expire and be of no further force or effect. Upon notice by Grantee of its intent to exercise the HPHA Option or the Refusal Right, all rights under the other shall be subordinate to the rights then being so exercised unless and until such exercise is withdrawn or discontinued, and upon the closing of any sale of the Property pursuant to such notice shall expire and be of no further force or effect, provided that in the event that the HPHA Option and the Refusal Right are hereafter held by different parties by reason of any permitted assignment or otherwise, Grantee in its assignment(s) or such parties by written agreement may specify any other order of priority consistent with the other terms and conditions of this Purchase Agreement.

**7. Determination of Price.** Upon notice by the Grantee of its intent to exercise the HPHA Option or the Refusal Right, the Partnership and the General Partner or Grantee shall exercise best efforts in good faith to agree on the purchase price for the Property or the Partnership Interests (as the case may be). Any such agreement shall be subject to the prior written consent of the General Partner and Consenting Limited Partners, which shall not be withheld as to any purchase price determined properly in accordance with this Purchase Agreement.

**8. Contract and Closing.** Upon determination of the purchase price, the Partnership and the Grantee shall enter into a written contract for the purchase and sale of the Property or the Limited Partner Partnership Interests or the Partner Partnership Interests (as the case may be) in accordance with this Purchase Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Project is located, providing for a closing not later than the date specified in the Grantee's notice of intent to exercise of the HPHA Option or the Refusal Right as applicable or 30 days after the purchase price has been determined, whichever is later. In the absence of any such contract, this Purchase Agreement shall be specifically enforceable upon the exercise of the HPHA Option or the Refusal Right, as applicable. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer for the Project or another mutually acceptable title company.

**9. Use Restrictions.** In consideration of the HPHA Option and the Refusal Right granted hereunder at the price specified herein, the Grantee hereby agrees that the documents of sale to the Grantee shall contain a leasehold covenant restricting use of the Project to low-income housing to the extent required by those Use Restrictions contained in the Regulatory Agreements, as approved in writing by the Consenting Limited Partners and unmodified without its prior written consent. In the event that neither the HPHA Option nor the Refusal Right is exercised, or the sale pursuant thereto is not consummated, then upon conveyance of the Project to anyone other than Grantee or its permitted assignee hereunder, the foregoing paragraph shall terminate and have no further force or effect.

**10. Assignment.** Grantee may assign all or any of its rights under this Purchase Agreement to (a) a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, (b) a government agency, or (c) a tenant organization (in cooperative form or otherwise) or resident management corporation of the Project (each a "Permitted Assignee") that demonstrates its ability and willingness to maintain the Project as low-income housing in accordance with the Use Restrictions, in any case subject to the prior written consent of the Consenting Limited Partners, which shall not be unreasonably withheld if the proposed grantee demonstrates that it is reputable and creditworthy and is a capable, experienced owner and operator of residential rental property, and subject in any event to the conditions precedent to the Refusal Right grant and the Option price set forth in Sections 2, 3 and 4 hereof. Prior to any assignment or proposed assignment of its rights hereunder, Grantee shall give written notice thereof to the Partnership, the General Partner, and the Consenting Limited Partners. Upon any permitted assignment hereunder, references in this Purchase Agreement to Grantee shall mean the permitted Assignee where the context so requires, subject to all applicable conditions to the effectiveness of the rights granted under this Purchase Agreement and so assigned. No assignment of Grantee's rights hereunder shall be effective unless and until the permitted Assignee enters into a written agreement accepting the assignment and assuming all of Grantee's obligations under this Purchase Agreement and copies of such written agreement are delivered to the Partnership, the General Partner and the Consenting Limited Partners. Except as specifically permitted herein, Grantee's rights hereunder shall not be assignable.

**11. Notices.**

Notice shall be provided by hand delivery or U.S. mail, first class postage prepaid, and delivered to the following addresses:

If to the Partnership:  
or General Partner HCDC School Street, LLC  
330 West Victoria Street  
Gardena, California 90248  
Attn: Mohannad H. Mohanna, President

With a copy to: Settle Meyer Law LLLC  
Pioneer Plaza  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawaii 96813  
Attn: Scott W. Settle, Esq.

and

Cox Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attn: Christian D. Dubois, Esq.

If to Grantee: Hawaii Public Housing Authority  
1002 North School Street  
Honolulu, Hawaii 96817  
Attn: Hakim Ouansafi, Executive Director

With a copy to: Department of the Attorney General  
of the State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Attn: Linda L.W. Chow

If to Consenting:  
Limited Partners c/o RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

*With a copy to:* Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attention: Kyle Arndt, Esq.

**12. Selection of Appraisers.** The Grantee and the Partners shall select a mutually acceptable independent appraiser. If the parties are unable to agree upon an independent appraiser within fifteen (15) business days following the date of delivery of HPHA's intent to exercise the HPHA Option, the Grantee and the Partners each shall select, and each pay their respective costs for, an independent appraiser within the next succeeding five (5) business days. If either party fails to select an independent appraiser within such time period, the determination of the other independent appraiser shall control. If the difference between the fair market values set forth in the two appraisals is not more than ten percent (10%) of the fair market value set forth in the lower of the two appraisals, the fair market value for purposes of Section 3(a)(ii) and 3(b)(ii) of this Purchase Agreement shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two independent appraisers shall jointly select a third independent appraiser whose determination of fair market value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers determinations, then the average of all three appraisals shall be the fair market value for purposes of Sections 3(a)(ii) and 3(b)(ii) of this Purchase Agreement. The Grantee and the Partners shall each pay one-half of the fees and costs of the third independent appraiser selected pursuant to this Section. All appraisers selected pursuant to this Section must be (a) members of the Master Appraiser Institute, (b) have experience in the geographic area in which the Project is located, and (c) licensed or certified in the State of Hawaii pursuant to Hawaii Revised Statutes Chapter 466K or successor laws governing real estate appraisers in Hawaii.

**13. Miscellaneous.** This Purchase Agreement shall be governed by the laws of the State of Hawaii. This Purchase Agreement may be executed in counterparts or counterpart signature pages, which together shall constitute a single agreement.

*(signature pages follow)*

In Witness Whereof, the parties have executed this Purchase Agreement as of the date first set forth hereinabove.

