

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 27, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Lease of Lands to Mohouli Senior Phase 3-92 LLLP, Amendment of Lease to Hawaii Island Community Development Corporation and Declaration and Confirmation of Easements under Governor’s Executive Order No. 4224 to County of Hawaii for Elderly and/or Affordable Rental Housing and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001: portion of 184.

CONTROLLING AGENCY :

County of Hawaii, a municipal corporation of the State of Hawaii.

APPLICANT :

County of Hawaii, a municipal corporation of the State of Hawaii.

Mohouli Senior Phase 3-92 LLLP (Mohouli 3), a Hawaii Limited Liability Limited Partnership.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RM-1.5 (Multiple-Family Residential, 1,500sf min/unit)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Governor's Executive Order No. 4224 to County of Hawaii for Elderly and/or Affordable Rental Housing and Related Purposes.

LEASE TERMS & CONDITIONS:

CHARACTER: Elderly housing and/or low-income housing and related services purposes

AREA: 5.392 acres, more or less.

TERM: 72 years, commencing August 1, 2018 and expiring on July 31, 2093.

RENT AMOUNT: \$10.00 per annum.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on May 8, 2009 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

· Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

REMARKS:

At its meeting of February 22, 2008, agenda item D-4, the Board approved the set aside of 15.948 acres to the County of Hawaii (County) for elderly and/or affordable rental housing and related purposes, which resulted in execution of Governor's Executive Order No. 4224 (EO4224) on June 24, 2008.

Since then, the original 15.948 acre parcel has been subdivided into 4 separate parcels identified as parcels 177 (6.376 acres), 184 (6.569 acres), 185 (1.585 acres) & 186 (1.418 acres), known collectively as Mohouli Heights Senior Neighborhood.

At its meeting on December 9, 2016, item D-6, the Board consented to three long-term leases between the County and:

Mohouli Senior Phase 1 LLLP for parcel 177;
Mohouli Senior Phase 2 LLLP for parcel 186; and

Hawaii Island Community Development Corporation for parcels 184 & 185.

As part of the development process, certain easements for access and utilities to the four parcels were designated by the County and were laid out in the Declaration of Easements and Confirmation of Easement RU-1, which were also consented to by the Board at this meeting.

At its meeting on September 22, 2017, item D-4, the Board consented to the Sublease of parcel 185 between Hawaii Island Community Development Corporation (HICDC) and Hawaii Island Adult Care, Inc. to provide adult day care and ancillary services to elderly and disabled individuals, including residents of Mohouli Senior Neighborhood.

The County is now entering the development stage for Phase 3 of the Mohouli Senior Neighborhood Project. In order to obtain pending funds, the County is requesting Board consent to a lease between the County and Mohouli 3 for a 5.392 acre portion of parcel 184 (attached as Exhibit B). Subdivision of parcel 184 has been approved by the County and is currently pending final plat map processing.

Again, as part of the development process easements for water line, sewer line and access have been designated and laid out in the Declaration of Easements and Confirmation of Easements¹ (attached as Exhibit C). These easements are set to run with the land until cancellation of EO4224. Upon cancellation of EO4224, the easements may be granted to the various utilities and entities or extinguished as warranted by the Board at that time. The County is requesting the Board consent to the above referenced Declaration of Easements and Confirmation of Easements.

The existing lease between the County and HICDC will be amended to reflect the reduced lease area of ~2.76 acres (parcel 185 = 1.585 acs. and the remainder of parcel 184 = 1.178 acs.) a draft of which is attached as Exhibit D.

The new lease and the easements are consistent with the limited purpose of EO4224. Attached Exhibits B, C & D are final drafts of the lease, amendment and easements. The only change to these documents will be replacement of the site map with the new plat maps after finalization of subdivision from the County. The documents will be executed upon consent by the Board.

RECOMMENDATION:

That the Board:

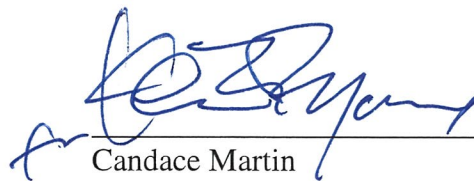
1. Consent to a lease between County of Hawaii and Mohouli Senior Phase 3-92 LLLP, subject to any applicable conditions cited above which are by this reference

¹ Confirmation of Easements refers to the easements that were previously consented to by the Board at its meeting of December 9, 2016, item D-6.

incorporated herein and further subject to the following:

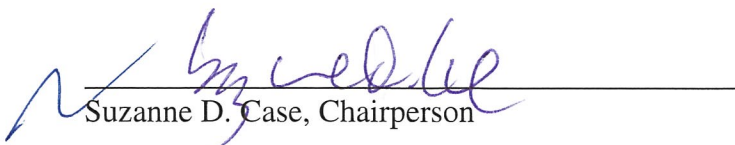
- a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Consent to an amendment of lease between County of Hawaii and Hawaii Island Community Development Corporation, which reduces the area under lease, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:
- a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Consent to the 2018 Decalaration of Easements RU-6, SL-1, SL-2, and Confirmation of Easements A-1, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:
- a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Candace Martin
Land Agent

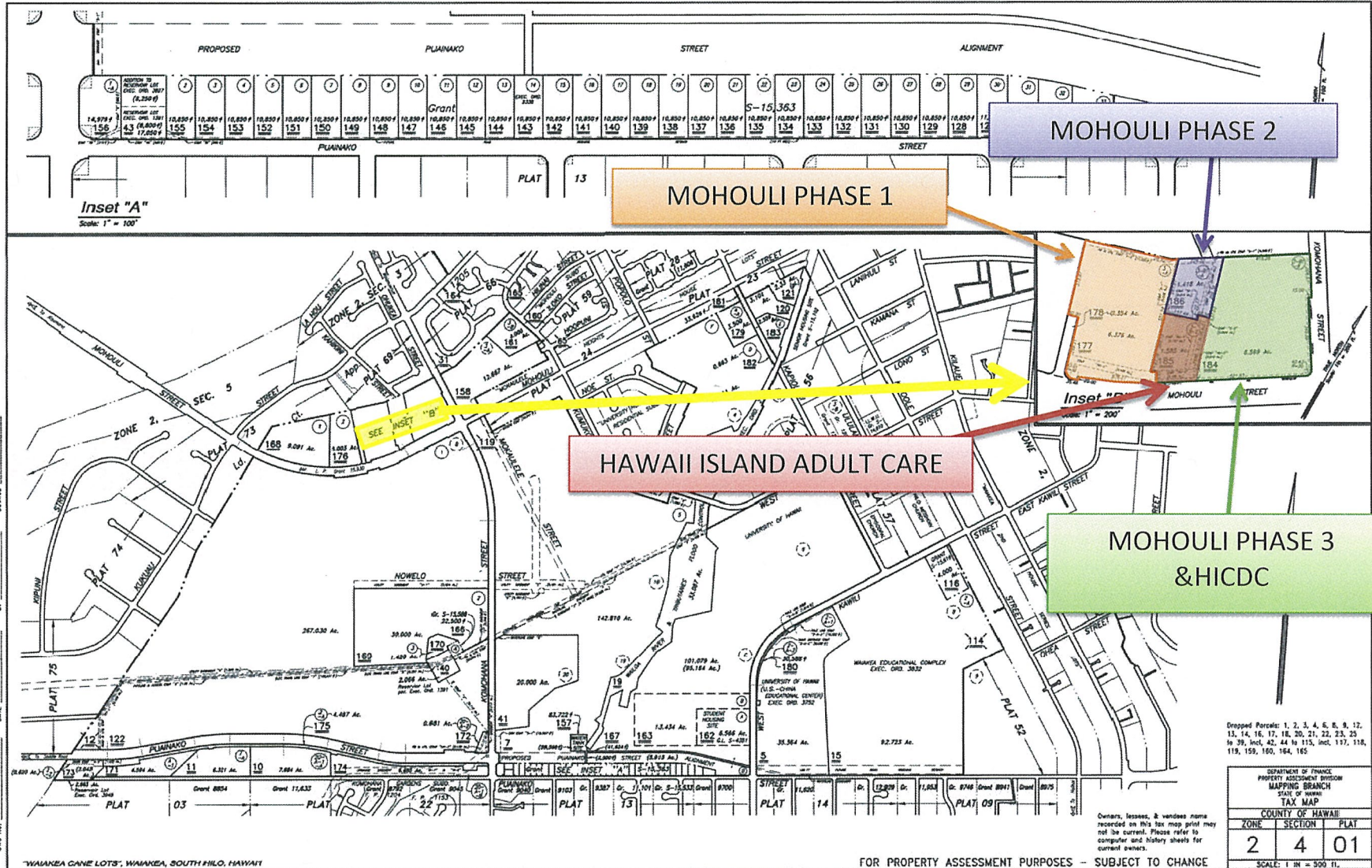
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A1

2 - 4 - 1 3RD. DIST.



Dropped Parcels: 1, 2, 3, 4, 5, 6, 8, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 25 to 39, incl, 42, 44 to 115, incl, 117, 118, 119, 159, 160, 164, 165

Owners, lessors, & vendees name recorded on this tax map print may not be current. Please refer to computer and history sheets for current names.

