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

September 14, 2018

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

<u>Hawaii</u>

Consent to the Lease of Lands under Governor's Executive Order No. 4539 from the County of Hawaii to HKI Kawili LLC for Veterans Center and Affordable Senior Housing with Preference to Veterans and Spouses Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-057:030.

#### **CONTROLLING AGENCY**:

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

#### <u>APPLICANT</u>:

County of Hawaii, a municipal corporation of the State of Hawaii and HKI Kawili LLC, a Hawaii Limited Liability Company.

#### LEGAL REFERENCE:

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

#### **ZONING:**

State Land Use District:

Urban

County of Hawaii CZO:

RM-1 (Multiple-Family Residential, 1,000sf land/unit)

#### TRUST LAND STATUS:

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

County of Hawaii, South Hilo, Hawaii TMK: (3) 2-4-057:030

#### **CURRENT USE STATUS:**

Governor's Executive Order No. 4539 to County of Hawaii for Combined Veterans Center, and Affordable Senior Housing with Preference to Veterans and Spouses Purposes.

#### LEASE TERMS & CONDITIONS:

#### CHARACTER OF USE:

Affordable senior rental housing facility with preference to: (a) veterans and their spouses; and (b) spouses of deceased veterans, in accordance with federal, state or county laws; provided that this requirement shall not apply to those units designated as staff units for personnel employed to manage the Project.

Portion of Government lands situated at Waiakea, South Hilo, LOCATION:

Hawaii, identified by Tax Map Key: (3) 2-4-057:030 as shown on

the attached map labeled Exhibit A.

AREA: 5.615 acres, more or less.

TERM: 65 years.

**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 August 8, 2006 with a finding of no significant impact (FONSI).

#### DCCA VERIFICATION:

Place of business registration confirmed: YES Registered business name confirmed: YES YES

Applicant in good standing confirmed:

#### **REMARKS:**

At its meeting of April 13, 2017, agenda item D-3 (attached as Exhibit B), the Board approved the set aside of two parcels of land totaling 6.55 acres to the County of Hawaii (COH) for combined veterans center, and affordable senior housing with preference to veterans and spouses purposes, which resulted in execution of Governor's Executive

TMK: (3) 2-4-057:030

Order No. 4539 (EO4539) on November 3, 2017.

The COH, in cooperation with the Hawaii Island Veterans Memorial, Inc., is now entering the initial development phase. This phase proposes construction of an affordable senior housing complex which will provide preference to veterans and spouses. The project will be located on the larger 5.615 acre parcel of land under EO4539. The remaining 0.935 acre parcel will be the future home of the East Hawaii Veterans Center.

The COH plans to enter into a long-term lease with HKI Kawili LLC (HKI) which will act as the developer/operator for the affordable housing project to be located on the subject parcel. A final draft of the proposed lease is attached as Exhibit C.

The lease is consistent with the limited purpose of EO4539 and the COH is requesting that the Board consent to the lease.

#### **RECOMMENDATION:**

That the Board:

- 1. Consent to the lease between County of Hawaii and HKI Kawili LLC, 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.

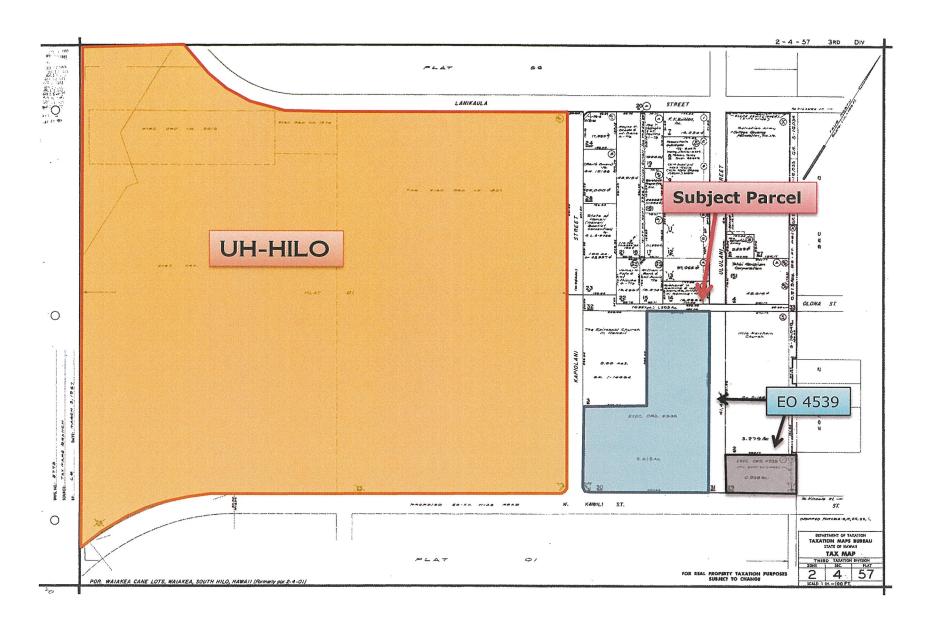
Respectfully Submitted,

Candace Martin Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

# **EXHIBIT A**



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

April 13, 2017

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

PSF No.: 17HD-004

Hawaii

Cancellation of Executive Orders No. 4014 and No. 4108 to the County of Hawaii, for Combined Veterans Center, Veterans Housing and Other Related Purposes; and Reset Aside to the County of Hawaii, for a Combined Veterans Center, and Affordable Senior Housing with Preference to Veterans and Spouses; Waiakea, South Hilo, Hawaii; Tax Map Keys: (3) 2-4-057:029 and 030

#### **CONTROLLING AGENCY:**

County of Hawaii

#### APPLICANT:

County of Hawaii

#### **LEGAL REFERENCE:**

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

#### LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-057:029, 030, as shown on the attached map labeled Exhibit A.

#### AREA:

EO 4014 - 5.615 acres, more or less. EO 4108 - 0.821 acre, more or less.

#### ZONING:

State Land Use District: County of Hawaii CZO: Urban RM-1

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

April 13, 2017 Co.

D-3

#### 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. 4014, setting aside 5.615 acres, and Governor's Executive Order No. 4108 setting aside 0.821 acres to the County of Hawaii for Combined Veterans Center, Veterans Housing and Other Related Purposes.

#### **PURPOSE:**

Revised Executive Order:

Combined veterans center, and <u>affordable senior housing with preference to veterans and spouses purposes</u>.

#### **CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on August 8, 2006 with a finding of no significant impact (FONSI).

#### APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision at Applicant's own cost;
- Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

#### BACKGROUND:

#### Executive Order No. 4014:

At its meeting of November 19, 1999, under Agenda Item D-18, the Board of Land and Natural Resources (Board) approved the set-aside of the subject property to the State of Hawaii, Department of Defense for the Combined Veterans Center, Veterans Housing and other related purposes.

At its meeting of August 24, 2001, the Board under Agenda Item D-11, amended the prior Board action of November 19, 1999, by deleting all reference to the Department of Defense and by approving of and recommending to the Governor, issuance of an executive order to the County of Hawaii (County) for the development of a Combined Veterans Center, Veterans Housing and other related purposes. The amended action included the addition of an adjacent two-acre portion of the subject parcel relinquished by the Department of Health to be included as part of the set-aside to the County.

At its meeting of October 25, 2002, the Board, under Agenda Item D-15, approved a second amendment to the prior Board action by the addition of adjacent road rights-of-way subject to the County executing a quitclaim for the same to the State.

In the County's attempt to process the quitclaim for the rights-of-way, there were concerns raised about the inclusion of these rights-of-way. In the interest of expediting the disposition, the County had requested that these rights-of-way, together with the remainder parcel on the east side of Ululani Street extension be excluded from the Executive Order for the Veterans Center. The County would have incorporated the use of these rights-of-way into the design of the veterans center as necessary but would have retained jurisdiction over them. This would have reduced the area of the site from 7.562 acres to 5.615 acres.

