



## WHITMORE CIRCLE APARTMENTS LEASE AGREEMENT

### 1. DEFINITIONS:

- a. Lease Agreement. This document dated «lease start date» will be called the Lease Agreement. It is a legal agreement between the Tenant and the Landlord to lease the unit described below.
- b. Landlord. Whitmore Circle Partners LP, the owner acting by and through its duly authorized Managing Agent, Mark Development, Inc., will be called the Landlord.
- c. Tenant. «head name» and «spouse name» and «cotenant name 1» and «cotenant name 2» and «cotenant name 3» will sometimes be called the Tenant and sometimes simply "you" or "your".
- d. Premises. This term shall mean the housing project known as Whitmore Circle Apartments and all the land and buildings of the Project, and all other improvements, equipment, apparatus, fixtures, and articles placed or installed in or on the land and buildings.
- e. Default. This term shall mean a failure in or neglect of an obligation or duty.
- f. USDA-RD. This means the USDA Rural Development and its successors and assigns.

### 2. PARTIES, DWELLING UNIT AND PARKING STALL:

The parties to this Lease Agreement are the Landlord and the Tenant. The Landlord leases to you the unit number «apt nbr» located at 111 N. Circle Makai Street, in the Project known as Whitmore Circle Apartments. Your permanent parking stall will be number N/A.

### 3. LENGTH OF TIME (TERM):

The initial term of this Lease Agreement shall begin on «lease start date» and end on «lease end date». This Lease Agreement automatically renews for additional terms of one year, calculated from the date of expiration, provided that Tenant continues to meet eligibility requirements. Tenant must notify Management in the manner described in paragraph 31 of this Lease Agreement if Tenant does not desire automatic renewal.

### 4. RENT AND SECURITY DEPOSIT:

You agree to pay «prorate rent» for the month ending on «last day of month» and a Security Deposit of «security deposit». After that, you agree to pay a rent of «tenant rent» per month. The monthly rent is due on the first day of the month. Checks and money orders shall be made payable to Whitmore Circle Apartments, and shall be paid to Mark Development, Inc., 3165 Waialae Avenue, Suite 200, Honolulu, Hawaii 96816 or such other place as may be established by the Landlord. You understand that this monthly rent is less than the Market (unsubsidized) Rent due on this unit. This lower rent is available either because the mortgage on this Project is subsidized by the USDA Rural Development (USDA-RD) and/or because USDA-RD makes monthly payments to the Landlord on behalf of the Tenant. The amount, if any, that USDA-RD makes

available monthly on behalf of the tenant is called Rental Assistance and is shown on RD 3560-8, which is Attachment No. 2 to this Lease Agreement.

You understand and agree that as long as you receive Rental Assistance, your total monthly payment for rent and utilities will be **«total tenant payment»**, (30 percent of your adjusted monthly income). If you pay any or all utilities directly (not including telephone or cable TV), a utility allowance of **«utility allowance»** will be deducted from your monthly payment for rent and utilities. If the utility allowance is in excess of 30 percent of your adjusted monthly income, the Landlord will pay you this excess.

You also understand and agree that monthly rent under this Lease Agreement may be raised or lowered, based on changes in household income, changes in the number and age of members living in your household, and on the escalation clause in the Lease Agreement. Should you no longer receive Rental Assistance as a result of these changes, or the Rental Assistance agreement executed by the Owner and USDA-RD expires, you understand and agree that your monthly payment for rent may be adjusted to no less than **«basic rent»** nor more than **«market rent»** during the remaining term of this Lease Agreement, except that based on the escalation clause in this Lease Agreement these rental payments may be changed by a USDA-RD approved rent change.

You understand that every effort will be made to provide Rental Assistance so long as you remain eligible and the Rental Assistance agreement between the Owner and USDA-RD remains in effect. However, should this assistance be terminated you may arrange to terminate this Lease Agreement, giving proper notice as set forth elsewhere in this Lease.

5. ACCEPTANCE OF RENT:

You understand that if the Landlord accepts your rent, it will not mean that the Landlord approves of, and therefore dismisses any nonperformance by you on any part of this Lease Agreement. It further will not eliminate from this Lease Agreement the provision that is not being performed.