EXHIBIT A2

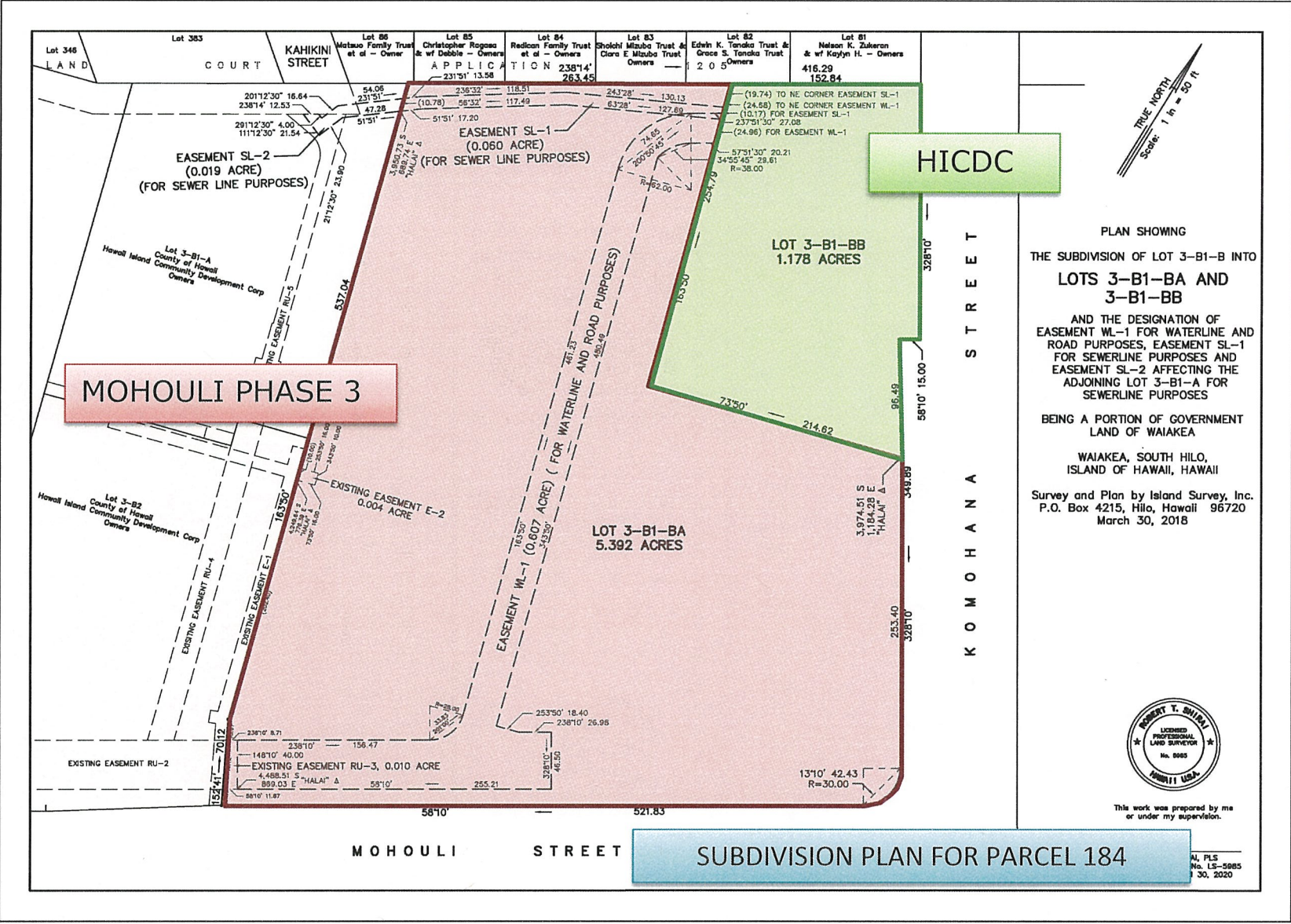


EXHIBIT B

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Nakamoto, Okamoto & Yamamoto (AMO)
187 Kapiolani Street
Hilo, HI 96720

TITLE OF DOCUMENT:
LEASE

PARTIES TO DOCUMENT:

Lessor: COUNTY OF HAWAI'I, a municipal corporation of the State of Hawai'i;

Lessee: MOHOULI SENIOR PHASE 3-92 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720.

Affects: TMK: (3rd) 2-4-001:
Lot 3-B1-BA

This document
contains __pages.

**SUMMARY OF LEASE
MOHOULI HEIGHTS SENIOR NEIGHBORHOOD PHASE 3
HAWAI'I ISLAND COMMUNITY DEVELOPMENT CORPORATION**

TERMS OF THE LEASE

Duration:	Until December 31, 2093.
Rental Charge:	\$10.00 per year
Utility Services:	Must be paid by Lessee
Improvements:	Lessee cannot improve property without prior written consent from the County.
Liens:	Except as expressly permitted herein, neither the property nor the leasehold interest shall become subject to any attachment, lien, charge or encumbrances without prior written consent of Lessor.
Liability Insurance:	Lessee shall, at its own expense, obtain a minimum of \$1,000,000 liability insurance.
Fire Insurance:	Lessee shall, at its own expense, obtain fire insurance for full replacement cost of improvements.
Maintenance:	The Lessee shall, at its own expense, perform all necessary maintenance of the Demised Premises.
Condition of Demised Premises:	The Lessee has examined and knows the condition of the Demised Premises and the Lessor is not responsible for the present or future condition of the Demised Premises.
Notice:	Where Lessor's approvals are needed, the Lessee shall contact the Housing Administrator.

Use: Lessee shall use the Demised Premises solely as rental housing for low- and moderate income elderly residents, health care, nutrition programs, or supportive services for elderly residents including residents of rental units on the Demised Premises and related uses.

Non-Profit Status: Lessee's general partner or general partner's parent company member with management authority shall maintain status as a tax-exempt, non-profit organization as certified by the IRS.

Investor Limited Partner: Lessee's limited partner, which is Hawaii Community Builders, a Hawaii non-profit corporation.

Partnership Agreement: Lessee's Agreement of Limited Partnership, entered into by and between General Partner, and Limited Partner

General Partner: Lessee's general partner, which is Hawaii Island Community Development Corporation, a Hawaii non-profit corporation.

Compliance Period: The 15 taxable years as defined in IRS Code Section 42.

Note: The lease with detailed terms of the lease is attached. If there is any conflict between this summary and the attached Lease, the terms of the Lease shall govern.

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LEASE

THIS LEASE ("Lease"), made this _____ day of _____, 2018, by and between the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, by its Mayor, whose mailing address is 25 Aupuni Street, Hilo, Hawaii, hereinafter referred to as Lessor, and the MOHOULI SENIOR PHASE 3-92 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720, hereinafter referred to as Lessee;

WITNESSETH:

That the Lessor, for and in consideration of the rent to be paid and of the terms, covenants, and conditions herein contained on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises more particularly described as Mohouli Heights Senior Neighborhood Phase3, State of Hawaii, Lot 3-B1-BA Tax Map Key (3) 2-4-001: _____, and more particularly described in Exhibits "A-1" and "A-2" attached hereto and made a part hereof (the "Demised Premises").

Recital 2. Lessor and Lessee contemplate that in connection with construction of the improvements on the Demised Premises, the Partnership Agreement shall be amended and restated to reflect the following organizational changes to Lessee: (i) the admission of Wells Fargo Affordable Housing Community Development Corporation (along with its successors and/or assigns, the "Investor Limited Partner") as the investor limited partner, (ii) the withdrawal of the Limited Partner as a limited partner, (iii) the admission of a limited liability company

wholly owned by Hawaii Island Community Development Corporation as the new general partner, (iv) the withdrawal of Hawaii Island Community Development Corporation as the general partner, and (v) the admission of Hawaii Fund 2018 I LLC as the state tax credit investor limited partner (the "State Tax Credit Limited Partner").

A. THE LESSOR COVENANTS AND AGREES WITH THE LESSEE:

1. **Definitions.** As used in this Lease, the following terms shall have the following meanings except as the context requires.

a. Compliance Period means the 15 year period described in Section 42, Internal Revenue Code.

b. General Partner means Hawaii Island Community Development Corporation, a Hawaii non-profit corporation, its successors or assigns as general partner of Lessee as contemplated by Recital 2.

c. (Reserved)

d. Partnership Agreement means Lessee's Agreement of Limited Partnership entered into by General Partner and Limited Partner as it may be amended or amended and restated as contemplated by Recital 2.

2. **Quiet Enjoyment.** That the Lessor hereby covenants and agrees with the Lessee that upon the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the Demised Premises for the term hereby demised, without hindrance or interruption

by the Lessor or any other person or persons lawfully claiming by, through and under it, except for the Lessor's right of entry to make repairs, improvement and inspections as set forth herein.

3. **Term.** The term of said Lease shall be from _____, 2018 until December 31, 2093.

4. **Rent.** On the date hereof, the Lessee hereby covenants and agrees to pay the sum of Ten Dollars (\$10.00) per year for the term of this Lease.

B. THE LESSOR COVENANTS AND AGREES WITH THE LESSOR:

1. **Utility Services.** That the Lessee shall pay when due all utility charges, duties and rates of every description, including water, sewer, gas, electricity, refuse collection or any other charges, as to which the Demised Premises, or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof may, during said term, become liable, whether assessed to or payable by the Lessor or Lessee.

2. **Covenant Against Discrimination.** That, except as may be provided in this Lease or by law, the use and enjoyment of the Demised Premises shall not be in support of any policy which discriminates against anyone based upon race, color, religion, sex, disability, national origin, or familial status.

3. **Sanitation, etc.** That the Lessee shall keep the Demised Premises in a strictly safe, clean, sanitary and orderly condition, in compliance with all applicable standards of the county, state and federal governments.

4. **Waste and Unlawful, Improper or Offensive Use of Demised Premises.** That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or

unlawful, improper or offensive use of the Demised Premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said Demised Premises, except with prior written approval of the Lessor and upon such conditions as the Lessor may impose, unless otherwise provided herein.

5. **Compliance With Laws, etc.** That the Lessee shall comply with all of the requirements of all county, state and federal authorities and observe all county ordinances and state and federal statutes, pertaining to the Demised Premises, and pertaining to the Lessee's activities, now in force or which may hereinafter be in force, and comply with all applicable licensing requirements of the state and federal governments, and with all applicable accreditation and other standards of quality generally acceptable in the field of Lessee's activities.

6. **Improvements.** That the Lessee shall not, at any time during said term, construct, place or install on the Demised Premises, any building, structure or improvement of any kind and description whatsoever, except with prior written approval of the Lessor and upon such conditions as the Lessor may impose, unless otherwise provided herein. Lessor and Lessee recognize that Lessee will be constructing buildings and related improvements for an apartment complex on the Demised Premises and that Lessee will be submitting the construction plans and specifications for review by Lessor as the fee owner of the Demised Premises. Lessee shall obtain separately any regulatory approvals or permits required for compliance with applicable federal, state or county laws or regulations, including those from County of Hawaii agencies. Lessor shall cooperate in timely review of such plans and specifications. Lessee shall supply all

information and documents as Lessor may require to perform its review. Lessor's consent shall not be unreasonably withheld.

7. Liens.

a. That the Lessee will keep and maintain the Demised Premises free and clear of all mechanic's and materialmen's liens and, in the event any lien is filed against the said premises or any improvements thereon, will indemnify and save harmless Lessor from all loss, cost and expense with respect thereto and will, prior to the construction of any improvements on the Demised Premises, deposit with Lessor a certificate or other evidence satisfactory to Lessor that the contractor constructing such improvements has obtained a bond with a surety approved by Lessor, guaranteeing the construction of the improvements free and clear of all mechanic's and materialmen's liens.

b. That the Lessee will not commit or suffer any act or neglect whereby the Demised Premises or any improvements thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge, or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

8. Assignments, etc. Except as permitted under Section B.9 below, the Lessee shall not transfer, assign or sublease the Demised Premises or any portion thereof, nor permit any other person to occupy or use the Demised Premises or any portion thereof except in furtherance of the uses expressly permitted in paragraph B. 20 herein and shall not transfer or assign or sublease this Lease or any interest therein, either voluntarily or by operation of law without

Lessor's, each of Lessee's Partners' and each Leasehold Mortgagee's prior written consent, and any transfer or assignment so made shall be null and void without such consent. Lessor declares that it enters into this Lease on reliance on the specific identity of the Lessee. Lessee may request consent of Lessor to an assignment of this Lease to a partnership in which Lessee or its wholly owned subsidiary is the General Partner with management control of said entity.