To simplify the disposition, at its meeting of August 8, 2003, the Board, under Agenda Item D-9, rescinded all previous Board actions regarding the subject parcel and approved a set-aside of the smaller area for the same purpose to the County. Executive Order No. 4014 was completed for the smaller area of 5.615 acres, excluding the extensions of Ululani Street and Olona Street.

#### Executive Order No. 4108:

As a result of the County of Hawaii retaining the Ululani Street extension, a small parcel of State land at the south-east corner was carved out of the original set-aside request. At its meeting of November 19, 2004, the Board, under Agenda Item D-13, approved and recommended the issuance of Executive Order No. 4108, containing approximately 0.821 acre of land.

#### Environmental Assessment:

A Draft Environmental Assessment (DEA) was prepared by Yukie Ohashi, Planning Consultant, on behalf of the Hawaii Island Veterans Memorial, Inc. (HIVM) in conjunction with its request to lease the properties from the County for East Hawaii Veterans Center and housing project. In the DEA report, the residential component was described as "affordable housing independent living community for Hawaii seniors (62+), with preference given to veterans and spouses of deceased veterans."

As part of the DEA review process, a request for comments was sent to various government agencies. Harry Yada, then District Land Agent for the Hawaii District Land Office, recommended the language in section 2.3.3 – "Senior Affordable Housing" as better reflecting the purpose of the Executive Orders (Exhibit B).

Changes were made in the Final Environmental Assessment (FEA) to conform with the purpose of the executive orders by defining the residential component as an "affordable independent living community for Hawaii seniors (62+), for veterans and widowed spouses of deceased veterans" (Exhibit C).

#### REQUEST:

By letter dated December 19, 2016 (Exhibit D), the Mayor of Hawaii County, the Honorable Harry Kim, requested an amendment to Executive Order No. 4014 and Executive Order No. 4108. The request is to amend the residential component back to the proposed use in the DEA, "affordable housing independent living community for Hawaii seniors (62+), with preference given to veterans and spouses of deceased veterans." The reason for the requested amendment is that IRS regulations bar projects such as this from using low-income housing tax credits to fund projects that solely benefit veterans.

In his letter, the Mayor is also asking that a portion of the abandoned railroad right-of-way identified by Tax Map Key; (3) 2-4-057:001 (Parcel 001) be included in EO 4108 for use as additional off-street parking for the veterans center. Parcel 001 was identified in the FEA although it was not included in the original design. There currently is an easement for utility purposes to the Hilo Meishoin over Parcel 001, however, this easement will not impact the proposed use.

Staff takes note of the comments and recommendations by the previous District Land Agent that, should the County or the HIVM wish to expand the use to possibly allow for seniors that are non-veterans, this issue should be brought back to the Board and the Governor for cancellation of the existing EO's and the issuance of new EO's allowing for the expanded use.

Staff is therefore recommending the cancellation of Executive Order No. 4014 and Executive Order No. 4108 and the reissuance of a single Executive Order for a Combined Veterans Center, and Affordable Senior Housing with Preference to Veterans and Spouses. Also, included within this set-aside would be the addition of a portion of the abandoned railroad right-of-way.

#### RECOMMENDATION: That the Board:

- 1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order Nos. 4014 and 4108 subject to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and

<sup>1</sup> LOD 28,949, perpetual non-exclusive utility easement for waste disposal transmission pipeline purposes.

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Approve the addition of the thirty-foot wide abandoned railroad right-of-way identified by Tax Map Key: (3) 2-4-057:001 and abutting parcel 029 to the area to be set-aside to the County, subject to the following:
  - A. Land Office Deed No. 28, 949, perpetual non-exclusive utility easement to Hilo Meishoin.
  - B. Subdivision and consolidation of the subject remnant railroad right-of-way into parcel 029.
- 3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

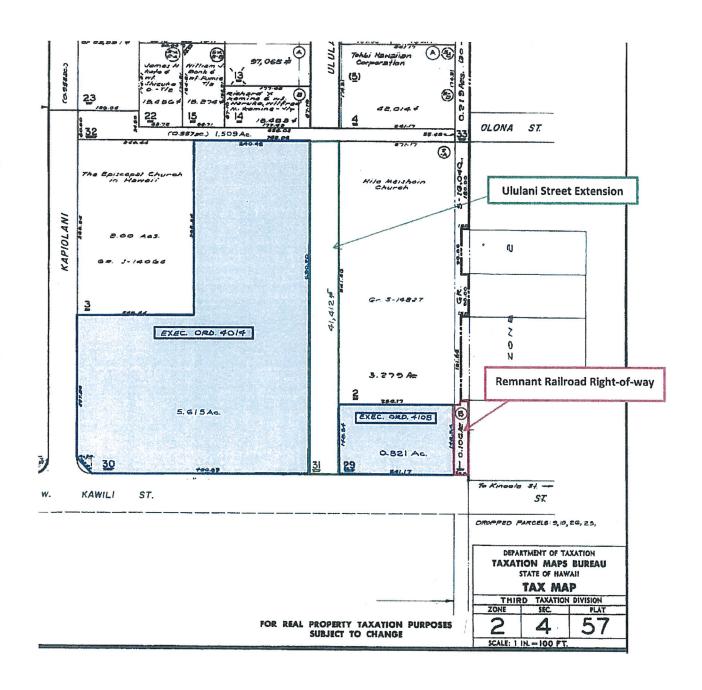
Respectfully Submitted,

Gordon C. Heit District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

TMK: (3) 2-4-057:001, 029 & 030



**EXHIBIT A** 

#### YUKIE OHASHI

From:



Sent: Subject: Tuesday, June 06, 2006 4:55 PM Draft EA for Ka Hui Na Koa O Kawili

Yukie:

I received the subject Draft EA and have the following comments:

- Section 2.3.3 indicates that the residential component will be an affordable housing independent living community for Hawaii seniors (62+), with preference given to veterans and spouses of deceased veterans. Based on this description, I have some reservations as to whether this use is within the parameters of County's Executive Order that is described as, "Combined Veteran's Center, Veteran's Housing and Other Related Purposes". Although the last section "Other Related Purposes" would seem to open a door to a broader interpretation, I would say that the more obvious interpretation would be that it would have to be "Other (Veteran) Related Purposes" which would be the clear intent of the language. If there is a desire to pursue the ability to expand the use to possible seniors that are non-veterans, we would need to take the issue back to the Board of Land and Natural Resources and the Governor for a cancellation of the existing EOs and the reissuance of new EOs allowing for the expanded use.
- I noticed a signed copy of the lease between the County of Hawaii and HIVM attached as Appendix A-3. Pursuant to Chapter 171-11, HRS, the County is authorized to issue leases consistent with the purposes of the EO, however, the lease requires a consent of the Board of Land and Natural Resources. The lease should be submitted to this office for submission to the Board of Land and Natural Resources for their consent.
- I am unclear as to how this concept of a life estate is to work within an EO and a lease. What happens if
  the purchaser of the life estate outlives the term of the lease? That may not be probable for the first buyer
  but may be a definite possibility for subsequent purchasers.

Thanks.

**EXHIBIT B** 

#### KA HUI NA KOA O KAWILI A HAWAII ISLAND VETERANS' MEMORIAL, INC. PROJECT

- To provide administrative space to the management entity for purposes of security, maintenance, repair, general administration, and service delivery to the residents (eg. dining, transportation, housekeeping, care-giving arrangements, etc.).
- To provide military and veterans' groups, and the community in general, an appropriate and convenient facility in which to stage meetings and events of varying sizes. The largest portion of this building will consist of a banquet facility available on a rental basis to residents and the community at large. Fees collected will be used by the management firm to sustain the facility without surcharging residents; and to maintain a capital reserve specifically for this facility for repair, maintenance, upgrades, improvements, etc.