6. CO-TENANTS TO THIS LEASE AGREEMENT:

If there is more than one Tenant involved in this Lease Agreement, any one of the co-tenants may terminate this Lease Agreement upon the terms as explained in Paragraph 31. Co-tenants agree that payment of any refund by the Landlord to any one or more of the co-tenants shall relieve the Landlord of the responsibility to all co-tenants.

7. PAYMENTS TO THE LANDLORD:

In applying Tenant's payments to delinquent rent and damage charges, the Landlord shall apply collections first to interest, then to unpaid rent and damage charges. The oldest unpaid accounts shall be paid first. You agree to pay interest at the rate of one percent per month on all unpaid balances due to the Landlord upon receipt of the Landlord's bill.

8. CHANGES IN THE TENANT'S SHARE OF THE RENT:

You agree that the amount of rent you pay and/or the amount of assistance that USDA-RD pays on your behalf may be changed during the term of this Lease Agreement if:

- a. USDA-RD or the Contract Administrator (such as a Public Housing Agency) determines, in

accordance with USDA-RD procedures, that an increase in rent is needed;

- b. USDA-RD or the Contract Administrator changes any allowance for utilities or services considered in computing the Tenant's share of the rent;
- c. the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and USDA-RD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;
- d. changes in the Tenant's rent or assistance payment are required by USDA-RD's recertification or subsidy termination procedures;
- e. USDA-RD's procedures for computing the Tenant's assistance payment or rent change; or
- f. the Tenant fails to provide information on Tenant income, household composition or other factors as required by the Landlord. The Landlord agrees to make any changes in your rent or Tenant assistance payment only within the time periods and in accordance with the administrative procedures set forth in USDA-RD's handbooks, instructions and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give the Tenant at least 30 days advance written notice of any increase in the Tenant's rent except as noted in Paragraph 18, 22 or 24. The notice will also advise the Tenant that Tenant may meet with the Landlord to discuss the rent change.

9. CHARGES FOR LATE PAYMENTS AND RETURNED CHECKS:

Rent is due and payable on the 1st day of each month. If you do not pay the full amount of the rent shown in Paragraph 4 by the end of the 10th day of the month, the Landlord may collect a fee of \$10.00 on the 11th day of the month. The Landlord may terminate this Lease Agreement for non-payment of rent, repair and service charges as described in Paragraphs 18 and 31 of this Lease Agreement. The Landlord will comply with local requirements in terminating this Lease Agreement. The Landlord may collect a fee of \$10.00 each time a check is not honored for payment (bounces). The charges set forth in this paragraph are in addition to the regular monthly rent payable by the Tenant.

10. CHARGES FOR UTILITIES AND SERVICES:

The following chart describes how the cost of utilities and services will be paid. You agree that the chart accurately describes the utilities and services paid by the Landlord and those paid by you.

You must pay for the utilities in column (3). You may be billed for more or less than shown in column (4) depending on your use of utilities. Payments should be made directly to the appropriate utility company. The items in column (2) are included in your rent.

(1) Type of Utility or Services	(2) Utilities included in your rent	(3) Utility You Pay Directly	(4) Utility Allowance	
			<u>1 BR</u>	<u>2 BR</u>
Electricity		X	41	66
Water	X			
Sewer	X			
Parking	X			
Grounds Maintenance	X			

Where the Landlord provides the utility in column (2) and if your monthly utility consumption

exceeds the utility allowances established below you may be charged for the excess utilities consumed.

- a. Electricity for residential use:   N/A   per month.
- b. Electricity for lighting, cooking and hot water per building:   N/A   per month.

11. SECURITY DEPOSIT:

The Security Deposit will be held by the Landlord as security for the full and faithful performance and observance of all the terms and conditions of this Lease Agreement. The Security Deposit shall be equal to the total of the monthly rent you pay for your unit plus Rental Assistance, if any; and, whenever there is any increase in such total, the Security Deposit will be increased to equal such total; and you will pay to the Landlord within 10 days after you receive written notice from the Landlord the amount necessary to increase the Security Deposit to the new total.