Provided, that this Paragraph 8 shall not apply to Lessee's issuance of space leases covering portions of the Demised Premises in the ordinary course of business and in furtherance of the permitted use under this Lease. Notwithstanding the foregoing, Lessor's consent shall not be required for (i) transfers of any future Investor Limited Partners' or State Tax Credit Limited Partner's interest in the Lessee and (ii) the removal and replacement of the General Partner pursuant to the terms of the Partnership Agreement.

9. **Mortgage.** Lessee may collaterally assign or transfer, mortgage and/or otherwise encumber by one or more mortgages, deeds of trust, easements, liens, security interests, encumbrances and/or restrictions (collectively, "**Permitted Leasehold Mortgages**") its leasehold interest and estate, or any portion thereof, in the Demised Premises and any improvements thereon, subject at all times, however, to all of the covenants and conditions of this Lease and to all of the rights and remedies of Lessor hereunder. In the event of any such Permitted Leasehold Mortgage by Lessee, the same shall be duly recorded according to law and Lessee shall, within thirty (30) days of the recordation of such Permitted Leasehold Mortgage or any assignment thereof, give or cause to be given to Lessor written notice of such Permitted Leasehold Mortgage consisting of (i) the name and address of the holder and/or beneficiary of such Permitted Leasehold Mortgage (an "**Leasehold Mortgagee**"), (ii) the name and address of

any transferee of such Leasehold Mortgagee, and (iii) a copy of such Permitted Leasehold Mortgage (as the case may be); and Lessor shall have no obligation to give written notice to Leasehold Mortgagee under Section C.13 unless and until Lessee or Leasehold Mortgagee complies with the provisions of this sentence. Execution of any such Permitted Leasehold Mortgage or the foreclosure thereof or any sale thereunder either by judicial proceeding or by virtue of any power reserved in said Permitted Leasehold Mortgage or conveyance by Lessee to any Leasehold Mortgagee or the exercising of any right, power or privilege reserved in a Permitted Leasehold Mortgage shall not be held as a violation of any of the terms or conditions of this Lease or as an assumption by Leasehold Mortgagee personally of the obligations of this Lease, except as provided in Section C.11 below. Lessor hereby acknowledges receipt of all notices required pursuant to this Section to encumber Lessee's leasehold interest in the Demised Premises with the mortgage, deed of trust, deed to secure debt or other security instrument in favor of Wells Fargo Bank, National Association, Bank of Hawaii, and Hawaii Housing Finance and Development Corporation (each, an "**Initial Leasehold Mortgagee**"), that such security instrument are each a "Permitted Leasehold Mortgage" under this Lease, and that each Initial Leasehold Mortgagee is a Leasehold Mortgagee and entitled to all of the rights of a Leasehold Mortgagee under this Lease.

. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the Demised Premises or any portion thereof or this Lease or any interest therein without the prior written approval of the Lessor, any future Investor Limited Partner and each Initial Leasehold Mortgagee and other Leasehold Mortgagee previously approved by Lessor (which

shall not be unreasonably withheld) and any such mortgage, hypothecation or pledge without such approval shall be null and void.

On Lessee's request, Lessor will review any mortgages and liens related to the financing on the Demised Premises reflected on a title policy issued on or about the date of Lessee's request with respect to the Demised Premises and as described in an Amendment to the Partnership Agreement and any refinancing thereof, except for the Initial Leasehold Mortgagees, which have been approved by Lessor prior to the date hereof. Lessor will also review the terms of Right of First Refusal and Purchase Option described in an Amendment to the Partnership Agreement. Lessor shall not unreasonably withhold consent.

10. **Indemnity.** That the Lessee will indemnify, defend and hold the Lessor harmless (a) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the Demised Premises or occasioned by any negligence or willful misconduct of Lessee, any act or nuisance made or suffered on the Demised Premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the Demised Premises in a safe condition, and will reimburse the Lessor for all reasonable costs and expenses in connection with the defense of such claims; and (b) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments, including actions against the Lessor brought by the federal government for noncompliance with federal grant requirements caused by the Lessee's failure to comply with the terms of this Lease. Notwithstanding the foregoing, Lessee

shall not be required to indemnify Lessor for any claims, actions, liability, or damage to the extent arising out of the gross negligence or willful misconduct of Lessor.

11. **Liability Insurance.** That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this Lease, with an insurance company or companies acceptable to the Lessor, a policy of comprehensive liability insurance, with minimum amounts of \$1,000,000.00 per occurrence for bodily injury and property damage, insuring against all claims for bodily injury, death and property damage; that said policy or policies shall cover the entire Demised Premises, including all buildings, improvements and grounds. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this Lease as set forth herein or limit the amount of its liability under this Lease. The Lessee shall cause the Lessor to be named as an “additional insured” on the above comprehensive liability insurance policy. The policy shall have a deductible of not more than \$2,500.00 per claim. Notwithstanding the above, Lessee shall maintain liability insurance as required by a Permitted Leasehold Mortgage.

12. **Fire Insurance.**

12.1 Lessee shall be responsible for and insure all improvements and contents within the Demised Premises. Lessor shall not be responsible for the protection or safekeeping of any of Lessee’s improvements or contents.

12.2 Lessee shall name Lessor as additional insured on the policy described in Section 12.1 above and shall insure the structure and common areas on the Demised Premises against loss or damage by fire, including extended coverage, in an amount equal to full replacement cost without deduction or depreciation. Lessee shall provide Lessor with certificates of insurance from time to time to show that said insurance remains in full force and effect. Lessee shall obtain commitments from its insurer that said insurance will not be cancelled or reduced unless Lessor has been given 30 days notice, sent to Lessor by certified or registered mail, postage prepaid.

12.3 Payment of Insurance Proceeds. Every policy of such insurance shall be issued to cover and insure all of the several interests in such buildings, fixtures and improvements of the Lessor and the Lessee and any Leasehold Mortgagee, as their respective interests shall appear, and shall be made payable in case of loss or damage to the Lessee, as trustee of all proceeds of such insurance to be used as described below.

12.4 Use of Insurance Proceeds. In case such buildings, fixtures or other improvements, or any part thereof, shall be destroyed or damaged by fire or other casualty herein required to be insured against, then, and as often as the same shall happen, all proceeds of such insurance, including the interest therein of the Lessor shall be available for and used with all reasonable dispatch by the Lessee in rebuilding, repairing or otherwise reinstating such buildings, fixtures and other improvements in a good and substantial manner according to the original plans and elevations thereof, or according to such modified plan conforming to laws and regulations then in effect as shall be approved in writing by the parties hereto and any Leasehold Mortgagee, and in case such proceeds shall be insufficient in amount to so rebuild, repair or

reinstate such buildings, fixtures and other improvements, the Lessee shall make up the deficiency for such purpose out of the Lessee's own funds; PROVIDED, HOWEVER, that if (A) the restoration of such buildings, fixtures and other improvements to substantially their same size and function as immediately prior to such casualty shall be prevented by any laws or regulations then in effect, or (B) such loss shall occur in the last fifteen (15) years of the term of this Lease, then the Lessee, in lieu of making up the deficiency, shall have the right, at its option, to surrender this Lease if the Lessee complies with all of the following conditions:

- (1) gives written notice of its intention to surrender the Lease to the Lessor within thirty (30) days after determining the insufficiency of such insurance proceeds;
- (2) is not in material default under any provision or condition of this Lease on the date of surrender;
- (3) promptly removes, at its own expense, from the Demised Premises all remains of such buildings, fixtures and other improvement and all debris resulting from such casualty and restores the land to good and orderly condition and even grade;
- (4) pays the real property taxes for the whole fiscal year in which the Lease is surrendered and all rent and other charges hereunder for the whole calendar year in which the Lease is surrendered, and performs all other obligations of the Lessee hereunder up to the date of surrender;
- (5) pays in full the indebtedness secured by any Permitted Leasehold Mortgage on this Lease, using such portion of the insurance proceeds as shall be necessary to pay and

discharge the indebtedness and in case such proceeds are insufficient in amount to satisfy the indebtedness, the Lessee shall make up the deficiency out of Lessee's own funds;

(6) causes to be discharged all liens and encumbrances resulting from any act or omission of Lessee;

(7) causes to be surrendered and terminated all subsisting subleases on any part of the Demised Premises or improvements thereon; and

(8) obtains the prior written approval of any future Investor Limited Partner and each Leasehold Mortgagee for such surrender.

Upon Lessee's satisfaction of conditions (1) to (8) above, Lessee shall be relieved of all further obligations under this Lease and any remaining insurance proceeds (that is, the balance remaining after deducting the amounts used in satisfying condition (5) above) shall be retained by Lessee

12.5 Lessee shall not store or place any material, or conduct any business on the Demised Premises which will cause Lessor's insurance policy to be canceled, or the rates to be increased from the normal rate associated with the uses contemplated under this Lease.

Notwithstanding the above, Lessee shall maintain fire insurance as required by any Permitted Leasehold Mortgage.

13. **Costs of Litigation.** That in case the Lessor shall be made a party to any litigation commenced against the Lessee by a third party (other than condemnation proceedings), the Lessee shall and will pay all reasonable costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all reasonable costs and expenses which may

be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the Demised Premises or in the collection of delinquent rental, taxes and any and all other charges.

14. **Entry by Lessor.** That the Lessee shall permit the Lessor, its agents and invitees, or independent contractors hired by the Lessor, to enter on the Demised Premises or any part thereof, at all reasonable hours, for the purpose of inspecting same, including inspections related to the services provided at the Demised Premises, or making repairs, improvements or alterations necessary or desirable for the safety or the preservation of the Demised Premises if Lessee shall have failed to perform any such repairs, improvements, or alterations within thirty (30) days after written notice from Lessor requesting the same (or such longer period as may be necessary to complete such repairs, improvements, or alterations, provided that Lessee has commenced such repairs, improvements or alterations within such thirty (30) day period and diligently pursues the same to completion), upon the Lessor or its agent giving 24 hours notice of entry, except that in case of emergency, no notice need be given for entry. That the Lessee shall cooperate with the Lessor to the fullest practical extent in permitting the Lessor to make such inspections, alterations, repairs and improvements. That any temporary diminution in or interference with the use of the Demised Premises to the Lessee occasioned by such inspections, alterations, repairs and improvements shall not be a breach of this Lease, and shall not result in any liability on the Lessor. Nothing in this paragraph shall be construed as requiring the Lessor to make any inspections, repairs, improvements or alterations to the Demised Premises.

