

**INDUSTRIAL SPACE LEASE**

BETWEEN

**ABP KALIHI YARD LLC**

AS LANDLORD

AND

**J A R TOWING, INC.**

AS TENANT

**228 KALIHI STREET, HONOLULU, HAWAII**

Industrial Space Lease  
Table of Contents

<b>ARTICLE 1 SPECIFIC PROVISIONS.....</b>	<b>1</b>
1.01 <u>SPECIFIC LEASE PROVISIONS AND DEFINITIONS</u> .....	1
1.02 <u>EXHIBITS</u> .....	4
1.03 <u>DEFINITIONS; GENERAL</u> .....	4
<b>ARTICLE 2 PREMISES.....</b>	<b>4</b>
2.01 <u>GRANTING CLAUSE</u> .....	4
2.02 <u>RESERVED</u> .....	5
2.03 <u>RESERVATIONS</u> .....	5
2.04 <u>NO INTEREST IN AIR SPACE OR LIGHT OR AIR EASEMENT</u> .....	5
2.05 <u>QUIET ENJOYMENT</u> .....	5
2.06 <u>RESERVED</u> .....	5
<b>ARTICLE 3 COMMENCEMENT DATE.....</b>	<b>5</b>
3.01 <u>CONFIRMATION OF COMMENCEMENT DATE</u> .....	5
<b>ARTICLE 4 RENT AND OTHER CHARGES .....</b>	<b>6</b>
4.01 <u>GENERAL</u> .....	6
4.02 <u>BASE RENT</u> .....	6
4.03 <u>TAX ON RENT AND OTHER PAYMENTS</u> .....	6
4.04 <u>REAL PROPERTY TAX</u> .....	6
4.05 <u>CONVEYANCE TAX; OTHER TAXES</u> .....	7
4.06 <u>ADDITIONAL RENT</u> .....	7
4.07 <u>PAYMENT OF RENT DURING DISPUTES</u> .....	7
4.08 <u>SERVICE CHARGE</u> .....	7
4.09 <u>FINANCIAL DISCLOSURES</u> .....	7
<b>ARTICLE 5 SECURITY DEPOSIT .....</b>	<b>7</b>
5.01 <u>SECURITY DEPOSIT</u> .....	7
5.02 <u>USE</u> .....	8
5.03 <u>APPLICATION IN EVENT OF BANKRUPTCY</u> .....	8
5.04 <u>ASSIGNMENT</u> .....	8
<b>ARTICLE 6 USE AND CONDUCT OF BUSINESS.....</b>	<b>8</b>
6.01 <u>PERMITTED USE OF PREMISES</u> .....	8
6.02 <u>PROHIBITED USE OF PREMISES</u> .....	9
6.03 <u>DISPOSAL OF RUBBISH</u> .....	9
6.04 <u>COMPLIANCE WITH LAW</u> .....	9
6.05 <u>AMERICANS WITH DISABILITIES ACT OF 1990</u> .....	9
6.06 <u>ANNOYING OR INJURIOUS CONDUCT</u> .....	10
6.07 <u>HAZARDOUS MATERIALS</u> .....	10
6.08 <u>PATRIOT ACT</u> .....	12
<b>ARTICLE 7 UTILITIES.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
7.01 <u>TENANT UTILITIES</u> .....	12
<b>ARTICLE 8 IMPROVEMENTS, ALTERATIONS AND RENOVATIONS BY TENANT.....</b>	<b>13</b>
8.01 <u>CONDITION OF PREMISES</u> .....	13
8.02 <u>TENANT IMPROVEMENTS</u> .....	13
8.03 <u>CONSENT REQUIRED</u> .....	13
8.04 <u>PROTECTION AGAINST LIENS</u> .....	14
8.05 <u>DISCLAIMER</u> .....	14
8.06 <u>ALTERATIONS BELONG TO LANDLORD</u> .....	14

8.07	<u>ALTERATIONS REQUIRED BY LAW</u>	15
8.08	<u>SIGNAGE</u>	15
<b>ARTICLE 9 MAINTENANCE AND REPAIRS</b>		<b>15</b>
9.01	<u>MAINTENANCE AND REPAIRS BY TENANT</u>	15
9.02	<u>INSPECTION; RIGHT TO CURE TENANT'S DEFAULT</u>	16
9.03	<u>RESERVED</u>	16
9.04	<u>RIGHT OF ENTRY</u>	16
9.05	<u>AIR CONDITIONING</u>	16
<b>ARTICLE 10 NAME OF BUSINESS</b>		<b>17</b>
<b>ARTICLE 11 INDEMNITY AND RISK OF INJURY, LOSS AND DAMAGE</b>		<b>17</b>
11.01	<u>INDEMNITY</u>	17
11.02	<u>TENANT'S ASSUMPTION OF RISK AND RELEASE</u>	17
<b>ARTICLE 12 INSURANCE</b>		<b>18</b>
12.01	<u>TENANT'S LIABILITY INSURANCE</u>	18
12.02	<u>TENANT'S PROPERTY INSURANCE</u>	19
12.03	<u>GENERAL INSURANCE REQUIREMENTS</u>	19
12.04	<u>RESERVED</u>	20
12.05	<u>WAIVER OF SUBROGATION</u>	20
<b>ARTICLE 13 DAMAGE AND RESTORATION</b>		<b>20</b>
13.01	<u>NOTICE OF CASUALTY</u>	20
13.02	<u>DAMAGE OR DESTRUCTION</u>	20
13.03	<u>PAYMENT OF INSURANCE PROCEEDS</u>	21
13.04	<u>USE OF INSURANCE PROCEEDS</u>	21
13.05	<u>WAIVER</u>	21
<b>ARTICLE 14 CONDEMNATION</b>		<b>21</b>
14.01	<u>SUBSTANTIAL TAKING</u>	21
14.02	<u>PARTIAL TAKING</u>	21
14.03	<u>LEASEHOLD TAKING</u>	21
14.04	<u>RESERVED</u>	22
14.05	<u>CONDEMNATION AWARD</u>	22
<b>ARTICLE 15 ASSIGNMENT, SUBLETTING AND MORTGAGING BY TENANT</b>		<b>22</b>
15.01	<u>GENERALLY</u>	22
15.02	<u>PROPOSAL NOTICE AND LANDLORD'S RIGHTS</u>	23
15.03	<u>PROCEEDS OF ASSIGNMENT; ASSIGNMENT OF SUBLEASE RENT</u>	23
15.04	<u>ADDITIONAL RESTRICTIONS ON ASSIGNMENT</u>	24
15.05	<u>PROHIBITION ON LEASEHOLD MORTGAGES</u>	24
15.06	<u>ASSIGNMENT BY LANDLORD</u>	24
<b>ARTICLE 16 SUBORDINATION, ATTORNMEN AND MORTGAGEE REQUIREMENTS</b>		<b>24</b>
16.01	<u>SUBORDINATION AND ATTORNMEN</u>	24
16.02	<u>REQUIREMENTS OF LANDLORD'S MORTGAGEE</u>	25
16.03	<u>ESTOPPEL CERTIFICATES</u>	25
16.04	<u>FURTHER DOCUMENTS</u>	25
<b>ARTICLE 17 DEFAULT BY TENANT</b>		<b>25</b>
17.01	<u>DEFINITION OF EVENT OF DEFAULT</u>	25
17.02	<u>LANDLORD'S REMEDIES</u>	26
17.03	<u>EXERCISE OF LANDLORD'S REMEDIES</u>	27
17.04	<u>TERMINATION OF LEASE</u>	27

17.05	<u>SEPARATE SUITS.</u>	28
17.06	<u>NO TERMINATION.</u>	28
17.07	<u>ADDITIONAL COSTS AND EXPENSES OF DEFAULT.</u>	28
17.08	<u>RELETTING THE PREMISES.</u>	28
17.09	<u>INDUCEMENT RECAPTURE.</u>	28
<b>ARTICLE 18 TERMINATION.....</b>		<b>29</b>
18.01	<u>SURRENDER OF THE PREMISES.</u>	29
18.02	<u>HOLDING OVER.</u>	29
<b>ARTICLE 19 LANDLORD'S RIGHTS .....</b>		<b>29</b>
19.01	<u>PERFORMANCE OF LEASE COVENANTS.</u>	29
19.02	<u>ENTRY TO PREMISES.</u>	30
19.03	<u>CHANGE OF NAME.</u>	30
19.04	<u>WAIVER.</u>	30
19.05	<u>RESERVED.</u>	30
<b>ARTICLE 20 LANDLORD'S LIABILITY .....</b>		<b>30</b>
20.01	<u>LANDLORD'S FAILURE TO PERFORM.</u>	30
20.02	<u>NOTICE TO LANDLORD'S MORTGAGEES.</u>	30
20.03	<u>PAYMENT OF RENTS UPON LANDLORD'S DEFAULT UNDER MORTGAGE.</u>	30
20.04	<u>LIMITATION ON LIABILITY OF LANDLORD.</u>	31
<b>ARTICLE 21 GENERAL PROVISIONS.....</b>		<b>31</b>
21.01	<u>NOTICES.</u>	31
21.02	<u>REIMBURSEMENT OF LANDLORD'S PROCESSING COSTS.</u>	31
21.03	<u>INTEREST.</u>	31
21.04	<u>COSTS AND ATTORNEYS' FEES.</u>	31
21.05	<u>ACCORD AND SATISFACTION.</u>	31
21.06	<u>EXECUTION OF THIS LEASE.</u>	32
21.07	<u>ENTIRE AGREEMENT.</u>	32
21.08	<u>WAIVER OF JURY TRIAL AND COUNTERCLAIM.</u>	32
21.09	<u>SHORT FORM LEASE.</u>	32
21.10	<u>CREDIT CHECK.</u>	32
21.11	<u>DISCLOSURE OF AGENCY; INDEMNIFICATION.</u>	32
21.12	<u>CAPTIONS; CONSTRUCTION.</u>	33
21.13	<u>TIME OF THE ESSENCE; FORCE MAJEURE.</u>	33
21.14	<u>COOPERATION WITH REIT STATUS.</u>	33
21.15	<u>OTHER MATTERS.</u>	33
21.16	<u>CONFIDENTIALITY.</u>	34
21.17	<u>COUNTERPARTS; ELECTRONIC DELIVERY.</u>	34

## INDUSTRIAL SPACE LEASE

This Industrial Space Lease (“Lease”) is dated as of July 18, 2022, 2022, between Landlord and Tenant (each as defined below).

### ARTICLE 1 SPECIFIC PROVISIONS

#### 1.01 Specific Lease Provisions and Definitions.

The following constitute certain specific provisions of the Lease and may be referred to elsewhere in the Lease:

Item 1 **Landlord:** ABP KALIHI YARD LLC, a Hawaii limited liability company.

Item 2 **Tenant:** J A R TOWING, INC., a Hawaii corporation, with Federal I.D. No. \_\_\_\_\_.

Item 3 **Premises:** Approximately 29,114 square feet of industrial space designated as “Unit 1” as generally depicted on the Site Plan attached hereto as Exhibit A attached hereto and made a part hereof, and covering the entire parcel of land described in Exhibit B attached hereto and made a part hereof (the “**Premises**”). Landlord and Tenant agree that the area of the Premises is conclusively set forth above, irrespective of the actual area of the Premises. Tenant accepts the Premises subject to any and all encumbrances affecting the Premises.

Item 4 **Premises Address:** 228 Kalihi Street, Honolulu, Hawaii 96819.

Item 5 **Commencement Date; Rent Commencement Date; Term:** The “**Commencement Date**” and the “**Rent Commencement Date**” shall be July 15, 2022. The “**Term**” of this Lease shall begin on the Commencement Date and end on December 31, 2022 unless extended in accordance with Item 14(b) below. This Lease is effective upon the earlier to occur of the Commencement Date or the date set forth on the first paragraph of this Lease.

Item 6 **Base Rent:** For purposes of this Lease, monthly Base Rent shall be as follows:

Period	Monthly Base Rent
July 15-July 31, 2022	\$20,379.80 (prorated)
August 1, 2022 – December 31, 2022	\$20,379.80
<b>Extension Term</b>	
January 1, 2023 – December 31, 2023	\$20,991.19
January 1, 2024 – December 31, 2024	\$21,620.93
January 1, 2025 – December 31, 2025	\$22,269.56
January 1, 2026 – December 31, 2026	\$22,937.64
January 1, 2027 – December 31, 2027	\$23,625.77

Unless otherwise expressly set forth in this Lease, even if Base Rent is not payable for any period during the Term, Tenant shall pay Operating Expenses and other charges under the Lease from and after the Commencement Date.

Item 7 **Notice and Rent Payment Addresses:**

Landlord’s address for all Rent payments: MSC 61428

P.O. Box 1300  
Honolulu, HI 96807-1300

Landlord's address for Notice purposes: ABP Kalihi Yard LLC  
Attention: Vice President – Asset Management  
P.O. Box 135032  
Honolulu, HI 96801-5032  
Telephone No. (808) 525-6611  
Fax No. (808) 525-8460  
Email: leaseadmin@abhi.com

With a copy to: ABP Kalihi Yard LLC  
Attention: Law Department  
822 Bishop Street  
Honolulu, HI 96813  
Telephone No. (808) 525-6611  
Fax No. (808) 525-6678

Tenant's address for Notice purposes: J A R Towing, Inc.  
228 Kalihi Street  
Honolulu, Hawaii 96819  
Telephone No. (808) 295-2201  
Fax No. \_\_\_\_\_  
Email: [rsrus5763@gmail.com](mailto:rsrus5763@gmail.com)  
Attention: Roy Guthrie

**Item 8 Security Deposit:** A total of FIFTY-TWO THOUSAND TWO HUNDRED FIFTY-TWO AND 96/100 DOLLARS (\$52,252.96), which is payable to Landlord upon the execution of this Lease.

**Item 9 Permitted Use of Premises:** Tenant shall use the Premises only for a base yard and general storage in connection with the operation of a commercial towing business and for no other purpose. Tenant shall be solely responsible for determining that Tenant's use of the Premises is in compliance with applicable zoning ordinances and all other applicable Laws and Tenant acknowledges that Landlord has made no representations or warranties in connection therewith.

**Item 10 Tenant's Trade Name:** J A R Towing

**Item 11 Brokers:** Tenant's Broker: N/A. Landlord's Broker: A & B Properties Hawaii, LLC, a Delaware limited liability company.

**Item 12 Guarantor(s):** It is understood and acknowledged that Landlord would not have entered into this Lease, but for the delivery to Landlord by the following individuals of a guaranty of this Lease in the form set forth in Exhibit F attached hereto and made a part hereof:

Roy Guthrie  
130 Hoopiha Place,  
Wahiawa, Hawaii 96786  
(808) 295-2201  
Email: [rsrus5763@gmail.com](mailto:rsrus5763@gmail.com)

Jan Wakayama  
1351 Anapa St,  
Honolulu, Hawaii 96818  
(808) 741-0832  
Email: [7410832@gmail.com](mailto:7410832@gmail.com)

Item 13 **Advance Deposit:** The following shall constitute Tenant's initial monthly payment of Rent, to be adjusted as and when required by this Lease:

	<u>Initial Monthly Amount</u>
Monthly Base Rent	\$20,379.80
Monthly Estimated Real Property Taxes	\$4,571.00
Tax on Rent / GET Reimbursement	\$1,175.68
<b>Total Initial Monthly Amount</b>	<b>\$26,126.48</b>

The "**Advance Deposit**" is the Total Initial Monthly Amount specified in this Item 13. Tenant shall pay the Advance Deposit to Landlord at the time of execution of this Lease together with a prorated amount of the Initial Monthly Amount to cover the period from May 15<sup>th</sup> through May 31, 2022. The Advance Deposit shall be credited by Landlord against Tenant's first full monthly installment(s) of Rent.

Item 14 **Special Provisions (if any):** The following special provisions amend this Lease, to the extent they contradict any other provisions set forth in this Lease. To the extent the terms and conditions contained in this Item 14 are inconsistent with any other terms of this Lease, then except as may be otherwise expressly set forth to the contrary, the terms of this Item 14 shall control.

(a) **Single Tenant Project; No Common Area.** Tenant acknowledges that the Premises constitutes the entire rentable area of the project. Accordingly, there is no "Common Area" at the project. Further, notwithstanding any other provision of this Lease to the contrary, Tenant agrees to assume full responsibility for and to perform, at Tenant's sole cost and expense, all maintenance, repair, replacement and substitution of all improvements constituting the Premises, including, but not limited to all storage and parking areas, paved areas, perimeter walls and fencing, the structural portions of the Premises, its walls, roof and roof flashings, canopies, fire exits, doors and hardware, windows, glass, sidewalks, landscaping, and all systems within the Premises (such as, air conditioning, electricity, water, heating, gas, ventilating, mechanical, lighting, telephone and telecommunication systems, sanitary (sewer) and storm drain systems, and all other utility and mechanical systems). Tenant also assumes full responsibility for obtaining and paying directly for the cost of any services for the Premises, including, but not limited to, janitorial services, utilities, trash removal, maintenance, landscaping, security and fire protection, and contract services. Tenant shall take good care of the Premises and keep the Premises in good working order and in a clean, safe, attractive and sanitary condition, all in accordance with this Lease and applicable Law. The foregoing responsibilities shall be in addition to Tenant's maintenance and repair responsibilities under Section 9.01 of this Lease.

If Landlord determines, in Landlord's reasonable discretion, that Tenant is not performing or observing any of its obligations under this Item 14(a), Landlord shall provide written notice of the same to Tenant, including a reasonably-detailed description of the breach in Tenant's obligations, and Tenant shall have ten (10) days after receipt of such notice to cure the breach to Landlord's satisfaction; provided, however, that if the breach is not reasonably susceptible of being cured within ten (10) days, then Tenant shall be deemed to be in compliance with this Lease as long as Tenant commences curing such breach within such 10-day period and thereafter diligently prosecutes such cure to completion. The term "diligently prosecutes" as used in the foregoing sentence means curing the breach to completion within thirty (30) days of the commencement of such cure or promptly requesting in writing an extension of time to complete such cure, which request must include a description of the reasons beyond Tenant's control that prevents Tenant from completely curing the breach within such 30-day period, from which Landlord may thereafter grant a reasonable extension of time to cure in Landlord's reasonable discretion. If Tenant fails to cure the breach within such cure period, Landlord shall be entitled (but not obligated) to address the breach by either (a) declaring an Event of Default and exercising its rights and remedies under Section 17.02, or (b) as set forth in Section 9.02, performing applicable maintenance, repairs and/or replacements with contractors or personnel selected by Landlord, at Tenant's expense, payable to Landlord as additional rent within ten (10) days of Landlord's written demand therefor.

**In furtherance of the foregoing, Landlord and Tenant acknowledge and agree that the provisions of this Special Provision (a) control over any contrary provision of this Lease.**

(b) **Extension Option.** Tenant shall have one (1) option (the "**Option**") to extend the Term of this Lease for five (5) years (the "**Extension Term**") under the same terms and conditions set forth herein except that the Base Rent shall for the Extension Term be as set forth in Item 6 and there shall be no further option to extend the

Term thereafter. Exercise of the Option to extend is conditioned upon: (i) Tenant exercising the Option being the originally named Tenant under this Lease; (ii) Tenant's not being in default under any term or condition of this Lease (beyond any applicable notice and cure periods) either at the time the Option is exercised or at the time the applicable Extension Term is to commence; and (iii) Tenant providing Landlord with irrevocable written notice of Tenant's exercise of the Option not later than three (3) months prior to the beginning of the Extension Term; time being of the essence in exercising such Option.

(c) **Early Termination of Extension Term.** If Tenant extends the term of this Lease as provided in Item 14(b) above, and provided that Tenant's current towing contract with the City and County of Honolulu is not renewed, then Tenant shall have the right to terminate this Lease effective at any time from and after January 1, 2026 by providing Landlord with not less than 180 days prior written notice of the effective date of termination in which event Tenant shall surrender possession of the Premises on the effective date of termination in accordance with the terms and conditions of this Lease.