**Partnership:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

**General Partner:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

Approved as to Form

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

**Grantee:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic, existing  
under the laws of the State of Hawaii

By: \_\_\_\_\_  
Hakim Ouansafi  
Its Executive Director



The undersigned hereby consents to the foregoing Purchase Agreement as of the date first set forth hereinabove.

**Consenting Limited Partner:**

**RBC COMMUNITY INVESTMENTS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Kenneth L. Lohiser  
Title: Managing Director

**Consenting Special Limited Partner:**

**RBC COMMUNITY INVESTMENTS MANAGER II, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Kenneth L. Lohiser  
Title: Managing Director

**Consenting State Limited Partner:**

**RBC COMMUNITY INVESTMENTS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Kenneth Lohiser  
Title: Director

**Exhibit A**

**Legal Description of Project Real Estate**

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

All of that certain parcel of land, being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this parcel of land on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 261° 19' 03" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 34.14 feet along same;
5. 151° 56' 41" 10.00 feet along same
6. 241° 56' 41" 47.84 feet along same;
7. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
8. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 301° 57' 23" 38.23 feet;
10. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;

12. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
13. 61° 54' 43" 11.00 feet along same;
14. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 19° 09' 57" 59.13 feet;
15. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
16. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
17. 61° 54' 43" 28.18 feet along same;
18. 151° 54' 43" 1.00 foot along same;
19. Thence along same on a curve to the left with a radius of 19.33 feet, the chord azimuth and distance being: 106° 54' 43" 27.34 feet;
20. 61° 54' 43" 47.91 feet along the remainder of Former Lanakila Emergency Homes;
21. Thence along same on a curve to the left with a radius of 2.33 feet, the chord azimuth and distance being: 31° 54' 43" 2.33 feet;
22. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 31° 54' 43" 33.67 feet;
23. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
24. 331° 54' 43" 14.40 feet along same;
25. 61° 54' 43" 45.50 feet along same;
26. 151° 52' 40" 132.83 feet along the northeasterly side of School Street;
27. 151° 57' 40" 221.12 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 83,451 square feet.

SUBJECT, HOWEVER, to Easement A-1 for access purposes and utility purposes and being more particularly described as follows:

EASEMENT A-1

Land situated at Kapalama, Honolulu, Oahu, Hawai'i.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, being also the initial point of the above described parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 19.50 feet, the chord azimuth and distance being: 267° 19' 93" 12.94 feet;
2. 241° 56' 41" 35.07 feet along the remainder of Former Lanakila Emergency Homes;
3. 247° 38' 38" 20.14 feet along same;
4. 241° 56' 41" 81.98 feet along same;
5. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 283° 18' 25" 45.50 feet;
6. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
7. Thence along same on a curve to the left with a radius of 59.50, the chord azimuth and distance being: 301° 57' 23" 45.95 feet;
8. 279° 14' 37" 60.72 feet along remainder of Former Lanakila Emergency Homes;
9. Thence along same on a curve to the right with a radius of 45.50 feet, the chord azimuth and distance being: 305° 34' 40" 40.37
10. 331° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;

11. Thence along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 13° 27' 19" 66.98;
12. Thence along remainder of Former Lanakila Emergency Homes on a curve to the left with a radius of 24.50 feet, the chord azimuth and distance being: 13° 27' 20" 32.50 feet;
13. 331° 54' 43" 1.55 feet along the remainder of Former Lanakila Emergency Homes;
14. 61° 54' 43" 22.50 feet along same;
15. 151° 54' 43" 1.00 feet along same;
16. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 106° 54' 43" 35.36 feet;
17. 61° 54' 43" 47.95 feet along the remainder of Former Lanakila Emergency Homes;
18. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 25° 33' 03" 39.92 feet;
19. 61° 54' 43" 53.71 feet along the remainder of Former Lanakila Emergency Homes;
20. 331° 54' 43" 14.40 feet along same;
21. 61° 54' 43" 45.50 feet along same;
22. 163° 22' 26.34 feet along same;
23. 151° 54' 43" 43.59 feet along same;
24. 241° 54' 43" 56.38 feet along same;
25. 220° 24' 33.65 feet along same;
26. 241° 54' 43" 6.30 feet along same;
27. Thence along same on a curve to the right with a radius of 33.67 feet, the chord azimuth and distance being: 278° 16' 56" 39.92 feet;
28. 241° 54' 43" 109.92 feet along the remainder of Former Lanakila Emergency Homes;

29. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 196° 54' 43" 42.43 feet;
30. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
31. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 125° 34' 40" 22.18 feet;
32. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
33. Thence along same on a curve to the right with a radius of 80.00 feet, the chord azimuth and distance being: 121° 57' 23" 61.78 feet;
34. 144° 40' 09" 64.58 feet along remainder of Former Lanakila Emergency Homes;
35. Thence along same on a curve to the left with a radius of 25.00 feet, the chord azimuth and distance being: 103° 18' 25" 33.04 feet;
36. 61° 56' 41" 82.00 feet along the remainder of Lanakila Emergency Homes;
37. 56° 14' 44" 20.14 feet along same;
38. 61° 56' 41" 35.06 feet along same;
39. Thence along same on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: 43° 09' 30" 12.88 feet;
40. 151° 57' 40" 32.94 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 21,797 square feet.

SUBJECT, ALSO, to Easement RW (10.00 feet wide) for future road widening purposes and being more particularly described as follows:

#### EASEMENT RW

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station 'KALAEPOHAKU' being 368.58 feet South and 626.79 feet West, thence running by azimuths measured clockwise from True South:

1. 241° 56' 41" 47.87 feet along the same;
2. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 283° 18' 25" 73.35 feet;
3. 324° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
4. Thence along same on a curve to the left with a radius of 49.50 feet, the chord azimuth and distance being: 310° 57' 23" 38.23 feet;
5. 279° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
6. Thence along same on a curve to the right with a radius of 55.50 feet, the chord azimuth and distance being: 305° 34' 40" 49.24 feet;
7. 331° 54' 43" 52.87 feet along the remainder of Former Lanakila Emergency Homes;
8. 61° 54' 43" 11.00 feet along the same;
9. Thence along same on a curve to the right with a radius of 50.50 feet, the chord azimuth and distance being: 157° 37' 21" 10.05 feet;
10. 151° 54' 43" 42.87 feet along the remainder of Former Lanakila Emergency Homes;
11. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 125° 34' 40" 40.37 feet;
12. 99° 14' 37" 60.72 feet along the remainder of Former Lanakila Emergency Homes;
13. Thence along same on a curve to the right with a radius of 59.50 feet, the chord azimuth and distance being: 121° 57' 23" 45.95 feet;
14. 144° 40' 09" 64.58 feet along the remainder of Former Lanakila Emergency Homes;
15. Thence along same on a curve to the left with a radius of 45.50 feet, the chord azimuth and distance being: 103° 18' 25" 60.13 feet;