15. **Contracts for Construction.** That the Lessee shall not make any contract for construction, renovation or material alteration of the improvement on, in, of, or to the Demised

Premises that would cause such improvements to materially deviate from the plans and specifications approved by the Lessor, without first obtaining the written approval of the Lessor which shall not be unreasonably withheld, denied or deferred. The Lessor's approval may be conditioned on the Lessee providing adequate assurance that it has the financial ability to pay for the cost of any such contract, or to otherwise provide sufficient assurances that no mechanic's or materialman's lien may be levied against the Demised Premises.

16. **Condition of Demised Premises.** That the Lessee has examined and knows the condition of the Demised Premises, that the Demised Premises are leased as they now are, that the Lessor expressly disclaims any warranty of fitness for any particular purpose, and that the Lessor shall not be responsible for the present or future condition thereof. The Lessor shall not be required to perform any repairs, alterations or improvements whatsoever during the term of this Lease.

17. **Notice.** That in the event of any material change in the condition of the Demised Premises, whether through the acts or omissions of the Lessee or otherwise, or any defect discovered in the Demised Premises, the Lessee shall immediately notify the Housing Administrator, County of Hawaii, of the change in condition of the Demised Premises or the defect. "Material change" includes, but is not limited to, any change which may create a risk of harm to users or occupants of the Demised Premises, or any change which exposes the Demised Premises to rapid deterioration in excess of normal weathering. Nothing in this paragraph shall be construed to imply a duty by the Lessor to remedy or repair any such changes.

The Housing Administrator, County of Hawai'i, shall be the agent of the Lessor for all provisions of this Lease where the Lessee is required to give notice or obtain approvals from the Lessor.

Lessor shall give Leasehold Mortgagee notice in writing of any defaults by Lessee under this Lease, and Leasehold Mortgagee shall have sixty (60) days after receipt of such written notice from Lessor to cure such default which is reasonably susceptible of cure. Further, as to any non-monetary default, Leasehold Mortgagee shall have a reasonable time after the expiration of said sixty (60) days if it shall have commenced foreclosure or other appropriate proceeding in the nature thereof within said sixty (60) day period and is diligently prosecuting the same, within which to endeavor to cure such default.

18. **Maintenance.** That the Lessee shall keep the Demised Premises in as good condition and repair as when Lessee's improvements were completed (wear and tear resulting from the reasonable use of the same excepted). The Lessee shall, at its own expense, perform all necessary maintenance of the Demised Premises. The Lessee shall promptly repair and correct, at its own expense, any condition or defect in the Demised Premises which creates a risk of harm to persons or property, or which exposes the Demised Premises to rapid deterioration in excess of normal weathering.

19. **Consent Required for Repairs and Renovations.** That prior to commencing any material repairs or renovations that would cause the improvements on the Demised Premises to materially deviate from the plans and specifications approved by the Lessor, the Lessee shall notify the Lessor and secure the Lessor's written consent, which shall not be unreasonably withheld. The Lessor may require the Lessee to produce plans showing the work to be done.

The Lessor may inspect any repairs and renovations and require that it be done in conformance with good and accepted construction practice and in compliance with applicable laws, codes and regulations.

20. Use.

20.1 That the Lessee shall use the Demised Premises solely as a rental housing facility for low and moderate income elderly housing and related uses in accordance with federal, state or county laws or such other elderly housing which is a “qualified low-income housing project”, health care, nutrition programs, or supportive services for elderly residents including residents of rental units on the Demised Premises.

20.2 Hazardous Materials. Lessee shall not store or bring to the Demised Premises “hazardous materials”.

a. “Hazardous materials” means any substances defined as or included in the definitions for “hazardous substances”, “hazardous wastes”, “extremely hazardous wastes”, “hazardous materials”, or “toxic substances” under the federal and state laws and regulations (“Hazardous Materials Laws”) including the: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, any similar Hawaii laws and regulations applicable to the Demised Premises or any portion thereof. For these purposes, hazardous materials shall not include cleaning materials, in acceptable quantities, which are suitable for

residential use and which are brought to the Demised Premises for cleaning the improvements thereon.

20.3 Lessee shall promptly remove any and all hazardous materials from the Demised Premises whether or not placed on the Demised Premises by Lessee. Lessee shall promptly report in writing to Lessor any hazardous materials found on the Demised Premises and details relating thereto and information on notification of governmental authorities, testing, and remediation plans.

20.4 If, at any time, Lessee places "hazardous materials" on the Demised Premises, Lessee shall remove the same in accordance with all hazardous materials laws and shall provide Lessor with an environmental analysis report by a competent consultant showing that Lessee has removed or taken remedial measures to adequately contain, encapsulate or treat, hazardous materials that cannot be removed. If Lessee disputes that it placed such hazardous materials on the Demised Premises, Lessor may have an investigation conducted and an environmental analysis report prepared to determine if Lessee was responsible and what remedial measures are necessary to contain, encapsulate or treat, such hazardous materials. If Lessee caused such hazardous materials to be placed on the Demised Premises, Lessor shall be entitled to be reimbursed for the cost of such investigation and report and Lessee shall indemnify and hold harmless Lessor from any and all costs, expenses, damages of any kind whatsoever by reason of placing such hazardous materials on the Demised Premises, including the cost of removal, encapsulation or other remediation and reasonable attorneys fees incurred.

21. **Low-Moderate Benefit.** That the Lessee shall ensure that 100 percent of the housing units at the Demised Premises be leased to persons or families of low and moderate

income as defined by incomes up to 140% of the Area Median Income as determined by the U.S. Department of Housing and Urban Development. To comply with this requirement, Lessee shall ensure that 100 percent of the total number of bed-days provided at the Demised Premises are provided to persons or families of low and moderate income.

22. **Records.** For all occupants of residential units, the Lessee shall establish and maintain records of intake, discharge, services and other documentation necessary to show compliance with this section, including but not limited to the financial status of occupants served, and shall maintain and preserve all required documents related to each and every residential occupant for a period not less than 5 years following the end of that occupant's term. All records referred to in this paragraph shall be available for inspection by the Lessor and its agents on reasonable notice, provided that the Lessee and Lessor shall agree on measures necessary to protect the privacy and individual identity of residential occupants receiving services from Lessee.

23. **Non-Profit Status.** That the general partner of Lessee, or the owner of the general partner of Lessee, with management control of Lessee ("Managing Non-Profit Entity") has and shall maintain its status as a tax-exempt, non-profit corporation as determined by the Internal Revenue Service. The Lessor may require the Lessee to provide evidence of such determination.

That the Managing Non-Profit Entity has, and shall continue to have during the Lease term, a governing board whose board members serve without compensation.

That the Lessee has, and shall continue to have during the Lease term, the Partnership Agreement with suitable amendments, which describes the manner in which business is conducted, including management, audit and fiscal policies and procedures, and policies on nepotism.

Provided, however, that the requirements of this Section shall not be effective or required in the event that the Lessee hereunder is a Leasehold Mortgagee or its designee that acquires Lessee's estate in the Demised Premises and improvements thereon pursuant to foreclosure proceedings, whether by judicial proceedings or power of sale, or by deed- or assignment-in-lieu of foreclosure or other appropriate proceedings in the nature thereof.

24. **Personal Property.** That Lessor is not responsible for any equipment, tools, kitchen appliances, furniture, bedding, utensils and all other personal property of any nature necessary for the uses described in paragraph B. 20 above.

25. **Services.** That the Lessee shall, at its own expense, provide all necessary staff (through a third-party service provider) for the provision of the services described in paragraph B. 20 above.

26. **Surrender.** That the Lessee shall, and will, at the expiration or sooner termination of this Lease, peaceably and quietly surrender and deliver possession of the Demised Premises to the Lessor, together with all buildings and improvements of whatever name or nature, now on or hereafter erected or placed upon the same, in good order and condition, reasonable wear and tear excepted, and that Lessee shall remove, at no expense to the Lessor, all of the Lessee's personal property at the termination of this Lease.

27. **Non-Waiver.** That the failure of the Lessor to insist on the strict performance of the terms, agreements, covenants and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the Lessor's right thereafter to enforce any such term, agreement or condition, but the same shall continue in full force and effect.

28. **Holdover.** That if Lessee shall hold over, after expiration of the term hereby created, with consent of the Lessor, it shall be deemed a renewal of this Lease and of all terms, covenants, conditions and agreements herein contained, for the period of thirty days.

29. **Abandonment.** That if the Lessee abandons the Demised Premises, its right to possession shall cease and this Lease shall terminate, without prejudice to any other rights of the Lessor. "Abandonment" shall include, but not be limited to, Lessee's failure to use the Demised Premises for the purposes and uses listed in Paragraph B. 20 herein.

30. **Subdivision of Demised Premises.** Lessee shall obtain the prior consent of Lessor, any Investor Limited Partner and each Leasehold Mortgagee before applying for subdivision of the Demised Premises. Such subdivision shall be in order to further the purposes of this Lease. Lessor shall not be responsible for any of the costs of processing the subdivision or for complying with conditions thereto.

C. IT IS HEREBY UNDERSTOOD AND AGREED BY THE PARTIES:

1. **Destruction, etc.** That if, during the term of this Lease, the Demised Premises shall be substantially destroyed or become untenable by reason of fire, the elements or any other cause, then Paragraph B. 12.4 shall apply.

2. **Condemnation.** That in the event that all of the Demised Premises is taken for public use, under the right of eminent domain, the Lessee shall be entitled to recover from the condemning authority the value of its interest in the Lease and the improvements on the Demised Premises. Lessee shall have the option to terminate the Lease with the consent of each Leasehold Mortgagee, the State Tax Credit Limited Partner, and the Investor Limited Partner or Lessor may exercise an option to terminate the Lease, and the Lessee and Lessor shall be released from further obligation hereunder and Lessor shall be entitled to the remaining condemnation proceeds. If a portion of the Demised Premises is taken for public use, under the right of eminent domain, and the remaining Demised Premises are suitable for the permitted use under this Lease, Lessee shall be entitled to recover from the condemning authority the value of its interest in the Lease and the value of the improvements on the Demised Premises which were taken and in that event, the Lease shall be deemed amended to apply to the portion of the Demised Premises that was not taken. If a portion of the Demised Premises is taken for public use, under the right of eminent domain, and the remaining Demised Premises are not suitable for the permitted use under this Lease (as reasonably agreed to by Lessee, Lessor, the State Tax Credit Limited Partner, and the Investor Limited Partner), Lessee shall be entitled to recover from the condemning authority the value of its interest in the Lease and the improvements on the Demised Premises which were taken and in that event, the Lessee shall have the option to terminate the Lease with the consent of all Leasehold Mortgagees, the State Tax Credit Limited Partner, and the Investor Limited Partner, or Lessor may exercise an option to terminate the Lease, and Lessee and Lessor shall be released from further obligation hereunder.