#### 1.02 **Exhibits.**

The following exhibits, to which reference is made in this Lease, are attached to and made a part of this Lease:

Exhibit A:	Site Plan
Exhibit B:	Legal Description of Land
Exhibit C:	Construction
Exhibit D:	<i>RESERVED</i>
Exhibit E:	Rules and Regulations
Exhibit F:	Guaranty of Lease
Exhibit G:	Estoppel Certificate
Exhibit H:	Confirmation of Commencement Date
Exhibit I:	Insurance and Environmental Questionnaire

#### 1.03 **Definitions; General.**

Each of the foregoing definitions and specific provisions shall be construed in conjunction with and limited by references thereto in other provisions of this Lease. Additionally, the following terms shall have the following meanings: The term "**Building**" means the two story office building located within the Premises that contains a combined total floor area on all floors of approximately 1,134 square feet. "**Law**" means all federal, state, and local laws, rules and regulations, all court orders, all governmental directives, orders, and requirements, and all restrictive covenants affecting the Property; "**affiliate**" means any person or entity that, directly or indirectly, controls, is controlled by, or is under common control with the party in question; "**Tenant Party**" shall include any subtenants claiming by, through, or under Tenant, and any agents, contractors, employees, invitees (while in the Premises), licensees, and concessionaires of Tenant and the foregoing parties; and "**including**" means including, without limitation.

### **ARTICLE 2 PREMISES**

#### 2.01 **Granting Clause.**

In consideration of Tenant's obligation to pay Rent and the other terms, covenants, and conditions of this Lease, the receipt and sufficiency of which are acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises to have and to hold for the Term, all on the terms and conditions set forth in this Lease. Tenant acknowledges that it has examined the Premises and accepts the Premises as of the date of this Lease in its existing physical condition, unless otherwise expressly set forth in this Lease. Tenant further acknowledges that Landlord has not made, and does not hereby make, any representation or warranty, express or implied, as to the physical condition of the Premises, the uses to which the Premises may be put, the suitability of the Premises for Tenant's intended purposes, compliance of any improvements with existing Laws, or Tenant's ability to use the Premises for Tenant's intended uses.



2.02 **Reserved.**

2.03 **Reservations.**

This Lease shall be subject to any lien or encumbrance of record existing on the Commencement Date or contemplated herein. In addition to any other rights reserved by Landlord, Landlord expressly reserves the following rights:

(a) The right to grant or relocate all easements now or later required by Landlord for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities, and appurtenances for electricity, gas, telephone, water, access, sewage, drainage and other services and utilities. This Lease is subject to all easements and setbacks and all rights-of-way now or hereafter granted for access, or to construct, install, operate, maintain, repair and replace lines and other transmission facilities and appurtenances for electricity, telephone, water, sewers, drainage and any other services and utilities over, across and under such easements according to the respective designation thereof and the right to enter for such purposes are excepted and reserved to Landlord. Landlord further excepts and reserves the right to grant such additional easements and rights-of-way as from time to time appear to Landlord to be necessary or expedient for the development (economic or otherwise) of any property owned or controlled by Landlord or in which Landlord has a financial interest.

(b) Unless otherwise designated by Landlord, the exclusive right to the use of the roof, exterior walls and land beneath the Building, together with the right, from time to time, to install, maintain, use, repair and replace utility mains and other facilities located within the Premises that serve other premises, when such location is dictated by engineering design, good practice and/or code requirements. These facilities shall include but are not limited to drains, water supply, sewage lines, sewage vents, steam and condensate pipes, condenser cooling water pipes, electric power circuits, telephone circuits, pump stations, electric panelboards, sanitary vents, fresh air supply ducts, telecommunications wiring and appurtenances, exhaust ducts and renewable energy systems.

2.04 **No Interest in Air Space or Light or Air Easement.**

Nothing in this Lease shall be construed as creating or transferring to Tenant any interest in the land underlying the Premises or any interest in the air space above the Premises, including the Building. Any diminution or shutting off of light or air by any structure which may be on the on lands adjacent to or in the vicinity of the Premises shall in no way affect this Lease or Tenant's obligations hereunder, abate Rent, or otherwise impose any liability on Landlord.

2.05 **Quiet Enjoyment.**

Landlord agrees that so long as Tenant pays the Rent and performs all of the covenants and conditions of this Lease, Tenant shall have, hold and enjoy the Premises during the Term, without hindrance or interruption by Landlord or any other person lawfully claiming by, through or under Landlord.

2.06 **Reserved.**

### ARTICLE 3 COMMENCEMENT DATE

3.01 **Confirmation of Commencement Date.**

(a) If the Commencement Date is either not specified in Section 1.01, Item 5 or is different from that date specified in said Item 5, the parties shall execute a written memorandum in the form attached as Exhibit H expressly confirming the Commencement Date and other pertinent dates of the Lease, and such memorandum shall be deemed to be an integral part of this Lease. If Tenant fails to execute and deliver such memorandum within ten (10) days after a completed copy is delivered by Landlord to Tenant, then (i) such failure shall constitute an acknowledgment that the statements included in such completed memorandum are true and correct, and (ii) Landlord may, as the attorney-in-fact of Tenant, execute such memorandum for and on behalf of and in the name of Tenant; and Tenant hereby irrevocably appoints Landlord as attorney-in-fact for Tenant with full power and authority to execute and deliver the same, which power of attorney shall be irrevocable and coupled with an interest. Occupancy of the Premises by Tenant prior to the Commencement Date shall be at Tenant's sole risk, and shall be subject to all of the terms and provisions of this Lease, excepting only those requiring the payment of Rent; however,

in no event shall Tenant be entitled to enter the Premises or take occupancy thereof without Landlord's prior written consent and without first delivering to Landlord the Security Deposit and evidence of the insurance required by this Lease.

(b) If this Lease is executed before the Premises become vacant or otherwise available and ready for occupancy by Tenant, and Landlord is unable to tender possession of the Premises to Tenant by the Commencement Date, then (i) Tenant's obligation to pay Rent hereunder shall be waived until Landlord tenders possession of the Premises to Tenant, (ii) the Term shall be extended by the time between the scheduled Commencement Date and the date on which Landlord tenders possession of the Premises to Tenant (which date will then be defined as the Commencement Date), Landlord shall not be in default hereunder or be liable for damages therefor, and (iii) Tenant shall accept possession of the Premises when Landlord tenders possession thereof to Tenant. When Landlord delivers possession of the Premises to Tenant, Tenant agrees to accept possession thereof and to proceed with due diligence to perform Tenant's work (if any) in accordance with the requirements set forth in Exhibit C attached hereto and made a part hereof, and to install its fixtures, furniture and equipment. By initiating Tenant's work (or if no Tenant's Work is to be performed by Tenant, then by occupying the Premises), Tenant shall be deemed to have accepted the Premises in their condition as of such date.

#### ARTICLE 4 RENT AND OTHER CHARGES

##### 4.01 General.

Rent shall accrue hereunder from the Commencement Date, and shall be payable by Tenant to Landlord, in immediately available funds, at the place designated by Landlord for the payment of Rent from time to time, without demand and without set-off or deduction. Base Rent and additional Rent (all defined below) are collectively referred to in this Lease as "**Rent**". Landlord and Tenant agree that all Rent payable hereunder shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "**Code**") and the Treasury Regulations promulgated thereunder (the "**Regulations**"). If Landlord determines there is any risk that a portion of any Rent shall not qualify as "rents from real property" under the Code or the Regulations, Tenant agrees to cooperate with Landlord to amend this Lease so as to cause all Rent to qualify as "rents from real property", provided however that any such amendments shall be made so as to produce the equivalent Rent (in economic terms) payable prior to such adjustments.

##### 4.02 Base Rent.

Tenant shall pay to Landlord as rent for the Premises the sums specified in Section 1.01, Item 6 (the "**Base Rent**") each month, in advance by the first day of each calendar month. The installment of Base Rent payable for any portion of the calendar month shall be a pro rata portion of the installment payable for a full calendar month.

##### 4.03 Tax on Rent and Other Payments.

Tenant shall pay to Landlord with each payment of Rent and other charges, an amount equal to any state or county general excise or gross income tax assessed against Landlord and attributable to such payment (whether actually or constructively received by Landlord), and any and all increases in such taxes, including the amount paid by Tenant to Landlord under this Section 4.03. Tenant shall also pay any and all other taxes, surcharges, and duties levied or assessed by the federal government, the state, and the county in which the Premises are located, and any other political entity now or hereafter having power to levy taxes, surcharges, or duties that are attributable to any payments made by Tenant under this Lease. It is the intent of this Section 4.03 to ensure that all Rent and other charges will be received by Landlord without diminution by any tax, assessment, charge, surcharge, or levy of any nature whatsoever, except United States and state net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose.

##### 4.04 Real Property Tax.

Landlord shall pay all Real Property Taxes assessed against or upon the Premises, and Tenant shall pay to Landlord with each payment of monthly Base Rent, as additional Rent an amount equal to one twelfth (1/12) of the estimated annual Real Property Taxes assessed against or upon the Premises (as determined by Landlord from time to time).

The term “**Real Property Taxes**” means and includes all taxes, assessments (special or otherwise), and other charges against or upon the Premises, the land underlying the Premises, or Landlord, as owner of the Premises and such land; any taxes based or measured by the Rent payable under this Lease; taxes based on the value, use or occupancy of the Premises, and any related charges.

4.05 **Conveyance Tax; Other Taxes.**

Tenant shall be responsible for paying when due any conveyance tax imposed by the State of Hawaii in connection with this Lease and any amendments hereof, and for preparing, executing, and filing directly with the state such documentation as may be necessary or proper in connection therewith. Tenant shall maintain payment records, and shall promptly provide Landlord with copies of such records upon request by Landlord. Tenant’s record maintenance and delivery obligations shall survive termination of this Lease. Tenant shall also be responsible for and shall pay before delinquency all municipal, state or county taxes assessed against Tenant by reason of the conduct of its business in the Premises or with respect to any personal property owned by or placed in or about the Premises by and/or at the expense of Tenant.

4.06 **Additional Rent.**

In addition to Base Rent, Tenant shall pay to Landlord all other charges described elsewhere in this Lease, and all such charges and any interest or penalties that may accrue shall be considered to be additional Rent. If Tenant fails to pay any such additional Rent, Landlord shall have all rights and remedies as Landlord has for the nonpayment of Base Rent.

4.07 **Payment of Rent During Disputes.**

During the pendency of any dispute between the parties, Tenant shall continue to pay all Rent without any delay, deduction, or set off whatsoever.

4.08 **Service Charge.**

In addition to any other remedy available to Landlord, a service charge of four percent (4.0%) of each Rent payment due under this Lease shall be assessed against Tenant if the amount is paid more than ten (10) days after the due date, to cover the extra expense involved in handling delinquent payments. In addition, if a check which has been remitted for the payment of Rent or any other amount due under the terms of this Lease shall not be honored upon its presentment for payment, then a FIFTY AND NO/100 DOLLARS (\$50.00) charge shall be imposed.

4.09 **Financial Disclosures.**

Unless Tenant is a publicly traded company listed on a nationally recognized stock exchange, Tenant shall provide true, complete and accurate financial information and documentation about itself and any guarantors to Landlord or Landlord’s designee, within ten (10) days after Landlord’s written request therefor, provided, however, absent the existence of an uncured Event of Default under this Lease, Landlord may not request such statements more frequently than once each calendar year. Tenant represents that the financial statements and other information submitted to Landlord by Tenant prior to the execution of this Lease are true, complete and accurate, were prepared in accordance with generally accepted accounting principles applied on a consistent basis, and accurately reflect Tenant’s net worth as of the date of this Lease.

## ARTICLE 5 SECURITY DEPOSIT

5.01 **Security Deposit.**

Concurrently with the execution of this Lease, Tenant shall deposit with Landlord the Security Deposit in the amount specified in Section 1.01, Item 8, as security for the performance by Tenant of every covenant and condition of this Lease (“**Security Deposit**”). The deposit is not an advance payment of Rent or a measure of Landlord’s damages in the event of any default by Tenant.

## 5.02 Use.

If at any time during the Term any of the Rent herein reserved shall be overdue and unpaid, then Landlord may, at its option, apply any portion of the Security Deposit to the payment of any such overdue Rent. If Tenant fails to keep and perform any of the other terms, covenants and conditions of this Lease to be kept and performed by Tenant, then Landlord at its option may apply the Security Deposit, or so much thereof as may be necessary, to compensate Landlord for loss, cost or damage sustained by Landlord due to such breach. If Landlord applies all or any part of the Security Deposit, Tenant shall within ten (10) days after receipt of notice from Landlord, pay to Landlord the sum expended to replenish the Security Deposit to its original amount. Failure to do so shall be a default under this Lease. If Tenant complies with all of the covenants and conditions of this Lease, the Security Deposit, or any balance remaining, shall be returned to Tenant within a reasonable time after the later of (i) the expiration of the Term, and (ii) Tenant's surrender of the Premises to Landlord in the condition required under the terms of this Lease.

Should Landlord choose to apply the Security Deposit against damages suffered by it, such application shall not establish or signify a waiver of any other rights or remedies of Landlord hereunder, nor shall such application constitute an accord and satisfaction. If a default by Tenant occurs hereunder, and either (a) Landlord elects not to terminate this Lease in connection therewith, or (b) Tenant otherwise cures such default and/or redeems its right of possession of the Premises prior to Landlord's termination of this Lease becoming effective, whether pursuant to applicable law or otherwise, then in addition to any other rights of Landlord exercisable in connection therewith, Landlord shall have the right to demand from Tenant, and Tenant agrees to deposit with Landlord, as additional security for the performance of Tenant's obligations hereunder, an amount equal to one month's Base Rent at the rent rate in effect at such time. Such additional security amount shall be held by Landlord as an addition to the Security Deposit, if any, previously tendered by Tenant to Landlord under this Lease, and shall be administered by Landlord in accordance with this Section. Landlord shall have the right to demand tender of such additional security on each occasion where Tenant commits a default hereunder, and on more than one occasion, if applicable, and Tenant's failure to make such payment within five (5) days after Landlord's demand therefor shall be deemed an event of default.

## 5.03 Application in Event of Bankruptcy.

In the event any bankruptcy, insolvency, reorganization, or other creditor debtor proceedings shall be instituted by or against Tenant, the Security Deposit shall be deemed to be applied first to payment of any Rent due Landlord for all periods prior to the institution of such proceedings, and the balance, if any, of the Security Deposit may be retained by Landlord in partial liquidation of Landlord's damages.

## 5.04 Assignment.

Landlord may assign and deliver the Security Deposit to any purchaser of Landlord's interest in this Lease or the Premises, and Landlord shall then be released and discharged from any and all obligations and liabilities related to the Security Deposit. After such transfer, Tenant shall look only to such purchaser for any recovery of the Security Deposit to which Tenant is entitled. In the event of any valid assignment of this Lease by Tenant, Landlord shall not be required to return the Security Deposit to Tenant, and any such assignment shall be deemed to include an assignment of any and all of Tenant's rights to recover the Security Deposit upon the expiration of the Term or the termination of this Lease. Landlord's duty to return the Security Deposit pursuant to this Section shall run to Tenant's valid assignee only.

# ARTICLE 6 USE AND CONDUCT OF BUSINESS

## 6.01 Permitted Use of Premises.

The Premises may be used and occupied only for the purpose set forth in Section 1.01, Item 9 above and for no other purpose. Nothing contained in this Lease shall be construed as granting to Tenant the exclusive right to conduct any particular business in the Premises. Tenant acknowledges that neither Landlord nor any agent or employee of Landlord has made any representation or warranty with respect to the Premises, or with respect to the suitability of the Premises for Tenant's intended use, except as expressly set forth in this Lease. In any event, this Lease is subject to all applicable zoning ordinances and to any Laws governing and regulating the use of the Premises.

#### 6.02 **Prohibited Use of Premises.**

Tenant shall not use or allow the use of the Premises for any illegal act, or any act that may injure the Premises or be a nuisance or menace to other tenants or users, or that will increase the rate of, or cause cancellation of, any insurance on the Premises. Tenant shall not use or occupy the Premises for the purpose of storing junk, scrap, or other offensive materials; permit any objectionable or unpleasant odors to emanate from the Premises; place or permit any radio, television, or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the Premises; place an antenna, awning or other projection on the exterior or the interior of the Premises; solicit business or distribute leaflets or other promotional media on the Premises, nor shall Tenant use in or about the Premises any advertising or promotional media such as searchlights, loudspeakers or similar visual or audio media. Tenant shall not use any apparatus, machinery, or device in or about the Premises which shall cause unreasonable noise or vibration. Tenant shall promptly report to Tenant's insurance company (in notification format and with supporting details requested by such insurance company) and verbally notify Landlord within twenty-four (24) hours, and provide written notification within five (5) days, after Tenant learns of any occurrence at the Premises involving Tenant or any subtenant, employee, agent, invitee, guest, licensee, concessionaire, or contractor of Tenant that results in personal injury, property damage, or any other event that may give rise to a claim or suit, whether insured or not, against Tenant or Landlord.

#### 6.03 **Disposal of Rubbish.**

Tenant shall keep the Premises, including any loading areas, neat, clean, sanitary and reasonably free from rubbish, dirt, insects, and pests at all times, and shall store all trash and garbage within the Premises or at an area designated by Landlord and Tenant shall not operate an incinerator or burn trash or garbage within the Premises. In addition, Tenant shall be solely responsible for the removal and disposal of all of Tenant's trash and garbage, and Tenant shall contract for the pick-up and disposal, at regular intervals, of the trash produced at, from and around the Premises, so that there is no accumulation of trash that cannot be accommodated by Tenant's dumpster or Tenant's other trash containers.

#### 6.04 **Compliance with Law.**

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in anyway conflict with any Law of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Tenant shall at its sole cost and expense promptly comply with all Laws now in force or that may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises. If Tenant shall fail to comply with any such Law, Landlord shall have the right, at Landlord's option, and without prejudice to any other right, remedy or cause of action available to Landlord under this Lease or under applicable law, to enter the Premises and do or cause to be done such things as shall be reasonably required to bring the Premises into compliance with such Law, as the case might be; and Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection therewith.

#### 6.05 **Americans With Disabilities Act of 1990.**

(a) **Compliance with ADA.** Without limiting the provisions of Section 6.04, Tenant shall be solely responsible for compliance with and shall make or cause to be made all improvements and alterations to and within the Premises as shall be required to comply with all Laws relating to public accommodations, including the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect in connection therewith, or any other similar federal, state or local Laws, and the applicable regulations, and all amendments, revisions or modifications (hereinafter collectively referred to as the "**ADA**").

(b) **Notice Requirement.** Tenant shall deliver to Landlord within five (5) Business Days after receipt, a copy of any notice from any governmental authority relation to any violation or alleged violation of the ADA pertaining to the Premises or Tenant's activities in, on or about the Premises.

(c) **Indemnity of Landlord.** Tenant's liability for compliance with the ADA shall be primary and Tenant shall indemnify Landlord in accordance with Section 11.01 in the event of any failure or alleged failure of Tenant to comply with the ADA. Any alternation or repairs to the Premises made or performed by or on behalf of

Tenant pursuant to the provisions of this Section shall be made in conformity with and subject to the provisions of Section 8.07.

#### 6.06 **Annoying or Injurious Conduct.**

No auction, fire, bankruptcy, going-out-of-business or liquidation sales may be conducted in or about the Premises without the previous written consent of Landlord. Tenant will not, without the advance written consent of Landlord, install any awnings, exterior decorations or painting or install any radio or television antennae, loudspeakers, sound amplifiers, or any devices on the roof or exterior walls of the Premises. No loudspeakers, radios or other means of broadcasting to be heard outside the Premises shall be used by Tenant, nor shall Tenant merchandise or display any goods or services for sale outside the enclosed portion of the Premises, without the prior written consent of Landlord.