- |     |      |     |     |       |   |
|-----|------|-----|-----|-------|---|
| 16. | 61°  | 56' | 41" | 47.84 | feet along the remainder of Former Lanakila Emergency Homes;                          |
| 17. | 151° | 56' | 41" | 10.00 | feet along the same to the point of beginning containing an Area of 1208 square feet. |

SUBJECT, FURTHER, to Easement U-2 for utility purposes and being more particularly described as follows:

EASEMENT U-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the westerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 408.64 feet South and 699.09 feet West, thence running by azimuths measured clockwise from True South:

1. Along the remainder of Former Lanakila Emergency Homes on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 223° 09' 30" 12.88 feet;
2. 241° 56' 41" 35.06 feet along the remainder of Former Lanakila Emergency Homes;
3. 236° 14' 44" 20.14 feet along same;
4. 241° 56' 41" 82.00 feet along same;
5. Thence along same on a curve to the right with a radius of 25.00 feet, the chord azimuth and distance being: 268° 30' 35" 22.36 feet;
6. 61° 56' 41" 138.30 feet along same;
7. 331° 56' 41" 9.00 feet along same;
8. 61° 56' 41" 31.00 feet along same;
9. 151° 57' 40" 12.85 feet along the northeasterly side of School Street to the point of beginning and containing an Area of 1761 square feet.



SUBJECT, FURTHER, to Easement P-1 for pedestrian access purposes and being more particularly described as follows:

EASEMENT P-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 731.89 feet South and 548.02 feet West, thence running by azimuths measured clockwise from True South:

1. 151° 52' 40" 106.40 feet along the northeasterly side of School Street;
2. 322° 17' 31.65 feet along the remainder of Former Lanakila Emergency Homes;
3. 331° 54' 43" 49.38 feet along same;
4. 343° 22' 26.34 feet along same to the point of beginning and containing an Area of 310 square feet.

TOGETHER with Easement A-2 for access purposes and being more particularly described as follows:

EASEMENT A-2

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes, being also a portion of Royal Patent 4475, Land Commission Award 7713, Apana 38 to V. Kamamalu.

Beginning at the easterly corner of this easement on the northerly side of Lanakila Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 1006.87 feet South and 141.68 feet West, thence running by azimuths measured clockwise from True South:

1. 64° 35' 22.53 feet along the northerly side of Lanakila Avenue
2. 151° 30' 444.95 feet along the remainder of Former Lanakila Emergency Homes;

3. 61° 54' 43" 28.18 feet along same;
4. 331° 30' 496.00 feet along same to the point of beginning and containing an Area of 10,023 square feet,

TOGETHER, ALSO, with Easement U-1 for utility purposes and being more particularly described as follows:

#### EASEMENT U-1

Land situated at Kapalama, Honolulu, Oahu, Hawaii.

Being a portion of Former Lanakila Emergency Homes as shown on C.S.F. 25,734, being also a portion of Royal Patent 4475, Land Commission Award 7718 to V. Kamamalu.

Beginning at the southerly corner of this easement on the northeasterly side of School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 419.56 feet South and 714.57 feet West, thence running by azimuths measured clockwise from True South:

1. 157° 57' 40" 11.21 feet along the northeasterly side of School Street;
2. 241° 56' 41" 70.50 feet along the same;
3. 331° 56' 41" 17.50 feet along the same;
4. 61° 56' 41" 3.19 feet along the same;
5. 67° 38' 38" 20.14 feet along the same;
6. 61° 58' 41" 35.07 feet along the same;
7. Thence along same on a curve to the right with a radius of 19.50 feet, the chord azimuth and distance being: 81° 19' 03" 12.94 feet to the point of beginning an containing an Area of 1103 square feet.

Being the property described in and conveyed by that certain Quitclaim Deed from the State of Hawaii, as grantor, to the Hawaii Public Housing Authority, a public body and a body corporate and politic, dated November 30, 2018, and recorded November 6, 2019, in the Bureau of Conveyances as Document No. A-72490859.

Subject, however, to the following exceptions and encumbrances:

[To be inserted based on final lender's title proforma]

**Exhibit B**

**Regulatory Agreements**

201H Agreement between the City and County of Honolulu and RHF Foundation, Inc. dated March 13, 2023 and binding on its successors and assigns.

Bond Regulatory Agreement between School Street I, LP and Hawaii Housing Finance and Development Corporation (HHFDC) dated \_\_\_\_\_

Declaration of Land Use Restrictive Covenants in favor of HHFDC dated \_\_\_\_\_

# 05. Subdevelopment Fee Agreement

**SUBDEVELOPMENT FEE AGREEMENT**  
**(HPHA School Street Redevelopment Phase 1A – Hawaii Public Housing Authority)**

THIS SUBDEVELOPMENT FEE AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2024, by and between HCDC School Street LLC, a Hawaii limited liability company (the “**Developer**”) and the Hawaii Public Housing Authority, a public body, corporate and politic duly organized and existing under the laws of the State of Hawaii (the “**Subdeveloper**” or the “**HPHA**”).

WHEREAS, School Street I, LP, a Hawaii limited partnership (the “**Owner**”) has been formed pursuant to that certain Agreement of Limited Partnership dated as of December 14, 2023, which shall be amended and restated by that certain Amended and Restated Agreement of Limited Partnership of the Owner dated the date hereof (as amended and restated, the “**Partnership Agreement**”) to develop, rehabilitate, own, maintain and operate a 250-unit residential rental development to be known as HPHA School Street Redevelopment Phase 1A and located in Honolulu, Hawaii (the “**Project**”); and

WHEREAS, the Owner is ground leasing the Project from the HPHA pursuant to a long-term lease, notice of which is to be recorded with the Bureau of Conveyances of the State of Hawaii herewith; and

WHEREAS, the Owner entered into a Development Services Agreement with Developer of even date herewith (the “**Development Agreement**”) pursuant to which Developer will receive a development fee (“**Development Fee**”); and

WHEREAS, the Developer desires to subcontract to the Subdeveloper certain services with respect to the Project;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

(1) Subcontract. The Developer hereby engages the Subdeveloper to assist the Developer in performing the following obligations established pursuant to the Development Agreement:

- (a) Assisting the Developer in assembling the construction loan financing for the Project;
- (b) Assisting the Developer in securing support for certain portions of the Project from the City and County of Honolulu (the “**City**”) and the State of Hawaii; and
- (c) Assisting the Developer in obtaining permits and zoning approvals for the Project, including but not limited to the 201H process, preparing for and attending

necessary meetings, preparing and submitting necessary forms and applications and responding to requests for additional information.