3. **Breach.** Subject to the rights of each Leasehold Mortgagee under Section B.17 above, that if the Lessee shall become bankrupt or shall abandon the Demised Premises, or if this Lease and the Demised Premises shall be attached or otherwise taken by operation of law, or if any assignment shall be made of the Lessee's property for the benefit of creditors, or if the Lessee shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed after notice from Lessor and a cure period of at least thirty (30) days plus such longer time as may be necessary to complete such cure, so long as Lessee has commenced the cure within such thirty (30) day period and diligently pursues such cure to completion, the Lessor may at once re-enter the Demised Premises or any part thereof, and upon or without such entry, terminate this Lease without prejudice to any other remedy or right of action.

4. **Headings.** That the marginal headings throughout this Lease are for the convenience of the Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

5. **Complete Agreement.** This Lease contains the full and complete agreement of the parties and supersedes any prior agreement between the parties, and there are no covenants, terms, agreements or conditions or understandings, either oral or written, between the parties other than herein set forth.

6. **Lessee Not an Agent of Lessor.** Nothing herein contained is intended or should be construed in any way establishing the relationship of co-partners between Lessee and Lessor, or as constituting the Lessee as the agent, employee or representative of the Lessor for any purpose whatsoever.

7. **Notice of Breach of Lease.** In addition to the notice required to be delivered to each Leasehold Mortgage under Section B.17 above, during the Compliance Period or such longer time as any Investor Limited Partner or State Tax Credit Limited Partner has a partnership interest in the Lessee, Lessor shall provide a copy of any notice sent to the Lessee to any Investor Limited Partner at an address to be provided by such Investor Limited Partner(s) and to State Tax Credit Limited Partner. At such times as the Investor Limited Partner is Wells Fargo Affordable Housing Community Development Corporation, as contemplated by Recital 2 above, the notice address for the Investor Limited Partner shall be as follows: Wells Fargo Affordable Housing Community Development Corporation, MAC D1053-170, 301 South College Street, 17th Floor, Charlotte, NC 28288, Attention: Director of Tax Credit Asset Management. The State Tax Credit Limited Partner may hereafter provide a notice address to Lessor.

8. **Cure Right.** During the Compliance Period or such longer time as the Investor Limited Partner or State Tax Credit Limited Partner holds a partnership interest in the Lessee, Lessor shall allow Lessee or its partners, and each Leasehold Mortgagee, a reasonable opportunity to cure a breach of the Lease before terminating the Lease, which Lessor shall not do while any cure period given Lessee or its partners or any Leasehold Mortgagee is in effect or any of Lessee or its partners or any Leasehold Mortgagee have commenced and are diligently prosecuting any cure to completion in accordance with the terms of this Lease. Any action by a Leasehold Mortgagee to cure a breach of this Lease shall be governed by the terms of Section B.17 above. Action to cure a breach by Lessee or its partners shall be completed within 30 days of a notice of breach if the breach can be cured within that period in accordance with the terms of Section C.3 above. If the nature of the cure does not allow completion within said period, Lessee

or its partners, or Leasehold Mortgagee shall have taken all action that it can within said period to begin the cure, shall notify Lessor of the circumstances, and Lessee or its partners, or Leasehold Mortgagee shall diligently proceed to complete the cure in an expeditious manner. Provided that, said right to cure does not limit the rights of Lessor to obtain damages or injunctive relief after the expiration of the cure period. Lessor shall accept such performance by Lessee's partners or any Leasehold Mortgagee with the same force and effect as if furnished by Lessee, provided, however, that Leasehold Mortgagee shall not thereby or hereby be subrogated to the rights of Lessor. The Investor Limited Partner and State Tax Credit Limited Partner shall have the right, but not the obligation, to cure any default of the Lessee hereunder within the cure periods set forth above; provided, however, that if the Investor Limited Partner or State Tax Credit Limited Partner elects to remove and replace the general partner of Lessee to effect such cure, the cure period shall be extended for such time as is reasonably necessary to complete the same. Additionally, Lessee may delegate irrevocably to Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder, including, but not limited to the right of Leasehold Mortgagee to participate (in conjunction with or to the exclusion of Lessee) in any proceeding, arbitration or settlement involving condemnation or eminent domain affecting Lessee's leasehold interest in the Demised Premises, but no such delegation shall be binding upon Lessor unless and until either Lessee or Leasehold Mortgagee in question shall give to Lessor a true copy of a written instrument effecting such delegation, in form required for recording. Any provision of this Lease that gives any Leasehold Mortgagee the privilege of exercising a particular right of Lessee hereunder on condition that Lessee shall have failed to exercise such right shall not be deemed to diminish any privilege that such Leasehold Mortgagee

may have, by virtue of a delegation of authority from Lessee, to exercise such right without regard to whether or not Lessee shall have failed to exercise such right.

9. **New Lease.** After an uncured default or breach of the Lease by Lessee and subject to applicable notice and cure periods in favor of Lessee, Investor Limited Partner and each Leasehold Mortgagee as set forth above, if Lessor exercises its right to terminate this Lease, then upon the request of any Leasehold Mortgagee within 60 days of the date of termination of the Lease, Lessor and such Leasehold Mortgagee shall enter into a new lease of the Demised Premises upon substantially the same terms and rental rate contained in this Lease, and, subject to the terms of Section C.11 below, such Leasehold Mortgagee shall pay Lessor all sums which would be due Lessor under this Lease at the time of execution of any such new lease of the Demised Premises, and otherwise remedy, to the extent such defaults are susceptible to cure, any and all other remaining defaults of Lessee under this Lease.

10. **Leasehold Mortgagee as Assignee of Lease.** No Leasehold Mortgagee under any Permitted Leasehold Mortgage shall be liable to Lessor as an assignee of this Lease unless and until such Leasehold Mortgagee acquires all rights of Lessee under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Permitted Leasehold Mortgage.

Notwithstanding any other provision of the Lease to the contrary, any liabilities of Lessee with respect to environmental conditions or hazardous materials matters caused by Lessee or arising out of conditions existing prior to the acquisition of the Demised Premises and improvements thereon by any Leasehold Mortgagee or any affiliate or assignee thereof shall not bind or apply to such Leasehold Mortgagee or such affiliate or assignee thereof; provided, however, that the

initial Lessee at the time of execution of this Lease shall remain liable in all respects to Lessor for all such liabilities in accordance with the terms of Section C.12(c) below. Furthermore, after any outstanding defaults or breaches have been cured to the extent required under this Lease, any Leasehold Mortgagee or other subsequent owner shall only be responsible or liable for defaults or breaches of this Lease arising out of events or conditions first occurring during the period that such Leasehold Mortgagee or subsequent owner acquires title to the Demised Premises.

11. **Rights on Foreclosure.** The Lessor's consent shall not be required for the exercise or enforcement by Leasehold Mortgagee of any of its rights or remedies under any Permitted Leasehold Mortgage, including, without limitation, any foreclosure or similar proceeding or action against the leasehold estate in the Demised Premises. Leasehold Mortgagee or a third party nominee or designee may acquire Lessee's interest in this Lease and the Demised Premises by foreclosure, deed in lieu of foreclosure or other appropriate proceedings in the nature thereof, or as a result of any other action or remedy provided for by any Permitted Leasehold Mortgage or by conveyance from Lessee. However, before any such acquisition is effective, Leasehold Mortgagee shall provide Lessor with written notice of the acquisition. Upon acquisition of the leasehold interest in the Demised Premises by Leasehold Mortgagee or such third party, then:

a. except as may otherwise expressly be provided herein, Leasehold Mortgagee or such third party shall take Lessee's interest in the Demised Premises subject to all of the provisions of this Lease and shall, so long as, and only so long as it shall be the owner and in possession of the leasehold estate, assume the obligations of Lessee under this Lease.

b. Leasehold Mortgagee or such third party may sublet the Demised Premises or such portion thereof or any of the buildings or any portion of any building and/or other improvements upon any portion of the Demised Premises for any period or periods within the Term and/or assign this Lease by sale or otherwise. Any subletter, assignee of Leasehold Mortgagee or such third party or any purchaser of the leasehold estate from Leasehold Mortgagee or such third party and/or their respective successors in interest shall take such leasehold interest subject to all the agreements, conditions, covenants and terms of this Lease on the part of Lessee to be kept, observed and performed, and shall as a condition to such assignment, purchase or other taking, assume and agree to perform all such agreements, conditions, covenants and terms.

c. Unless otherwise agreed to by Lessor, no such foreclosure, deed in lieu of foreclosure, assignment, sale, assumption of obligation, subleasing or subletting of the Demised Premises, foreclosure acts, or the acceptance of rent by Lessor from any such assignee, sublessee, subtenant, or any other person, shall relieve, release or in any manner affect the liability of the initial Lessee under this Lease existing before the foreclosure acts.

12. **Lessee Personal Property.** In the event of any default by Lessee under the Lease or any documents evidencing or securing a Leasehold Mortgagee's loan to Lessee, Lessor will allow Leasehold Mortgagee to enforce its lien and security interest in Lessee's personal property located at the Demised Premises and Lessor will allow Leasehold Mortgagee to assemble and remove all of Lessee's personal property located on the Demised Premises. Lessor hereby waives any Lessor's lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Lessee and now or hereafter located on the Demised

Premises. If so requested by Lessee, Lessor shall execute a waiver of any right, title or interest or right to seize any of Lessee's personal property on the Demised Premises that may be subject to a lien or security interest in favor of Leasehold Mortgagee or a seller of Lessee's personal property or creditor holding a security interest in such personal property.

13. **No Merger.** For as long as any Permitted Leasehold Mortgage is in existence, there shall be no merger of the leasehold estate created by this Lease and the interest of Lessor in the Demised Premises merely because both estates have been acquired or become vested in the same person or entity, unless Leasehold Mortgagee otherwise consents in writing.

14. **Two or More Leasehold Mortgages.** Any Permitted Leasehold Mortgages permitted hereunder may consist of two (2) or more separate loans or other financing arrangements from two (2) or more Leasehold Mortgagees. In the event two (2) or more Leasehold Mortgagees each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of Leasehold Mortgagees, the Leasehold Mortgagee whose Permitted Leasehold Mortgage would have senior priority in the event of a foreclosure shall prevail.

15. **Condemnation, Casualty and Insurance Proceeds.** Lessor and Lessee agree that, in the event of a condemnation or casualty, the award or net proceeds from the condemnation or the proceeds of insurance in connection with a casualty ("**Net Proceeds**") will be disbursed in accordance with the Lease, provided, however, that all Net Proceeds payable to Lessee or to which Lessee is otherwise entitled shall be paid to Leasehold Mortgagee and applied in accordance with the requirements of the Permitted Leasehold Mortgage upon Lessee or such Leasehold Mortgagee providing written notice of such disbursement to Lessor.