The facility will have a commercial kitchen, a lounge area, a large banquet room with stage, designed to seat 355 people inside with additional spill-over seating for an additional 130 in the two adjoining dividable rooms and outside seating on covered lanais. It will have separate access for events from the Kawili Street side where parking to accommodate 480 people has been designed without conflicting with residential parking.

The north end of the building consists of a library and dining rooms, a spacious recreation area and a small exercise wellness center for residents use and for small group gatherings. The mail room, administrative office, and a conference room make up the remainder of this building.

This facility is specifically designed to be revenue-producing to offset costs for its operation. Further discussion follows in Section 2.4.

#### 2.3.3 Senior Affordable Housing

The residential component of the project (Figures 7A, 7B, 7C) is proposed as an affordable independent living community for Hawaii seniors (62+), for veterans and widowed spouses of deceased veterans. Together with the Multi-Purpose Facility, this component will be managed and operated by a certified, licensed and bonded non-profit senior housing entity in accordance with HUD provisions.

The preliminary design envisions three (3) 4-story buildings, comprising a total of 96 to 110 units with a mix of one- and two-bedroom units ranging from 800 sq. ft. to 1,000 sq. ft. (with lanai, 950 sq. ft. to 1,225 sq. ft., respectively). Individual residential units will be ADA accessible and will have a living/dining room, kitchen, one or two bathrooms, laundry area, and balcony. Wide central hallways, elevator service, and stairs provide access to all units and all units are designed for assisted-living, thus, as residents' age, assisted care level can be provided on an ala carte basis. Individual residential units and common areas in all components of the overall project will be designed for ADA-accessibility to facilitate care-giving on an individualized basis initially, with the possibility of transitioning into a formal assisted-care facility in the future.

Harry Kim Mayor



Barbara J. Kossow 2015 Defout Managing Pirector

# County of Hawai'i

Office of the Mayor

HEAL R 25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553 KONA: 74-5044 Ane Keohokalole Hwy., Bldg. C • Kailua-Kona, Hawai'i 96740 (808) 323-4444 • Fax (808) 323-4440

December 19, 2016

Suzanne Case, Chairperson Department of Land & Natural Resources Kalanimoku Building 1151 Punchbowl Street Honolulu, Hawai'i 96813

SUBJECT: Amendment to Executive Order No. 4014: 5.615 acre parcel,

TMK (3) 2-4-057:030

Amendment to Executive Order No. 4108: 0.821 acre parcel,

TMK (3) 2-4-057:029

Hawaii Island Veterans Memorial, Inc., (HIVM) is the lessee of lands covered by the above Executives Orders No. 4014 and 4108, both "For combined veterans center, veterans housing and other related purposes."

HIVM has an agreement with EAH Housing, a leader in developing and managing affordable senior living communities in Hawaii, to develop and operate the housing project on parcel 030 as low-income apartments for seniors with a preference for veterans and their spouses. Unfortunately IRS regulations bar projects from using low-income housing tax credits to fund projects that solely benefit veterans. Towards this objective, HIVM asks that the public purposes be amended to state: "For a combined veterans center and affordable senior housing community with preference to veterans and spouses".

Secondly, HIVM is now developing a combined veteran's center on parcel 029 and requires added space for off street parking. Accordingly, we respectfully request an amendment to Executive Order No. 4108 to include that portion of the abandoned railroad right of way that adjoins the eastern boundary of the land covered by Executive Order No. 4108. HIVM understands that a survey map is required to move forward with this second request. Please see the attached parcel map.

On behalf of HIVM, the County respectfully request these amendments be considered as

County of Hawaii

# **EXHIBIT C**

LAND (	COURT SYSTEM	REGULAR SYSTEM
Return by Mail (	) Pickup ( ) To:	
TITLE OF DOCU	MENT:	
	LEA	ASE
PARTIES TO DO	CUMENT:	
Lessor:		a municipal corporation of the State of ddress is 25 Aupuni Street, Hilo, Hawai'i 96720
Lessee:	HKI KAWILI LLC, whos Suite 2880, Honolulu, Hav	e mailing address is 1001 Bishop Street, wai'i 96813
Affects Tax Map K	Ley No. (3) 2-4-057:030	This document contains pages.

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#### SUMMARY OF LEASE

### TERMS OF THE LEASE Executive Order No. 4539 **Executive Order** Duration: Sixty-five (65) years starting from the date of execution of this Lease. Rental Charge: \$10.00 per year. **Utility Services:** Must be paid by the Lessee. Improvements: The Lessee cannot improve the Property without prior written consent from the Lessor. Liens: Except as expressly permitted herein, neither the fee simple interest in the Property nor the leasehold interest shall become subject to any attachment, lien, charge or encumbrances without prior written consent of the Lessor. Liability Insurance: The Lessee shall, at its own expense, obtain a minimum of \$2,000,000 liability insurance. Fire Insurance: The 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 Premises. Condition of Premises: The Lessee has examined and is familiar with the condition of the Property and acknowledges that the Lessor is not responsible for the present or future condition of the Premises. Notice: When the Lessor's consent or approval is required under this Lease, the Lessee shall contact the

The Lessee shall use the Premises solely to provide affordable rental housing and supportive services

and related uses for senior citizens (62 years of age

Housing Administrator.

Use:

or older) with a preference to: (a) veterans and their spouses; and (b) spouses of deceased veterans.

Non-Profit Status:

The Lessee or the Lessee's member with management authority shall maintain status as a tax-exempt, non-profit organization as certified by the IRS.

Note: The attached Lease provides more information and details regarding the provisions summarized above. In the event of any conflict between this summary and the attached Lease, the terms of the Lease shall govern.

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#### LEASE

#### 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 in **Exhibit A**, attached hereto and made a part hereof, Tax Map Key No. (3) 2-4-057:030 (hereafter referred to as "Property") situated at the corner of Kapi'olani and Kawili Streets, across from Waiakea High School, at Waiakea, South Hilo, County and State of Hawai'i. The Property, together with all improvements to be constructed and owned in fee simple by the Lessee as provided in this Lease, are collectively referred to as the "Premises".

### A. THE LESSOR COVENANTS AND AGREES WITH THE LESSEE:

1. **Executive Order**. Pursuant to Executive Order No. 4539 approved by the State of Hawai'i Board of Land and Natural Resources on April 13, 2017 and executed by Governor David Ige on November 3, 2017 (the "Executive Order"), the County of Hawai'i has control and management of the subject Property for the purpose of affordable senior

rental housing with preference to: (a) veterans and their spouses; and (b) spouses of deceased veterans. Both the Lessor and the Lessee understand that the Lessor's authority to enter into this Lease is subject to the Executive Order and the approval of the State of Hawai'i Board of Land and Natural Resources.