The Security Deposit further serves to secure the Landlord against any costs or expenses which may result if you fail to meet the terms and conditions of this Lease Agreement. If any part of the Security Deposit is used by the Landlord to pay the Landlord for amounts owed by you to the Landlord, you will pay the Landlord within 10 days after you receive written notice from the Landlord, the amount equal to the amount used by the Landlord, to restore the Security Deposit to the original sum. The Landlord agrees to refund your Security Deposit within 14 days after you have officially moved out of the unit and returned your keys. The Landlord will deduct from your Security Deposit the amount necessary to pay for any of the following:

- a. losses or damages to the premises, appliances, fixtures and other equipment caused by you, your household or guest;
- b. the cost of cleaning and repairing the unit, appliances and fixtures for re-leasing to a new tenant; and
- c. any and all sums which you owe the Landlord under the provisions of this Lease Agreement.

You understand the Landlord will not apply the Security Deposit toward the last month's rent or toward repair charges owed by you.

12. MAXIMUM INCOME:

USDA-RD regulations require that, should your adjusted household income exceed 80% of Median Income as published by USDA-RD, or Tax Credit Income Eligibility Limits, you will no longer be eligible for occupancy in this Project and will be required to vacate within thirty (30) days or when your Lease ends, whichever is earlier, unless an exception is authorized by the State Director.

If this Lease Agreement is terminated and the effective date of termination falls in the middle of the month, you will pay only a portion of that month's rent since you will live in the unit only a portion of that month. The Landlord will advise you of the amount of rent due for the final month.

### 13. GENERAL PROVISIONS:

You must live in the unit and it must be your only place of residence. You shall use the premises only as a private dwelling for yourself and those individuals listed on this Lease Agreement. You agree to permit other individuals to reside only after obtaining the prior written approval of the Landlord. Any individual not listed on the Lease Agreement USDA-RD 3560-8, who intends to stay more than 24 hours with you in your unit, is considered a guest and is required to obtain the prior written permission of the Landlord to stay on the premises. Landlord may request proof of domicile when visitor(s) makes reoccurring visits or one continuous visit of 14 days and/or nights in a 45-day period without prior notification. Landlord may take appropriate action as set forth in this lease if the Tenant cannot provide sufficient evidence that the visitor has another domicile as the visitor will be deemed a household member.

You agree to:

- a. keep your unit clean and in good working condition by maintaining proper practices and repairing and maintaining your unit and fixtures in a proper manner;
- b. use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
- c. not litter the grounds or common areas of the Project;
- d. not destroy, deface, damage or remove any part of the unit, common areas, or Project grounds;
- e. give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating equipment or any other part of the unit or related facilities;
- f. remove garbage and other waste from the unit in a clean and safe manner;
- g. not sublet or assign the unit, or any part of the unit;
- h. not use the unit for any unlawful activities in the unit, in the common areas or the Project grounds;
- i. not make or permit noises or acts that will disturb the rights or comfort of your neighbors. You agree to keep the volume of any radio, stereo, television or musical instrument at a level which will not disturb your neighbors;
- j. not consume alcohol in the common areas of the Project.

### 14. VIOLATIONS OF DRUG LAWS:

- a. It is understood that the use, or possession, manufacture, sale or distribution of an illegal substance (as defined by local, state, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereinafter called "drug violation(s)") may be evidenced upon the admission to or conviction of a drug violation. It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements.

The Landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation or domestic violence to vacate the leased unit permanently, within time frames set by the Landlord, and not thereafter enter upon the Landlord's premises or the lessee's unit without the Landlord's prior consent as a condition for continued occupancy by members of the tenant household. The Landlord may deny consent for entry unless the person agrees not to commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

The Landlord may require any lessee to show evidence that any non-adult member of the Tenant household occupying the unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, completed a counseling or recovery program within time frames specified by the Landlord as a condition for continued occupancy in the unit. Should a further drug violation or domestic violence be committed by any non-adult person occupying the unit, the Landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the Landlord. The Landlord may also, at the option of the Landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.