#### 6.07 **Hazardous Materials**

(a) **Use, Storage, Handling and Disposal of Hazardous Materials.** Except as explicitly provided in this Lease, Tenant shall neither cause nor permit any Hazardous Materials (as such term is defined below) to be used, generated, stored, transported, handled or disposed of in, on, under, or about the Premises at any time in violation of Law (such activities are hereinafter referred to as “**Environmental Activities**”). Tenant further agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Materials; (ii) Tenant will not install any underground tanks of any type; (iii) no portion of the Premises will be used as a landfill or a dump; and (iv) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance. Tenant shall be responsible for assuring compliance by all Tenant Parties with the foregoing prohibition, which shall survive the expiration or early termination of this Lease, and Tenant’s failure to abide by the terms of this Section shall be restrainable by injunction. Notwithstanding the foregoing and subject to Tenant’s covenant to strictly comply with all Hazardous Materials Laws (as such term is defined below), Tenant may bring upon, keep and use general office cleaning supplies typically used in an office area in the ordinary course of business, such as copier toner, liquid paper, glue, ink, and cleaning solvents, for use in the manner for which they were designed. From time to time during the Term, Tenant may request Landlord’s approval of Tenant’s use of other Hazardous Materials, which approval may be withheld in Landlord’s sole discretion.

(b) **Compliance with Laws.** Tenant, at its sole cost and expense, shall comply and shall cause all Tenant Parties to comply, with all federal, state and local laws, ordinances and regulations and all rules, licenses, permits, orders, decrees and judgments relating to the environment and/or Environmental Activities (collectively referred to as “**Hazardous Materials Laws**”) conducted on the Premises. Tenant’s breach of any of its covenants or obligations under this Section shall constitute a material Event of Default under the Lease. The obligations of Tenant under this Section shall survive the expiration or earlier termination of the Lease without any limitation, and shall constitute obligations that are independent and severable from Tenant’s covenants and obligations to pay Rent under this Lease.

(c) **Exculpation of Landlord.** Other tenants in the vicinity of the Premises may be using, handling, or storing certain Hazardous Materials in connection with such tenants’ use of their premises. The failure of another tenant to comply with applicable Laws could result in a release of Hazardous Materials and contamination to improvements within the Premises or the soil and groundwater thereunder. In the event of such release, the tenant responsible for the release, and not Landlord, shall be solely responsible for any claim, damage, or expense incurred by Tenant by reason of such contamination. Tenant waives any rights it may have to later assert that the foregoing release does not cover unknown claims.

(d) **Disclosure and Notification.** Tenant shall promptly complete and return to Landlord all environmental questionnaires and hazardous materials disclosures submitted by Landlord to Tenant from time to time. In addition, prior to the Commencement Date, and on January 1 of each year thereafter (each such date being hereafter referred to as a “**Disclosure Date**”), Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials other than general office and cleaning items and other supplies referred to in Subsection (a) above that were used, generated, treated, handled, stored or disposed of at the Premises or that Tenant intends to use, generate, treat, handle, store or dispose of at the Premises, for the year prior to and after such Disclosure Date on the form questionnaire attached hereto as **Exhibit I**.

At any time Tenant becomes aware of any violation of any Hazardous Materials Laws or of any claim made pursuant to any Hazardous Materials Laws that has occurred or that Tenant reasonably believes may have occurred with respect to the Premises, Tenant shall immediately (but in no event later than five (5) days) advise Landlord in writing and provide Landlord with a copy of any notices, correspondence, and other materials relating to (i) any violation or potential or alleged violation of any Hazardous Materials Laws that are received by Tenant from any governmental agency concerned with Tenant's or any other Tenant Party's Environmental Activities; (ii) any and all inquiry, investigation, enforcement, clean-up, removal or other governmental or regulatory actions instituted or threatened relating to Tenant, the Premises; (iii) all claims made or threatened by any third party against Tenant or the Premises relating to any Hazardous Materials; and (iv) any release of Hazardous Materials on or about the Premises that Tenant knows of or reasonably believes may have occurred.

(e) Inspection of Premises. Tenant shall permit Landlord and Landlord's agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the Premises for the purposes of environmental inspections and sampling during normal business hours, or during other hours either by agreement of the parties or at any time in the event of any environmental emergency. Tenant shall not restrict access to any part of the Premises, and Tenant shall not impose any conditions to access. From time to time, Landlord may retain a registered environmental consultant (the "Consultant") to conduct an investigation of the Premises ("Environmental Assessment") (i) for Hazardous Materials contamination in, about, or beneath the Premises and (ii) to assess all Environmental Activities at the Premises for compliance with all applicable Laws and for the use of procedures intended to reasonably reduce the risk of a release of Hazardous Materials. If Landlord obtains the Environmental Assessment and it reveals any violation of this Section by Tenant, Tenant shall pay Landlord on demand the cost of the Environmental Assessment. If Landlord so requires, Tenant shall comply, at its sole cost and expense, with all recommendations contained in the Environmental Assessment which should be taken with respect to Environmental Activities on the Premises or any recommendations for additional testing and studies to detect the presence of Hazardous Materials. Tenant covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to, and materials sampling from, all portions of the Premises for the purpose of Consultant's investigation.

(f) Indemnification of Landlord. Tenant shall indemnify, defend (with counsel satisfactory to Landlord) and hold harmless Landlord, its members, managers, affiliates, partners, directors, shareholders, officers, employees, agents, assigns and any successors to Landlord's interest in the Premises, from and against any and all foreseeable and unforeseeable consequential damages or loss (including without limitation, any loss in fair market value, damages for the loss or restriction on use and damages arising from any adverse impact on marketing of the Premises, and sums paid in settlement of all claims), cost, damage, expense (including reasonable attorneys' fees and litigation costs, consultant fees and expert fees), claim, cause of action, demand, obligation, judgment, penalty, fine or liability directly or indirectly relating to or arising from (i) any Environmental Activity undertaken by Tenant or any other Tenant Party at the Premises, (ii) any remedial or clean-up work undertaken by or for Tenant in connection with Tenant's or any other Tenant Party's Environmental Activities or its compliance with Hazardous Materials Laws, or (iii) the breach by Tenant of any of its obligations and covenants set forth in this Section. Landlord shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with Tenant's or any other Tenant Party's Environmental Activities. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Premises by a Hazardous Material. Tenant shall reimburse any costs or expenses incurred by Landlord for which Tenant is responsible under this Section or for which Tenant has indemnified Landlord on demand as additional Rent. At the request of Landlord, Tenant shall promptly provide to Landlord evidence of insurance or financial resources available to satisfy the obligations of Tenant under this Lease, including the obligations under this Section.

(g) Remediation. If any Environmental Activities undertaken by Tenant or any other Tenant Party result in contamination of the Premises or the soil or ground water thereunder, subject to Landlord's prior written approval and any conditions imposed by Landlord, Tenant shall promptly take all actions, at its sole expense and without abatement of Rent, as are necessary to return the affected portion to the condition existing prior to the introduction of the contaminating Hazardous Material. Landlord shall also have the right to approve any and all contractors hired by Tenant to perform such remedial work. All such remedial work shall be performed in compliance with all applicable Laws and in such a manner as to minimize any interference with the use and enjoyment of the

Premises. Appearance of a Hazardous Material in or about the Premises shall not be deemed an occurrence of damage or destruction that is subject to the terms of the Lease respecting damage or destruction.

(h) **Surrender of Premises.** Prior to or after the expiration or termination of the Term and prior to surrendering possession of the Premises, Tenant shall cause all Hazardous Materials previously owned, stored or used by Tenant to be removed from the Premises and disposed of in accordance with applicable provisions of Hazardous Materials Laws. Landlord may have an Environmental Assessment of the Premises performed in accordance with Subsection (e) above. Tenant shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the Consultant that is necessary to remove, mitigate, or remediate any Hazardous Materials contamination of the Premises in connection with Tenant's or any other Tenant Party's or their agent's Environmental Activities.

(i) **Definition of Hazardous Materials.** As used in this Lease, the term "**Hazardous Materials**" shall mean asbestos, any petroleum fuel or petroleum product, chemicals known to cause cancer or reproductive toxicity, pollutant, contaminant, organic matter (including but not limited to mold), and any hazardous, toxic, or other substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Premises is located, or the United States government, including, but not limited to, any material or substance defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material," "toxic substance" or "toxic pollutant" under Hazardous Materials Laws. If any such Hazardous Materials is so brought or found located in or on the Premises, the same shall be immediately removed by Tenant, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Hazardous Materials Laws, by Tenant, at Tenant's sole expense.

#### 6.08 **Patriot Act.**

Tenant covenants that the use of the Premises will not violate (a) the Trading with the Enemy Act, as amended, or (b) any of the foreign assets control regulations of the United States Treasury Department or any enabling legislation or order relating thereto. Without limiting the foregoing, neither Tenant nor any guarantor (i) is, or will become a person described in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or as described by Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism (31 CFR Part 595 et seq.) or (ii) to its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such person. Tenant covenants that Tenant is in compliance, in all material respects, with the USA Patriot Act, to the extent applicable. Tenant will indemnify, defend, and hold harmless Landlord from any claims, costs, expenses, demands, fees (including reasonable attorneys' fees), penalties, and amounts related to Tenant's violation of the provisions of this Section, or the failure of any of the provisions in this Section to be true or accurate at any time during the Term. The indemnification provisions of this Section shall survive termination of the Lease for any reason.

### ARTICLE 7 UTILITIES

#### 7.01 **Tenant Utilities.**

(a) Tenant shall pay prior to delinquency for all water, gas, light, heat, power, electricity, telephone, trash and garbage pick-up, air conditioning and ventilation, sewer or septic charges, janitorial services, landscaping, and all other services supplied to or consumed on the Premises, and all taxes and surcharges. Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase such services as are tendered by Landlord (including but not limited to provision of power by photovoltaic equipment or other equipment that uses natural energy to produce power), and shall pay on demand the rates established therefor by Landlord which shall not exceed the rates which would be charged for the same services if furnished directly by the local public utility companies. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service.

(b) Landlord shall not be liable to Tenant for damages or otherwise for failure to furnish or interruption in service for water, gas, electricity, air conditioning, sewer or septic system stoppage, from any cause, and any such interruption shall not abate or relieve Tenant's obligation to pay Rent. Should it become necessary or desirable because of recommendations or directives of public authorities to reduce energy consumption within the



Premises, Tenant will reduce its energy consumption in accordance with reasonable, uniform and non-discriminatory standards established by Landlord.

## ARTICLE 8 IMPROVEMENTS, ALTERATIONS AND RENOVATIONS BY TENANT

### 8.01 Condition of Premises.

By taking possession of Premises, Tenant agrees that the Premises are in a good and tenantable condition and that Tenant is accepting the Premises in their "as is" condition (subject to any punch list items agreed upon by Landlord and Tenant in writing, or latent defects not discoverable at occupancy) and that Tenant shall maintain the Premises in good repair for the Term.

### 8.02 Tenant Improvements.

Unless otherwise provided in this Lease, Landlord is not requiring Tenant to construct any specific improvements within the Premises, it being understood that Tenant is solely responsible for determining the size, nature and scope of the improvements required for Tenant's use of the Premises, subject to the provisions of Exhibit C. Tenant will construct and install all improvements, equipment, and fixtures in the Premises that Tenant requires for the conduct of Tenant's business in the Premises, in accordance with plans and specifications first approved by Landlord pursuant to the provisions of this Lease. If Landlord allows Tenant to enter the Premises prior to the Commencement Date for the purpose of commencing Tenant Work, such occupancy shall be subject to all of the terms and provisions of this Lease.

### 8.03 Consent Required.

Tenant shall not, without Landlord's prior written consent, which shall not be unreasonably withheld, make any alterations, repairs, improvements or additions in or to the Premises (i) costing in excess of Three Thousand Dollars (\$3,000.00); or (ii) that affect any utility lines, conduits, and other elements used by others; or (iii) required under Section 8.07; or (iv) that require the attachment of any fixtures or equipment in the Premises ("Tenant Work"). In performing such Tenant Work, Tenant shall strictly comply with the requirements of Exhibit C and with the following conditions, unless any of such conditions shall be waived in writing by Landlord in its sole discretion:

(a) Approval of Architect and Contractor. Tenant shall obtain Landlord's written approval of Tenant's construction contractor(s), subcontractors and architect, all of whom shall be licensed in the State of Hawaii and in good standing.

(b) Approval of Plans and Specifications. Tenant shall submit to Landlord for its approval, at least thirty (30) days prior to the date on which Tenant expects to commence construction, complete plans and specifications for such Tenant Work. Landlord may specify minimum requirements from time to time for any alteration, addition or improvement of the Premises, the satisfaction of which shall be a prerequisite to Landlord's consent to any such alteration, addition or improvement. Landlord shall have the right to charge a reasonable fee for such review, which fee shall include any architect's, engineer's or other professional fee incurred by Landlord in such review.

(c) Governmental Permits: Compliance with Laws. Tenant shall, prior to any alterations, repairs, improvements or additions in or to the Premises (regardless of cost), furnish Landlord with a building permit (if required) and all other required governmental certificates, licenses, permits or approvals. All such work shall comply with all Laws, and any such work not acceptable to any governmental authority or agency having or exercising jurisdiction over such work shall be promptly cured or replaced so that it is acceptable to such authority or agency, at Tenant's sole expense, notwithstanding any failure by Landlord to object to any such work, and Landlord shall have no responsibility therefor.

(d) Financing Commitments: Bonds. Tenant shall provide Landlord with evidence satisfactory to Landlord that funds are available and/or committed to Tenant sufficient to pay for one hundred percent (100%) of the total direct and indirect costs of the Tenant Work. Tenant shall deposit with Landlord a certificate or other evidence satisfactory to Landlord stating that each of Tenant's contractors or subcontractors for construction in the amount of

TEN THOUSAND DOLLARS (\$10,000.00) or more has obtained performance and labor and material payment bonds for not less than one hundred percent (100%) of the total cost of the Tenant Work, naming Landlord, Landlord's lender, if any, any managing agent of Landlord, and such other persons as Landlord may direct, as their interests may appear, as obligees. Such bonds shall be in the form and amount and with surety satisfactory to Landlord.

(e) **Completion.** All Tenant Work shall be diligently and continuously pursued from the date of its commencement through its completion. Upon substantial completion of any construction, Tenant shall file or cause to be filed a "Notice of Completion" in the Office of the Clerk of the applicable circuit court of the State of Hawaii pursuant to Chapter 507, Hawaii Revised Statutes, as amended. Two (2) certified "filed" stamped copies of the Notice of Completion shall be provided by Tenant to Landlord. On substantial completion of construction, Tenant's architect shall deliver to Landlord a certificate setting forth the total cost of such construction and certifying that the Tenant Work has been completed in compliance with the approved plans and specifications, and complies with applicable Laws.

#### 8.04 **Protection Against Liens.**

Tenant shall promptly pay all contractors and materialmen, and shall keep the Premises free from any liens or encumbrances arising out of any work performed by or for Tenant, materials furnished to or for Tenant or obligations incurred by Tenant. As a condition precedent to Tenant's payments of sums owed by Tenant to its contractors and materialmen, Tenant shall require such contractors, their subcontractors and materialmen, to submit lien releases and waivers to Tenant in form and content satisfactory to Landlord. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims for mechanic's, materialmen's or other liens in connection with any Tenant Work. If a mechanic's or materialman's lien, notice of lien, or similar encumbrance shall be filed against the Premises for or purporting to be for labor or materials alleged to have been furnished or to be furnished to or for Tenant, Tenant shall bond against or discharge said lien within five (5) days after the filing of same. If Tenant shall fail to bond against or discharge said lien as aforesaid, Tenant shall be in default under this Lease and, in addition to the remedies available to the Landlord under this Lease or otherwise, Landlord may (but shall not be obligated to) pay the amount of such lien or discharge the same by deposit or by bonding against such lien. If Landlord shall discharge such lien as aforesaid, Landlord may require the lienor to prosecute an appropriate action to enforce such claim, and if said lienor shall prevail in its claim, Landlord may pay the judgment recovered thereon. Any amount paid and expense incurred by Landlord pursuant to this Section (including attorneys' and consultants' fees) shall be paid by Tenant to Landlord upon demand, as additional Rent, together with interest thereon from the date of payment by Landlord at the rate provided in Section 19.03 below. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least ten (10) business days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Premises.

#### 8.05 **Disclaimer.**

Neither Landlord's approval of Tenant's architect or engineer, nor the approval by Landlord or by any architect or engineer engaged by Landlord, of any plans or specifications submitted by Tenant to Landlord pursuant to the provisions of this Lease, shall be deemed an agreement, warranty, or other representation on Landlord's part to Tenant or any person that such approvals or plans or specifications or the improvements described in said plans are structurally safe or sound or comply with any applicable Laws, nor shall Landlord's approval be construed as a requirement that any such improvements be constructed in the Premises.

#### 8.06 **Alterations Belong to Landlord.**

Unless Landlord requires their removal, all alterations, additions, improvements and utility installations that may be made on the Premises, shall at the expiration or earlier termination of this Lease become the property of Landlord and remain upon and be surrendered with the Premises. Notwithstanding the provisions of this Section, personal property, business and trade fixtures, furniture, movable partitions, machinery and equipment, other those that are affixed to the Premises so that they cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the terms of this Lease, at any time during the Term when Tenant is not in default and in accordance with Section 18.01 of this Lease.

#### 8.07 **Alterations Required By Law.**

(a) If, during the Term, any change, alteration, addition or correction in or to the Premises shall be required by any Law or by any governmental authority, then such change, alteration, addition or correction shall be made by Tenant at its sole expense; provided, however, that no such change, alteration, addition or correction shall be commenced until Landlord has given its written approval of Tenant's plans and specifications pursuant to the terms of this Lease.

(b) If Tenant fails to diligently take such actions or make such alterations or improvements as are necessary for compliance with applicable Law, Landlord may but shall not be obligated to take such actions and make such alterations and improvements and may recover all of the costs and expenses of such actions, alterations and improvements from Tenant as additional Rent.

(c) Notwithstanding anything in this Lease contained to the contrary, no act or omission of Landlord, including any approval, consent or acceptance by Landlord or Landlord's agents, employees or other representatives, shall be deemed an agreement, acknowledgment, warranty, or other representation by Landlord that Tenant has complied with the ADA or that any action, alteration or improvement by Tenant complies or will comply with the ADA or constitutes a waiver by Landlord of Tenant's obligations to comply with the ADA under this Lease or otherwise. Any failure of Landlord to comply with the obligations of the ADA shall not relieve Tenant from any of its obligations under this Lease or constitute or be construed as a constructive or other eviction of Tenant or disturbance of Tenant's use and possession of the Premises.

#### 8.08 **Signage.**

(a) Tenant shall not place any sign upon the Premises (including any signs or advertisements placed in the interior of the Premises that are visible from the exterior) without Landlord's prior written consent. Once installed, Tenant shall maintain such signs in good condition. From time to time, Landlord may promulgate and/or revise signage requirements for the Premises. In such event, Landlord shall give Tenant written notice thereof setting forth such requirements, and Tenant shall have thirty (30) days from receipt of such notice to make any changes to Tenant's then-existing signage that are necessary to conform with such requirements. All signage changes shall be Tenant's sole cost and expense; however, if Landlord revises its signage requirements more than once within a consecutive two-year period (excluding revisions required by changes in laws or codes) and Tenant's signage otherwise complies with Landlord's then-current signage requirements and all applicable Laws, Landlord shall contribute the lesser of (i) Tenant's actual cost to comply with Landlord's requirements; and (ii) \$500, to Tenant's cost of revising its signage after the first revision within such two-year period. Any expenses in addition to Landlord's contribution shall be borne by Tenant. Tenant's signage shall comply at all times with Landlord's then-existing signage requirements and applicable Laws, and if Tenant reasonably believes a conflict among such requirements exists, Tenant shall promptly describe such alleged conflict to Landlord in writing. If Landlord currently has signage requirements, they are set forth in Exhibit D attached to this Lease, although they are subject to change pursuant to this section.

(b) Tenant shall make all repairs to the Premises required by reason of the installation, maintenance and removal of its signs and in all events, Tenant shall be responsible for the repair, painting and/or replacement of the fascia surface where signs were attached. Upon termination of the Lease, Tenant shall remove its signs and, at its cost, repair, repaint and/or replace the Building fascia surface where such signs were attached. If Tenant fails to timely remove its signs after Landlord's written request therefor, Landlord may, at Tenant's expense, together with an administrative charge in the amount of fifteen percent (15%) of Landlord's costs, remove such signs, perform the related restoration and repair work as described herein and dispose of such signs in any manner Landlord deems appropriate.