(2) Subdevelopment Fee. For services performed and to be performed under Section 1 of this Agreement, the Developer agrees to pay Subdeveloper a fee (the “**Subdevelopment Fee**”) equal to fifty percent (50%) of the Development Fee, less fifty percent (50%) of the GP Funded Portion (as defined below), which Development Fee is currently projected at [fifteen million dollars (\$15,000,000)]. Developer shall pay Subdeveloper the Subdevelopment Fee promptly upon the Owner’s payment to Developer of the Development Fee in accordance with the Development Agreement and Partnership Agreement, such that for each payment of Development Fee that the Developer receives pursuant to the Development Agreement and Partnership Agreement, the Subdeveloper shall receive fifty percent (50%) of such payment until the Subdevelopment Fee is paid in full. Payments of the Subdevelopment Fee due under this Agreement, but not made within ten (10) business days of Developer’s receipt of or entitlement to any payment of the Development Fee from the Owner, shall bear interest at the Prime Rate, which shall mean the rate of interest reported from time to time as the prime rate in the “Money Rates” section of The Wall Street Journal.

(3) Limitations on and Adjustments to Payment Obligations. Notwithstanding anything to the contrary set forth in this Agreement, Developer shall only pay the Subdevelopment Fee to the extent Developer receives payments under the Development Agreement or the Partnership Agreement and no Subdevelopment Fee shall be payable from any portion of Development Fee received by Developer that is funded from a capital contribution to the Owner by HCDC School Street LLC (the “**GP Funded Portion**”). Upon the expiration of the initial fifteen-year “compliance period” as defined in and determined in accordance with Section 42(i) of the Code, any portion of Subdeveloper Fee owed to Subdeveloper that must be paid with a General Partner Capital Contribution or General Partner loan, will be simultaneously assigned to Developer.

(4) Successors and Assigns. This Agreement may not be assigned without the written consent of all parties and the limited partners of the Owner.

(5) Defined Terms. Capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to them in the Partnership Agreement.

(6) Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

(7) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one

agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

(8) No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

(9) Applicable Law/Forum. This Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii. The parties hereto irrevocably submit to the jurisdiction of any state court sitting in Honolulu, Hawaii to resolve any dispute under this Agreement.

(10) Notice. Notice shall be provided by hand delivery or U.S. mail, first class postage prepaid, and delivered to the following addresses:

If to Developer: HCDC School Street LLC  
330 West Victoria Street  
Gardena, CA 90248  
Attn: Mohannad H. Mohanna, President

With a copy to: Settle Meyer Law LLLC  
Pioneer Plaza  
900 Fort Street Mall, Suite 1800  
Honolulu, HI 96813  
Attn: Scott W. Settle

And to:

Cox Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attention: Stephen C. Ryan, Esq.  
Telephone: (415) 262-5150  
Email: sryan@coxcastle.com

If to Subdeveloper: Hawaii Public Housing Authority  
1002 North School Street  
Honolulu, HI 96817  
Attn: Hakim Ouansafi, Executive Director

With a copy to: Department of the Attorney General  
of the State of Hawaii  
425 Queen Street  
Honolulu, HI 96813

Attn: Linda L.W. Chow

[SIGNATURES ON FOLLOWING PAGE.]



IN WITNESS WHEREOF, the parties have caused this Subdevelopment Fee Agreement to be duly executed as of the date first written above.

**DEVELOPER:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company,

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**SUBDEVELOPER:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

[Signature Page – Subdevelopment Fee Agreement]

# 06. Asset Management Fee Agreement

## HPHA ASSET MANAGEMENT FEE AGREEMENT

THIS HPHA MANAGEMENT FEE AGREEMENT (the "HPHA Fee Agreement") made as of \_\_\_\_\_, 2024, by and between School Street I, LP, a Hawaii limited partnership (the "Partnership") and the Hawaii Public Housing Authority, a public body corporate and politic of the State of Hawaii (the "HPHA").

### Recitals

WHEREAS, the Partnership has been formed to develop, construct, own, maintain and operate a 250-unit apartment complex intended for rental to low-income seniors, to be known as HPHA School Street Redevelopment Phase 1A, and to be located in Honolulu, Hawaii (the "Project") on land ground leased to the Partnership from the HPHA; and

WHEREAS, the Partnership desires that the HPHA provide certain services with respect to, among other things, overseeing and monitoring certain aspects of the management and administration of the Project for the period commencing as of the date hereof and continuing throughout the term of the Partnership.

**NOW, THEREFORE**, in consideration of the recitals, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Obligations of HPHA. HPHA shall have the following duties, obligations, and responsibilities:

- (i) to monitor the General Partner's reporting on the Project in the periodic reports required by lenders and investors to the Project;
- (ii) perform an annual review and physical inspection of the Project and to provide a report detailing any issues or concerns about the physical condition of the Project within sixty (60) days of such inspection;
- (iii) to review the occupancy/rental reports for the Project; and
- (iv) to review all other information related to the operation and management of the Project available to the Partnership reasonably requested by HPHA with respect to the Project.

2. Fees. For services to be performed under this HPHA Fee Agreement, the Partnership shall pay an annual HPHA Fee to the HPHA in the amount of seven thousand five hundred dollars (\$7,500). The HPHA Fee will be paid in accordance with the priority for Net Cashflow Distributions attached hereto in Exhibit A. The HPHA Fee will increase by three percent (3%) on an annual basis, will be cumulative, and will start to accrue annually concurrent with the permanent loan conversion.