- b. Tenant, any member of the Tenant's household, or a guest or other person under the Tenant's control shall not engage in acts of violence or threats of violence, including, but not limited to, the unlawful discharge of firearms, on or near Project premises.
- c. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of any of the provisions of this paragraph 14 shall be deemed a serious violation and a material noncompliance with the Lease. It is understood and agreed that a single violation shall be good cause for termination of the Lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.
- d. In case of conflict between the provisions of this paragraph 14 and any other provisions of the Lease, the provisions of this paragraph 14 shall govern.

15. ALTERATIONS, ADDITIONS AND IMPROVEMENTS:

- a. You will not make any alterations, additions or improvements of any kind or install any fixture on or in the unit without the prior written approval of the Landlord. The Landlord may withhold consent regarding any alteration, etc. if you cannot show that:

- (1) you have made financial arrangements to pay all costs for the proposed alteration; or
  - (2) you have the money readily available to pay for all costs of the proposed alteration.
- b. Any alterations, etc. shall not be paid for on credit. The Landlord shall not be held responsible for any non-payment of bills on your part for any alteration.
  - c. Any alterations, etc. made without the prior written consent of the Landlord must be removed at the Landlord's request. It will be your responsibility to pay for both the removal of all alterations and the cost of restoring the unit back to its original condition.
  - d. Any alterations, etc. made with the prior written approval of the Landlord must be removed and the premises restored to its original condition when you terminate the Lease Agreement. It will be your responsibility to pay for both the removal and restoration.
  - e. The Landlord may from time to time make alterations, additions and repairs in and about the unit and the premises. These alterations shall be paid for by the Landlord. You agree to allow the Landlord and any of its agents or contractors to enter the unit during reasonable hours.
  - f. You agree that the only claim you may make against the Landlord, its agents or contractors shall be for loss and damages caused by their negligence or unlawful conduct.

16. KEYS AND LOCKS:

You agree not to install additional or different locks or gates on any doors or windows of the unit without first getting the written permission of the Landlord. If the Landlord approves your request to install such locks, you agree to provide the Landlord with a key to each lock. When this Lease Agreement ends, you agree to return all keys to the dwelling unit to the Landlord. If you do not return all keys, you will be charged \$10.00 for each key not returned or the actual costs of re-keying or replacing the lock.

17. INDEMNITY:

You agree that while you, your household and guests use or live on the premises, the Landlord shall not be held responsible for:

- a. any kind of damage (including damage to property, personal injury and wrongful death);
- b. accident or fire on the premises;
- c. any kind of nuisance; or
- d. any failure by you, members of your household or your guests to observe the provisions of this Lease Agreement.
- e. provided none of the above results from acts or omissions whether intentional or negligent on the part of the Landlord in carrying out its responsibilities under this Lease Agreement.

18. DAMAGES:

Whenever damage is caused to any portion of the premises (including all fixtures, appliances, and any other equipment) by you, your household or guests, you agree to pay for the cost of replacement or repair within 30 days after receipt of the Landlord's bill for repair charges.

Please note that this does not apply to damage caused by normal and reasonable wear and tear. You further agree to pay rent for the period the unit is damaged whether or not the unit is

habitable. You understand that USDA-RD will not make assistance payments for any period in which the unit is not habitable. For each such period, you agree to pay the USDA-RD-approved Market Rent rather than only your rent as shown in Paragraph 4 of this Lease Agreement.

19. MOTOR VEHICLES:

You agree that all motor vehicles (including automobiles, motorcycles and motor scooters) owned by you shall be registered with the Manager and insured with minimum coverage required by law (including No-Fault coverage).

You must provide the Landlord with a current Certificate of Insurance or you may request your Insurance Company to include the Landlord as an added interest to your insurance policy. An added interest means your insurance company will notify the Landlord in the event that you terminate your policy. If you fail to provide evidence of insurance for each vehicle you operate on the Project site, this Lease Agreement may be terminated under the provisions of Paragraph 31 of this Lease Agreement.

You further agree to promptly notify the Manager if your insurance policy is terminated.

20. TERMINATION OF THIS LEASE AGREEMENT:

When this Lease Agreement is terminated, you agree to:

- a. clean the unit;
- b. clean the appliances and fixtures installed in the unit; and
- c. peacefully leave the unit.