### ARTICLE 9 MAINTENANCE AND REPAIRS

#### 9.01 **Maintenance and Repairs by Tenant.**

(a) Tenant shall, at its own expense, at all times keep the Premises (including but not limited to entrances, all glass, partitions, floor covering, doors, door closure devices, window and door frames, molding, locks

and hardware, cabling and related equipment, fixtures, equipment and appurtenances thereof, any air conditioning system, lighting and plumbing fixtures, all structural portions of the Premises, the exterior wall where Tenant's sign (if any) is located; any other facilities serving Tenant exclusively; and alterations performed by contractors retained by Tenant, including HVAC balancing; in an attractive, safe, clean and sanitary state, and in good order, condition, and state of repair. Tenant's responsibilities shall include the periodic replacement of items or components that have become worn due to normal wear and tear, and any repairs required by an insurance company, or by Law or regulation of any public authority relating to the use or occupancy of the Premises. Tenant hereby waives any right to make repairs at Landlord's expense or to deduct the cost thereof from Rent. Tenant shall not add, disturb, or in any way change any plumbing, gas lines, air-conditioning system, sewer or septic system hookups, wiring, or any other utility serving in the Premises without first obtaining the written consent of Landlord, which consent may be withheld in Landlord's sole discretion. In addition, if Tenant changes the locks on an exterior door to the Premises, Tenant shall immediately notify Landlord of such change and will provide Landlord with a copy of the new key for the Premises.

(b) Tenant shall give Landlord prompt written notice of any damage to, or defect in, any water or other pipes or plumbing, electric lights or other fixtures, equipment or appurtenances of the Premises. Tenant shall keep all plumbing units, pipes and connections free from obstruction and protected against damage. Tenant shall report to Landlord immediately the existence of any mold, water leaking or extruding from the Premises, water intrusion into or affecting the Premises, and any physical conditions that might indicate the existence of any water intrusion such as peeling paint or cracks in sheetrock. If requested to do so by Landlord, Tenant shall participate in reasonable programs of energy conservation and/or recycling waste products generated from the Premises. Except as otherwise provided herein, Landlord shall have no obligation to repair the interior of the Premises or any improvements therein.

#### 9.02 **Inspection; Right to Cure Tenant's Default.**

Within ten (10) days after notice from Landlord or its agents to do so, Tenant shall repair and make good all defects that this Lease requires Tenant to repair and make good, except that if such defect cannot be cured within such ten (10) day period, Tenant may have such additional time as is necessary, but in no event more than thirty (30) days, provided that Tenant commences work within such ten (10) day period and diligently prosecutes it to completion. If Tenant refuses or neglects to make proper repairs or alterations in accordance with this Lease and to the reasonable satisfaction of Landlord, Landlord may make such repairs or alterations without liability to Tenant for any loss or damage that may accrue to Tenant's stock or other property or to Tenant's business. Upon completion of such repairs or alterations, Tenant shall reimburse Landlord, upon demand, for the expenses incurred by Landlord in making such repairs and alterations, together with an administrative fee equal to fifteen percent (15%) of Landlord's cost. If Tenant fails to remove any property, Landlord may at its option retain such property as abandoned by Tenant and title thereto shall thereupon vest in Landlord, or Landlord may remove the same and dispose of it in any manner and Tenant shall, upon demand, pay Landlord the actual expense of such removal and disposition plus the cost of repair of any and all damage to the Premises resulting from or caused by such removal, together with an administrative fee equal to fifteen percent (15%) of Landlord's cost.

#### 9.03 **Reserved.**

#### 9.04 **Right of Entry.**

Tenant shall permit Landlord and its agents to enter the Premises at all reasonable times and at any time during an emergency for the purpose of inspecting, maintaining and repairing the Premises, without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises; provided, that all such work shall be done in such manner as to minimize interference to the extent reasonably possible.

#### 9.05 **Air Conditioning.**

Tenant shall maintain, at its expense, a contract for the repair and maintenance of the air conditioning system (specifically including large air handlers) that services the Premises and shall provide Landlord with a copy of the contract upon request by Landlord. The contract shall provide for periodic inspections and maintenance of the system. The contract shall be for the benefit of Landlord and Tenant and placed with a licensed contractor. Within the 30-day

period preceding Tenant's vacation of the Premises, Tenant shall have the air conditioning systems (i.e. air handlers) checked and serviced to ensure proper functioning and shall provide Landlord with satisfactory proof thereof. If Tenant fails to provide such satisfactory proof, Tenant shall repair all air conditioning systems prior to vacating the Premises. If not already owned by Landlord, all air conditioning systems shall become the property of Landlord upon the termination of this Lease.

## **ARTICLE 10 NAME OF BUSINESS**

Tenant shall not operate any business upon the Premises or permit any concessionaire, licensee or subtenant to operate any business upon the Premises other than the business described in Section 1.01, Item 9, nor shall Tenant operate the Premises under any trade name other than that specified in Section 1.01, Item 10, without Landlord's prior written consent. Tenant agrees not to change the advertised name of the business operated in the Premises without the written permission of Landlord.

## **ARTICLE 11 INDEMNITY AND RISK OF INJURY, LOSS AND DAMAGE**

### **11.01 Indemnity.**

Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's lenders, Landlord's managing agent, members, managers, employees, officers, directors, partners, and contractors (individually and collectively, "**Landlord's Affiliates**") from and against any and all claims, loss, damages, costs, attorneys' fees, expenses and liabilities incurred in the defense of any claim or any action or proceeding arising out of (i) the operation, maintenance, use, occupancy or condition of the Premises, including the Building; and (ii) the failure by Tenant or any Tenant Party to comply with the terms of this Lease. This Lease is made on the express understanding that Landlord shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause (except for the gross negligence or willful misconduct of Landlord), in any way connected with the operation, use or occupancy of the Premises. If any action or proceeding is brought against Landlord or any Landlord's Affiliate by reason of any such claim for which Tenant has indemnified Landlord and/or Landlord's Affiliates, Tenant, upon written notice from Landlord, will defend the same at Tenant's expense, with counsel reasonably satisfactory to Landlord. The provisions of this Section shall survive the expiration or termination of this Lease.

### **11.02 Tenant's Assumption of Risk and Release.**

Except for suits arising from the gross negligence of Landlord, Landlord shall not be liable to Tenant for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, goods, wares, merchandise or property of Tenant, any Tenant Party, or any other person in or about the Premises, caused by or resulting from fire, water, gas, explosion, electricity, steam, sewerage, wiring, deluge, rain, wind, storm, overflow of ocean waters, earthquakes, bursting, leaking or overflow of water, gas, sewer, septic, sprinkler or any pipes, plumbing or apparatus, or running of any tank, washstand, closet or waste or other pipes in or about the Premises, nor by reason of any ceiling leak, nor for any damage occasioned by water coming into the Premises from any source whatsoever, nor any existing or future condition, defect, matter or thing in the Premises, nor from any damage arising from any acts or neglect of other tenants or occupants of nearby property, or the public, unless the damage is caused by a condition of the Premises that Landlord is obligated to repair under the terms of this Lease, and unless written notice of the need for repairs was given to Landlord, and Landlord failed to make such repairs. Tenant, as a material part of the consideration to Landlord for this Lease, hereby assumes all risk of bodily injury or damage to property in, upon or about the Premises, from any cause other than Landlord's willful misconduct or gross negligence. All property of Tenant stored on the Premises shall be so stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subordination claims by Tenant's insurance carriers.

## ARTICLE 12 INSURANCE


### 12.01 Tenant's Liability Insurance.


At all times during the Term, Tenant will procure and maintain without cost to Landlord, the following policies of insurance with an insurance company or companies qualified to do business in the state in which the Premises is located and on forms satisfactory to Landlord:


(a) Commercial General Liability insuring against all claims, demands and actions arising out of or in connection with occurrences within the Premises and any other areas as to which Tenant has the exclusive use, covering the use, occupancy, and maintenance of the Premises and all operations of Tenant, the condition of the Premises, the acts or omissions of all Tenant Parties in the Premises, and for liabilities assumed under this Lease, such policy to:


1) include coverage for bodily injury and property damage arising from premises and operations, independent contractors, products and completed operations, personal and advertising injury, blanket contractual liability, fire legal liability, employees as additional insureds, and, if applicable to Tenant's operations, liquor liability;

2) have the following minimum limits:

A.  a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products and completed operations aggregate; NA - approved (CA)

B.  not less than \$1,000,000 per person or per organization for personal and advertising injury;

C.  not less than \$100,000 for any one fire for fire legal damage;


D.  not less than \$5,000 for any one person for medical expenses;


E. NA not less than \$1,000,000 for each common cause and an aggregate limit of \$1,000,000 for liquor liability, if such coverage is applicable to Tenant's permitted operations;


3) be endorsed to provide that the general aggregate limit applies exclusively to the Premises;

4) insure the performance by Tenant of the indemnity agreement under this Lease; provided, however, such insurance shall not limit the liability or extent of liability of Tenant under this Lease; and


5) will not include an "insured versus insured" cross suits exclusion.

(b)  Business Automobile Liability insurance with minimum limits of \$1,000,000 per person/\$1,000,000 per accident – bodily injury, \$1,000,000 per accident – property damage, or \$1,000,000 combined single limit and basic no-fault coverage if required by the laws of the state in which the Premises is located, for all owned, non-owned or hired automobiles that may be used by Tenant in connection with its use or occupation of the Premises.

(c)  Umbrella insurance with a minimum limit of \$3,000,000 and a self-insured retention no greater than \$10,000. Such limits shall apply excess over the limits provided by the commercial general liability, automobile liability and employers' liability policies required under this Lease. Such umbrella policy shall, at a minimum, provide as broad a coverage as the aforementioned primary insurance policies, and shall provide defense expense in addition to the limit of liability stated in the policy.

(d)  Workers' Compensation and Employers' Liability insurance as required by (and which insurance shall be in conformity with) applicable law to further include voluntary compensation coverage, other states

coverage, and U.S. longshore & harbor workers' compensation coverage, if applicable, for all employees working in or at the Premises, providing not less than the statutory workers' compensation benefits and employers' liability insurance limits of \$1,000,000 for each employee, \$1,000,000 policy limit by disease, and \$1,000,000 for each accident. Such insurance shall be endorsed to include a waiver of any rights of subrogation against Landlord and Landlord's members, managers, officers, employees, agents or other representatives and any mortgagee of Landlord.

(e)  Pollution Legal Liability insurance covering claims for damage or injury caused by Hazardous Materials, including, without limitation, bodily injury, wrongful death, property damage, including loss of use, removal, cleanup and restoration of work and materials necessary to return the Premises and any other property of whatever nature located on the Premises to their condition existing prior to the appearance of Tenant's Hazardous Materials on the Premises with limits of \$1,000,000 per occurrence and \$1,000,000 general aggregate. If written on a "claims made" policy, Tenant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Lease; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years from the date this Lease terminates.

All insurance required to be provided by Tenant under this Section 12.01 shall:

1) be written on an "occurrence" form, except that if Landlord requires Pollution Legal Liability insurance, such policy may be written on a "claims made" form; and

2) cover the whole of the Premises and any other areas to which Tenant has the exclusive use, and the business operated by Tenant and/or any further permitted sublessee within the Premises and shall also cover any act or omission of any employee of Tenant and any occurrence involving any employee of Tenant which occurs at any other portion of the Premises and occurs in the course of such employee's employment with Tenant.

#### 12.02 **Reserved.**

#### 12.03 **General Insurance Requirements.**

(a) All insurance required to be obtained by Tenant under this Lease shall:

1) be issued by an insurance company approved and authorized to do business in the State of Hawaii with an A. M. Best published rating of not less than "A-" Class VIII or otherwise reasonably approved by Landlord in writing;

2) except for workers' compensation coverage, name Landlord, and its parent companies, affiliates, managers, partners, subsidiaries, officers, directors, and employees, agents or other representatives and any ground lessor and/or mortgagee of Landlord and such additional entities as may be specified by Landlord from time to time, as additional insureds thereunder as their interests shall appear;

3) provide that such insurance will be written as primary coverage and not contributing and not in excess of any coverage that Landlord, any agent of Landlord, Landlord's ground lessor and/or mortgagee, or any building manager may carry; and

4) Tenant's policies will not be canceled, allowed to expire by non-renewal or modified without thirty (30) days written notice to Landlord prior to the effective date of the proposed cancellation, non-renewal or modification.

(b) Prior to occupancy of the Premises, Tenant shall deposit with Landlord current certificates of all insurance required to be obtained by Tenant in form and content reasonably acceptable to Landlord. Such certificates shall name as additional insureds all persons who are required to be named as such in this Lease. At least ten (10) days prior to the expiration date of any such policy of insurance, Tenant shall deposit with Landlord renewal certificates of insurance. If requested by Landlord, Tenant shall deliver to Landlord true and complete copies of any or all insurance policies required by this Lease.

(c) Tenant acknowledges that inflation may reduce the effective value of coverage, that terms of insurance contracts or endorsements may be revised, that the types of insurance contemplated herein may become unavailable or that other circumstances may arise which affect or threaten to affect the protection to be afforded by the insurance required hereunder. Accordingly, Landlord shall have the right from time to time, by notice to Tenant, to increase the minimum policy limits required in this Lease or to require Tenant to procure and maintain additional forms of insurance, to such amounts or coverages as Landlord may reasonably and in good faith determine to be consistent with then prevailing prudent commercial practice.

(d) Tenant's failure to comply with the foregoing insurance requirements shall constitute an Event of Default. In addition to other remedies provided in this Lease, Landlord may at its option (but is under no obligation to) obtain similar coverage, in which case on demand Tenant shall pay to Landlord the additional cost of obtaining such insurance plus interest thereon at the lesser rate of 12% per annum or the maximum rate permitted by Law.

12.04 **Reserved.**

12.05 **Waiver of Subrogation.**

Tenant hereby waives, on Tenant's behalf and on behalf of any Tenant's insurance carriers, any and all rights to recover against Landlord or against the members, managers, officers, employees, agents or other representatives of Landlord or against Landlord's ground lessors and/or mortgagees, for any loss, damage, injury or risk whatsoever, including consequential loss or damage, arising from any cause covered by any insurance required to be carried by Tenant under this Lease or by any other insurance actually carried by Tenant. With respect to each policy of insurance carried by Tenant, Tenant shall deliver to Landlord prior to the Commencement Date either (i) appropriate provisions from such policy indicating that Tenant has the right to waive on Tenant's behalf and on behalf of its insurance carrier all of the rights of recovery and subrogation described in this paragraph, or (ii) appropriate waivers of subrogation from such insurance carriers. Tenant further agrees that all other occupants of the Premises claiming by, under or through Tenant shall similarly waive any and all rights of recovery and deliver to Landlord either appropriate provisions from its insurance policies indicating that it has the right to waive rights of recovery and subrogation or appropriate waivers of subrogation.

### **ARTICLE 13 DAMAGE AND RESTORATION**

13.01 **Notice of Casualty.**

Tenant shall give immediate written notice to Landlord of any damage to the Premises or the Building by fire or other casualty.

13.02 **Damage or Destruction.**

If the Premises or the Building is damaged or destroyed by fire, the elements or other cause, Tenant shall repair and restore the Premises and the Building in a good and substantial manner according to the plans and elevation thereof, or according to such modified plans for the same or a substitute building as shall be approved in writing by the parties hereto (the "**Rebuilding Standard**"). In the event of any such damage or destruction, this Lease shall remain in full force and effect and Tenant shall continue to pay full Rent hereunder as it comes due, and the term of this Lease will not be reduced or affected in any way. During any period of reconstruction or repair of the Premises and the Building, Tenant shall continue the operation of Tenant's business in the Premises to the extent reasonably practicable from the standpoint of good business practice.

Notwithstanding the foregoing, if more than fifty percent (50%) of the Building is damaged or destroyed by fire or other cause and such damage or destruction occurs during the last two (2) years of the Term of this Lease (as the same may be extended), then Tenant shall elect to either: (a) repair, restore and/or rebuild the Building in accordance with the Rebuilding Standard if Landlord and Tenant reach a mutually agreeable extension of the Term of this Lease as memorialized in writing by the parties hereto; or alternatively (b) terminate this Lease and assign Tenant's insurance proceeds arising from such damage to Landlord. If Tenant elects to proceed under the foregoing clause (b), Tenant shall, if instructed to by Landlord, demolish the remaining portion of the Building, remove all debris and restore the



Premises to a safe and sanitary condition. If Landlord elects (in Landlord's sole discretion) to repair, restore and rebuild the Building, Landlord shall utilize proceeds of Tenant's insurance required to be maintained hereunder. Such insurance proceeds shall be used to cover all such demolition, restoration, repair and rebuilding costs contemplated under this Section 13.02, with Tenant responsible, from Tenant's own funds, for any deficiency in insurance proceeds.

Within ninety (90) days after any such casualty, Tenant shall provide Landlord with written notification of whether Tenant elects to repair or rebuild the Building or demolish the remaining portion of the Building in accordance with this Section 13.02.

#### 13.03 **Payment of Insurance Proceeds.**

Every policy of insurance shall be issued to cover and insure all of the several interests in the Building, fixtures and improvements of Landlord and Tenant, as their respective interests shall appear, and shall be made payable in the case of loss or damage to Landlord as its interests shall appear. The respective interests of Landlord and Tenant in any proceeds of such insurance payable for loss or damage to the Building, fixtures and improvements shall be fixed and determined as of the date of such loss or damage pursuant to the terms of this Lease.

#### 13.04 **Use of Insurance Proceeds.**

In the event the Building, any 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 Landlord, shall be available for use and used with all reasonable dispatch by Tenant in rebuilding, repairing or otherwise reinstating the Building, fixtures and other improvements in a good and substantial manner according to the plan and elevation thereof, or according to such modified plan for the same or a substitute building, fixtures and other improvements as shall be approved in writing by the parties hereto, and in case such proceeds shall be insufficient in amount to so rebuilding, repair or reinstate the Building, fixtures and other improvements, Tenant shall make up the deficiency for such purpose of out Tenant's own funds.

#### 13.05 **Waiver**

Landlord and Tenant waive the provisions of any Laws now existing or which may hereafter be passed that relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

### **ARTICLE 14 CONDEMNATION**

#### 14.01 **Substantial Taking.**

If more than twenty percent (20%) of the floor area of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall terminate and the Rent (excluding Rent accruing with respect to the period prior to the date of such termination) shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority.

#### 14.02 **Partial Taking.**

If twenty percent (20%) or less of the floor area of the Premises should be taken as aforesaid, this Lease shall not terminate; however, the Base Rent payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, Landlord shall make all necessary repairs or alterations within the scope of the improvements made by Landlord to the Premises for Tenant in connection with this Lease (if any) necessary to make the Premises an architectural whole.

#### 14.03 **Leasehold Taking.**

If there is a condemnation of a leasehold interest in all or a portion of the Premises without the condemnation of the fee simple title also, this Lease shall not terminate but such condemnation shall excuse Tenant from full performance

of its covenants hereunder with respect to the portion of the Premises condemned for the duration of such condemnation, excepting only Tenant's obligation to pay Rent hereunder. Tenant in such event shall be entitled to pursue against the condemning authority its claim for and to receive all compensation or damages sustained by it by reason of such condemnation; it being understood, however, that during such time as Tenant shall be out of possession of the Premises by reason of such condemnation, this Lease shall not be subject to forfeiture for failure to observe and perform those covenants not calling for payment of money. Landlord's right to recover compensation or damages shall be limited to compensation for and damages, if any, to its reversionary interest, and any time period outside of the Term.