3. HPHA Not an Insurer. The Partnership acknowledges and agrees that, while HPHA shall act responsibly and faithfully in performing its responsibilities pursuant to this HPHA Fee Agreement, HPHA does not insure or guarantee the success of the Project or the Partnership, economically or otherwise. No act or failure to act by HPHA under this HPHA Fee Agreement shall

diminish the liabilities and obligations of the Partnership under other agreements executed with respect to the Project.

4. Successors and Assigns. This HPHA Fee Agreement shall be binding on the parties hereto, their heirs, successors and assigns. This HPHA Fee Agreement may not be assigned by any of the parties hereto without the written consent of the other party.

5. Separability of Provisions. Each provision of this HPHA Fee Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this HPHA Fee Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this HPHA Fee Agreement which are valid.

6. Counterparts. This HPHA Fee Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

7. No Continuing Waiver. The waiver of any party of any breach of this HPHA Fee Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. Applicable Law. This HPHA Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

9. Third Party Beneficiary. RBC Community Investments, LLC, an Illinois limited liability company in its capacity as the limited partner and the state limited partner in the Partnership and RBC Community Investments Manager II, Inc., a Delaware corporation in its capacity as the special limited partner in the Partnership and their respective successors and/or assigns (collectively, the "Investor Limited Partner") is a third-party beneficiary of this HPHA Fee Agreement, and the Partnership and the HPHA hereby expressly agree that any amendment to this HPHA Fee Agreement shall not be effective unless and until the same is consented to by the Investor Limited Partner. All correspondence between HPHA and the Partnership in regards to this HPHA Fee Agreement must be disclosed to the Investor Limited Partner at the notice address below.

c/o RBC Community Investments, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

with a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, California 90071  
Attention: Kyle Arndt, Esq.  
Facsimile No.: (213) 559-0733

*(signature page follows)*

IN WITNESS WHEREOF, the parties have caused this HPHA Fee Agreement to be duly executed as of the date as first written above.

**PARTNERSHIP:**

**SCHOOL STREET I, LP,**  
a Hawaii limited partnership

By: HCDC School Street LLC,  
a Hawaii limited liability company,  
its General Partner

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development  
Company, LLC, a Delaware limited  
liability company, its Manager

By: \_\_\_\_\_  
Name: Mohannad H. Mohanna  
Title: President

Approved as to Form

**HPHA:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic,  
existing under the laws of the State of Hawaii

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

EXHIBIT A  
Distributions of Net Cash Flow

[attached]

# School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

## Proposed CF Waterfall

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3) To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%

# 07. Property Management Fee Agreement



## HPHA PROPERTY MANAGEMENT FEE AGREEMENT

THIS HPHA PROPERTY MANAGEMENT FEE AGREEMENT (the "**HPHA Property Management Fee Agreement**") made as of \_\_\_\_\_, 2024, by HCDC School Street LLC, a Hawaii limited liability company, which is a general partner (the "**General Partner**") in the School Street I, LP (the "**Partnership**") and the Hawaii Public Housing Authority, a public body corporate and politic of the State of Hawaii (the "**HPHA**").

### Recitals

WHEREAS, the Partnership has been formed to develop, construct, own, maintain and operate a 250-unit apartment complex intended for rental to low-income seniors, to be known as HPHA School Street Redevelopment Phase 1A, and to be located in Honolulu, Hawaii (the "**Project**") on land ground leased to the Partnership from the HPHA; and

WHEREAS, the General Partner is a party to a Property Management Oversight Fee Agreement with the Partnership pursuant to which the General Partner will receive an annual fee in the amount of two percent (2%) of effective gross income ("**GP PM Oversight Fee**") on a non-cumulative basis;

WHEREAS, the Partnership has retained HCHP Property Management, LP ("**Related Property Manager**") and Michaels Management-Affordable, LLC ("**Unrelated Property Manager**") which are referred to in the Limited Partnership Agreement of substantially even date herewith ("**Limited Partnership Agreement**"), together, as the "**Initial Management Agent**."

WHEREAS, the General Partner desires that the HPHA provide certain services with respect to, among other things, overseeing and monitoring aspects of the management and administration of the Project for the period commencing as of the date hereof and continuing throughout the term of the ground lease entered into as of substantially even date herewith ("**Ground Lease**").

**NOW, THEREFORE**, in consideration of the recitals, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Obligations of HPHA. HPHA shall have the following duties, obligations, and responsibilities:

- (i) Review and approve the Management Plan in its entirety and any subsequent suggested modifications;
- (ii) Approve legal counsel designated for enforcement of leases; to monitor grievance procedures and be made aware of any lease termination efforts and approve all lease forms and necessary changes;
- (iii) Monitor maintenance and repair and conditions or limitations established by the Partnership;
- (iv) Review and approve any capital expenditure;
- (v) Be informed of any emergency repairs involving manifest danger to persons or property;

- (vi) Review and approve proposed annual operating budgets, budgeted withdrawals from replacement reserves, and capital expenditures prior to implementation and review and approve any expected (prior to incurring the cost) annual increases that would exceed the annual Consumer's Price Index;
- (vii) Review and verify that the Project's property insurance is in force at all times and that the Project is in compliance with insurance requirements specified in the Partnership Agreement and Ground Lease;
- (viii) Review and comment on the quarterly report on monitoring and oversight of property manager issued by the General Partner in its day-to-day authority over the routine operations of the property;
- (ix) Review and approve any Partnership or property manager or management agent media statements;
- (x) Review and comment on annual audit and monitor compliance with governmental orders and licenses;
- (xi) Request the removal the Related Property Manager for material violations of the property management oversight agreement, subject to notice and opportunities to cure and the rights of lenders and investors and applicable government agencies; and
- (xii) Recommend the removal of the Unrelated Property Manager for material violations of the property management agreement, subject to notice and opportunity to cure and the rights of lenders and investors and applicable government agencies.

HPHA agrees to review materials submitted for its review and comment or review and approval promptly and to provide comments or approvals required hereunder no later than thirty (30) days from receipt unless a longer period of review is required to adequately conduct the due diligence required to support an informed review and approval.

2. Fees. For services to be performed under this HPHA Property Management Fee Agreement, the General Partner shall pay an annual HPHA Property Management Fee to the HPHA in the amount equal to fifty percent (50%) of the GP PM Oversight Fee. The HPHA Property Management Fee will be paid in accordance with the priority for Net Cashflow Distributions attached hereto in Exhibit A and due to the HPHA upon the General Partner's receipt of the GP PM Oversight Management Fee. The HPHA Property Management Fee will be non-cumulative.