- 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 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 this Lease shall be for a period of sixty-five (65) years, commencing as of the date of this Lease, or unless sooner terminated by either the Lessor or the Lessee in accordance with the terms of this Lease.
- 4. **Rent**. The Lessee hereby covenants and agrees to pay the sum of ten dollars (\$10.00) per year ("Rent") for the term of this Lease. The first payment of Rent shall be made within ten (10) business days of upon full execution of the Lease, and thereafter, on the anniversary date of the Lease date. All Rent payments shall be made to the addressee in Paragraph B.20 herein.
- 5. **Financing Contingency**. Notwithstanding any provision to the contrary in this Lease, this Lease is subject to the Lessee obtaining sufficient loan proceeds for construction and permanent financing from various programs administered by the Hawaii Housing and Finance Development Corporation, including but not limited to, the Hula Mae Multi-Family Revenue Tax-Exempt Bond Project, the Low Income Housing Tax Credit Program (LIHTC),

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and the Rental Housing Revolving Fund, and other private and public sources, grant proceeds and capital contributions, as applicable, to pay for the total estimated cost to develop. construct and equip the Project (as defined below), including a developer fee (the "Financing Contingency"). The Lessee shall have the right to terminate this Lease upon written notice to the Lessor if the Financing Contingency is not satisfied or waived in writing by the Lessee as of the third (3<sup>rd</sup>) anniversary of the date of this Lease (the "Financing Contingency Deadline"); provided that the Financing Contingency Deadline shall be automatically extended for one (1) year pursuant to written notice delivered to the Lessor by the Lessee prior to the expiration of the Financing Contingency Deadline, and thereafter further extended as may be mutually agreed upon by the parties. If the Lessee fails to provide written notice either waiving the Financing Contingency or terminating this Lease on or before the expiration of the Financing Contingency Deadline, as may be extended, then the Lessee shall be deemed to have terminated this Lease. In the event that the Lessee terminates this Lease or is deemed to have terminated this Lease pursuant to this paragraph A.5, then the Lessee shall surrender possession of the Premises to the Lessor as of the effective date of such termination in accordance with this Lease, whereupon the parties shall have no further rights, duties or obligations to each other under this Lease, except for those obligations which expressly survive the expiration or termination of this Lease.

6. **Operation of Premises**. The Lessee acknowledges and agrees that the Lessee shall be solely responsible for payment of all costs and expenses relating to the operation, repair and maintenance of the Premises in accordance with the terms of this Lease and that the Lessor shall have no obligation under this Lease to provide financial support to the Lessee to subsidize the Lessee's operating costs and expenses for the Premises.

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#### B. THE LESSEE COVENANTS AND AGREES WITH THE LESSOR:

- 1. Utility Services. That the Lessee shall pay when due all utility charges, connections, duties and rates of every description, including water, sewer, gas, electricity, refuse collection or any other charges related to the Premises or any improvements thereon during the term of this Lease.
- 2. Covenant Against Discrimination. That the Lessee acknowledges and agrees that the nondiscrimination clauses set forth in County of Hawaii Executive Order No. 142 (Nondiscrimination in County Contracts) ("County Contract Nondiscrimination Clauses"), a complete copy of which is attached hereto as Exhibit B, are hereby incorporated into this Lease by this reference. The Lessor and the Lessee acknowledge and agree that "contractor's noncompliance", as used in paragraph (4) of the County Contract Non-Discrimination Clauses, means that a federal, state or county agency having jurisdiction over such matters or a court of competent jurisdiction has determined that the Lessee is not in compliance in a material respect with the County Contract Nondiscrimination Clauses.
- 3. **Sanitation, etc.** That the Lessee shall keep the Premises in a strictly safe, clean, sanitary and orderly condition, in compliance with all applicable laws, rules and regulations of the county, state and federal governments.
- 4. Waste and Unlawful, Improper or Offensive Use of 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 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 the Premises, except with prior written

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approval of the Lessor and upon such conditions as the Lessor may impose in writing, unless otherwise provided herein. Notwithstanding any provision to the contrary in this Lease, approval by the Lessor of the Lessee's construction drawings for submittal for a building permit for the Lessee's improvements to the Premises which include the trimming, removal, and/or relocation of any trees now growing on the Premises, shall serve as the Lessor's written approval of the trimming, removal and/or relocation of any trees now growing on the Premises, unless such trees are designated as Exceptional Trees of the County of Hawai'i pursuant to section 14-65 of the Hawai'i County Code 1983 (2016 Edition, as amended).

- 5. No Hazardous Materials. The Lessee shall not bring, cause or permit the escape, disposal, or release on, within, under, or about the Premises of any "hazardous materials," "hazardous substances," "hazardous wastes," "extremely hazardous wastes," or "toxic substances" (collectively, "hazardous materials"), as such terms are defined in any federal, state, or county laws, statutes, ordinances, rules, and regulations (collectively "Environmental Laws"), that is in violation of applicable Environmental Laws. The Lessee agrees to indemnify, defend, and hold the Lessor harmless from any damages and claims resulting from the release of hazardous materials on the Premises in violation of any Environmental Laws occurring as a result of the Lessee exercising its rights under this Lease.
- 6. 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 laws, pertaining to the 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.
  - 7. Improvements. That the Lessee shall not, at any time during said term,

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construct, place or install on the 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 in writing, unless otherwise provided herein; provided that the Lessor's approval shall not be unreasonably withheld, conditioned or delayed. The Lessee shall supply all information and documents as the Lessor may require to perform its review. The Lessor and the Lessee recognize that, subject to satisfaction of the Financing Contingency, the Lessee intends to construct buildings and related improvements for an affordable senior rental complex consisting of approximately sixty-eight (68) units (the "Project") on the Premises and that the Lessee shall submit the proposed schematic plans for the buildings and improvements, including the site plan, building elevations, and the floor plans for the units and community building (collectively, "Schematics") for review by the Lessor as the manager of the Property pursuant to HRS §171-11. The Lessor shall with reasonable promptness provide the Lessee with any specific comments to the Schematics; provided that the Lessor's approval of the Schematics shall not be construed to constitute a representation or warranty by the Lessor that the Schematics comply with any applicable federal, state or county law, rule, regulation, code or ordinance. After obtaining the Lessor's approval of the Schematics, the Lessee shall cause the preparation of construction drawings for the Project that are substantially consistent with the approved Schematics and shall thereafter seek to obtain any regulatory approvals or permits required to develop the Project in compliance with applicable federal, state and county laws or regulations, including those from County of Hawai'i agencies. The Lessor agrees to provide such information and/or authorization as may be required in connection with the Lessee applying for such regulatory approvals or permits.

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#### 8. Liens.

- a. That the Lessee will keep and maintain the Premises free and clear of all mechanic's and materialmen's liens and, in the event any lien is filed against the Premises or any improvements thereon, will indemnify and save harmless the Lessor from all loss, cost and expense with respect thereto and will, prior to the construction of any improvements on the Premises, deposit with the Lessor a certificate or other evidence satisfactory to the Lessor that the contractor constructing such improvements has obtained a bond with a surety approved by the 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 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.
- 9. **Assignments, etc.** That the Lessee shall not transfer, assign or sublease the Premises or any portion thereof, nor permit any other person to occupy or use the Premises or any portion thereof, except in furtherance of the uses expressly permitted in paragraph B. 22 herein and, except to the extent permitted in this paragraph B.9, shall not transfer or assign or sublease this Lease or any interest therein, either voluntarily or by operation of law without the Lessor's prior written consent, and any transfer or assignment so made shall be null and void without such consent. The Lessor declares that it enters into this Lease on reliance on the specific identity of the Lessee. Notwithstanding any provision to the contrary in this Lease, Lessee may assign its interest in this Lease to a partnership in which the Lessee, as presently

constituted as of the date of this Lease, is the general partner (a "Permitted Transferee"), with management control of said entity (a "Permitted Transfer"); provided that (a) the Lessee shall provide the Lessor with documentation reasonably evidencing that such assignment qualifies as a Permitted Transfer; and (b) pursuant to an assignment instrument executed by the Lessee and the Permitted Transferee, the Permitted Transferee shall assume all of the duties and obligations of the Lessee under this Lease from and after the effective date of the Permitted Transfer. This paragraph B.9 shall not apply to the Lessee's issuance of residential tenant leases for the use and occupancy of units in the Project in the ordinary course of business and in furtherance of the Lessee's permitted use under paragraph B.22 of this Lease.