You will be considered to have officially left the unit when you completely vacate the unit and return all keys to the unit to the Manager.

21. PERSONAL POSSESSIONS:

Tenant's tenancy still exists during the time that Tenant's household personal possessions remain in the apartment unit (even after the Tenant's household has moved out with the intent to vacate and leave the project). The tenancy exists until such time as the personal possessions have been removed voluntarily or by legal means (in accordance with State or local law).

22. REGULARLY SCHEDULED RECERTIFICATION:

Every year around 105 days prior to the end of your rental term, the Landlord will request you to report the income and composition of your household and to supply any other information required by USDA-RD for the purposes of determining your rent and assistance payment, if any. You agree to provide accurate statements of this information and do so by the date specified in the Landlord's request. The Landlord will verify the information supplied by you and use the verified information to recompute the amount of your rent and assistance payment, if any. USDA-RD has the right to further verify the information provided by you.

- a. If you do not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only in accordance with the administrative procedures and time frames specified in USDA-RD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.



- (1) Require you to pay the higher, USDA-RD-approved Market Rent for your unit.
  - (2) Implement any increase in rent resulting from the recertification processing without providing the 30-day notice otherwise required by Paragraph 8 of this Lease Agreement.
- b. You may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If you request such a meeting, the Landlord agrees to meet with you and discuss how your rent and assistance payment, if any, were computed.
  - c. You understand that you will no longer be eligible for occupancy in this Project if your income exceeds the maximum allowable adjusted income as defined periodically by the USDA Rural Development for the State of Hawaii.

23. REPORTING CHANGES BETWEEN REGULARLY SCHEDULED RECERTIFICATION:

- a. If any of the following changes occur, you agree to advise the Landlord immediately.
  - (1) Any household member moves in/out of the unit.
  - (2) An adult member of the household who was reported as unemployed on the most recent recertification obtains employment.
  - (3) Any change in the gross or adjusted to income.
  - (4) Change in citizenship.
- b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty (30) days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent.
- c. If you do not advise the Landlord of these interim changes, the Landlord may increase your rent to the USDA-RD-approved Market Rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in USDA-RD's regulations, handbooks, and instructions on the administration of multifamily subsidy programs.
- d. You may request to meet with the Landlord to discuss how any change in income or other factors affect your rent or assistance payments, if any. If you request such a meeting, the Landlord agrees to meet with you and explain how your rent or assistance payment, if any, was computed.

24. TERMINATION OF ASSISTANCE:

- a. You understand that assistance made available on your behalf may be terminated if any of the following events happen. Termination of assistance means that the Landlord may make the assistance available to another Tenant and your rent will be recomputed. In addition, if

your assistance is terminated because of criteria (1) or (2) below, you will be required to pay the USDA-RD-approved Market Rent for your unit.

- (1) You deliberately submit false information on any application, certification, recertification or request for interim adjustment for the purpose of obtaining a higher payment or lower rent and USDA-RD approves the termination.
  - (2) You do not provide the Landlord with the information or reports required by Paragraph 22 or 19 within 10 calendar days after the receipt of the Landlord's notice of intent to terminate your assistance payment.
  - (3) The amount you would be required to pay towards rent and utilities under USDA-RD rules and regulations equals the Household Gross Rent shown on Attachment 2.
- b. The Landlord agrees to give you written notice of the proposed termination. The notice will advise you that, during the 10 calendar days following the date of the notice, you may request to meet the Landlord to discuss the proposed termination of assistance. If you request a discussion of the proposed termination, the Landlord agrees to meet with you.
- c. Termination of assistance shall not affect your other rights under this Lease Agreement, including the right to occupy the unit. If assistance is terminated pursuant to Paragraph 24a(2) or 24a(3), assistance may subsequently be reinstated if you submit the income or other data required by USDA-RD procedures, the Landlord determines you are eligible for assistance, and assistance is available.

25. TENANT OBLIGATION TO REPAY:

If you submit false information on any application, certification, recertification or request for interim adjustment or do not report interim changes in household income or other factors as required by Paragraph 23 of the Lease Agreement, and as a result, are charged a rent less than the amount required by USDA-RD's rent formulas, you agree to reimburse the Landlord for the difference between the rent you should have paid and the rent you were charged. You are not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow USDA-RD's procedures for computing rent or assistance payments.