16. **Estoppel Certificates.** Lessor and Lessee agree, within fifteen (15) calendar days from the receipt of a written request by Lessee or Leasehold Mortgagee, to execute, acknowledge and deliver to the requesting party a statement in writing certifying: (i) that this Lease is unmodified and in force and effect (other than changes that have been approved in accordance with this Lease), and if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreement, or if this Lease is not in force and effect the certificate shall so state; (ii) identify the terms of this Lease and all documents evidencing and otherwise relating to this Lease; (iii) the date through which rent and all other amounts payable hereunder have been paid under this Lease; (iv) whether there is an existing default by Lessee in the payment of any rent or other sum of money under this Lease; (v) whether there is any other existing default by either party under this Lease with respect to which a notice of default has been served (or any existing condition which would be a default but for the passage of time or the giving of notice), and if there is any such default or condition, specifying the nature and extent thereof; (vi) whether there are any set-offs, defenses or counterclaims against enforcement of the obligations of Lessor hereunder known to it; (vii) if such certificate is requested by any Leasehold Mortgagee, that Lessor consents to the applicable Permitted Leasehold Mortgage; (viii) and such other information as may be reasonably requested by Lessee or Leasehold Mortgagee.

17. **No Encumbrance of Interest or Leasehold Estate.**

a. Lessor represents and warrants that there are no existing mortgages, deeds of trust, easements, liens, security interests, encumbrances and/or restrictions encumbering Lessor's interest in the Demised Premises other than Executive Order No. 4224 whereby

the State set aside the property which is the subject of this Lease to Lessor, along with any applicable rules or restrictions on set-aside public lands, including and not limited to the rules and restrictions found in Hawaii Revised Statutes Section 171-11. Lessor's interest shall not hereafter be subordinated to, or made subject to, any mortgage, deed of trust, easement, lien, security interest, encumbrance and/or restriction except for an encumbrance that expressly provides that it is and shall remain subject and subordinate at all times in lien, operation and otherwise to this Lease and to all renewals, modifications, amendments, consolidations and replacements hereof (including new leases entered into pursuant to Section C.10 and extensions).

b. Lessee covenants and agrees that it will not subordinate its leasehold interest in the Demised Premises to any mortgage, deed of trust, easement, lien, security interest, encumbrance and/or restriction without the prior written consent of each Leasehold Mortgagee and Lessor.

18. **Third Party Beneficiary.** Each Leasehold Mortgagee shall be a third party beneficiary of the rights and benefits granted to Leasehold Mortgagees and Investor Limited Partner under this Lease. Neither the Lessee nor the Lessor shall be deemed to be a third party beneficiary of the rights granted hereunder to a Leasehold Mortgagee and no Leasehold Mortgagee shall have any obligation to the Lessee or the Lessor to account for any decision, action or election it may take or the exercise of its rights hereunder, nor shall any Leasehold Mortgagee have any duty to the Lessee or the Lessor to exercise any right hereunder in any particular manner or order, other than that which such Leasehold Mortgagee, in its sole

discretion (but in any event subject to the terms of this Lease) shall deem appropriate and in its own best interests.

19. Lessee is Owner for Federal Income Tax Purposes. For all purposes, including federal income tax purposes, Lessee shall own all improvements, trade fixtures, and personal property, including furnishings, furniture, equipment or property used or installed by Lessee and shall be entitled to all tax benefits including but not limited to depreciation and tax credits. Lessor shall treat Lessee as the tax owner of the Demised Premises for federal income tax purposes. Lessee shall have the exclusive right to all tax benefits related to the Demised Premises, any and all additions thereto and improvements thereon, substitutions therefor, fixtures therein, and other property relating thereto, including but not limited to the right to deduct, claim, retain and enjoy any and all rental income, appreciation gain, depreciation, amortization and tax credits for federal and state purposes.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

COUNTY OF HAWAII

By: _____

RECOMMEND APPROVAL:

MOHOULI SENIOR PHASE 3-92 LLLP

NEIL S. GYOTOKU
Housing Administrator
Date: _____

By: HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION
Its General Partner

By: _____

Its: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Hawaii
Date: _____

County of Hawai'i Lease to Mohouli Senior Phase 3-92 LLLP
Exhibit List

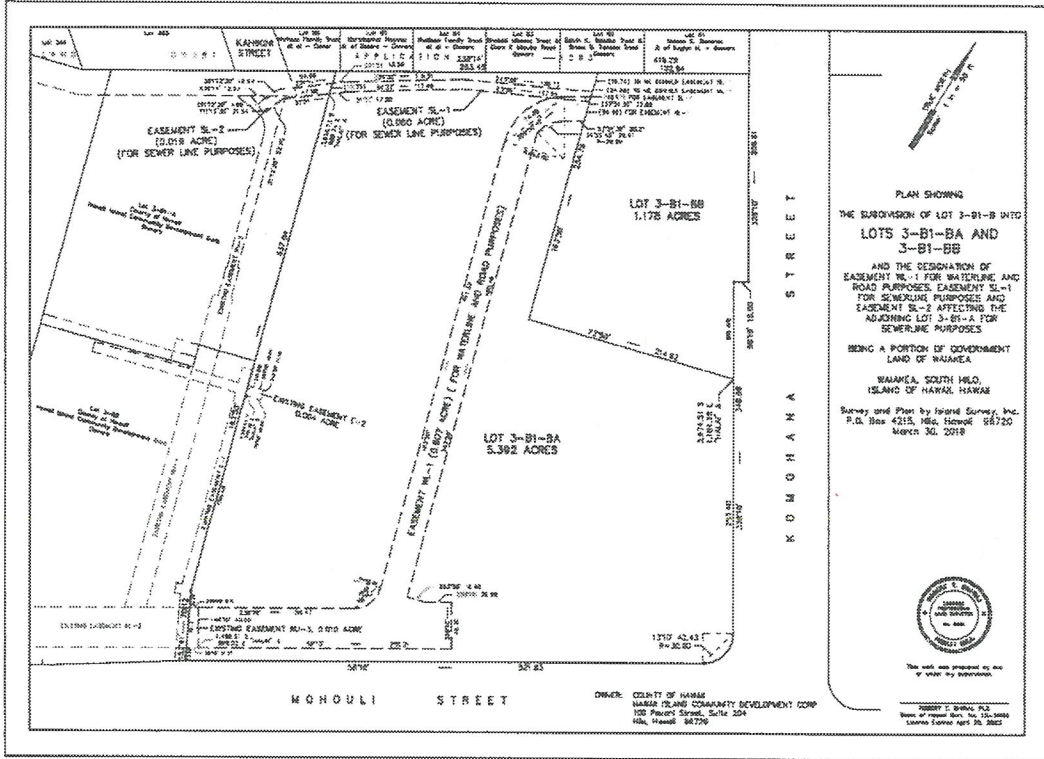
Exhibit A-1 - Metes and bounds description

Exhibit A-2 - Map

EXHIBIT "A-1"

INSERT METES AND BOUNDS DESCRIPTION FOR LOT 3-B1-BA

EXHIBIT "A2"



TO BE REPLACED BY FINAL SUBDIVISION PLAT

EXHIBIT C

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:
Nakamoto, Okamoto & Yamamoto (AMO)
187 Kapiolani Street
Hilo, HI 96720

TITLE OF DOCUMENT:

**2018 DECLARATION OF EASEMENTS
RU-6, SL-1, SL-2, AND
CONFIRMATION OF EASEMENTS
A-1, A-2, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2**

PARTIES TO DOCUMENT:

Declarants: COUNTY OF HAWAI'I, a municipal corporation of the State of Hawai'i;
HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii nonprofit corporation, whose address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720;
MOHOULI SENIOR PHASE 3-92 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720.
MOHOULI SENIOR PHASE 2 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720;
MOHOULI SENIOR PHASE 1 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720;

Affects: TMKS [3] 2-4-001: 177, 184, 185, 186 & _____

This document contains _____ pages.

**2018 DECLARATION OF EASEMENTS
RU-6, SL-1, SL-2, A-2, AND
CONFIRMATION OF EASEMENTS
A-1, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2**

This 2018 Declaration of Easements is made and executed on this ____ day of _____, 2018 (hereinafter the “Declaration”), by the COUNTY OF HAWAI’I, a municipal corporation of the State of Hawai’i, by its Mayor, whose mailing address is 25 Aupuni Street, Hilo, Hawaii 96720 (hereinafter “Lessor” or “Declarant COUNTY”), HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii nonprofit corporation, whose address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720 (hereinafter “HICDC” or “Declarant HICDC”), MOHOULI SENIOR PHASE 3-92 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720 (hereinafter “MOHOULI 3” or “Declarant MOHOULI 3”), MOHOULI SENIOR PHASE 2 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720 (hereinafter “MOHOULI 2” or “Declarant MOHOULI 2”), and MOHOULI SENIOR PHASE 1 LLLP, a Hawaii limited liability limited partnership, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720 (hereinafter “MOHOULI 1” or “Declarant MOHOULI 1”), (collectively hereinafter “Declarants”);

RECITALS

1. By Executive Order 4224 and pursuant to HRS Section 171-11, the Governor of the State of Hawaii set aside and transferred the control and management of that certain property situated in Waiakea, South Hilo, Island, County, and State of Hawaii, referred to as Mohouli Heights Senior Neighborhood Parcel, containing an area of 15.948 acres, State of Hawaii, Tax

Map key (3) 2-4-001: 177 (hereinafter "Project"), to the Declarant COUNTY.

2. HICDC (hereinafter "Lessee HICDC"), was the lessee of the land contained in the Project

under that certain Lease made on June 30, 2009 with Lessor, said Lease recorded as Document No. 2009-117264 in the Bureau of Conveyances of the State of Hawaii, as amended by the First Amendment to Lease dated July 1, 2010 and recorded as Document No. 2010-103928 in said Bureau, as amended by the Second Amendment to Lease dated December 28, 2011 and recorded as Document No. A-43930473 in said Bureau, as amended by the Third Amendment to Lease dated June 6, 2012 and recorded as Document No. A-45610244 in said Bureau, as amended by the Fourth Amendment to Lease dated October 17, 2016 and recorded as Document No. A-61990073 in said Bureau, and as amended by the Fifth Amendment to Lease dated _____, 2018, and recorded as Document No. _____ in said Bureau. As a result of said amendments, HICDC currently leases Lots 3-B2 and 3-B1-BB described below.