14.04 **Reserved.**

14.05 **Condemnation Award.**

All compensation awarded for any taking for public purposes, whether permanent or temporary (or the proceeds of private sale in lieu thereof), of the Premises, as between Landlord and Tenant, shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; however, Landlord shall have no interest in any award made to Tenant for loss of business or for the taking of Tenant's fixtures and other personal property of Tenant if a separate award for such items is made to Tenant. Tenant shall not be entitled to any award made for the value of the unexpired Term and Tenant shall have no claim against Landlord. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall repair, to the extent of severance damages received by Landlord in connection with such condemnation, any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefore by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

**ARTICLE 15**  
**ASSIGNMENT, SUBLETTING AND MORTGAGING BY TENANT**

15.01 **Generally.**

Tenant shall not assign or transfer all or any portion of its legal or equitable interest in this Lease or in the Premises, nor sublet all or any portion of the Premises, nor enter into any management or similar contract which provides for a direct or indirect transfer of operating control over the business operated in the Premises, without the prior written consent of Landlord. The term "**sublet**" shall include, without limitation, any use or possession of the Premises by any party other than Tenant, including the granting of licenses, concessions, and any other rights of occupancy of any portion of the Premises. Any assignment, sublease or other such transfer without Landlord's prior written consent shall be voidable and, at Landlord's election, shall constitute an Event of Default by Tenant hereunder. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights with respect to any subsequent assignment or subletting, and no sublessee shall have the right to further sublet or assign its interest without Landlord's prior written consent. If Tenant is a partnership or limited liability company, a withdrawal or change (voluntary, involuntary, or by operation of law) of any partner or member owning twenty percent (20%) or more of the partnership or the limited liability company, or the dilution or liquidation of the partnership or limited liability company, shall be deemed an assignment of this Lease. If Tenant consists of more than one person, a purported assignment (voluntary, involuntary, or by operation of law) from any of such persons to any other person or entity shall be deemed an assignment of this Lease. If Tenant is a trust, one or more sales or transfers by operation of law or otherwise by which an aggregate of more than fifty percent (50%) of the total beneficial interests of a trust lessee shall become vested in one or more individuals, firms, or corporations who or which are not beneficiaries thereof, either legally or equitably, as of the date of this Lease or of Tenant's subsequent acquisition of this Lease by assignment, shall be deemed an assignment of this Lease. If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of the controlling percentage of the capital stock of Tenant, or the sale of fifty-one percent (51%) of the value of the assets of Tenant, shall be deemed an assignment of this Lease. If Tenant is a corporation in which stock is publicly held and traded regularly on a recognized stock exchange, the condition that the present stockholders of the Tenant retain at least fifty percent (50%) of the voting stock of Tenant shall not apply, nor shall the provisions relating to the transfer, sale, pledge, or other disposition of corporation stock or voting securities of Tenant apply; provided, however, that a merger or acquisition of fifty-one percent (51%) or more of the outstanding stock of any such Tenant shall be construed to be an assignment and shall require Landlord's consent unless the successor or acquiring corporation has a net worth equal to or greater than Tenant had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall

be the greater). The phrase “**controlling percentage**” means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Tenant’s capital stock issued, outstanding, and entitled to vote for the election of directors.

#### 15.02 **Proposal Notice and Landlord’s Rights.**

If Tenant desires to assign this Lease, or to sublet all or any portion of the Premises, Tenant shall deliver written notice to Landlord identifying the proposed assignee or sublessee (the “**Proposal Notice**”), which Proposal Notice shall include, among other things, current financial and other information with respect to the financial ability, operating experience and business reputation of the proposed assignee or sublessee sufficient for Landlord to evaluate the proposal; a form of assignment and assumption agreement, or sublease agreement, for Landlord’s review and approval; and a check made payable to Landlord in the amount of \$750 representing the consent fee. Tenant shall also reimburse Landlord immediately upon request for its attorneys’ fees incurred in connection with considering any request for consent to a Proposal Notice. Landlord shall have no obligation to consent to or otherwise respond to any proposed assignment or sublease if Tenant fails to deliver a Proposal Notice to Landlord completed in accordance with this Section 15.02. Within thirty (30) days after receipt of the Proposal Notice, Landlord shall, in its sole discretion, elect by written notice to Tenant either to (a) consent to such proposed assignment or sublease; or (b) deny its consent to such proposed assignment or sublease.

#### 15.03 **Proceeds of Assignment; Assignment of Sublease Rent.**

All cash and other proceeds of any assignment, subletting, or other transfer in excess of the Rent called for hereunder, and all cash and other proceeds attributable to or apportioned to the value of the Premises or Tenant’s interest in this Lease, shall be paid to Landlord as received by Tenant, and Tenant hereby assigns all rights in such proceeds to Landlord excluding, however, any consideration received by Tenant for the value of Tenant’s business, including goodwill, the tangible, and the intangible operating assets, and only after first deducting Tenant’s actual and reasonable customary closing costs and expenses. It is the intent of Landlord and Tenant that Landlord receive only the proceeds related to the value attributable to the Lease and the Premises (i.e., any economic value of below market rents payable under the Lease).

Tenant agrees that upon any sublease by Tenant of all or a portion of the Premises pursuant to this Article 15 and with no further action or documentation required of Landlord and Tenant at such time, the following assignment shall become effective:

Tenant hereby absolutely assigns to Landlord all rents, income, revenues, issues and profits (collectively referred to as “**rents**”) from the Premises. Landlord hereby grants to Tenant a revocable license to collect such rents (but not any lump sum payment by any subtenant to terminate or modify a sublease) as they become due and payable, but not in advance thereof, and to expend the same for the legitimate costs and expenses of the Premises, including Rent payable under this Lease, and the remainder, if any, for Tenant’s own use. Landlord may revoke such license at any time by written notice to Tenant; provided, however, that the license shall be automatically revoked without notice upon the occurrence of an Event of Default. This constitutes an absolute and present assignment of such rents, subject, however, to the revocable license granted to Tenant to collect such rents (but not any lump sum payment by any subtenant to terminate or modify a sublease) as provided above. Upon the revocation of the license granted by Landlord to Tenant, Landlord, at its option and without further consent thereto by Tenant, may collect the rents, may exercise all of its remedies under this Lease, and if requested to do so by Landlord, the subtenant(s) shall be required to pay all of the rents directly to Landlord. Landlord, at its sole discretion, may require that any lump sum payments from subtenants for termination or modification of subleases be applied to payment of Rent or other sums due and owing under this Lease. After all sums due and owing under this Lease have been paid in full, any remaining rents shall be paid to Tenant. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Landlord shall be entitled, at its option, upon the revocation of the license to all such rents whether or not Landlord takes possession of the Premises. Exercise by Landlord of rights under this Section 15, and the application of any such rents to amounts due under this Lease, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or any such notice, but shall be cumulative of all other rights and remedies. Tenant

shall not, without the prior written consent of Landlord, further assign the rents or Tenant's right, title and interest in any subleases, and any such assignment without the express written consent of Landlord shall be void as against Landlord. Tenant hereby agrees to execute and deliver to Landlord any other instrument or document as may be necessary to further evidence or implement such assignment, in form and with content deemed by Landlord in its reasonable discretion to be necessary and appropriate to the furtherance of this transaction, and Tenant hereby authorizes Landlord to file or record any instruments or financing statements that Landlord may deem necessary or desirable to evidence this assignment.

#### **15.04 Additional Restrictions on Assignment.**

Notwithstanding any assignment or subletting, Tenant and any guarantor(s) shall at all times remain fully and primarily responsible and liable for the payment of all Rent and other monetary obligations herein specified and for the compliance with and performance of all of its other obligations under this Lease. Upon any subletting or assignment by Tenant in accordance with the terms of this Lease, any and all renewal options, expansion options, rights of first refusal and/or exclusive use provisions herein contained shall immediately terminate. Landlord shall be entitled to reimbursement by Tenant for reasonable fees incurred by Landlord for the processing of any requests for assignment or subletting by Tenant, including but not limited to attorneys' fees. In addition, Tenant shall pay to Landlord a consent fee in the amount of \$750.00 (or such other amount that is Landlord's standard consent fee, from time to time).

Notwithstanding any provision in this Lease to the contrary, Landlord shall not be required to consent to an assignment or sublease, nor shall Tenant assign or sublease all or any portion of this Lease or the Premises to any person or entity in which Alexander & Baldwin, Inc. or Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Code). As used in this paragraph, the term "assign" shall include the transactions and changes of control described in Section 15.01 above. Further, Landlord shall not be required to consent to any sublease unless and until (among other things) Landlord has first obtained the advice of Landlord's tax advisor that such sublease will not adversely affect Landlord's or Landlord's parent entity's qualification as a real estate investment trust.

In addition, whether or not Landlord's consent is required as a condition to Tenant subleasing all or any portion of the Premises, Tenant shall require in any such sublease that all sublease rent, fees, and other amounts payable to Tenant thereunder shall qualify as "rents from real property" within the meaning of Section 856(d) of the Code, and the Regulations promulgated thereunder, and that percentage rent shall not be permissible under any sublease.

#### **15.05 Prohibition on Leasehold Mortgages.**

Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Premises, and any such mortgage, pledge or encumbrance shall be void and of no force and effect.

#### **15.06 Assignment by Landlord.**

If Landlord transfers or assigns its interest in this Lease and in the Building to a person or entity assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligation hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

### **ARTICLE 16 SUBORDINATION, ATTORNMEN AND MORTGAGEE REQUIREMENTS**

#### **16.01 Subordination and Attornment.**

This Lease shall be subject and subordinate at all times to existing and future mortgages and other liens and encumbrances which now exist or may hereafter be executed affecting the Premises or the land upon which the Premises is situated or all of them, including any condominium property regime and documents related thereto (and

any amendments or extensions thereof), and any declaration of covenants, conditions, and restrictions (and any amendments or extensions thereof), on Landlord's interest in the Premises or this Lease. This subordination of Tenant's interest shall be self-operating, and no further instrument or subordination shall be required. In confirmation of such subordination, Tenant agrees promptly to execute and to deliver without charge therefore, any instrument that a mortgagee or its successors in interest may require to evidence such subordination, provided that such instrument shall provide that so long as Tenant is not in default of its obligations under this Lease, such mortgagee, its successors or assigns shall not disturb Tenant's occupancy and use of the Premises. If Tenant has failed to execute and deliver such instruments as required by this Section 16.01 within ten (10) days after receipt thereof from Landlord, and Tenant fails to execute and deliver such instrument within another ten (10) days after receipt of written notice of such failure from Landlord, then in consideration of the administrative burden to Landlord, and the inconvenience to Landlord caused by Tenant's delay, Tenant shall pay to Landlord the sum of Fifty Dollars (\$50.00) per day for each day after the second (2nd) ten (10) day period that Tenant fails to execute and deliver to Landlord such instruments. Such daily fine shall not be Landlord's sole remedy, nor shall it excuse Tenant from compliance with the requirements of this Section 16.01.

#### **16.02 Requirements of Landlord's Mortgagee.**

In the event any mortgagee shall elect to have this Lease prior to its mortgage, then upon such mortgagee notifying Tenant to that effect, this Lease shall have priority over the lien of such mortgage to the same extent as if the same had been placed on record prior to such mortgage. Tenant covenants and agrees, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage now or later made by the Landlord covering the Premises (and which may also cover other premises), that it will, upon request by the purchaser, attorn to the purchaser upon any foreclosure or sale and recognize such purchaser as the Landlord under this Lease, whether or not this Lease is terminated by such foreclosure or sale.

#### **16.03 Estoppel Certificates.**

Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a fully executed certificate in substantially the form and content set forth in Exhibit G attached hereto and containing the information requested therein and such other information as may be reasonably requested. Tenant acknowledges that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises. If Tenant has failed to execute and deliver such certificate within ten (10) days after receipt thereof, and Tenant fails to execute and deliver such certificate within another ten (10) days after receipt of written notice of such failure from Landlord, then in consideration of the administrative burden to Landlord, and the inconvenience to Landlord caused by Tenant's delay, Tenant shall pay to Landlord the sum of Fifty Dollars (\$50.00) per day for each day after the second (2nd) ten (10) day period that Tenant fails to execute and deliver to Landlord such certificate. Such daily fine shall not be Landlord's sole remedy, nor shall it excuse Tenant from compliance with the requirements of this Section 16.03.

#### **16.04 Further Documents.**

Tenant agrees upon request of Landlord to make such amendments to this Lease as may reasonably be required by any holder or proposed holder of any mortgage or other encumbrance now or hereafter placed, charged or enforced against the Landlord's interest in this Lease or the Premises, and to execute and deliver from time to time upon request by Landlord such documents as may be required to effectuate such amendment, provided such amendments and documents shall not alter the term, the amount, time and manner of payment of Rent, or otherwise adversely affect the rights of the Tenant in any material way.

### **ARTICLE 17 DEFAULT BY TENANT**

#### **17.01 Definition of Event of Default.**

Each of the following events shall be an "Event of Default" by Tenant under this Lease:

(a) If Tenant shall fail to pay Rent when due and the continuance of such failure for a period of five days after Landlord has delivered to Tenant written notice thereof; however, an Event of Default shall occur

hereunder without any obligation of Landlord to give any notice if Landlord has given Tenant written notice under this Section 17.01(a) on more than one occasion during the 12-month interval preceding such failure by Tenant.

(b) If Tenant shall fail to (1) obtain the insurance coverage required hereunder, (2) comply with the provisions of Section 6.06 regarding Hazardous Materials, or (3) open for business as and when specified by this Lease.

(c) If any petition is filed by or against Tenant (the term “**Tenant**” shall include, for the purpose of this Section 17.01(c) any Guarantor(s)) (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant’s property or for Tenant’s interest in this Lease.

(d) If Tenant admits in writing that it cannot meet its obligations as they become due or the making by Tenant of an assignment for the benefit of its creditors.

(e) If Tenant shall vacate the Premises and permit the same to remain unoccupied and unattended, or removes or attempts to remove or manifests an intent to remove, not in the ordinary course of business, Tenant’s goods or property from or out of the Premises.

(f) If Tenant shall create or suffer the creation of a lien upon the Premises in violation of Section 8.04.

(g) If Tenant shall fail to commence promptly its Tenant’s Work in the Premises if and as required by this Lease, or shall fail to prosecute the same diligently to completion.

(h) If Tenant shall fail to open for business to the public in the Premises by the Commencement Date or such other date as Landlord and Tenant may agree in writing.

(i) If Tenant shall fail, after once being open for business in the Premises, to be open when required by this Lease to be so open, or otherwise abandons, deserts, or vacates the Premises.

(j) If any execution, levy, attachment, or other process of law shall occur upon Tenant’s goods, fixtures or interest in the Premises.

(k) If Tenant shall fail to deliver an estoppel certificate to Landlord within twenty days after Landlord’s or Landlord’s Mortgagee’s request therefor, pursuant to the requirements of Section 16.03.

(l) If Tenant shall at any time be in breach or default in the observance or performance of any of the other covenants and/or agreements required to be performed and/or observed by Tenant hereunder for a period of five (5) days; provided that if such default is curable but shall reasonably require more than five (5) days to cure, Tenant shall be afforded an additional time period to effect such cure, not to exceed thirty (30) days, provided Tenant commences to cure the default within the initial five (5) day period and diligently prosecutes the same to completion.

(m) If Tenant shall commit any act of fraud, malfeasance or crime against Landlord.

(n) If Tenant or an affiliate of Tenant is in default under any other lease or agreement with Landlord or an affiliate of Landlord.

(o) If any Guarantor of this Lease shall default under any guaranty or shall repudiate or revoke such guaranty or any obligation under such guaranty.

#### 17.02 **Landlord’s Remedies.**

Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so Landlord may, without prejudice to any other remedy which Landlord may have

for omission or arrearages in rental, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor.

(b) Enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof without being liable for prosecution or any claim for damages therefor, with or without having terminated this Lease.

(c) Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the lesser of 12% per annum or the maximum rate permitted by law.

(d) Alter all locks and other security devices at the Premises without terminating this Lease.

(e) Bring an action for summary possession and, in such action, service of prior notice or demand is hereby expressly waived.

In addition to the other remedies provided in this Lease, and anything contained herein to the contrary notwithstanding, Landlord shall be entitled to restrain any default or violation, or attempted or threatened default or violation of any of the terms, covenants, conditions or other provisions of this Lease, by injunction, order of specific performance or other appropriate equitable relief.

#### 17.03 **Exercise of Landlord's Remedies.**

The remedies provided to Landlord hereunder are intended to be cumulative, and may be exercised by Landlord in any order, or simultaneously, without such exercise being a waiver by Landlord of its right to exercise any other remedy granted to Landlord hereunder (or under applicable laws) with respect to the same Event of Default. Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance or surrender of the Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. No alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises shall be deemed unauthorized or constitute a conversion or a tortious interference with the business, contracts or operations of Tenant, Tenant hereby consenting, after any Event of Default, to the aforesaid exercise of dominion over Tenant's property within the Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgment obtained in legal proceedings, or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass, for tortious interference with business or contract, or otherwise in connection therewith. To the fullest extent permitted by applicable law, Landlord shall have the right to bring an action for unlawful detainer or possession separate from any action brought to recover damages due from Tenant by virtue of its default, and the bringing of such separate action for unlawful detainer or possession shall in no way prejudice or cut off Landlord's right to seek damages or to exercise any of its other rights and remedies under this Lease after recovering possession of the Premises.

#### 17.04 **Termination of Lease**

If, after the occurrence of an Event of Default, Landlord elects to terminate this Lease, then notwithstanding such termination (and in addition to the additional costs and expenses recoverable from Tenant pursuant to Section 17.07), Tenant shall be liable for and shall pay to Landlord the sum of all Rent and other amounts payable to Landlord pursuant to the terms of this Lease which have accrued to the date of such termination, plus, as damages, an amount equal to the total Rent for the remaining portion of the Term (had such Term not been terminated by Landlord prior to the date of its scheduled expiration), less the present value of the then fair market rental value of the Premises for such period based upon a discount rate of 10% per annum.

#### 17.05 **Separate Suits.**

Tenant shall permit Landlord to split its cause of action for rent so as to permit institution of a separate suit or suits or proceedings for the Base Rent hereunder reserved to Landlord, and a separate suit or suits or proceedings for any other payment required hereunder, and neither the institution of such suit or proceeding, nor the entering of judgment therein, shall bar Landlord from bringing a subsequent suit or proceeding for the Base Rent (or for any other Rent, as the case may be), or for any other payments required hereunder.

#### 17.06 **No Termination**

If Landlord elects to repossess the Premises without terminating this Lease, then (in addition to the additional costs and expenses recoverable from Tenant pursuant to Section 17.07) Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein all Rent and other amounts payable to Landlord pursuant to the terms of this Lease which have accrued to the date of such repossession, plus total Rent required to be paid by Tenant to Landlord during the remainder of the Term until the scheduled date of expiration of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period (after deducting expenses incurred by Landlord as provided in Section 17.07). In reletting the Premises on Tenant's behalf, Landlord shall be entitled to grant any concessions it deems advisable, including rent abatement. In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in this Section 17.06 may be brought from time to time on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term, or such action may be brought at or after the end of the Term, in which event Landlord's cause of action to collect such amounts shall be deemed (for purposes of applying any applicable statute of limitations) to have accrued on the last day of such Term, and Tenant hereby waives any defense based on application of a statute of limitations with respect to an action brought by Landlord to recover such amounts, as long as such action is brought within the applicable limitation period as measured from the last day of the Term.

#### 17.07 **Additional Costs and Expenses of Default.**

Following the occurrence of any Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above: (a) costs and expenses incurred by Landlord to obtain possession of the Premises; (b) broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (c) the costs of removing, storing and/or disposing of Tenant's or other occupant's property; (d) the amount of all damages suffered by Landlord as a result of Tenant's default prior to termination or recovery of the Premises, as the case may be; (e) the cost of making repairs and replacements required to be made by Tenant hereunder, and of performing all covenants of Tenant relating to the condition of the Premises; (f) the cost of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; (g) all unamortized leasing commissions and tenant improvement allowance (based upon straight line amortization over the original term of the Lease); and (h) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies at law, equity or hereunder, including reasonable attorneys' fees, litigation expenses and court costs.

#### 17.08 **Reletting the Premises.**

In the event of termination of this Lease or repossession of the Premises after an Event of Default, Landlord shall in good faith mitigate its damages if required by law, and Landlord may relet the whole or any portion of the Premises for any period, to any tenant, and for any use and purpose, upon such terms as it deems appropriate, and may grant any rental or other lease concessions as it deems advisable, including free rent.