3. HPHA Not an Insurer. The General Partner acknowledges and agrees that, while HPHA shall act responsibly and faithfully in performing its responsibilities pursuant to this HPHA Property Management Fee Agreement, HPHA does not insure or guarantee the success of the Project or the General Partner, economically or otherwise. No act or failure to act by HPHA under this HPHA Property Management Fee Agreement shall diminish the liabilities and obligations of the General Partner under other agreements executed with respect to the Project.

4. Successors and Assigns. This HPHA Property Management Fee Agreement shall be binding on the parties hereto, their heirs, successors and assigns. This HPHA Property Management Fee Agreement may not be assigned by any of the parties hereto without the written consent of the other party.

5. Separability of Provisions. Each provision of this HPHA Property Management Fee Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this HPHA Property Management Fee Agreement is

determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this HPHA Property Management Fee Agreement which are valid.

6. Counterparts. This HPHA Property Management Fee Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

7. No Continuing Waiver. The waiver of any party of any breach of this HPHA Property Management Fee Agreement shall not operate or be construed to be a waiver of any subsequent breach.

8. Applicable Law. This HPHA Agreement shall be construed and enforced in accordance with the laws of the State of Hawaii.

9. Third Party Beneficiary. RBC Community Investments, LLC, and their successors and/or assigns as a limited partner in the Partnership (the “**Limited Partner**”) is a third-party beneficiary of this HPHA Property Management Fee Agreement, and the General Partner and the HPHA hereby expressly agree that any amendment to this HPHA Property Management Fee Agreement shall not be effective unless and until the same is consented to by the Limited Partner.

*(signature page follows)*

IN WITNESS WHEREOF, the parties have caused this HPHA Property Management Fee Agreement to be duly executed as of the date as first written above.

**HCDC:**

**HCDC SCHOOL STREET LLC,**  
a Hawaii limited liability company,

By: HCDC Hawaii Development LLC,  
a Hawaii limited liability company,  
its Manager

By: Highridge Costa Development Company,  
LLC, a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Mohannad H. Mohanna  
President

**HPHA:**

**HAWAII PUBLIC HOUSING AUTHORITY,**  
a public body corporate and politic, existing under  
the laws of the State of Hawaii

Approved as to Form

\_\_\_\_\_  
Linda L.W. Chow  
Deputy Attorney General

By: \_\_\_\_\_  
Hakim Ouansafi  
Executive Director

**EXHIBIT A**

Distribution of Net Cash Flow

[attached]

# School Street Apts Phase 1A

Cash Flow Waterfall (draft, subject to HPHA approval)

3/21/2024

<b>Proposed CF Waterfall</b>
------------------------------

- 1) To the Federal and State LP in the amount of any unpaid LIHTC adjusters, LP Loans or other amounts due the LP
  - 2) To pay Asset Management Fees to the Special LP (RBC entity, \$7,500/annually growing at 3%) and to the State LP (RBC entity, \$2,500/annually, growing at 3%)
  - 3) To pay the Partnership Management Fee to the GP (\$7,500/annually, growing at 3%) and the Asset Management Fee to the Authority (\$7,500/annually, growing at 3%) on a pari passu basis
  - 4) To replenish the Operating Reserve up to original balance
  - 5) To repay the Deferred Developer Fee until paid in full
  - 6) To pay a non-cumulative Prop Mgmt Oversight Fee to the GP and Authority (split evenly)
  - 7) To repay any GP or Developer Loans
  - 8) Of the remaining balance:
    - a) 75% to repay the RHRF Loan until paid in full, and then
    - b) 25% of the remaining cash flow after payment of 8)a), to pay the current and accrued Base Rent due on the Ground Lease
  - 9) Of the remaining balance:
    - (i) 45% to the GP as Incentive Management Fee
    - (ii) 45% to pay the current and accrued Base Rent due on the Ground Lease
  - 10) Of the remaining balance:
    - (i) 0.01% to the GP 0.0100%
    - (ii) 0.001% to the Special LP 0.0010%
    - (iii) 1% to the State LP 1.0000%
    - (iv) 98.989% to the Federal LP 98.9890%
- 100.0000%

# 08. Performance and Completion Guaranty

## PERFORMANCE AND COMPLETION GUARANTY

This **PERFORMANCE AND COMPLETION GUARANTY** (this “**Guaranty**”) is entered into as of \_\_\_\_\_, 2024, by **HIGHRIDGE COSTA DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company (“**Guarantor**”), for the benefit of Hawaii Public Housing Authority, a public body corporate and politic, organized under the laws of the State of Hawaii (“**HPHA**”).

### **RECITALS:**

A. **SCHOOL STREET I, LP**, a Hawaii limited partnership, (“**Tenant**”) has entered into that certain HPHA Ground Lease Agreement for the HPHA School Street Redevelopment Project Phase 1A with the HPHA dated as of substantially even date herewith (“**Ground Lease**”), which obligates the Tenant to, among other things, complete construction of a 250-unit affordable housing development.

B. As a condition to entering into the Ground Lease, HPHA requires that Guarantor execute this Guaranty.

C. Guarantor will directly or indirectly derive a material financial benefit from the Tenant entering into the Ground Lease.

NOW, THEREFORE, in order to induce HPHA to enter into the Ground Lease, and in consideration thereof, Guarantor agrees as follows:

1. **Defined Terms**. Capitalized terms used but not defined in this Guaranty shall have the meanings assigned to them in the Ground Lease.