- 10. Mortgage. That the Lessee shall not mortgage, hypothecate or pledge the Premises, or any portion thereof or this Lease or any interest therein, without the prior written consent of the Lessor. Any mortgage to which Lessor has so consented is referred to herein as an "Approved Mortgage". Any mortgage, hypothecation or pledge without such consent shall be null and void.
- a. The Lessee shall obtain the prior written consent of the Lessor to the assignment of lease or mortgage of the Lessee's interest in this Lease, together with its right, title and interest in and to the Project, and any and all other improvements, fixtures and personal property of the Lessee now or hereafter placed thereon, to secure financing for the construction of the Project ("Financing Mortgage") and to record associated regulatory agreements as may be required by the Lessee's lenders or other parties, against the title to the Premises. (A Financing Mortgage or Approved Mortgage, are individually and collectively referred to herein as a "Permitted Mortgage".) With respect to any such request for consent, the Lessee will submit its written request for consent to the Lessor and furnish the Lessor with a copy of such

instrument(s), including the proposed mortgage within thirty (30) days after the same is executed by the Lessee. If the Lessor consents to such request, then the mortgagee or holder under the approved mortgage shall be authorized to record this Lease (or a short form thereof) and the approved mortgage and associated regulatory agreements in the Bureau of Conveyances of the State of Hawai'i (if the demised land is regular system property) or the State of Hawai'i Land Court (if the demised land is Land Court property). From and after the date of recordation of the approved mortgage in the Bureau of Conveyances or Land Court of the State of Hawaii, as applicable, such approved mortgage shall be deemed to be a "Permitted Mortgage" under this Lease and the mortgagee under the Permitted Mortgage shall be deemed to be a "Permitted Mortgagee" under this Lease.

A Permitted Mortgagee may enforce such Permitted Mortgage and acquire title to the leasehold and any removable improvements in any lawful way, rent the Premises pending foreclosure and acquisition and disposal of title; and the Permitted Mortgagee under a Permitted Mortgage and the Permitted Mortgagee's assignees or designee or anyone taking by, through of under any Permitted Mortgage may sell and assign the leasehold and the improvements thereon, subject to the terms and provisions of this Lease, or may sublet the Premises in whole or in part, and any assignee of the Permitted Mortgagee may mortgage this Lease to the Permitted Mortgagee, or any other established lending institution as mortgagee, to finance the purchase of this Lease. Any person acquiring the leasehold estate in consideration of the extinguishment of the debt secured by the Permitted Mortgage or through foreclosure sale, judicial or otherwise, or any party claiming by, through or under any such person, and any subsequent holder of the leasehold estate shall be liable to perform the obligations imposed upon the Lessee by this Lease, but only during the period such person or party has possession or ownership of the

leasehold estate and shall be recognized by the Lessor as the lessee hereunder. When giving notice to the Lessee with respect to any default hereunder, the Lessor shall also deliver a copy of such notice to any Permitted Mortgagee who shall have given the Lessor a written notice specifying its name and address. During the existence of any Permitted Mortgage, the Lessor will not exercise the Lessor's right to terminate this Lease by reason of the occurrence of any of the events of default set forth in this Lease, if the Permitted Mortgagee, within sixty (60) days (or such longer period of time as may be approved by the Lessor) after the Lessor has mailed to the Permitted Mortgagee at its last known address a written notice of intention to terminate this Lease for such cause, shall either remedy such default, if the default can be cured by the payment of money, or if such is not the case, shall undertake in writing to perform all covenants of this Lease capable of performance by the Permitted Mortgagee until such time as this Lease shall be assigned upon foreclosure pursuant to such Permitted Mortgage (or assignment in lieu of foreclosure). If such default shall be the failure of the Lessee promptly to discharge or cause to be discharged any lien, charge or encumbrance which may be filed against the Premises or any improvements thereon, junior in priority to such Permitted Mortgage or other default not susceptible to being cured by the Permitted Mortgagee, the Permitted Mortgagee may cure such default by accomplishing the foreclosure of such Permitted Mortgage and such default shall be deemed to be cured within such period of sixty (60) days, if such foreclosure shall be accomplished through proceedings or action instituted within said period and thereafter prosecuted in a diligent and timely manner, subject to any stay in any proceedings involving the insolvency of the Lessee or other proceeding or injunction (unless in the meantime the Permitted Mortgagee shall have acquired the Lessee's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

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- b. In the event of the commencement of a bankruptcy proceeding by or against the Lessee, the Permitted Mortgagee shall have the option, and the Lessor shall recognize the Permitted Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of this Lease, to obtain or cause the Lessee and/or trustee in bankruptcy to obtain:
- (i) An extension of the period during which this Lease may be assumed or rejected; or
- (ii) An abandonment of the leasehold estate by the Lessee and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or
- (iii) An assumption of this Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the termination of this Lease by reason of a default by the Lessee in accordance with this Lease, or commencement of a bankruptcy proceeding by or against the Lessee, the Lessor agrees and acknowledges for the exclusive benefit of the Permitted Mortgagee and any person or entity acquiring an interest in this Lease or in lieu of the foreclosure of the Permitted Mortgage, that such termination of this Lease or the actual or deemed rejection or disaffirmance of this Lease under Section 365 of the Bankruptcy Code (11 United States Code section 365) or any other law having similar effect shall not effect a termination of this Lease or affect or impair the Permitted Mortgagee's lien thereon or rights with respect thereto (provided however that this provision is not intended and shall not be deemed to confer any rights or benefits upon the Lessee or the Lessee's bankruptcy trustee), and upon the written request of the Permitted Mortgagee delivered to the Lessor within thirty (30) days following the Permitted Mortgagee's receipt of written notice of such termination or actual

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or deemed rejection of this Lease, the Lessor will, at the option of the Permitted Mortgagee, execute and deliver to the Permitted Mortgagee or its designee (1) an instrument recognizing, confirming and giving legal effect to the continued existence of this Lease, with its original validity and priority, or (2) a new lease of the Premises in favor of the Permitted Mortgagee or its designee, (in either event, hereinafter called the "Mortgagee's Lease"), subject to the lien of the Permitted Mortgage and any lien or encumbrance prior to the lien of the Permitted Mortgage, upon and subject to the following terms and conditions:

- (a) The Permitted Mortgagee shall pay or cause to be paid to Lessor at the time of the execution and delivery of the Mortgagee's Lease, any and all sums which are at the time of execution and delivery thereof due under this Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which the Lessor shall have incurred by reason of the termination or actual or deemed rejection of this Lease and execution and delivery of the Mortgagee's Lease;
- (b) The Mortgagee's Lease shall be effective as of the date of termination or the actual or deemed rejection of this Lease, and shall expire on the last day of the term of this Lease, at the same rent, and upon the same terms, covenants and conditions of this Lease and of any amendment or modification thereof;
- (c) The lessee under the Mortgagee's Lease shall undertake, by accepting the Mortgagee's Lease, to perform all covenants and conditions of the Mortgagee's Lease. The lessee under the Mortgagee's Lease may assign the Mortgagee's Lease and the lessee under the Mortgagee's Lease, if such lessee is a mortgagee, or a wholly-owned subsidiary of a mortgagee, shall thereupon be released from all liability for the performance or observance of the covenants and conditions in the Mortgagee's Lease contained and on lessee's part

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thereunder to be performed and observed from and after the date of such assignment, provided that a certified recorded copy of such assignment be provided to the Lessor;