#### 17.09 **Inducement Recapture.**

Notwithstanding the foregoing, and in addition to any other remedies Landlord may have at Law or pursuant to this Lease, any agreement by Landlord for possession of the Premises without the payment or reduced payment of Rent or other charges or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement, or consideration for Tenant's entering into this Lease including, but not limited to tenant improvement allowances and abated Rent, all of which concessions are hereinafter referred to as "**Inducement Provisions**", are conditioned on Tenant's full and faithful performance of all of the terms, covenants, and conditions of this Lease to be performed or observed by Tenant during the Term. Upon the occurrence of an Event of Default by Tenant, any Rent, other charge,



bonus, inducement, or consideration abated, given, or paid by Landlord pursuant to such an Inducement Provision shall be due and payable by Tenant to Landlord and recoverable by Landlord as additional Rent under this Lease, no more than ten (10) days after Tenant's receipt of an invoice or notice therefor, notwithstanding any subsequent cure by Tenant.

## **ARTICLE 18 TERMINATION**

### **18.01 Surrender of the Premises.**

Tenant shall deliver and surrender to Landlord possession of the Premises upon the expiration of the Term, or its earlier termination for any reason, in as good condition and repair as the same shall be at the commencement of the Term (ordinary wear and tear excepted), shall deliver the keys to Landlord, and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Unless otherwise agreed by Landlord and Tenant, Tenant shall remove all trade fixtures, vaults, safes, machinery and equipment, and movable furniture, and repair all damage to the Premises *specifically, including, without limitation, patching of any holes and repair and restoration to Premises walls, floors and slabs that may be necessitated by Tenant's removal of the foregoing.* Such repairs shall be performed in a manner satisfactory to Landlord. If Tenant fails to remove any property required by this Lease or Landlord to be removed by the termination date of this Lease, Landlord may at its option retain such property as abandoned by Tenant and title thereto shall thereupon vest in Landlord, or Landlord may liquidate such property and apply the proceeds against any sums due and owing by Tenant, or Landlord may remove the same and dispose of it in any manner and Tenant shall, upon demand, pay Landlord the actual expense of such removal and disposition plus the cost of repair of any and all damage to the Premises resulting from or caused by such removal. Tenant shall remove all communications and data wiring and cabling in the Premises, unless otherwise directed by Landlord in writing. In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent or direction: any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes; blinds or other window coverings; carpets or other floor coverings; air conditioners or any other air conditioning equipment; fencing or security gates; and other similar operating equipment and decorations. Tenant's obligation to observe or perform the covenants contained in this Section 18.01 shall survive the expiration or termination of the Lease. Upon such surrender by Tenant, should the Premises require any repairs that are the responsibility of Tenant hereunder, Landlord shall have the right to make such repairs at Tenant's sole cost.

### **18.02 Holding Over.**

If Tenant or any Tenant Party remains in possession of the Premises after the expiration of this Lease, Tenant shall (a) be a tenant at will, (b) pay, in addition to all other Rent, a Base Rent equal to 200% of the Base Rent herein provided, (c) be subject to all of the conditions, provisions and obligations of this Lease, including, but not limited to, Tenant's obligation to pay all other obligations constituting Rent as set forth herein, adjusted by Landlord as is necessary or appropriate to make the same applicable to a tenancy at will, and (d) pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including the loss of any proposed subsequent tenant for any portion of the Premises.

## **ARTICLE 19 LANDLORD'S RIGHTS**

### **19.01 Performance of Lease Covenants.**

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense. If Tenant fails to pay any sum of money owed to a third party, or fails to perform any act required under this Lease within the time specified (or within a reasonable time if no time is specified), then Landlord may, but shall not be obligated to, make any such payment and perform any other act on Tenant's part. In that case, Tenant shall upon demand reimburse Landlord for all sums expended by Landlord in making any such payment or performing any such act, together with interest at the rate provided in Section 21.03 below, and a fifteen percent (15%) administrative charge. If Landlord elects to perform any of Tenant's obligations, such action by Landlord shall not be construed as a waiver or release of Tenant and shall be in addition to any other remedies that Landlord shall have under this Lease.

19.02 **Entry to Premises.**

Tenant shall permit Landlord and Landlord's employees, agents, brokers, janitors, workers and engineers to have access to the Premises to enable them to inspect and examine the Premises from time to time with reference to any emergency or to the general maintenance of the Premises or to show the Premises to prospective purchasers of the Premises or Landlord's lenders, or, during the last six (6) months of the Term, for the purpose of exhibiting the same to prospective future tenants of the Premises. Landlord shall give Tenant forty-eight (48) hours prior notice of such inspections except in the case of emergency.

19.03 **Change of Name.**

Landlord may, in its sole judgment, change the name of the Premises at any time and in any manner it desires to do so. Landlord may, in its sole judgment, at any time during the Term upon sixty (60) days prior notice to Tenant, change the suite number designation of the Premises.

19.04 **Waiver.**

Landlord's failure to assert any Event of Default or breach of covenant on the part of Tenant shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between Landlord and Tenant in the course of administering this Lease be construed to waive or to lessen the right of Landlord to insist upon the performance by Tenant of any term, covenant or condition hereof, or to waive or lessen the right of Landlord to exercise any rights given Landlord on account of any such Event of Default. A waiver by Landlord of a particular breach or Event of Default shall not be deemed to be a waiver of the same or any other subsequent breach or Event of Default. The acceptance of Rent shall not be, or be construed to be, a waiver of any breach of any term, covenant or condition of this Lease, whether or not Landlord has knowledge of such breach at the time of such acceptance.

19.05 **Reserved.**

**ARTICLE 20  
LANDLORD'S LIABILITY**

20.01 **Landlord's Failure to Perform.**

Landlord shall not be deemed to be in default in the performance of any obligation required of it under this Lease unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord, specifying the obligation to be performed; provided that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be in default if Landlord commences to cure the default within such thirty (30) day period and thereafter diligently prosecutes the same to completion. No such failure by Landlord shall constitute grounds for canceling or terminating this Lease or for withholding all or any portion of the Base Rent or other charges payable hereunder. Tenant's exclusive remedy shall be an action for damages. Unless Landlord fails to so cure such default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. Liability of Landlord to Tenant for any default by Landlord, shall be limited to actual, direct, but not consequential, damages therefore.

20.02 **Notice to Landlord's Mortgagees.**

In the event of any act or omission by Landlord which would give Tenant the right to terminate this Lease or to claim a partial or total eviction, Tenant shall not exercise any such right (a) until it shall have given written notice, by registered or certified mail, of such act or omission to the holder of any mortgage whose name and address shall have been furnished to Tenant in writing, at the last address so furnished, and (b) until a reasonable period of time for remedying such act or omission shall have elapsed following the giving of such notice, provided that following the giving of such notice, Landlord or said holder shall, with reasonable diligence, have commenced and continued to remedy such act or omission or to cause the same to be remedied.

20.03 **Payment of Rents Upon Landlord's Default under Mortgage.**

If Landlord's mortgagee notifies Tenant in writing of a default under a mortgage executed by Landlord and demands that Tenant pay its Rent and all other sums due under this Lease to such mortgagee, Tenant shall honor such demand

without inquiry and pay its Rent directly to such mortgagee or as otherwise required pursuant to such notice and shall not thereby incur any obligation or liability to Landlord.

#### 20.04 **Limitation on Liability of Landlord.**

Landlord is entering into this Lease on the understanding and express condition that: (i) the agreements, obligations and liabilities of Landlord shall be enforceable only against and payable out of Landlord's interest in the Premises; (ii) Landlord's members, managers, officers, directors, partners, agents and employees shall not have any personal or corporate liability for the payment or performance of any such agreements, obligations or liabilities; and (iii) Tenant shall in no event be entitled to any judgment against any of Landlord's members, officers, directors, partners, agents and employees. The term "**Landlord**" shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

### **ARTICLE 21 GENERAL PROVISIONS**

#### 21.01 **Notices.**

All notices shall be given in writing and may be given or served for all purposes by being (a) sent as registered or certified mail, postage prepaid, addressed to Tenant at its post office address set forth in Section 1.01, or at such other post office address as Tenant may from time to time designate in writing by notice to Landlord, or to Landlord at its office set forth above or at such other post office address as Landlord may from time to time designate to Tenant, or (b) delivered personally to Tenant (if Tenant is an individual), to a partner of Tenant (if Tenant is a partnership), to a member or manager of Tenant (if Tenant is a limited liability company) or to an officer of Tenant (if Tenant is a corporation), or (c) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery. If there is more than one Tenant, mailing or personal service to any one shall be construed as notice to all Tenants. If Tenant has vacated the Premises (or if the notice address for Tenant is other than the Premises and Tenant has vacated such address) without providing Landlord a new notice address, Landlord may serve notice in any manner described in this Section 21.01 or in another manner permitted by law. Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt, the overnight carrier's proof of delivery, or telephonic confirmation of receipt as the case may be. Any notice given in another manner shall be deemed given upon receipt of the same by the party. Any party may give notice by more than one method described in this Section 21.01.

#### 21.02 **Reimbursement of Landlord's Processing Costs.**

Tenant shall reimburse Landlord for all reasonable costs and expenses (including attorneys' and other professional fees) incurred by Landlord in processing all consents and approvals requested of Landlord, and shall pay to Landlord a processing fee of \$750.00 for any such consents or approvals, whether or not Landlord grants them.

#### 21.03 **Interest.**

Interest shall be charged to Tenant on late payments of Rent, and shall accrue from the date such payment becomes due until it is received by Landlord, at the rate of twelve percent (12.0%) per annum.

#### 21.04 **Costs and Attorneys' Fees.**

If any action or proceeding is brought by either party against the other based upon or arising out of any breach of the terms and conditions of the Lease, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, from the other. If Landlord becomes involved in any action, without any fault on its part arising by reason of or related to any act or omission of Tenant or Tenant's agents or customers, Tenant agrees to pay Landlord's reasonable attorneys' fees and other costs incurred in connection with such action.

#### 21.05 **Accord and Satisfaction.**

No payment by Tenant or receipt by Landlord of a lesser amount than the amount then due shall be deemed to be other than on account of Rent due, nor shall any endorsement or statement on any check or any letter accompanying any

check or payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided. In the event that the Rent is delinquent, Landlord may, upon the receipt of any payments, apply them to any account or period it shall determine in its discretion.

#### 21.06 **Execution of this Lease.**

The submission of this Lease for examination does not constitute a reservation of or option for the Premises and this Lease becomes effective as a lease only upon execution and delivery by Tenant and Landlord. Each person signing below warrants that he or she has the proper authority to execute this Lease on behalf of the party for whom he or she is signing.

#### 21.07 **Entire Agreement.**

The provisions of this Lease constitute, and are intended to constitute, the entire agreement of Landlord and Tenant regarding the Lease of the Premises, and supersede any prior or contemporaneous negotiations, discussions, agreements, memoranda or correspondence, written or oral, between the parties. No terms, conditions, warranties, promises or undertakings of any nature, express or implied, exist between Landlord and Tenant except as expressly set forth in this Lease.

#### 21.08 **Waiver of Jury Trial and Counterclaim.**

The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage. If Landlord shall commence any proceeding for nonpayment of Rent, Tenant will not interpose any counterclaim or setoff of whatever nature or description (other than compulsory counterclaim), in such proceedings nor seek to consolidate Landlord's action with any other action that would delay or prevent Landlord's action from proceeding. This restriction shall not, however, be construed to prohibit Tenant's assertion of compulsory counterclaims or Tenant's right to assert any claim against Landlord in a separate action or actions. The parties hereto specifically agree that Tenant's covenants to pay Rent are independent of all other covenants and agreements in this Lease. The foregoing shall not be construed as a waiver of Tenant's right to assert any such claim in a separate action brought by Tenant against Landlord.

#### 21.09 **Short Form Lease.**

Neither this Lease nor any short form or memorandum thereof shall be recorded by either Landlord or Tenant. If a short-form Lease is recorded with Landlord's consent, Tenant shall, at Landlord's request upon the expiration or sooner termination of this Lease, execute a document in recordable form reflecting the expiration or termination of the Term. In the event Tenant fails to do so within fifteen (15) days after request therefor from Landlord, Tenant hereby irrevocably agrees that Landlord may unilaterally execute and record a termination instrument. If a short form Lease is recorded without Landlord's prior written consent, such recordation shall, at the option of Landlord constitute a non-curable material Event of Default of Tenant hereunder, and Tenant hereby irrevocably agrees that Landlord may unilaterally execute and record a cancellation document. Landlord's rights under this Section shall survive termination of this Lease for any reason.

#### 21.10 **Credit Check.**

Tenant agrees that Landlord is authorized to obtain such credit information as Landlord may require from time to time with respect to Tenant's credit and financial ability as it relates to Tenant's obligations under the terms and conditions of this Lease.

#### 21.11 **Disclosure of Agency; Indemnification.**

Landlord shall have no obligation to pay any commission, finder's fee or other amount to any broker or other person in connection with this Lease except in accordance with a separate written agreement executed by Landlord that expressly states the amount to be paid. Without limiting the foregoing, Landlord shall have no obligation to pay any commission, finder's fee or other amount in connection with any extension, renewal, expansion, amendment, exercise

of option, or any other action giving Tenant additional rights to rent the Premises. If a Tenant's Broker is identified in Section 1.01, Item 10, then Tenant represents that it has dealt directly with and only with Tenant's Broker as a broker in connection with this Lease. If no such broker is identified, then Tenant represents that it was not represented by a broker in connection with this Lease. Tenant shall indemnify and hold harmless Landlord and Landlord's members, managers, agents, employees, officers and/or directors from all claims of any other brokers claiming to have represented Tenant in connection with this Lease. This indemnity shall also cover all costs and expenses, including reasonable attorney's fees, incurred by the indemnified party in the defense of any indemnified claims. If a Landlord's Broker is identified in Section 1.01, Item 10, then Landlord discloses that Landlord's Broker has represented Landlord in this transaction. A & B Properties Hawaii, LLC is a licensed real estate broker in the State of Hawaii. By signing below, Landlord and Tenant confirm that oral and written disclosure of such representation was provided to them before the signing of this Lease. Landlord agrees to indemnify and hold harmless Tenant and Tenant's partners, agents, employees, officers and/or directors from all claims of any brokers claiming to have represented Landlord in connection with this Lease.

#### 21.12 **Captions; Construction.**

The captions used herein are for convenience only and do not limit or amplify the provisions hereof. The language in all parts of this Lease shall in all cases be construed as a whole and according to its fair meaning, and not strictly for or against either Landlord or Tenant, and the construction of this Lease and any of its various provisions shall be unaffected by any argument or claim, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of Landlord or Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender. References to "**day**" or "**days**" shall mean calendar days. If any provision of this Lease subjects any action, inaction, activity or other right or obligation of Tenant to the prior consent or approval of Landlord, Landlord shall be deemed to have the right to exercise its sole and unfettered discretion in determining whether to grant or deny such consent or approval, unless the provision in question states that Landlord's consent or approval "shall not be unreasonably withheld," in which event Landlord's consent shall be subject to Landlord's sole, but reasonable, discretion.

#### 21.13 **Time of the Essence; Force Majeure.**

Time is of the essence of all performances under this Lease. The foregoing notwithstanding, whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, the party required to perform shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, acts of terrorists, computer crimes, governmental laws or any other causes of any kind whatsoever which are beyond the reasonable control of such party. Unless otherwise explicitly provided herein, no such events shall excuse Tenant from payment of Rent due Landlord under this Lease.

#### 21.14 **Cooperation with REIT Status.**

Tenant understands that for Landlord's parent entity to continue to qualify as a real estate investment trust, certain requirements must be satisfied. Accordingly, Tenant (a) agrees, upon request and at the expense of Landlord, to use its commercially reasonable efforts and cooperate in good faith with Landlord to provide Landlord with information about the ownership of Tenant and its affiliates and otherwise assist in satisfying such requirements, provided that Tenant shall not be required to take any actions that would have a material adverse effect on Tenant or its affiliates, nor shall Tenant be required to amend any material terms of this Lease or agree to any changes that would increase Tenant's financial obligations hereunder, and (b) represents and covenants that Tenant's and its affiliates' direct or indirect ownership interest in Alexander & Baldwin, Inc. (applying constructive ownership rules set forth in Section 856(d)(5) of the Code), if any, shall not cause any Rent received by Landlord from Tenant to fail to qualify as "rents from real property" within the meaning of Section 856(d)(5) of the Code, and the Regulations promulgated thereunder.

#### 21.15 **Other Matters.**

This Lease shall be governed by and construed in accordance with the laws of the State of Hawaii, and venue for any action related to this Lease shall be with the courts of the State of Hawaii. This Lease contains the entire agreement between the parties as to the rights granted and the obligations assumed in this instrument and it may not be amended except by a writing signed by both Landlord and Tenant. The invalidity or unenforceability of any provision of this Lease shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Except as otherwise provided in this Lease, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors, and assigns. If there is more than one Tenant, the obligations and promises of the tenants as contained in this Lease shall be joint and several. If guarantor(s) are listed in Section 1.01, Item 12, then the obligations hereunder imposed upon Tenant shall be the joint and several obligations of Tenant and such guarantor(s), and Landlord need not first proceed against Tenant before proceeding against such guarantor(s) nor shall any such guarantor(s) be released from its guaranty for any reason whatsoever.

21.16 **Confidentiality.**

Tenant acknowledges that the terms of this Lease and any related documents are confidential information. As a material inducement to Landlord's agreement to these terms, Tenant agrees to keep this information strictly confidential. Tenant shall ensure that these terms remain strictly confidential and shall not disclose such confidential information to any other party, other than Tenant's consultants, attorneys, property managers, and employees who have a need to know such information. In the event Tenant or its agents, employees or consultants disclose this information to other third parties without the prior written consent Landlord, Tenant agrees that such disclosure shall be a default under this Lease.

21.17 **Counterparts; Electronic Delivery.**

This Lease may be executed in multiple counterparts, each of which shall constitute one agreement, even though all parties do not sign the same counterpart. The signature pages taken from separate individually executed counterparts of this Lease may be combined to form multiple fully executed counterparts. This Lease may also be executed via an electronic signature program such as, without limitation, DocuSign, in whole or in multiple counterparts. Electronic delivery or other transmission by any party of its signature on an original or any copy of this Lease in electronic format (e.g., .pdf) or similar format or via an electronic signature program shall be deemed effective execution and delivery hereof. If so executed and delivered by one or both parties hereto, the effectiveness of this Lease shall not be affected by the non-delivery of any manually-signed signature page.

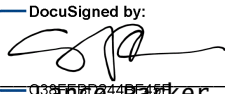
*[Signatures on next page]*

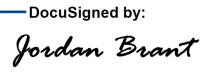
THE PARTY OR PARTIES SIGNING THIS LEASE ON BEHALF OF TENANT ACKNOWLEDGE THAT HE, SHE OR THEY HAVE READ THIS LEASE, UNDERSTAND THE RIGHTS AND LIABILITIES OF TENANT HEREUNDER, HAVE BEEN GIVEN THE OPPORTUNITY TO SEEK THE ADVICE OF COUNSEL, AND HEREBY KNOWINGLY AND VOLUNTARILY EXECUTE THIS INSTRUMENT.

LANDLORD:

ABP KALIHI YARD LLC

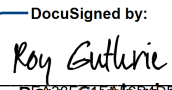
By A&B Properties Hawaii, LLC, Series R,  
Its Manager

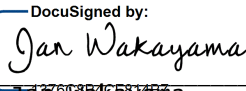
DocuSigned by:  
  
By Lance Parker  
Its President

DocuSigned by:  
  
By Jordan Brant  
Its Vice President

TENANT:

J A R TOWING, INC.

DocuSigned by:  
  
By Roy Guthrie  
Its President

DocuSigned by:  
  
By Jan Wakayama  
Its vice President







**EXHIBIT B**  
**LEGAL DESCRIPTION OF LAND**

All of that certain parcel of land situate at Mokauea, Kalihi, City and County of Honolulu, State of Hawaii, being LOTS 18, 20, 22, 24, 27 and 28, BLOCK 27, of the "KAPIOLANI TRACT", as shown on File Plan Number 117, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 30,000 square feet, more or less.