2. **Scope of Guaranty**. Guarantor represents to HPHA that Guarantor has a direct or indirect ownership interest in Tenant and/or will otherwise derive a material financial benefit from the Tenant entering into the Ground Lease. Guarantor hereby does jointly, severally and unconditionally guaranty to HPHA the following (collectively, the “**Guaranteed Obligations**”):

(a) that Tenant will complete the Improvements in accordance with the Plans and Specifications;

(b) that in the event that the sum of the proceeds of the loans secured by the Leasehold Mortgagees available for disbursement, the equity contributions available for disbursement from the Tax Credit Investor, and the net cash flow available from the Premises are, or at any time become, in the judgment of the HPHA, insufficient to pay all costs for the completion of the Improvements, then the Tenant will pay such costs;

(c) that Tenant will pay and discharge, or otherwise release, all mechanic’s and materialmen’s liens or claims therefor imposed or alleged against the Premises to the end that there shall be no mechanic’s, materialmen’s or other like liens or claims outstanding against the Premises;



(d) that Tenant shall cause the construction of the Improvements at all times to comply with all applicable existing building, zoning, use and environmental protection laws and ordinances as may be necessary to enable the use and occupancy of the Premises for its intended purposes

3. If Tenant shall fail to duly and punctually perform and observe any of the Guaranteed Obligations, then upon written demand by the HPHA or its designee, Guarantor forthwith will itself, at its own expense, do, promptly perform and observe such Guaranteed Obligations provided, however, (a) to the extent that the Guarantor's ability to continue and complete construction of the Improvements is impacted by the First Hawaiian Bank's ("Construction Lender") failure to advance funds to the Guarantor under the Tenant's loan agreement with the Construction Lender, the HPHA agrees to delay enforcement of this Guaranty for up to 180 days to allow the Guarantor to obtain replacement financing, and (b) obligations imposed on the Guarantor under this Guaranty are limited to the extent that Guarantor certifies to HPHA, and HPHA confirms the basis for such certification (such confirmation not to be unreasonably withheld, conditioned or delayed), that the cost to complete the Improvements, when combined with financing costs and the construction costs (including all costs incurred as of the date of such determination and the projected costs to complete the Improvements) (collectively, "**Total Construction Costs**"), exceeds one hundred and twenty percent (125%) of the budget approved by HPHA, Leasehold Mortgagees, and the Tax Credit Investor at Closing ("**Guaranty Limit**"). If the Guaranty Limit is reached this Guaranty shall terminate in accordance with Section 16 of this Guaranty.

4. In the case of any payment to be made by Guarantor, such payment shall be made within five (5) days following written demand therefor, and any amounts not paid within such time shall accrue interest at the long term applicable federal rate from the earlier of the date of demand therefor or such other date as may be provided under the Ground Lease.

5. **[Reserved]**

6. **Guaranty of Payment and Performance.** Guarantor's obligations under this Guaranty constitute an unconditional and continuing guaranty of payment and performance and not merely a guaranty of collection. Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the Guaranteed Obligations as a primary obligor.

7. **Unconditional Guaranty.** The obligations of Guarantor under this Guaranty shall be performed without demand by HPHA and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability, in whole or in part, of the Ground Lease, and without regard to any other circumstance which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and agrees that Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a

mortgagor. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to a guarantor, a surety, a borrower or a mortgagor, and any other rights of a guarantor, a surety, a borrower or a mortgagor, thereunder. Without limiting the generality of the foregoing, Guarantor hereby waives, to the fullest extent permitted by law, presentment, demand for payment, protest, all notices with respect to this Guaranty which may be required by statute, rule of law or otherwise to preserve HPHA's rights against Guarantor under this Guaranty, including, but not limited to, notice of acceptance, notice of any amendment of the Ground Lease, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, and notice of the incurring by Tenant of any obligation or indebtedness. Guarantor also waives, to the fullest extent permitted by law, all rights to require HPHA to (a) proceed against the Tenant or any other guarantor of Tenant's payment or performance with respect to the Indebtedness (an "**Other Guarantor**"), (b) if the Tenant or any Other Guarantor is a partnership, proceed against any general partner of the Tenant or the Other Guarantor, or (c) pursue any other remedy it may now or hereafter have against the Tenant, or, if the Tenant is a partnership, any general partner of Tenant. Guarantor further waives, to the fullest extent permitted by applicable law, (a) any defenses that could arise with respect to an amendment or modification of the Guaranteed Obligations by operation of law, action of any court or the amendment of any of the Ground Lease, (b) any defense that HPHA has waived any Guaranteed Obligation by failing to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy and (c) any other event or circumstance that may constitute a defense of Guarantor to payment of the Guaranteed Obligations.

8. **Joint and Several Liability.** If more than one person executes this Guaranty, the obligations of those persons under this Guaranty and any Other Guarantor shall be joint and several. HPHA, in its sole and absolute discretion, may (a) bring suit against Guarantor, or any one or more of the persons constituting Guarantor, and any Other Guarantor, jointly and severally, or against any one or more of them; (b) compromise or settle with any one or more of the persons constituting Guarantor or any Other Guarantor for such consideration as HPHA may deem proper; (c) release one or more of the persons constituting Guarantor, or any Other Guarantor, from liability; and/or (d) otherwise deal with Guarantor and any Other Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of HPHA to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty. Nothing contained in this paragraph shall in any way affect or impair the rights or obligations of Guarantor with respect to any Other Guarantor.

9. **[Reserved]**

10. **[Reserved]**

11. **Preference.** If any payment by the Tenant is held to constitute a preference under any applicable bankruptcy, insolvency, or similar laws, or if for any other reason HPHA is required to refund any sums to Guarantor, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of HPHA and Guarantor that Guarantor's obligations under this Guaranty shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

12. **Reinstatement.** If at any time any payment of any amounts due under this Guaranty is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time.

13. **Guarantor's Financial Condition.**

(a) Guarantor hereby represents and warrants to HPHA that as of the date hereof and throughout the term of this Guaranty, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is and will be solvent and has and will have (i) assets which, fairly valued, exceed its obligations, liabilities and debts (excluding contingent liabilities), and (ii) property and assets sufficient to satisfy and repay its obligations and liabilities. Guarantor hereby covenants and agrees that during the term of this Guaranty, except for the payment of employee salaries and benefits, distributions and dividends in the ordinary course of business, it shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, which, when taken in the aggregate are on terms materially less favorable than would be obtained in an arms-length transaction for fair consideration.

(b) Guarantor hereby represents and warrants to HPHA that all financial statements and other financial data previously delivered to HPHA in connection with this Guaranty relating to the Guarantor are true, correct and complete in all material respects. Such financial statements fairly present the financial positions of all Persons who are the subjects thereof as of the respective dates thereof. Guarantor further represents and warrants to HPHA that, except as previously disclosed to HPHA in writing, no material adverse change has occurred as of the date hereof in such financial position, or in the business, operations, assets, management, ownership or condition (financial or otherwise) of Guarantor, since the respective dates of such financial statements and financial data. Except as otherwise previously disclosed to HPHA in writing, Guarantor has no knowledge of any material contractual obligations of Guarantor which might have a material adverse effect upon the ability of Guarantor to perform Guarantor's obligations under this Guaranty.