26. PENALTIES FOR SUBMITTING FALSE INFORMATION:

If you deliberately submit false information regarding income, household composition or other data on which your eligibility or rent is determined, the Landlord may, with USDA-RD approval, require you to pay the higher USDA-RD approved Market Rent for as long as you remain in the Project. The submission of false information could also result in the initiation of legal action by USDA-RD. In addition, you could become subject to penalties available under federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

27. FAILURE TO PAY RENT:

- a. You understand and agree that the unit is rented to you on the condition that you will not:
- (1) fail to pay your portion of the rent due on 3 occasions;
  - (2) fail to pay your portion of the rent within 10 days after it is due; or
  - (3) fail to observe or perform any of the terms of this Lease Agreement. If the Landlord notifies you that you are in default, the default must be corrected within 15 days after you have been notified.

- b. If you fail to comply with any of the above conditions, the Landlord may, with prior notice or demand:
  - (1) enter upon and take possession of the unit;
  - (2) terminate this Lease Agreement; or
  - (3) start a court proceeding to have you evicted.

28. ACCEPTANCE OF THE UNIT IN "AS IS" CONDITION:

You agree that you have inspected the unit and all appliances, fixtures and other articles provided by the Landlord for use in the unit. You further agree to accept the unit (including all appliances, fixtures, etc.) "as is".

29. VACATING PREMISES WHEN THE LEASE ENDS:

You must vacate the premises on or before the termination of this Lease Agreement. When you give notice of your intent to vacate as required in Paragraph 31, you must move on the date you indicated. If your tenancy is terminated because of your default with the terms of this Lease Agreement, you must move out on the date indicated in the Landlord's termination notice.

If you do not vacate the premises when this Lease Agreement ends or has been terminated, you shall pay rent at the rate of two times the Market (unsubsidized) Rent and shall be considered a holdover tenant staying in violation of this Lease Agreement. You may be sued for eviction at any time when you are a holdover tenant.

30. ACCESS BY LANDLORD:

- a. You agree to permit the Landlord or Manager to enter the unit for the purpose of:
  - (1) making periodic inspections of the unit;
  - (2) making necessary or agreed repairs, decorations, alterations or improvements;
  - (3) supplying services as agreed; and
  - (4) showing the unit to prospective buyers, mortgagees or tenants.
- b. You agree that the Landlord or Manager may enter the unit for any of the purposes listed above after giving you written notice at least 48 hours before he/she intends to enter the unit. You agree that he/she may enter the unit after giving notice regardless of whether you are in the unit or not.
- c. The Landlord and Manager agree that:
  - (1) they will not abuse their right of access nor use it to harass you;
  - (2) they will give you at least 2 days notice of their intent to enter the unit, except when emergency situations make such notice impossible.
  - (3) they will enter the unit only during reasonable hours.
- d. The Landlord and Manager further agree that they will have no other right to enter the unit, except by court order, unless you appear to have abandoned the unit.
- e. You agree that you will pay to the Landlord the cost of any damage caused by your unreasonable refusal to allow the Landlord or Manager access to the unit.

31. TERMINATION OF TENANCY:

- a. To terminate this Lease Agreement, you must give the Landlord 30-days written notice before moving from the unit. If you do not give the full 30-day notice, you shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever date comes first.
- b. Any termination of this Lease Agreement by the Landlord must be carried out in accordance with USDA-RD regulations, State and local laws, and the terms of this Lease Agreement. The Landlord may terminate this Agreement only for:
  - (1) your material non-compliance with the terms of this Lease Agreement;
  - (2) your material failure to carry out obligations under any State Landlord and Tenant Act;
  - (3) other good cause, which includes but is not limited to your refusal to accept the Landlord's proposed change to the Lease Agreement. Terminations for "other good cause" may only be effective at the end of any initial or successive term.
  - (4) your failure to meet the income eligibility and USDA-RD requirements for occupancy in USDA-RD assisted projects. Terminations for failure to meet occupancy requirements include your failure to provide certifications and verifications to the Landlord.