- (d) The lessee under such Mortgagee's Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as the Lessee had under this Lease prior to its termination or rejection and the Lessor shall use its best efforts to obtain the cooperation of all parties in interest such that any Mortgagee's Lease made pursuant to this Lease shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises, which mortgage, lien, charge or encumbrance was junior to this Lease;
- (e) The lessee under such Mortgagee's Lease may mortgage its interest in the Mortgagee's Lease to the mortgagee under one or more new mortgages, and all of the lessee's agreements under this Lease with respect to the Permitted Mortgage shall apply equally to the new mortgagee, provided that a certified recorded copy of such assignment be provided to the Lessor; and
- (f) No provision contained in this Lease shall be construed as authorizing the Lessee to encumber in any way the Lessor's management interest in the Premises or the State's fee simple interest in the Premises. The rights to a Mortgagee's Lease by any Permitted Mortgagee as set forth above shall survive any termination of this Lease.
- c. The Lessor and the Lessee agree that, without the prior written consent of the Permitted Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), neither the Lessor nor the Lessee shall have the right to (i) enter into any agreement amending, modifying, terminating or waiving any material provision of this Lease (except as otherwise provided in this Lease), or (ii) cancel or terminate or agree to a cancellation or

termination or surrender of this Lease (except in the event of default by the Lessee and provided the Permitted Mortgagee shall have been provided with written notice and opportunity to cure such default as provided in paragraph B.10.a hereof). Any actions described under this paragraph B.10.c. taken by the Lessor without Permitted Mortgagee's prior written consent (except in the event of default by the Lessee and provided the Permitted Mortgagee shall have been provided with written notice and opportunity to cure such default as provided in paragraph B.10.a hereof) shall be voidable by Permitted Mortgagee.

- d. In the event of any breach by the Lessee under the Lease or default under any loan documents executed in connection with the Permitted Mortgage ("Loan Documents"), the Lessor will allow the Permitted Mortgagee to enforce its lien and security interest in the Lessee's personal property located at the Premises and the Lessor will allow the Permitted Mortgagee to assemble and remove all of the Lessee's personal property located on the Premises. The Lessor hereby agrees to subordinate any lien the Lessor might hold, whether statutory, constitutional, contractual or otherwise, in any personal property owned or leased by the Lessee and now or hereafter located on the Premises, to the lien or security interest in favor of any Permitted Mortgagee. If so requested by the Lessee, the Lessor shall execute a subordination agreement subordinating any right, title or interest or right to seize any of the Lessee's personal property on the Premises to the lien or security interest in favor of any Permitted Mortgagee.
- e. For as long as any Permitted Mortgage is in existence, there shall be no merger of the leasehold estate created by this Lease and the fee estate in the Property merely because both estates have been acquired or become vested in the same person or entity, unless Permitted Mortgagee otherwise consents in writing. In the event there are more than one

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Permitted Mortgagees, each may exercise its respective rights under this Lease and if there is a conflict that renders it impossible to comply with all requests of the Permitted Mortgagees, the Permitted Mortgagee whose Permitted Mortgage would have senior priority in the event of a foreclosure shall prevail.

- f. The Lessor agrees to provide estoppel certificates within thirty (30) days of request by the Lessee or Permitted Mortgagee, to establish that there have been no unapproved material modifications to this Lease, that this Lease is in full force and effect, that there are no known defaults, the date through which rent has been paid, and such other matters as may be reasonably requested by the Lessee or Permitted Mortgagee.
- Indemnity. That, except to the extent caused by the gross negligence or willful misconduct of the Lessor, the Lessee will indemnify, defend and hold the Lessor and the State of Hawai'i 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, to the extent arising out of any accident on the Premises or occasioned by any negligence or willful misconduct of the Lessee, any act or nuisance made or suffered on the Premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the Premises in a safe condition, and will reimburse the Lessor for all reasonable costs and expenses incurred in connection with the defense of such claims.
- 12. **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 \$2,000,000.00 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 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 County of Hawai'i, and State of Hawai'i to be named as "additional insureds" on the above comprehensive liability insurance policy in addition to any Permitted Mortgagee. The policy shall have a deductible of not more than \$25,000.00 per claim.

#### 13. Fire Insurance.

- a. The Lessee shall be responsible for and insure all improvements and contents within the Premises, with the exception of the personal property of the Lessee's tenants. The Lessor shall not be responsible for the protection or safekeeping of any of the Lessee's improvements or contents.
- b. The Lessee shall name the Lessor as additional insured on the Premises and shall insure the structure and common areas against loss or damage by fire, including extended coverage, in an amount equal to full replacement cost without deduction or depreciation. The Lessee shall provide the Lessor with certificates of insurance from time to time to show that said insurance remains in full force and effect. The Lessee shall obtain commitments from its insurer that said insurance will not be cancelled or reduced unless the Lessor has been given thirty (30) days' notice, sent to the Lessor by certified or registered mail, postage prepaid.
  - c. 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 Permitted Mortgagee under any Permitted Mortgage of this Lease, 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.

- d. 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, subject to the terms of any Permitted Mortgage, 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 Permitted 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:
  - (i) gives written notice of its intention to surrender the Lease to the

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Lessor within thirty (30) days after determining the insufficiency of such insurance proceeds;

- (ii) is not in material default under any provision or condition of this Lease on the date of surrender;
- (iii) promptly removes from the 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;
- (iv) pays the real property taxes for the whole fiscal year in which this

  Lease is surrendered and all rent and other charges hereunder for the whole calendar year in

  which this Lease is surrendered, and performs all other obligations of the Lessee hereunder up to
  the date of surrender;
- (v) pays in full the indebtedness secured by any Permitted 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;
- (vi) causes to be discharged all liens and encumbrances resulting from any act or omission of Lessee; and
- (vii) causes to be surrendered and terminated all subsisting subleases and rental agreements on any part of the Premises.

Upon the Lessee's satisfaction of conditions (i) to (vii) above, the 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 conditions (iii) through (v) above) shall be divided between and payable to the Lessor and the Lessee as follows: (a) the interest of the Lessor in such insurance proceeds shall be a proportionate amount thereof in the

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ratio which the expired portion of the term of this Lease from the date of original completion of such buildings, fixtures and improvements to the date of such loss or damage bears to the portion of such term from the date of original completion of such buildings, fixtures and improvements to the date of expiration of the term of this Lease; and (b) the interest of the Lessee therein shall be the balance of such proceeds. The interest of any Permitted Mortgagee whose loan exceeds or is not covered by the Approved Mortgage Limit (as hereinafter defined) shall be limited to only the interest of the Lessee under clause (b) above, and in no event shall such Permitted Mortgagee be entitled to claim any portion of the Lessor's interest under clause (a) above after the Approved Mortgage Limit has been fully exhausted to pay the loan indebtedness of any Permitted Mortgagee.

As used in this subparagraph, the term "Approved Mortgage Limit" shall mean the total amount of loan indebtedness secured by Permitted Mortgages, the proceeds of which have been used to pay for the costs of acquiring, developing, constructing and equipping the Premises (including "soft costs" such as architect's, engineer's and consultant's fees, "hard costs" of constructing or renovating any improvements on the Premises, and construction loan interest), and any refinancing of such loan indebtedness shall also be counted towards the Approved Mortgage Limit. The "costs of acquiring, developing, constructing and equipping the Premises" shall be liberally construed, but the Approved Mortgage Limit shall not include the amount of working capital loans or that portion of any refinancing loans which represents appreciation equity over and above the Lessee's costs of acquiring, developing, constructing and equipping the Premises. At the request of the Lessee or the Lessee's Permitted Mortgage, the Lessor shall provide a written statement confirming the Approved Mortgage Limit with respect to such Permitted Mortgagee's Permitted Mortgage on the Premises.