EXCEPTING AND EXCLUDING from the above described parcel of land all that portion thereof condemned by the City and County of Honolulu in Final Order of Condemnation dated April 6, 1966, filed in Civil No. 16683, Circuit Court of the First Circuit, State of Hawaii, on April 6, 1966, recorded in the Bureau of Conveyances in Liber 5301 at Page 318, to-wit:

PARCEL 61: Being a portion a Lot 28, Block 27 of the Kapiolani Tract (File Plan 117). Being also a portion of L.P. 8194 on a portion of L.C. Aw. 6450, Apana 1 to Kaunuohua for W.L. Moehonua, situate at Mokauea, Kalihi-Kai, Honolulu, Oahu, Hawaii.

Beginning at the east corner of this parcel of land, being also the south corner of Lot 27, Block 27, of the Kapiolani Tract (File Plan 117), and on the present northwest side of Kalihi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAUIKI" being 8,217.59 feet south and 2,791.39 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 12-7-2-7A, thence running by azimuths measured clockwise from true South:

- |    |  |     |       |  |
|----|--|-----|-------|--|
| 1. | 42°  | 20' | 50.00 | feet along the present northwest side of Kalihi Street;  |
| 2. | 132°   | 20' | 28.00 | feet along the present northeast side of Silva Street;   |
| 3. | Thence along the new north corner of Kalihi and Silva Streets along the remainder of Lot 28, Block 27, of the Kapiolani Tract (File Plan 117), on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being: |     |       |  |
|    | 267°   | 20' | 28.28 | feet;  |
| 4. | 222°   | 20' | 30.00 | feet along the new northwest side of Kalihi Street along remainder of Lot 28, Block 27, of the Kapiolani Tract (File Plan 117);          |
| 5. | 312°   | 20' | 8.00  | feet along Lot 27, Block 27, of the Kapiolani Tract (File Plan 117) to the point of beginning and containing an area of 486 square feet. |

PARCEL 62: Being a portion of Lot 27, Block 27, of the Kapiolani Tract (File Plan 117). Being also a portion of L.P. 8194 on a portion of L.C. Aw. 6450, Apana 1 to Kaunuohua for W.L. Moehonua, situate at Mokauea, Kalihi-Kai, Honolulu, Oahu, Hawaii.

Beginning at the south corner of this parcel of land, being also the east corner of Lot 28, Block 27, of the Kapiolani Tract (File Plan 117), and on the present northwest side of Kalihi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAUIKI" being 8,217.59 feet south and 2,791.39 feet west, as shown on Division of Land Survey and Acquisition Parcel Map File No. 12-7-2-7A, thence running by azimuths measured clockwise from true South:

- |    |      |     |       |   |
|----|------|-----|-------|---|
| 1. | 132° | 20' | 8.00  | feet along Lot 28, Block 27 of the Kapiolani Tract (File Plan 117);   |
| 2. | 222° | 20' | 50.00 | feet along the new northwest side of Kalihi Street along the remainder of Lot 27, Block 27, of the Kapiolani Tract (File Plan 117); |
| 3. | 312° | 20' | 8.00  | feet along Lot 26, Block 27, of the Kapiolani Tract (File Plan 117);  |

4.        42°        20'        50.00        feet along the present northwest side of Kalihi Street to the point of beginning and containing an area of 400 square feet.

**SUBJECT TO ALL ENCUMBRANCES OF RECORD**

## **EXHIBIT C**

### **CONSTRUCTION**

This Exhibit C describes the rights and obligations of Landlord and Tenant relating to design and construction of the Premises. Tenant acknowledges that Landlord has the right, from time to time, to revise the standards and requirements set forth in this Exhibit for construction, renovation, and alterations at the Premises. Landlord shall notify Tenant of any such changes when they are made, and Tenant shall be required to comply with such revised standards and requirements as applicable to Tenant. Terms capitalized and not otherwise defined herein shall have the respective meanings ascribed to them in the body of the Lease.

#### **A. Tenant's Work.**

1. As-Is. Tenant hereby accepts the Premises in their "AS IS" condition, without warranty, on the date the Lease is entered into. Unless otherwise expressly agreed by Landlord and Tenant in writing, Tenant takes the Premises As Is, in the condition left by any prior tenant. For example, if the previous tenant installed tile in the Premises, Tenant shall take the Premises As Is with the existing tile and Landlord shall not be obligated to restore the flooring to exposed cement slab. Landlord shall have no obligation to perform any work therein (including, without limitation, demolition of any improvements existing therein or construction of any tenant finish-work or other improvements therein), and shall not be obligated to reimburse Tenant or provide an allowance for any costs related to the demolition or construction of improvements therein.

2. Plans and Specifications. If Tenant wishes to perform work in the Premises, then or before the date ten (10) days after the date of the Lease, Tenant shall provide to Landlord for its approval, final working drawings, prepared by an architect that has been approved by Landlord (which approval shall not be unreasonably withheld), of all improvements that Tenant proposes to install in the Premises; such working drawings shall include the partition layout, ceiling plan, electrical outlets and switches, telephone outlets, drawings for any modifications to the mechanical and plumbing systems of the building in which the Premises are located (the "**Building**"), and detailed plans and specifications for the construction of the improvements called for under this Exhibit in accordance with all applicable Laws ("**Tenant's Plans**"). Further, if any of Tenant's proposed construction work will affect the Building's HVAC, electrical, mechanical, or plumbing systems, then the Tenant's Plans pertaining thereto shall be prepared by the Building's engineer of record, whom Tenant shall at its cost engage for such purpose.

3. Approvals. Landlord shall approve or disapprove of the Tenant's Plans within ten (10) business days after receipt. If Landlord disapproves, Landlord and Tenant shall promptly meet and attempt to resolve any dispute. If the parties are unable to mutually approve the Tenant's Plans on or before the date thirty (30) days after the date of the Lease, Landlord may, at Landlord's option, terminate the Lease upon seven (7) days' prior written notice to Tenant. Landlord's approval of such Tenant's Plans shall not be unreasonably withheld, provided that (a) they comply with all applicable Laws; (b) such Tenant's Plans are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner; and (c) the improvements depicted thereon conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant improvements.

4. Working Drawings. As used herein, "**Working Drawings**" shall mean the final Tenant's Plans approved by Landlord, as amended from time to time by any approved changes thereto, and "**Tenant's Work**" shall mean all improvements to be constructed in accordance with and as indicated on the Working Drawings. Approval by Landlord of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use, purpose, or condition, or that such drawings comply with any applicable Law, but shall merely be the consent of Landlord to the performance of Tenant's Work. Tenant shall, at Landlord's request, sign the Working Drawings to evidence its review and approval thereof. All changes in Tenant's Work must receive the prior written approval of Landlord, and in the event of any such approved change Tenant shall, upon completion of Tenant's Work, furnish Landlord with an accurate, reproducible "as-built" plan (e.g., sepia) of the improvements as constructed, which plan shall be incorporated into the Lease by this reference for all purposes.

5. Permits and Governmental Requirements. Tenant shall obtain all governmental permits required to complete Tenant's Work and shall comply with all conditions thereto and with all other applicable Laws. Tenant shall apply for such permits no later than ten (10) days after Landlord's approval of the Working Drawings.

6. Materials and Warranties. Tenant shall use only new, first-class materials in completion of Tenant's Work. All work and equipment shall be warranted for a minimum of one (1) year from installation.

7. Diligent Construction. Tenant shall diligently commence and complete the actual construction of Tenant's Work pursuant to the Working Drawings and the provisions of this Exhibit. Provided that Landlord has completed any work required by the Lease, Tenant shall occupy the Premises for purposes of completing Tenant's Work within thirty (30) days after Tenant receives Landlord's approval of the space plans, unless an earlier occupancy date is specified in the Lease.

8. Contractors. Tenant's Work shall be performed only by contractors and subcontractors approved in writing by Landlord, which approval shall not be unreasonably withheld. All contractors and subcontractors shall be required to procure and maintain (a) insurance against such risks, in such amounts, and with such companies as Landlord may reasonably require and (b) payment and performance bonds guaranteeing completion of and covering the cost of Tenant's Work, naming Landlord as obligee, and otherwise reasonably satisfactory to Landlord. Certificates of such insurance, with paid receipts therefor, and copies of such bonds must be received by Landlord before Tenant's Work is commenced.

9. Landlord's Rules, Requirements. Tenant shall comply with such reasonable rules and regulations as Landlord may establish regarding Tenant's construction work in order to avoid interference or delays with other work, to protect the property of Landlord and other tenants, and to enhance the safety of the Premises. Tenant shall perform or cause Tenant's contractor to perform all work in a manner and at such times so as to avoid any labor dispute or other interference that may cause stoppage of work, deliveries, or other services in or to the Premises. Tenant's Work shall be performed in a good and workmanlike manner that is free of defects and is in strict conformance with the Working Drawings. All contractors and subcontractors shall contact Landlord and schedule time periods during which they may use Building facilities in connection with Tenant's Work (e.g., excess electricity, etc.).

10. TI Costs. The "TI Costs" means the actual costs of performing Tenant's Work in accordance with the Working Drawings. Unless otherwise specified in the Lease, Tenant shall bear the entire amount of TI Costs. The "TI Costs" include, but are not limited to the following: design of Tenant's Work and preparation of the Working Drawings; costs of construction labor, equipment, and materials; contractor's field overhead and fees; engineering fees; costs of governmental permits and plan check fees; testing and inspection costs; electrical usage during construction; additional janitorial services; general tenant signage; related taxes and insurance costs; Landlord's review, supervision, and coordination costs and expenses referenced in Section 11 of this Exhibit; and other costs directly related to the performance of Tenant's Work.

11. Landlord Supervision. Landlord or its representative may supervise Tenant's Work, and coordinate the relationship between Tenant's Work, the Building, and the Building's systems. In each instance where Landlord's approval is required hereunder, including, without limitation, Landlord's review of the Working Drawings, or where Landlord or its representative supervises or coordinates Tenant's Work as provided herein, Tenant shall reimburse Landlord for all reasonable out-of-pocket costs and expenses incurred in such review, supervision, or coordination, regardless of whether the request is approved or whether Tenant sought such supervision or coordination.

12. Indemnity. Tenant shall indemnify, hold harmless and defend Landlord from and against any loss or damage to property and any liability for death or personal injury arising out of the construction of Tenant's Work, except to the extent caused by the negligence or intentional misconduct of Landlord or its agents or employees.

13. Completion. After completion of Tenant's Work, Tenant shall obtain a Certificate of Occupancy or similar document issued by the applicable county agency (if necessitated by the nature of Tenant's Work), and shall provide to Landlord evidence of the expiration of the statutory period in which mechanics and materialmen can file liens or the furnishing of lien releases acceptable to Landlord from all contractors and suppliers.

14. Compliance. Notwithstanding Landlord's review of Tenant's Plans and the Working Drawings, and whether or not Landlord approves or disapproves such drawings and specifications, at all times during the term of the Lease, Tenant and not Landlord shall be responsible for compliance of such drawings and specifications and of the improvements in the Premises with all laws relating to the ADA (as defined in Section 6.05 of the Lease) and all other Laws. Tenant shall pay, indemnify and hold harmless Landlord against all costs and expenses (including reasonable attorneys' fees), losses, damages (including foreseeable or unforeseeable consequential damages) and liabilities incurred by Landlord which may arise out of or may directly or indirectly be attributable to Tenant's (a) failure to comply with the ADA or any other Law; (b) Landlord's investigation and handling (including the defense) of Tenant's failure to comply with the ADA or any other Law, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof, (c) any amounts assessed against Landlord pursuant to the ADA or any other Law based upon Landlord's ownership of the Premises and (d) Landlord's enforcement of this section, whether or not

suit is brought therefor. All of the above amounts shall constitute additional Rent and be payable on demand with interest at the rate provided by Law.

**B. Standards for Interior Finishes:**

1. Floor Coverings. Standard floor covering shall be commercial quality carpet or tile and shall not be affixed to the floor in any manner except by a tack strip, paste, or other materials that may be easily removed with water. The use of cement or other similar adhesive materials is expressly prohibited. The method of affixing the floor covering to the floor shall be specified in the plans and specifications submitted to Landlord for written approval. The expense of repairing any damage or removing any floor covering affixed to the Premises in violation of this provision shall be Tenant's responsibility. Requests for non-standard floor coverings shall be submitted to Landlord for written approval.

2. Base. A base material (e.g. vinyl, wood) shall be used on all walls and partitions.

3. Interior Partitions. Partitions shall be constructed of metal stud and drywall or other similar forms of construction material in accordance with the applicable building code. Subject to Landlord's written approval, non rated partitions may be allowed within the Premises and shall be installed by Tenant in accordance with building standards established by Landlord. Partitions meeting the interior face of the glazed external building wall or column shall terminate only at the centerline of window mullions or columns. Tenant shall be responsible for the painting of all interior walls.

4. Cooling System. Tenant shall be responsible for the installation of its own air conditioning system or unit within the Premises. Any roof penetrations or roof work must be approved in writing by Landlord prior to the commencement of any such work and shall not in any way affect any roofing warranties for the Building.

5. Utilities. Subject to Landlord's prior written consent, Tenant shall be responsible for the adjustment of the fire sprinkler system, all electrical, telephone, communications, and other wiring within the Premises, all receptacles, switches and fixtures, any plumbing system lines and fixtures, and any other facilities or improvements required by Tenant for the distribution or operation of utilities and other systems within the Premises. All lighting branch circuit panel board shall be circuit-breaker type. Power panels may be circuit-breaker type or hinged fusible unit type. All wiring in finished areas, including lighting, power, telephone and communication systems wiring, shall be concealed.

6. Ceiling. The minimum clear height for all ceilings shall be 7'6" unless otherwise approved by Landlord in writing. The quality of the ceiling shall be not less than a standard suspended dry wall ceiling. Ceilings do not need to be installed in stock or service areas except where required by Law.

7. Concrete floors and walls. Holes for electrical and telephone services or chases may be cut through concrete floor slabs and concrete walls only with the prior written approval of and under the direction of Landlord. Floor penetrations shall be by core drilling only, and not by jack hammering. Floor penetrations shall be grouted with an expanding concrete grout or similar suitable material to provide dire stopping and a water tight seal. Tenant shall be liable for any damage caused by the floor penetration to space below, during, and after construction.

8. Fire Protection System. Tenant shall furnish and install a smoke detector and fire signaling system within the Premises in accordance with plans approved by Landlord. Where there is a master fire alarm system for the Building, Tenant's engineer shall be responsible for coordinating Tenant's system with the master alarm system. Any system installed by Tenant shall be in strict compliance with all governmental codes and requirements, as well as the requirements of any insurance policy covering the Premises.

**EXHIBIT D**

**Reserved.**

**EXHIBIT E**  
**RULES AND REGULATIONS**

Tenant acknowledges that the Landlord has the right, from time to time, to revise these Rules and Regulations. Landlord shall notify Tenant of any such changes when they are made, and Tenant shall be required to comply with such revised Rules and Regulations. These rules and regulations have been adopted for the purpose of ensuring order and safety in the Premises and to maintain the rights of tenants and Landlord.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises, unless electrical hold backs have been installed.

2. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility of Tenant and any expense of said damage or injury shall be borne by Tenant.

3. The requirements of Tenant will be attended to only upon application at the office of the Building or at such other location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. Tenant shall not, and shall not permit the cleaning of any dishes, coffee pots, kitchen or eating utensils or any objects other than hands. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or agents, shall have caused it.

5. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof without Landlord's consent first had and obtained.

6. Except for vending machines intended for the sole use of Tenant's employees, no vending machines shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

7. Tenant shall not use or keep in or on the Premises or the Building any kerosene, gasoline or other inflammable or combustible fluid or material.

8. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors, or vibrations, or interfere in any way with other tenants of nearby property. No tenant shall play upon or suffer to be played upon any musical instrument on the Premises if the same shall disturb or annoy other tenants of nearby property and the tone volume of radios, TV, stereo, telephones, and other sound producing devices shall be turned down so as to avoid bothering neighbors.

9. Tenant shall not bring into or keep within the Building or the Premises any animals (including birds), provided however, that notwithstanding the foregoing, properly authorized service animals shall be permitted for the performance of the services for which they are trained.

10. No cooking (except for occasional outdoor cooking/barbequing for Tenant's staff) shall be done or permitted by any tenant on the Premises, nor shall the Premises be used for washing clothes, lodging, or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate

and similar beverages, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, and does not cause odors which are objectionable to Landlord and other Tenants.

11. Landlord will approve where and how utility lines and conduits are to be introduced to the Premises. No boring or cutting for wires shall be allowed without the consent of Landlord. The location of telephone, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

12. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city in which the Building is located without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate. All boxes must be broken down prior to being placed in the container. Trash containing food, wet trash or liquids shall be securely wrapped or placed in watertight containers before being placed in a receptacle.

13. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

14. The sidewalks, exits, and entrances shall not be obstructed by Tenant or used by Tenant for any purpose other than for ingress to and egress from the Premises. No tenant and no employees or invitees of any tenant shall go upon the roofs of any buildings in the Premises without Landlord's prior written consent.

15. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed, when the Premises are not occupied.

16. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Building.

17. No awnings or other projection shall be attached to the outside walls of the Building or the exterior of any door without the prior written consent of Landlord. No curtains, blinds, shades, screens, or other projections shall be attached to or hung in, or used in connection with, any window or door of the Premises without the prior written consent of Landlord. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and bulb color approved by Landlord.

18. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

19. The washing and/or detailing of or, the installation of windshields, radios, telephones in or general work on, automobiles shall not be allowed on the Building. Waste fluids or materials shall be properly discarded in suitable containers or by recycling services or as recommended by the manufacturer. Dumping in plumbing or storm drain lines or in the surrounding landscaping is prohibited.

20. Tenant must comply with requests by Landlord that Tenant inform Tenant's employees of information of importance from time to time.



**EXHIBIT F****GUARANTY OF LEASE**

To induce **ABP KALIHI YARD LLC**, a Hawaii limited liability company, whose address is 822 Bishop Street, Honolulu, Hawaii 96813 (“**Landlord**”), to execute and enter into a lease for premises at 228 Kalihi Street, Honolulu, Hawaii 96819 of even date herewith (the “**Lease**”), with **J A R TOWING, INC.**, a Hawaii corporation, whose address is 228 Kalihi Street, Honolulu, Hawaii 96819 (“**Tenant**”), the undersigned, **ROY GUTHRIE** and **JAN WAKAYAMA** (individually and jointly, “**Guarantor**”), hereby unconditionally guarantee the full performance of and agree to perform or cause to be performed each and all of the terms, covenants and conditions of the Lease on the part of Tenant to be kept and performed, including the payment of all rent, reimbursables, and other amounts provided therein (this “**Guaranty**”). Guarantor further agrees as follows:

1. **Guaranteed Obligations.** This Guaranty is an absolute and unconditional guaranty of payment and of performance. This Guaranty shall be enforceable against Guarantor without the necessity for any demand, suit or proceedings on Landlord’s part of any kind or nature whatsoever against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease.

2. **Direct and Primary Liability of Guarantor to the Landlord.** The liability of Guarantor to Landlord under this Guaranty is direct and primary, and is independent of any secondary liability Guarantor may have by virtue of its status as a general partner, officer or stockholder of Tenant (to the extent applicable). Accordingly, this Guaranty may be enforced by Landlord regardless of any defense or setoff or counterclaim which Tenant may have or assert against Landlord, and regardless whether or not Landlord has instituted any suit, action or proceeding, or exhausted its remedies against Tenant, or exhausted the assets of Tenant, or taken any steps to enforce any rights against any other person to compel any such performance or to collect all or part of such amount, and regardless of whether Landlord has obtained any judgment against Tenant for the amounts owed by Tenant to Landlord under the Lease.

3. **Waiver.** Guarantor hereby unconditionally (a) covenants that this Guaranty will not be discharged except by complete performance by Tenant of the obligations contained in the Lease; (b) forever waives all statutory or common law suretyship defenses now or hereafter otherwise available, and any rights of appraisal with regard to the value of any collateral which Landlord may apply as a credit to the obligations of Tenant, through foreclosure or otherwise, and agrees that the determination by an independent appraiser appointed by Landlord of the value of such collateral shall be binding upon Guarantor for all purposes; (c) agrees that this Guaranty shall remain in full force and effect without regard to, and shall not be affected or impaired by, without limitation, any invalidity, irregularity, or unenforceability in whole or in part of any of the provisions of the Lease or any limitation on the liability of Tenant thereunder; and (d) acknowledges its responsibility for verifying from the Landlord from time to time the delinquent or nondelinquent status of the Tenant’s account.