3. That in order to allow the orderly development of the leased land, HICDC, with the consent of the COUNTY, subdivided lots from the initial leased land so that those lots could be developed under HICDC, MOHOULI 1, MOHOULI 2 and MOHOULI 3 as follows:

a. That Lessee HICDC, with the consent of the COUNTY, applied for a bulk lot subdivision of Lot 3 to create Lots 3-A and 3-B, as shown on the revised plat map attached to the 2016 Declaration of Easements as Exhibit A. Said subdivision was approved by the Planning Director of the County of Hawaii in Subdivision No. SUB-11-001115 revised on October 9, 2012.

b. That Lessee HICDC, with the consent of the COUNTY, applied for a bulk lot subdivision of Lot 3-B to create Lots 3-B1 and 3-B2, as shown on the plat map attached to the

2016 Declaration of Easements as Exhibit B. Lots 3-B1 and 3-B2 are described in the metes and bounds description attached to the 2016 Declaration of Easements as Exhibits C and D, respectively. Said subdivision was approved by the Planning Director of the County of Hawaii in Subdivision No. SUB-14-001396 on April 21, 2016.

c. That Lessee HICDC, with the consent of the COUNTY, applied for a bulk lot subdivision of Lot 3-B1 to create Lots 3-B1-A and 3-B1-B, as shown on the plat map attached to the 2016 Declaration of Easements as Exhibit E. Said subdivision was approved by the Planning Director of the County of Hawaii in Subdivision No. SUB-16-001625 on August 8, 2016.

d. That Lessee HICDC, with the consent of the COUNTY, applied for a bulk lot subdivision of Lot 3-B1-B to create Lot 3-B1-BA and Lot 3-B1-BB as shown on the plat map attached hereto as Exhibit A. Said subdivision was approved by the Planning Director of the County of Hawaii in Subdivision No. SUB-18-_____ on June ____, 2018.

4. Following the various subdivisions and the various lease amendments, the COUNTY entered into the following leases:

a. MOHOULI 1 is the current lessee of the land covering Lot 3-A under the Lease made on December 28, 2011, recorded as Document No. A-43930474 in said Bureau.

b. MOHOULI 2 is the current lessee of the land covering Lot 3-B1-A under that certain Fourth Amendment to Lease made on October 17, 2016, recorded as Document No. A-61990073 in said Bureau.

c. MOHOULI 3 is the current Lessee of Lot 3-B1-BA under that certain Lease made on _____, 2018, recorded as Document No. _____ in said Bureau.

d. HICDC remains Lessee of Lot 3-B2 and Lot 3-B1-BB.

5. In order to allow orderly development of the leased lots, HICDC, MOHOULI 1 and MOHOULI 2 created and confirmed the easements described in the 2016 Declaration of Easements as A-1, A-2, RU-1, RU-2, RU-3, RU-4, RU-5, E1 and E-2, and D-1. Easements A-2 and D-1 do not apply to Lot 3-B1-BA or to Lot 3-B1-BB. .

6. In order to allow orderly development of Lot 3-B1-BA and Lot 3-B1-BB, the parties wish to create new easements RU-6, SL-1 and SL-2, and to recognize, confirm and provide to Lot 3-B1-BA and Lot 3-B1-BB the same easements provided in the 2016 Declaration of Easements.

7. In conjunction with the development of the Project, Declarants created Easement RU-1 for access and utility purposes by that certain Declaration of Easements (RU-1 Roadway and Utility Purposes) dated December 6, 2011 and recorded as Document No. 2011-210813 in said Bureau, for the benefit of the lands in Lot 3-B.

8. Declarant COUNTY, pursuant to Executive Order 4224 and HRS Section 171-11, joins in this Declaration so that said easements will run with the land, until cancellation of said Executive Order, or until amended or otherwise extinguished as provided in this Declaration. Lessees HICDC and MOHOULI 1, MOHOULI 2 and MOHOULI 3 join in and consent to creation and confirmation of said easements.

9. **Definitions.** As used in this Declaration, the following terms shall mean:

a. "Benefited Land" is the land whose Benefitted Lessee has the right to use an Easement over Burdened Land;

b. "Benefited Lessee" is the lessee of Benefited Land;

c. "Burdened Land" is the land on which an Easement is located;

- d. "Burdened Lessee" is the lessee of Burdened Land;
- e. "Easement" means the appurtenant easement described in this document as the context below requires.
- f. "2016 Declaration of Easements" is the Declaration of Easements and Confirmation of Easements RU-1 (Easements A-1, A-2, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2) dated November 21, 2016, recorded as Document No. A-61990076 in the Bureau of Conveyances in the State of Hawaii.

NOW THEREFORE, Declarants hereby declare:

1. **Sewer, Utility and Access Easements.** Declarants hereby confirm and grant non-exclusive easements for Lot 3-B1-BA and Lot 3-B1-BB for sewer, utilities and access purposes over, across and under the easements as shown below for the Benefited Land as shown below:

EASEMENT	BENEFITED LAND	BURDENED LAND	EXHIBIT
A-1	3-B1-BA and 3-B1-BB	3-B1-A	shown on Exhibit B 2016 Declaration of Easements*
RU-4	3-B1-A	3-B2	shown on 2016 Declaration of Easements
RU-5	3-B1-BA, 3-B1-BB, 3-B2	3-B1-A	shown on 2016 Declaration of Easements
SL-1	3-B1-BB	3-B1-BA	shown on Exhibit B attached hereto
SL-2	3-B1-BA, 3-B1-BB	3-B1-A	shown on Exhibit C attached hereto
RU-6	3-B1-BB	3-B1-BA	shown on Exhibit D attached hereto

*Exhibit E pages 1 of 3 of 2016 Declaration of Easements mislabels area for Easement A-2 as "Existing Easement "A-1." The easements are correctly shown on Exhibit B of the 2016 Declaration of Easements.

2. **Roadway and Utility Easements.** Declarants hereby create and grant non-exclusive easements for roadway and utility purposes (including electrical and waterline) over, across and under the easements as shown below for Lot 3-B1-BA and Lot 3-B1-BB as shown below:

EASEMENT	BENEFITED LAND	BURDENED LAND	EXHIBIT
RU-1	3-B1-A, 3-B1-BA, 3-B1-BB and 3-B2	3-A	shown in Declaration of Easements recorded as 2011-210813
RU-2	3-B1-A, 3-B1-BA and 3-B1-BB	3-B2	shown on 2016 Declaration of Easements
RU-3	3-B1-BB	3-B1-BA	shown on 2016 Declaration of Easements
RU-4	3-B1-A	3-B2	shown on 2016 Declaration of Easements
RU-5	3-B1-BA, 3-B1-BB, 3-B2	3-B1-A	shown on 2016 Declaration of Easements

Declarants further confirm and regrant Easement RU-1 for Lot 3-B1-A, Lot 3-B1-BA, Lot 3-B1-BB and Lot 3-B2 (all of which are part of former Lot 3-B).

3. **Confirmation of Easements.**

a. **Easement A-2**

Declarants hereby acknowledge and confirm the following easements for sewer, utilities, and access purposes, over, across, and under the easements as shown for the

Benefitted land as shown below:

EASEMENT	BENEFITED	BURDENED	EXHIBIT
	LAND	LAND	
A-2	TMK (3) 2-4-01:176	3-A	Exhibit B to 2016 Declaration of Easements

b. **Drainage Easement.** Declarants hereby create and grant non-exclusive easements for drainage purpose over, across and under the easement as shown below for the Benefitted Land as shown below:

EASEMENT	BENEFITED	BURDENED	EXHIBIT
	LAND	LAND	
D-1	3-B2	3-B1-A	shown on 2016 Declaration of Easements

4. **Electrical Easements.** Declarants hereby create and grant non-exclusive easements for electrical purpose over, across and under the easements as shown below for the Benefitted Land as shown below:

EASEMENT	BENEFITED LAND	BURDENED	EXHIBIT
		LAND	
E-1	3-B1-A, 3-B1-BA, 3-B1-BB, and 3-B2	3-B2	shown on 2016 Declaration of Easements
E-2	3-B1-A, 3-B1-BA, and 3-B1-BB, and 3-B2	3-B1-BA	shown on 2016 Declaration of Easements

5. **Declarants' Reserved Rights.** Declarants hereby reserve the right to grant additional non-exclusive easements for sewer, utilities and access purposes over, across and

under Lots 3-B1-BA and 3-B1-BB to connect to Easement A-1, provided that such additional easements do not interfere with any improvements or planned improvements on such lots.

6. **Indemnification Against Claims Arising From Use of Easements.** The Benefited Lessee of the easement shall indemnify the Declarants and the Burdened Lessee against all loss and damage to that Burdened Lessee's property caused by or arising out of that Benefited Lessee's use of the easement or by or out of the acts or omissions of any person under the supervision, custody or control of said Benefited Lessee's agents, employees or contractors, or in the company of said Benefited Lessee. Said Benefited Lessee will indemnify and hold the affected Declarant or Burdened Lessee harmless from and against all claims and demands for loss or damage including, without limitation, property damage, personal injury and wrongful death, and all claims, demands, judgments, liens and causes of action, together with reasonable attorneys' fees, when such loss or damage arises out of or in connection with the negligence or willful misconduct of said Benefited Lessee, Benefited Lessee's agents, employees or independent contractors, or anyone claiming by, through, under or against Benefited Lessee by reason of this Declaration of Easement.

7. The easements granted herein are appurtenant to the respective Benefited Land and may not be transferred or used except with regard to the Benefited Land. The rights relating to said Easements shall pass to the heirs, successors and assigns of the Benefited Lessee as appurtenant to the Benefited Land until the Benefited Lessee surrenders said Easement or until the Easement is extinguished by cancellation of the Executive Order. In the case of extinguishment, the Benefited Lessee and Declarant COUNTY shall sign an appropriate recordable document confirming said extinguishment of Easement and shall deliver the same promptly to the State of Hawaii.

8. **Maintenance of Improvements within Easement Area.** For those improvements that benefit only the Benefited Land or the Burdened Land, the maintenance shall be the responsibility of the lessee of that land. For those improvements, such as a shared roadway, which benefit the Burdened Land and Benefited Land, the maintenance responsibility shall be by Declarant HICDC, subject to assignment of said responsibility to a Lessee of the Benefited Land or to an association formed to undertake such responsibility. The share of maintenance costs shall be proportionate to the benefit conferred by the improvements upon the Benefited Land and Burdened Land and may be allocated under a maintenance agreement between the Lessees of the Benefited Land and Burdened Land.

As long as the Benefited Land is leased to another entity who has the right to use that land, the Declarant COUNTY will have no responsibility to share in any maintenance costs allowable to the Benefited Land. As long as the Burdened Land is leased to another entity who has the right to use that land, the Declarant COUNTY will have no responsibility to share in any maintenance costs allowable to the Burdened Land.

Each Lessee of a Benefited lot shall include liability insurance that covers its liability for use of easements benefiting its leased lot in such amounts as are required under its Lease, but in no event in an amount of less than \$1,000,000 per occurrence.

9. If at any time the premises across which the rights and easements are hereby granted, or any part thereof, shall be condemned, taken by, or dedicated to the County of Hawaii, or any governmental entity, and comparable access rights are provided, that easement will terminate without further action and the Benefited Lessee will sign documents recognizing the extinguishing of such easement.