(c) Guarantor shall furnish or cause to be furnished to HPHA: as soon as available and in any event within one hundred eighty (180) days after the end of each fiscal year of Guarantor, copies of the following financial statements of Guarantor for such fiscal year, prepared and audited by an independent certified public accountant acceptable to HPHA in accordance with generally accepted accounting principles: (A) a balance sheet as of the end of such fiscal year (including supporting schedules), and (B) a statement of income and capital accounts for such fiscal year. Notwithstanding the foregoing, the financial statements of any individual Guarantor, if any, are not required to be audited by an independent certified public accountant.

(d) Guarantor shall from time to time, upon written request by HPHA, deliver to HPHA Lender such other financial statements as HPHA may reasonably require.

14. **Marital and Residency Status.** N/A

15. **Financial Covenants.** N/A

16. **Term of Guaranty.** Subject to the provisions of Section 10 (Preference) and Section 11 (Reinstatement), this Guaranty shall automatically terminate on the earlier to occur of (a) the Completion Date or (b) date the Guarantor provides a certification to the HPHA that Total Construction Costs exceed the Guaranty Limit, and HPHA has confirmed the basis for such certification (such confirmation not to be unreasonably conditioned, withheld or delayed) or (c) termination of the Ground Lease.

17. **Determinations by HPHA.** Except to the extent expressly set forth in this Guaranty to the contrary, in any instance where the consent or approval of HPHA may be given or is required, or where any determination, judgment or decision is to be rendered by HPHA under this Guaranty, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by HPHA, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

18. **Governing Law.** This Guaranty shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

19. **Consent to Jurisdiction and Venue.** Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in the Property Jurisdiction. The state courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty. Guarantor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit HPHA's right to bring any suit, action or proceeding relating to matters arising under this Guaranty against Guarantor or any of Guarantor's assets in any court of any other jurisdiction.

20. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor and its heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, and shall inure to the benefit of the HPHA and its respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities. Guarantor acknowledges and agrees that any HPHA, at its option, may assign its respective rights and interests under this Guaranty and the Ground Lease in whole or in part and upon such assignment all the terms and provisions of this Guaranty or the Ground Lease shall inure to the benefit of such assignee to the extent so assigned. Guarantor may not assign or delegate its rights, interests or obligations under this Guaranty without first obtaining HPHA's prior written consent.

21. **Severability.** The invalidity, illegality or unenforceability of any provision of this Guaranty shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

22. **Expenses.** Guarantor shall pay to HPHA, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys' fees (including reasonable time charges of attorneys who may be employees of HPHA), which HPHA may incur in connection with (a) the exercise or enforcement of any of its rights hereunder, (b) the failure by Guarantor to perform or observe any of the provisions hereof, or (c) the breach by Guarantor of any representation or warranty of Guarantor set forth herein. Guarantor shall also pay to HPHA any such expenses, interest on such expenses computed at the long term applicable federal rate of interest.

23. **Remedies Cumulative.** In the event of Guarantor's default under this Guaranty, HPHA may exercise all or any one or more of its rights and remedies available under this Guaranty, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent HPHA from exercising any other right or remedy available to HPHA. HPHA may exercise any such remedies from time to time as often as may be deemed necessary by HPHA.

24. **No Agency or Partnership.** Nothing contained in this Guaranty shall constitute HPHA as a joint venturer, partner or agent of Guarantor, or render HPHA liable for any debts, obligations, acts, omissions, representations or contracts of Guarantor.

25. **Entire Agreement; Amendment and Waiver.** This Guaranty contains the complete and entire understanding of the parties with respect to the matters covered herein. Guarantor acknowledges that Guarantor has received a copy of the Ground Lease. This Guaranty may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Guaranty shall be considered as a general waiver.

26. **Further Assurances.** Guarantor shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that HPHA may reasonably request, in order to protect any right or interest granted by this Guaranty or to enable HPHA to exercise and enforce its rights and remedies under this Guaranty.

27. **Notices; Change of Guarantor's Address.** All notices, requests, demands, consents, and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given if mailed, certified first class mail, postage prepaid, return receipt requested, or by Federal Express or other receipted courier service, or hand delivered, to the party to whom the same is so given or made, at the address of such party as set forth below, which address may be changed by notice to the other parties hereto duly given pursuant hereto. Notice by overnight courier service or hand delivery shall be deemed to have been given

and received upon delivery. Notice by first class certified or registered mail shall be deemed to have been given and received two (2) business days after being sent. A party may change its address by giving written notice to the other party as specified herein.

**If to Guarantor:**

Highridge Costa Development Company, LLC  
330 W. Victoria Street  
Gardena, California 90248  
Attn: Mohannad H. Mohanna

With a copy to:

Settle Meyer Law LLLC  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawaii 96813  
Attn: Scott W. Settle, Esq.

**If to HPHA:**

Hawaii Public Housing Authority  
1002 N. School St.  
P.O. Box 17907  
Honolulu, Hawai'i 96817  
Attn: Executive Director

With a copy to:

Department of the Attorney  
General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attn: Deputy Attorney General

28. **Counterparts.** To the extent Guarantor consists of more than one party, this Guaranty may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

29. **Captions.** The captions of the sections of this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

30. **[Reserved]**

31. **[Reserved]**

32. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF GUARANTOR AND HPHA (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GUARANTY OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

33. **Time of the Essence.** Time is of the essence with respect to this Guaranty.

34. **Limitation on Recourse.** All obligations of Guarantor under this Guaranty shall be recourse obligations of such Guarantor only, payable solely and only from the assets of the Guarantor. No member, manager, shareholder, owner, trust, director, officer, agent, employee, attorney or consultant of Guarantor, including any person executing this Guaranty on behalf of

Guarantor, shall be liable personally under this Guaranty.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Performance and Completion Guaranty or caused this Performance and Completion Guaranty to be duly executed and delivered by its authorized representative as of the date first set forth above.

**GUARANTOR:**

**HIGHRIDGE COSTA DEVELOPMENT  
COMPANY, LLC**, a Delaware limited liability  
company

By: \_\_\_\_\_  
Mohannad H. Mohanna  
Its President