4. **No Modification.** This Guaranty shall continue in favor of Landlord throughout any extension of the Lease and notwithstanding any modification or alteration thereof entered into by and between Landlord and Tenant, or their respective heirs, legal representatives, successors and assigns, and that no assignment (with or without the consent of Landlord), extension, modification or alteration of the Lease and no receipt, application or release of security given for the performance and observance of covenants and conditions of the Lease on Tenant’s part to be observed and performed and no waiver by Landlord of the performance or observance by Tenant of any of the agreements, covenants, terms, or conditions in the Lease, and no actions that Landlord may take or omit to take by virtue of the Lease or through any course of dealing with Tenant, and no operation of law or any other cause shall in any manner release or discharge Guarantor or diminish the liability of Guarantor hereunder.

5. **No Release.** The liability of Guarantor hereunder shall in no way be affected by (a) the release or discharge of Tenant in any creditors’, receivership, bankruptcy or other proceedings; (b) the impairment, limitation or

modification of the liability of Tenant or the estate of Tenant in bankruptcy, or any remedy for the enforcement of Tenant's said liability under the Lease resulting from the operation of any present or future provision of the Federal Bankruptcy Act, or other statutes or from the decisions in any court; (c) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of the Tenant or any other guarantor of the Lease; (d) the rejection or disaffirmance of the Lease in any such proceedings; (e) the assignment or transfer of the Lease by Tenant; (f) the addition of a new guarantor or the release of any guarantor of the Lease; (g) any disability or other defense of Tenant; or (h) the cessation from any cause whatsoever of the liability of Tenant.

6. **Assignment.** Landlord may assign this Guaranty in whole or in part; however, Landlord shall give notice to Tenant and Guarantor that such assignment has been made, but the failure of Landlord to give such notice shall not affect the validity hereof or of the assignment.

7. **Independent Right of Action.** Landlord may at Landlord's option bring a separate action or actions against Guarantor whether or not an action is brought against Tenant and whether or not Tenant is joined in any such action.

8. **Attorney's Fees.** Guarantor shall pay Landlord's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed or in enforcement of this Guaranty against Guarantor.

9. **Subrogation.** If Guarantor shall be required to make any payments on account of the Lease, then, from and after the payment in full of the total lease rent and other sums to be paid under the Lease and the discharge of all obligations to be performed under the Lease, Guarantor shall be subrogated to the rights of Landlord against Tenant. Until such payment in full and such other performance and discharge, Guarantor waives any rights it may have to insist that Landlord enforce any of its remedies under the Lease and any rights Guarantor may have to participate in any security for the repayment of Tenant's obligations under the Lease.

10. **Amendment.** The terms of this Guaranty may not be modified or amended, except by a written agreement executed by Guarantor with the written consent of Landlord.

11. **Notices.** Any notices or demand to be given or served on Guarantor shall be in writing and personally delivered, or sent by registered or certified mail addressed to Guarantor at the address provided above. Guarantor may change its address from time to time by delivering to Landlord written notice of any change of address. Service of any notice of demand shall be deemed complete on the date of actual delivery or the expiration of the second day after the date of mailing, whichever is earlier.

12. **Binding Force.** The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the heirs, legal representatives and assigns of the parties hereto. If this Guaranty is executed by two or more persons, then the obligation of each person executing this Guaranty shall be joint and several. This Guaranty may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Guaranty, it shall not be necessary to produce or account for more than one such counterpart.

13. **Severability.** If for any reason any of the provisions hereof are or become unenforceable or ineffective, all the remaining provisions shall be and remain in full force and effect.

14. **Submission to Jurisdiction.** This Guaranty and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the laws of the State of Hawaii and Guarantor hereby irrevocably consents to the jurisdiction of the State of Hawaii and, unless prohibited by law, to the venue of the Circuit Courts of the State of Hawaii. This provision shall not, however, preclude Landlord from commencing any action against Guarantor in any other jurisdiction. Guarantor agrees that notice or service of process may be made on Guarantor by certified or registered mail, postage prepaid, addressed at the address shown below following Guarantor's signature, or at such other address as Guarantor may designate from time to time by written notice to Landlord.

15. **Waiver of Jury Trial.** Guarantor hereby waives, to the maximum extent permitted by law, trial by jury in any action, proceeding or counterclaim, on any claim or matter whatsoever arising out of or in any way connected

with this Guaranty, the relationship of Landlord with Guarantor, Guarantor's rights and obligations under this Guaranty, or the enforcement of this Guaranty.

16. **Facsimile and Electronic Delivery.** This Guaranty may be executed and the signature page transmitted by facsimile or other electronic transmission. The delivery of such facsimile or electronic copy of the executed signature page to this Guaranty shall constitute effective execution and delivery hereof. If so executed and delivered by Guarantor, the effectiveness of this Guaranty shall not be affected by the non-delivery of the manually-signed signature page.

IN WITNESS WHEREOF, Guarantor has executed these presents as of July 15, 2022.

DocuSigned by:

*Roy Guthrie*

FA38FC1FA58D4PB...

**ROY GUTHRIE**

130 Hoopiha Place,  
Wahiawa, Hawaii 96786  
(808) 295-2201  
Email: [rsus5763@gmail.com](mailto:rsus5763@gmail.com)

DocuSigned by:

*Jan Wakayama*

1376C8B4CF814B7

**JAN WAKAYAMA**

1351 Anapa St,  
Honolulu, Hawaii 96818  
(808) 741-0832  
Email: [7410832@gmail.com](mailto:7410832@gmail.com)

**EXHIBIT G**  
**TENANT ESTOPPEL CERTIFICATE**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[BUYER ENTITY]  
\_\_\_\_\_  
[ADDRESS]  
\_\_\_\_\_  
[CITY, STATE ZIP]  
\_\_\_\_\_  
Attn: [BUYER CONTACT]

Re: Lease dated [DATE OF LEASE] (the “**Lease**”) executed between [NAMED LANDLORD], and [NAMED TENANT], for those premises located at [PREMISES ADDRESS], Suite No. [SUITE] (the “**Premises**”).

Ladies and Gentlemen:

The undersigned, [TENANT] (“**Tenant**”), understands that you or your assigns intend to acquire that property known as [PROJECT NAME, PHYSICAL ADDRESS, CITY, Hawaii ZIP CODE] (the “**Property**”), owned by [LANDLORD ENTITY(IES)] (“**Landlord**”). The undersigned Tenant does hereby certify to you as follows:

- A. The Lease referenced above is in full force and effect and has not been modified, supplemented, or amended except as follows:
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- B. Tenant has accepted and is occupying the Premises under the Lease, rent payments have commenced, and all improvements in the Premises that were the responsibility of Landlord have been completed. There is no outstanding tenant improvement or other allowance due Tenant with respect to the Premises unless otherwise noted below:
- \_\_\_\_\_
- C. Tenant has not assigned the Lease or entered into a sublease or license for any portion of the Premises, and no person or firm other than Tenant or its employees is in possession of such Premises or any portion thereof, except as follows:
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- D. Tenant has not given Landlord written notice of any dispute between Landlord and Tenant or that Tenant considers Landlord in default under the Lease. To Tenant’s knowledge, neither Tenant nor Landlord is in default under the Lease, nor has any event occurred that with the passage of time (after notice, if required by the Lease) would become an event of default under the Lease.
- E. Tenant does not claim any offsets or credits against rents payable under the Lease.
- F. Tenant has not paid a security or other deposit with respect to the Lease, except as follows: Security Deposit of \$[AMOUNT].
- G. Tenant has fully paid rent on account for [MONTH YEAR].
- H. Tenant’s rent obligations under the Lease are as follows:  
Total Monthly Rent: \$[AMOUNT].

- I. Tenant has not paid any rent in advance except for the current month of [MONTH YEAR].
- J. Tenant has no options to renew or extend the term of the Lease except as expressly provided in the Lease.
- K. Tenant has no option or right of first refusal, right of first offer, or similar right to purchase the Property or any portion thereof, except as follows: [DESCRIBE]
- L. The Lease shall remain in full force and effect through [LEASE EXPIRATION DATE].
- M. The person(s) executing this Certificate has (have) the power and authority to execute and deliver this Certificate on behalf of Tenant.
- N. Tenant recognizes and acknowledges it is making these representations with the intent that you and any lenders and successors will rely on Tenant's representations and certifications herein. The provisions hereof shall be binding on the successors of Tenant.

Very truly yours,

**[TENANT NAME]**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**EXHIBIT H**  
**CONFIRMATION OF COMMENCEMENT DATE**

Dated \_\_\_\_\_

Subject: Lease dated \_\_\_\_\_ between \_\_\_\_\_ (“**Landlord**”), and \_\_\_\_\_  
 (“**Tenant**”), for Suite \_\_\_\_\_ at \_\_\_\_\_ (the “**Premises**”)

Tenant hereby confirms and certifies that:

- 1) The Commencement Date (as defined in the Lease) is \_\_\_\_\_, 20\_\_.
- 2) Tenant has accepted, and is now in possession of, the Premises.
- 3) To date, Landlord has fully complied with all Landlord’s covenants and obligations under the Lease.

*If Tenant fails to execute and return this Confirmation of Commencement Date within ten (10) calendar days of receipt, Landlord shall deem the information contained herein acceptable to and binding on Tenant.*

**AGREED AND ACCEPTED:**

[\_\_\_\_\_**TENANT**\_\_\_\_\_]

By \_\_\_\_\_

Name:

Title:

---

---

**CONFIRMATION OF RENT COMMENCEMENT DATE**

Dated \_\_\_\_\_

Tenant hereby confirms and certifies that:

- 1) The Rent Commencement Date (as defined in the Lease) is \_\_\_\_\_, 20\_\_.
- 2) The expiration date of the Lease is \_\_\_\_\_, 20\_\_.
- 3) To date, Landlord has fully complied with all Landlord’s covenants and obligations under the Lease.

*If Tenant fails to execute and return this Confirmation of Rent Commencement Date within ten (10) calendar days of receipt, Landlord shall deem the information contained herein acceptable to and binding on Tenant.*

This document may be executed by electronic or facsimile signature, which shall be deemed an original and binding on the Tenant.

**AGREED AND ACCEPTED:**

[\_\_\_\_\_**TENANT**\_\_\_\_\_]

By \_\_\_\_\_

Name:

Title:

**EXHIBIT I**  
**INSURANCE AND ENVIRONMENTAL QUESTIONNAIRE**

All terms capitalized and not defined in this Questionnaire shall have the meanings ascribed to them in the Lease. To the extent the terms of this Questionnaire are inconsistent with the terms of the Lease, the terms of this Questionnaire shall control.

**Insurance Questionnaire.** Tenant represents and warrants to Landlord that the insurance questionnaire attached hereto as **Schedule 1** and completed by Tenant prior to execution of this Lease accurately reflects Tenant's original intended use of the Premises.

**Environmental Questionnaire.** Tenant has completed the Environmental Questionnaire attached hereto as **Schedule 2** and represents and warrants to Landlord that all statements contained therein are true and correct. If removal and remediation are required, Tenant shall provide Landlord with written reports at least once each week detailing the progress of any such removal and remediation, including but not limited to statements of a qualified independent expert verifying that such removal and remediation is proceeding in accordance with all legal requirements.

**Schedule 1**  
**INSURANCE QUESTIONNAIRE**

1. Do you use, store or contemplate using at any time fluids or other materials having a closed cup flash point 80 degrees or less including, but not limited to, gasoline, benzene, carbon disulfide, naphtha, kerosene, LPG, or other materials?  
Yes \_\_\_\_ No \_\_\_\_

If yes, please answer the following:

- A. Will you use Underwriter's Laboratories approved self-closing cans? Yes \_\_\_\_ No \_\_\_\_
- B. What is the gallon capacity you anticipate storing or using? \_\_\_\_\_
- C. Will the above be "shelf stock" stored in original sealed containers? Yes \_\_\_\_ No \_\_\_\_
- D. Do you plan to store or use the above outside of the building? Yes \_\_\_\_ No \_\_\_\_
- If yes, will it be within 30 feet of the building? Yes \_\_\_\_ No \_\_\_\_

2. Do you have or plan to have a gasoline engine or other gasoline powered equipment to be used in the building (other than forklifts)? Yes \_\_\_\_ No \_\_\_\_

3. Do you contemplate the use of any spray painting equipment? Yes \_\_\_\_ No \_\_\_\_

If yes, please answer the following:

- A. Will an Underwriter's Laboratory approved booth be installed? Yes \_\_\_\_ No \_\_\_\_
- B. If yes, submit the specifications for the booth or furnish the name of the booth company and person to contact including telephone number and address.
- \_\_\_\_\_

4. Do you contemplate or plan to operate a restaurant or similar cooking facility?  
Yes \_\_\_\_ No \_\_\_\_

If yes will you install an Underwriter's Laboratory approved hood and dust fire extinguisher system? Yes \_\_\_\_ No \_\_\_\_

5. If building is sprinklered, please answer the following:

- A. Do you contemplate storing stock over 15 feet without racks, or over 12 feet with racks? Yes \_\_\_\_ No \_\_\_\_
- B. How many feet in height will you store goods? \_\_\_\_\_
- C. Will you store goods closer than within 3 feet of the sprinkler heads? Yes \_\_\_\_ No \_\_\_\_
- D. Will you use racks or shelves for storage? Yes \_\_\_\_ No \_\_\_\_
- E. If answer to "D" above is "Yes", please answer the following:
1. Are racks slatted, solid, or open? \_\_\_\_\_
2. What is the width of racks? \_\_\_\_\_
3. Will racks be single or multi-row? \_\_\_\_\_
4. What is the aisle width between racks? \_\_\_\_\_

- F. Describe the goods to be stored: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_



G. What materials are the products made of? \_\_\_\_\_

H. Will your inventory consist of any of the following? Please check the appropriate item(s).

- \_\_\_\_\_ Linoleum products
- \_\_\_\_\_ Lacquers in cans or in cartons
- \_\_\_\_\_ All high-hazard plastics
- \_\_\_\_\_ Upholstered furniture
- \_\_\_\_\_ Wooden furniture
- \_\_\_\_\_ Eighty-six proof or higher liquors
- \_\_\_\_\_ Pharmaceuticals in bottles
- \_\_\_\_\_ Rugs or carpets
- \_\_\_\_\_ Rolled pulp and paper light tissue crepe grade (horizontal storage or racked)
- \_\_\_\_\_ Balled waste paper
- \_\_\_\_\_ Alcohol in cans or bottles or in cartons
- \_\_\_\_\_ Baled cork
- \_\_\_\_\_ Wooden patterns, pallets, and flats
- \_\_\_\_\_ Rolled pulp and paper (vertical storage)
- \_\_\_\_\_ Unbanded or light tissue crepe paper
- \_\_\_\_\_ Rolled asphalt paper (vertical)
- \_\_\_\_\_ Rubber Tires
- \_\_\_\_\_ Foam or sponge rubber
- \_\_\_\_\_ Crude or synthetic rubber
- \_\_\_\_\_ Roamed plastic products (with or without cartons)
- \_\_\_\_\_ Goods encapsulated by plastic

If any of the above is "checked", do you plan to install approved in-rack or in-bin sprinklers? Yes \_\_\_\_\_ No \_\_\_\_\_

Do you plan to install other fire protection devices? Yes \_\_\_\_\_ No \_\_\_\_\_.

If yes, describe: \_\_\_\_\_

6. Do you contemplate any of the following operations? If yes, please check the appropriate occupancy.

- \_\_\_\_\_ Storage of dynamite, dynamite caps, or gunpowder
- \_\_\_\_\_ Woodworking (any kind)
- \_\_\_\_\_ Paper Box Manufacturing
- \_\_\_\_\_ Excelsior Works
- \_\_\_\_\_ Paper Shredding Plants
- \_\_\_\_\_ Upholstery Works
- \_\_\_\_\_ Cotton Storage
- \_\_\_\_\_ Broom Manufacturing
- \_\_\_\_\_ Calcium Carbide (Stocks)
- \_\_\_\_\_ Celluloid Goods
- \_\_\_\_\_ Fireworks
- \_\_\_\_\_ Furniture Repairing
- \_\_\_\_\_ Furniture Factories
- \_\_\_\_\_ Moving Picture Film (Stock)
- \_\_\_\_\_ Paint Manufacturing
- \_\_\_\_\_ Printer's Ink Manufacturing
- \_\_\_\_\_ Rubber Tire Recap or Retread

**SCHEDULE 1 TO EXHIBIT I**

7. What is your contemplated usage if not previously covered? \_\_\_\_\_  
\_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

LOCATION OF PREMISES: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Schedule 2**  
**ENVIRONMENTAL QUESTIONNAIRE**

The protection of Hawaii's environment and compliance with all applicable environmental laws are of extreme importance to Landlord. As part of Landlord's leasing procedures, please complete this Environmental Questionnaire ("Questionnaire") for every business that will be conducted from the leased premises. Use additional sheets if there is insufficient space for your response. Thank you for your cooperation.

1. Tenant's name: \_\_\_\_\_

2. Location of Premises: \_\_\_\_\_

3. Each business to be conducted by Tenant at the Premises (*please be specific*):

\_\_\_\_\_

4. Will all or any portion of the premises be subleased to others? Yes \_\_\_\_ No \_\_\_\_  
 If yes, identify each subtenant and each business to be conducted by the subtenant at the premises (*please be specific*):

**Subtenant Name**

**Business**

a) \_\_\_\_\_

b) \_\_\_\_\_

5. Please indicate which of the following items will be placed, used, stored, treated or generated at the leased premises by Tenant or any subtenant (*check all applicable categories*):

\_\_\_\_\_ Underground storage tank.

\_\_\_\_\_ Above-ground storage tank.

\_\_\_\_\_ Any hazardous materials or wastes that are regulated by state or federal law.  
 (*If this category is checked, please complete Part A on page 3 of this questionnaire.*)

\_\_\_\_\_ Any other materials which, if not properly stored, treated or handled, could pose a risk of harm to the environment. (*If this category is checked, please complete Part B on page 3 of this questionnaire.*)

\_\_\_\_\_ None of the above.

6. Will any by-product of any business conducted at the leased premises by Tenant or any subtenant be released or discharged into the atmosphere, the ground or any waterway, drainage ditch, or private cesspool or septic tank?

Yes \_\_\_\_ No \_\_\_\_ (*If yes, please complete Part C on page 3 of this questionnaire.*)

7. Has Tenant or any proposed subtenant been subject to any warning from or citation, penalty, lawsuit or administrative action by any government agency under any hazardous materials law?

Yes \_\_\_\_ No \_\_\_\_ (*If yes, please complete Part D on page 3 of this questionnaire.*)

Tenant hereby certifies that each of the above questions has been answered accurately and completely. Tenant acknowledges that neither the above answers nor Landlord's receipt and review of this Questionnaire will release Tenant from any liability or responsibility for environmental matters or from any liability or obligation under Tenant's lease with Landlord, or result in any transfer or assumption of any liability or responsibility to or by Landlord.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**ENVIRONMENTAL QUESTIONNAIRE**  
**Additional Information**

Please use additional sheets if there is insufficient space for your response.

- A. The following regulated hazardous materials or wastes will be used, stored, treated or generated at the leased premises:
- |       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
- B. The following other materials, if not properly stored, treated or handled, could pose a risk of harm to the environment:
- |       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
- C. The following by-products will be released or discharged into the atmosphere, the ground, a waterway, a drainage ditch or a private cesspool or septic tank:
- |       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
- D. The following warning from, or citation, penalty, lawsuit or administration by a government agency under a hazardous materials law was brought against me or my proposed subtenant  
*(please describe)*:
- |       |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

Tenant hereby certifies that each of the above questions has been answered accurately and completely. Tenant acknowledges that neither the above answers nor Landlord’s receipt and review of this Questionnaire will release Tenant from any liability or responsibility for environmental matters or from any liability or obligation under Tenant’s lease with Landlord, or result in any transfer or assumption of any liability or responsibility to or by Landlord.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_