- e. Limitation on Use. The Lessee shall not store or place any material, or conduct any business on the Premises which will cause Lessor's insurance policy to be canceled, or the rates to be increased from the normal rate for the business.
- Worker's Compensation Law, HRS Chapter 386, "Employers Liability", shall secure adequate workers' compensation and employers' liability insurance with minimum limits of \$100,000 (bodily injury per occurrence) for all of its employees who will be engaged in work at the site of the Project, and in case any part of the Premises is sublet, the Lessee will require his contractor and subcontractors to maintain such insurance for all employees who will be so engaged, unless the latter's employees are protected by the principal Lessee's insurance. The policy shall remain in full force and effect for the term of this Lease and which further names the County of Hawai'i and its officers and employees as an additional insured. The limits required under this Lease may not be adequate and any limit requirement contained in this Lease shall not act as a limitation of the Lessee's indemnification obligation under this Lease and/or liability thereunder.
- 15. Automobile Insurance. The Lessee shall secure adequate automobile liability insurance policy with minimum limits of \$100,000 (bodily injury per person) / \$300,000 (bodily injury per occurrence) / \$100,000 (property damage per occurrence) coverage (assuming the Lessee will be using vehicle(s) in performance of its duties and obligations under this Lease), which policy shall remain in full force and effect for the term of this Lease and which further names the County of Hawai'i and its officers and employees as an additional insured. The limits required under this Lease may not be adequate and any limit requirement contained in this Lease shall not act as a limitation of the Lessee's indemnification obligation under this Lease and/or liability thereunder.

- litigation commenced by or against the Lessee (other than condemnation proceedings or any action to enforce the covenants and agreements of Lessor under this Lease), 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 Premises or in the collection of delinquent rental, taxes and any and all other charges.
- Entry by Lessor. That the Lessee shall permit the Lessor, its agents and 17. invitees, or independent contractors hired by the Lessor, to enter on the common areas of the Premises, at all reasonable hours, for the purpose of inspecting same, including inspections related to the services provided at the Premises, upon the Lessor or its agent giving not less than 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. That any temporary diminution in or interference with the use of the common areas of the Premises by the Lessee occasioned by such inspections which are conducted in accordance with this Section 17 and in compliance with all applicable laws, rules and regulations, shall not be a breach of this Lease, and shall not result in any liability to the Lessor. Nothing in this paragraph shall be construed as requiring the Lessor to make any inspections of the common areas of the Premises. Notwithstanding the foregoing, Lessor reserves the right to conduct inspections of individual units as may be required to comply with applicable laws, rules and regulations from time to time; provided that such inspection of an occupied unit in the Premises shall at all times be

conducted by Lessor in accordance with the advance notice and other requirements of the Residential Landlord-Tenant Code under Chapter 521 of the Hawai'i Revised Statutes, as may be amended.

- 18. Contracts for Construction. That the Lessee shall not make any contract for construction, repair, renovation or improvement on, in, of, or to the Premises, or any part thereof, or for any work to be done or materials to be furnished on or to the Premises, without first obtaining the written approval of the Lessor; provided that the approval of the Lessor shall not be unreasonably withheld, conditioned or delayed. The Lessor's approval may be conditioned on the Lessee providing adequate assurance that it has or will have, prior to commencement of such work the financial ability to pay for the cost of any such contract, and shall obtain partial and full lien waivers, in a form reasonably acceptable to the Lessor, during the course of construction of the work and upon completion thereof and shall cause the filing of a notice of completion and affidavit upon substantial completion of the work as required under HRS Section 507-43 to provide sufficient assurances to the Lessor that no mechanic's or materialman's lien may be levied against the Premises.
- 19. Condition of Premises. That the Lessee has examined and is familiar with the condition of the Premises, that the Premises is leased in its current condition, 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.
- 20. **Notice.** That in the event of any material change in the condition of the Premises, whether through the acts or omissions of the Lessee or otherwise, or any defect

discovered in the Premises, the Lessee shall immediately notify the Housing Administrator,

County of Hawai'i, of the material change in condition of the 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 Premises, which change cannot be repaired or otherwise remedied
by alterations or repairs by the Lessee, or any change which exposes the 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 consents or approvals from the Lessor. All notices and/or requests for consents or approvals pursuant to this Lease must be in writing and given by personal delivery or United States mail with postage or delivery charges prepaid, return receipt requested and addressed to the Housing Administrator of the County of Hawai'i. The address for the Housing Administrator is as follows:

County of Hawaii Housing Administrator Office of Housing and Community Development 50 Wailuku Drive Hilo, Hawai'i 96720-2456

21. **Maintenance**. That the Lessee shall keep the Premises in as good repair as the Premises shall be at the commencement of the term (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 Premises. The Lessee shall immediately inform the Lessor in writing and promptly repair and correct, at its own expense, any condition or defect in the Premises which creates a risk of harm to persons or property, or which exposes the Premises to rapid deterioration in excess of normal weathering.

- 22. Use. The Lessee shall use the Premises solely as an affordable senior rental housing facility with preference to: (a) veterans and their spouses; and (b) spouses of deceased veterans, in accordance with federal, state or county laws; provided that this requirement shall not apply to those units designated as staff units for personnel employed to manage the Project.
- Records. That the Lessee shall establish and maintain records of intake, discharge, services and other documentation necessary to show compliance with paragraph B.22 above, including but not limited to, the financial status of clients served, and to show the scope and nature of services rendered at the Premises, and shall maintain and preserve all required records and documents for three (3) years after the expiration of this Lease. All records referred to in this paragraph shall be available for inspection by the Lessor and its agents on reasonable advance written notice but in no event less than forty-eight (48) hours, provided that the Lessee and the Lessor shall agree on measures necessary to protect the privacy and individual identity of persons receiving services at the Project. Upon the written request of the Lessor, the Lessee shall provide the Lessor with a copy of the Lessee's most recent annual independent audit of the financial records of the Project.
- 24. **Non-Profit Status**. That the sole member of Lessee, Hui Kauhale, Inc., a Hawaii non-profit corporation ("Managing Non-Profit Entity"), has and shall maintain its status as a tax-exempt, non-profit organization as certified by the Internal Revenue Service. The Lessor may require the Lessee to provide evidence of such certification.

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

That the Lessee will have, and shall continue thereafter to have during the term, a partnership agreement, operating agreement, bylaws or policies, as applicable, which

describe the manner in which the Lessee's business and operation of the Project shall be conducted, including management, audit and fiscal policies and procedures, and policies on nepotism.

- 25. 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 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.
- 26. **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.
- 27. **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 (30) days.
- Abandonment. That if the Lessee abandons the Premises, its right to possession shall cease if not cured after the giving of notice and within the time periods permitted under this Lease, in which event this Lease shall terminate, without prejudice to any other rights of the Lessor. "Abandonment" shall mean Lessee's failure to use the Premises for the purposes and uses listed in paragraph B.22 herein, except (a) for the

period commencing as of the date of this Lease and continuing until the Premises are first constructed and occupied for the purposes and uses set forth in paragraph B.22 herein; and (b) during any period that the Premises or any portion thereof are under renovation, refurbishment, repair or improvement in accordance with the terms and conditions of this Lease.

29. **Subdivision of Property**. The Lessee shall obtain the prior consent of Lessor before applying for subdivision of the Premises. Such subdivision shall be in order to further the purposes of this Lease. The 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 Premises shall be substantially destroyed or become un-tenantable by reason of fire, the elements or any other cause, then paragraph B.13.d. shall apply.
- 2. Condemnation. That in the event of a condemnation proceeding, the Lessee and the Permitted Mortgagee shall have the right to participate in any such condemnation proceeding or settlement discussions, including filing and pursuing a claim against the condemning authority on account of the value of all or a part of Lessee's leasehold interest in the Premises, the value of Lessee's interest in the improvements, moving and relocation expenses and loss of profits, and any award received on account thereof shall be the sole property of the Lessee. If the entire Premises are taken, or if so much of the Premises are taken that the Premises become unsuitable or impracticable for the operation of the uses permitted in paragraph B.22, as determined by the Lessee, in its sole discretion, then this Lease shall terminate upon written notice by the Lessee to the Lessor, effective as of the date

of such taking, whereupon the Lessor and the Lessee shall have no further obligations under this Lease. In the event of a partial taking, the Lessee shall have the right to rebuild and restore the Premises in accordance with the terms of the Permitted Mortgage; provided that the Lessee shall have the right to terminate this Lease upon written notice by the Lessee to the Lessor if such partial taking occurs during the last ten (10) years of the term of this Lease.