10. If enforcement of this Declaration is necessary, the prevailing party in any action

or arbitration undertaken for such enforcement shall be entitled to an award of reasonable attorney's fees to be paid by the defaulting party. Any dispute which may arise under this Declaration shall first be attempted to be resolved by mediation, and if not successful, by binding arbitration in accordance with then applicable Hawaii law; provided, however, that a party hereto shall be entitled to obtain equitable relief from a court with jurisdiction to protect that party's rights herein.

[The Remainder of This Page Is Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarants have executed this instrument on the day and year first above written.

RECOMMEND APPROVAL:

COUNTY OF HAWAII

SUSAN K. AKIYAMA
Housing Administrator
Date: _____

By: _____

APPROVED AS TO FORM AND LEGALITY:

HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION,
a Hawaii non-profit corporation

Deputy Corporation Counsel
County of Hawaii

By: _____

Its: _____

MOHOULI SENIOR PHASE 3-92 LLLP,
a Hawaii limited liability limited partnership

MOHOULI SENIOR PHASE 2 LLLP,
a Hawaii limited liability limited partnership

By: HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION
Its General Partner

By: HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION
Its General Partner

By: _____

By: _____

Its: _____

Its: _____

MOHOULI SENIOR PHASE 1 LLLP,
a Hawaii limited liability limited
partnership

By: HOME CORPORATION
Its General Partner

By: _____

Its: _____

Declarants

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this ____ day of _____, 2018, before me personally appeared

OR ____ to me personally known,
OR ____ whose identity I proved on the basis of _____,
OR ____ whose identity I proved on the oath/affirmation of _____, a
 ____ credible witness,

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 Signature)
Print Notary Name: _____

Notary Public, State of Hawaii
My commission expires: _____

(Seal)

Date of Document: or _____ Undated at time of notarization
Description of Document: 2018 DECLARATION OF EASEMENTS RU-6, SL-1, SL-2, A-2 AND CONFIRMATION OF EASEMENTS A-1, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2 (Declarants COUNTY OF HAWAI'I, HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, MOHOULI SENIOR PHASE 3-92 LLLP, MOHOULI SENIOR PHASE 2 LLLP and MOHOULI SENIOR PHASE 1 LLLP) affecting TMKs (3) 2-4- 001-177, 184, 185, 186 & _____

Third Judicial Circuit No. of Pages: _____

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____, 2018, before me personally appeared

OR _____ to me personally known,

OR _____ whose identity I proved on the basis of _____,

OR _____ whose identity I proved on the oath/affirmation of _____, a
_____ credible witness,

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 Signature)
Print Notary Name: _____

Notary Public, State of Hawaii
My commission expires: _____

(Seal)

Date of Document: or _____ Undated at time of notarization
Description of Document: 2018 DECLARATION OF EASEMENTS RU-6, SL-1, SL-2, A-2 AND CONFIRMATION OF EASEMENTS A-1, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2 (Declarants COUNTY OF HAWAI'I, HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, MOHOULI SENIOR PHASE 3-92 LLLP, MOHOULI SENIOR PHASE 2 LLLP and MOHOULI SENIOR PHASE 1 LLLP) affecting TMKs (3) 2-4- 001-177, 184, 185, 186 & _____

Third Judicial Circuit No. of Pages: _____

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____, 2018, before me personally appeared

OR _____ to me personally known,

OR _____ whose identity I proved on the basis of _____,

OR _____ whose identity I proved on the oath/affirmation of _____, a
_____ credible witness,

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 Signature)
Print Notary Name: _____

Notary Public, State of Hawaii
My commission expires: _____

(Seal)

Date of Document: _____ or _____ Undated at time of notarization
Description of Document: 2018 DECLARATION OF EASEMENTS RU-6, SL-1, SL-2, A-2 AND CONFIRMATION OF EASEMENTS A-1, RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1 & E-2 (Declarants COUNTY OF HAWAI'I, HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, MOHOULI SENIOR PHASE 3-92 LLLP, MOHOULI SENIOR PHASE 2 LLLP and MOHOULI SENIOR PHASE 1 LLLP) affecting TMKs (3) 2-4- 001-177, 184, 185, 186 & _____

Third Judicial Circuit No. of Pages: _____

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____, 2018, before me personally appeared

_____ to me personally known,

OR

_____ whose identity I proved on the basis of _____,

OR

_____ whose identity I proved on the oath/affirmation of _____, a
_____ credible witness,

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 Signature)
Print Notary Name: _____

Notary Public, State of Hawaii
My commission expires: _____

(Seal)

Date of Document:
_____ or _____ Undated at time of notarization

Description of Document:
2018 DECLARATION OF EASEMENTS
RU-6, SL-1, SL-2, A-2 AND
CONFIRMATION OF EASEMENTS A-1,
RU-1, RU-2, RU-3, RU-4, RU-5, D-1, E-1
& E-2 (Declarants COUNTY OF
HAWAI'I, HAWAII ISLAND
COMMUNITY DEVELOPMENT
CORPORATION, MOHOULI SENIOR
PHASE 3-92 LLLP, MOHOULI SENIOR
PHASE 2 LLLP and MOHOULI SENIOR
PHASE 1 LLLP) affecting TMKs (3) 2-4-
001-177, 184, 185, 186 & _____

Third Judicial Circuit No. of Pages: _____

EXHIBIT B

[METES AND BOUNDS DESCRIPTION OF EASEMENT SL-1 TO BE ATTACHED]

EXHIBIT C

[METES AND BOUNDS DESCRIPTION OF EASEMENT SL-2 TO BE ATTACHED]

EXHIBIT D

[METES AND BOUNDS DESCRIPTION OF EASEMENT RU-6 TO BE ATTACHED]

EXHIBIT D

LAND COURT SYSTEM REGULAR SYSTEM
Return by Mail () Pickup () To:

TITLE OF DOCUMENT:

FIFTH AMENDMENT TO LEASE

PARTIES TO DOCUMENT:

Lessor: COUNTY OF HAWAII, a municipal corporation of the State of Hawai'i;
Lessee: HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a
Hawaii non-profit corporation, whose mailing address is 100 Pauahi
Street, Suite 204, Hilo, Hawaii 96720.

Affects: TMKs [3] 2-4-001-184, 185 & ____ This document
contains ____ pages.

FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease made this _____ day of _____, 2018, by and between the COUNTY OF HAWAII, a municipal corporation of the State of Hawai'i, by its Mayor, whose mailing address is 25 Aupuni Street, Hilo, Hawaii 96720, hereinafter referred to as Lessor or COUNTY, and HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii non-profit corporation, whose mailing address is 100 Pauahi Street, Suite 204, Hilo, Hawaii 96720, hereinafter referred to as Lessee or HICDC.

RECITALS

That a Lease was made on June 30, 2009 between Lessor and Lessee and recorded as Document No. 2009-117264 in the Bureau of Conveyances of the State of Hawaii (hereafter "Lease"). The Lease was amended by the First Amendment to Lease dated July 1, 2010 and recorded as Document No. 2010-103928 (hereafter "First Amendment"), the Second Amendment to Lease dated December 28, 2011 and recorded as Document No. A-43930473 (hereafter "Second Amendment"), the Third Amendment to Lease dated June 6, 2012 and recorded as Document No. A-45610244 (hereafter "Third Amendment"), and the Fourth Amendment to Lease dated October 17, 2016 (hereafter "Fourth Amendment") (the Lease and all of said Amendments may hereafter collectively be referred to as "Lease" if the context requires).

Under the 2009 Lease, Lessor leased to Lessee the premises referred to as Mohouli Heights Senior Neighborhood Parcel containing an area of 15.948 acres. The Second Amendment to Lease removed land within Lot 3-A (bearing TMK No. [3] 2-4-001: 177) reducing the said leased premises to 9.572 acres, within what was then Lot 3-B. The Fourth Amendment to Lease removed Lot 3B-1-A (bearing TMK No. [3] 2-4-001: 186) from the area in

Lot 3-B, thereby reducing the leased premises to Lot 3-B-2, 1.418 acres (bearing TMK No. [3] 2-4-001: 185 and what was then Lot 3-B1-B, 6.569 acres as the remaining leased premises. This Fifth Amendment to Lease further removes Lot 3-B1-BA, 5.392 acres (bearing TMK No. [3] 2-4-001: ___) from Lot 3-B1-B to allow Lessor to lease that lot to Mohouli Senior Phase 3-92 LLLP for the purposes specified below. Lot 3-B1-BA is shown on the plat map attached hereto as Exhibit B and as described in the metes and bounds description attached hereto as Exhibit B

That this Fifth Amendment is being made so Lessor can lease Lot 3-B1-BA to Mohouli Senior Phase 3-92 LLLP to allow development of that lot to provide rental housing for low and moderate income elderly residents, health care, nutrition programs, or supportive services for elderly residents including residents of rental units on the Leased Premises and related uses, it being expected that subject to feasibility, the development would include up to 93 units;

NOW, THEREFORE in consideration of the foregoing and the obligations herein, the parties agree as follows:

1. **Amendment to Reduce Leased Area.** Lessor and Lessee hereby agree that the Leased Area shall be reduced to Lot 3-B1-BB as described in the metes and bounds description attached hereto as Exhibit A and as shown on the copy of the subdivision plat map attached hereto as Exhibit B, and Lot 3-B2 as described in the Fourth Amendment to Lease.

2. Except as amended by Paragraph 1 above, the terms of this Lease as previously amended shall continue in full force and effect.

IN WITNESS WHEREOF, the Lessor and Lessee have executed these presents on this _____ day of _____, 2018.

RECOMMEND APPROVAL:

COUNTY OF HAWAII

NEIL S GYOTOKU
Housing Administrator
Date: _____

By: _____

HAWAII ISLAND COMMUNITY
DEVELOPMENT CORPORATION,
a Hawaii non-profit corporation

APPROVED AS TO FORM AND
LEGALITY:

Deputy Corporation Counsel
County of Hawaii
Date: _____

By: _____

Its: _____

STATE OF HAWAII)
)
 COUNTY OF HAWAII) SS:

On this _____ day of _____, 2018, before me personally appeared _____, _____ of HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, a Hawaii nonprofit corporation, to me personally known who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

 Notary Public
 State of Hawaii
 My commission expires: _____

Date of Document: _____		# of Pages: _____	
Name of Notary: _____		Third	Circuit
Document Description: Fifth Amendment to Lease between County of Hawai'i and Hawaii Island Community Development Corporation			
Notary Signature _____		Date _____	
NOTARY CERTIFICATION			(Seal or Stamp)

EXHIBIT A

INSERT METES AND BOUNDS DESCRIPTION LOT 3-B1-BA

EXHIBIT B

TO BE REPLACED BY FINAL SUBDIVISION PLAT