- 3. Breach. That if (a) the Lessee shall become bankrupt, or (b) shall abandon the Premises, or (c) if this Lease and the Premises shall be attached or otherwise taken by operation of law, or (d) if any assignment shall be made of the Lessee's property for the benefit of creditors, or (e) 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, then the Lessor shall provide written notice of such default and an opportunity for the Lessee to cure such default for a period of not less than thirty (30) days, provided that if such default is not susceptible to cure within thirty (30) days and the Lessee shall substantially commence to cure such default within such 30-day period, then such 30-day period shall be extended for such additional time as reasonably approved by the Lessor for the Lessee to diligently prosecute the same to completion. If, after the giving of such written notice and expiration of such 30-day period (as may be extended), the Lessee shall fail to cure such default, then the Lessee shall be in breach of this Lease. In the event of such breach, Lessor may immediately re-enter the Premises, and, upon or without such entry, terminate this Lease without prejudice to any other remedy or right of action.
  - 4. Limited Partner Provisions.

- a. The Lessor hereby agrees for purposes of this Lease that the cure of any default made or tendered by a limited partner of the Partnership (the "Limited Partner") shall be deemed to be a cure by the Lessee and shall be accepted or rejected on the same basis as if made or tendered by the Lessee.
- b. The Lessor hereby agrees that, from and after a Permitted Transfer, transfers of interests within the Permitted Transferee, including but not limited to, a transfer of the interest of the Limited Partner, in accordance with the terms of the partnership agreement of the Permitted Transferee, shall be expressly permitted under the terms of this Lease and shall not require the prior consent of the Lessor; provided that the Lessee shall give written notice of such transfer to the Lessor.
- c. The Lessee owns fee simple title to all improvements constructed or installed on the Premises during the term of this Lease.
- d. No amendments or modifications to this Lease shall be signed without the consent of the Limited Partner, which consent shall not be unreasonably withheld.
- 5. Reasonable Cooperation. The Lessor and the Lessee acknowledge and agree that the Lessee may request an amendment to this Lease in connection with satisfying the Financing Contingency or the requirements of a Permitted Mortgagee. In such event, the parties shall work cooperatively and in good faith to enter into such amendment, as permitted by law, that may be requested by the Lessee to satisfy the Financing Contingency or the requirements of a Permitted Mortgagee; provided that any such amendment shall not impose any obligation upon the Lessor to construct or make any improvements to the Premises.
- 6. **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.

- 7. Complete Agreement; Hawaii Law; Severability. 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. This Lease shall be governed by the laws of the State of Hawaii. If any provision of this Lease shall be invalid or unenforceable to any extent, then the other provisions of this Lease shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- 8. 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 the Lessee and the Lessor, or as constituting the Lessee as the agent, employee or representative of the Lessor for any purpose whatsoever.

[signatures on the next page]

IN WITNESS WHEREOF, the parties hereto have entered into this Lease on the day and year first above written.

	COUNTY OF HAWAIT
	Ву
	Its
	"Lessor"
	HKI KAWILI LLC, a Hawai'i limited liability company
	By Hui Kauhale, Inc., a Hawaii nonprofit corporation Its Sole Member
	By Marian Gushiken Its President
	"Lessee"
RECOMMEND APPROVAL:	
Housing Administrator Date:	
APPROVED AS TO FORM AND LEGA	ALITY:
Deputy Corporation Counsel County of Hawai'i Date:	

STATE OF HAWAI'I	)						
COUNTY OF HAWAI'I	) SS: )						
On this	day of	, 2018, before me personally					
appeared		,, to me personally					
known who, being by me dul	y sworn or affi	irmed, 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.							
		Signature					
	Print Name						
		Notary Public, State of Hawai'i My Commission Expires:					
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# **INSERT MAYOR'S NOTARY PAGE**



#### STATE OF HAWAI'I SURVEY DIVISION DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES HONOLULU

C.S.F. No. 25,630

September 13, 2017

## COMBINED VETERANS CENTER, AND AFFORDABLE SENIOR HOUSING SITE

#### PARCEL A

Waiakea, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Waiakea.

Beginning at the south corner of this parcel of land, the north corner of the intersection of Kapiolani and Kawili Streets, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 5613.82 feet South and 6690.70 feet East, thence running by azimuths measured clockwise from True South:-

1.	Along th	ne north con	rner of the intersect	tion of Kawili and Kapiolani Streets on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: 103° 10' 42.43 feet;
2.	148°	10'	297.86	feet along the northeast side of Kapiolani Street;
3.	238°	10'	240.44	feet along Grant S-14,064 to The Protestant Episcopal Church in the Hawaiian Islands;
4.	148°	10'	362.34	feet along Grant S-14,064 to The Protestant Episcopal Church in the Hawaiian Islands:

-1-

#### EXHIBIT A

C.S.F. No. 25,630		September 13, 2017
5. 238° 10	240.45	feet along the remainder of the Government (Crown) Land of Waiakea;
6. 328° 10	9' 690.20	feet along the southwest side of Ululani Street Extension;
7. 58° 10	450.89	feet along the northwest side of Kawili Street to the point of beginning and containing an AREA OF 5.615 ACRES.

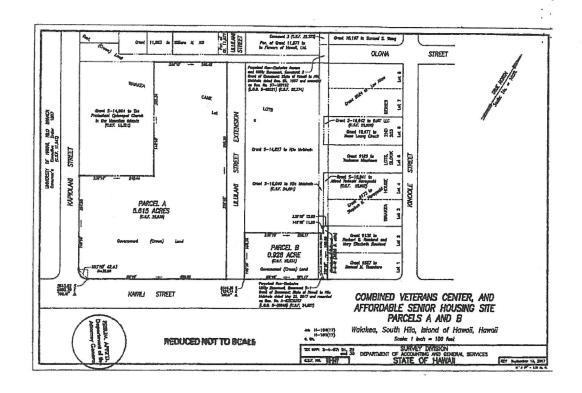
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: BU 3. 5
Gerald Z. Yonashiro
Land Surveyor

rk

Compiled from map and desc. fum. by dlb & Associates, LLC. Said map and desc. have been examined and checked as to form and mathematical correctness but not on the ground by the Survey Division.





#### County of Hawai'i

#### **EXECUTIVE ORDER NO. 142**

### NONDISCRIMINATION IN COUNTY CONTRACTS

Under and by virtue of the authority vested in me as Mayor of the County of Hawai'i, by Article V of the County Charter and the laws of the State of Hawai'i, it is ordered as follows:

SECTION 1. All County contracts shall include hereafter the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
- applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The contractor shall assure that applicants are employed and that employees are treated during employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause."
- (3) The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.

EXHIBIT B

- In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
- The contractor who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to Section above.
- The County may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein."

SECTION 2. All County departments and agencies shall take appropriate action to revise the standard County contract forms in accordance with the provisions of this Order.

SECTION 3. Executive Order No. 100 is hereby rescinded. This Order shall take effect thirty (30) days after the date of this Order.

Dated:

COUNTY OF HAWAI'I

Mayor, County of Hawai'i

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Coursel

County of Hawai'i