Material non-compliance includes, but is not limited to, nonpayment of rent beyond any grace period available under State law; failure to reimburse the Landlord within 30 days for repairs made under Paragraph 18 of this Lease Agreement; repeated late payment of rent; permitting unauthorized persons to live in the unit; serious or repeated damage to the unit or common areas; creation of physical hazards, serious or repeated interference with the rights and quiet enjoyment of other tenants; failure to repay unauthorized assistance payments; and giving the Landlord false information regarding income or other factors considered in determining the Tenant's rent.

- c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause", the termination notice must be received by the Tenant at least 30 days before the date you will be required to move from the unit. Notice of the proposed termination for other reasons must be given in accordance with any time frames set forth in State and local laws. Any USDA-RD-required notice period may run concurrently with any notice period required by State or local laws.
- d. All termination notices must:
  - (1) specify the date this Lease Agreement will be terminated;
  - (2) state the grounds for termination as required by USDA-RD; and
  - (3) advise you of your right to defend the action in court.

32. EXTENDED ABSENCE OF THE TENANT:

If you plan to be away from the unit for any extended period of time, you agree that:

- a. You will give written notice to the Landlord of your intent to be away from the unit for an extended period of time.

- b. During any extended absence, the Landlord or Manager may enter the unit for the purpose of inspection, maintenance, and safe-keeping.
- c. If you fail to notify the Landlord of your intent to be away from the unit for an extended period of time, you will be responsible for any damages resulting from your absence.
- d. The Landlord shall be responsible only for damages caused by acts or the neglect to perform what the law requires (omissions) by the Landlord or its agents.
- e. You understand that if you do not personally reside in the unit for a period exceeding 60 days, for reasons other than health or emergency, your rent shall be raised to the Market Rent approved by USDA-RD for the period of your absence exceeding 60 days. You also understand that should any entitlement (RA or interest credit) be suspended or reassigned to other eligible tenants, you are not assured that it will still be available to you upon your return. You also understand that if your absence continues, as Landlord, we may take the appropriate steps to terminate your tenancy. You understand that this provision shall apply only if you are in basic compliance with the other conditions of this Lease Agreement.

33. ABANDONMENT OF THE UNIT:

If the unit remains unoccupied for a continuous period of 20 days, and the Landlord has not been informed of your extended absence from the unit, or if there has been evidence of abandonment, the unit shall be considered abandoned and this Lease Agreement shall be terminated. The Landlord may, without prior notice, enter the unit and remove and place in storage all your personal belongings.

34. TENANT'S PERSONAL PROPERTY:

You agree to keep all of your personal property (including your automobile, household furniture, valuables, etc.) in or around the unit or premises at your own risk. The Landlord will not be responsible for loss or damages to your personal property caused by theft, fire, water damages or any other cause.

35. INJURIES OR DAMAGE CAUSED TO TENANT:

The Landlord shall not be responsible for any injuries or damage caused to you, your household, guests or agents while in the unit or on the premises, unless the injury or damage is a direct result of negligence on the part of the Landlord in carrying out its responsibilities under this Lease Agreement.

36. RESPONSIBILITY FOR UTILITY SERVICE:

You agree that the Landlord shall not be responsible for the temporary failure of electricity, gas, water or other kind of utility. The Landlord further shall not be responsible for the breakdown of appliances or equipment due to causes beyond the Landlord's control.

If you install any machinery or major appliance in the unit with the prior written approval of the Landlord, the Landlord may, as a condition of consent, require you to pay a reasonable utility charge.

You understand that you will not be permitted to install any air conditioning equipment.

37. PARKING PRIVILEGES:

- a. You shall have the privilege of using one parking stall for your motor vehicle provided there are parking stalls available. Parking stalls are assigned on a first-come, first-served basis.
- b. You may keep the parking privilege only if:
  - (1) you have the necessary insurance as described in Paragraph 19; and
  - (2) you observe and perform all rules and regulations regarding motor vehicles and use the parking stall as described in this Lease Agreement and the House Rules which is Attachment 1 to the Lease Agreement. If you fail to observe or perform any rule or regulation, your parking privilege may be taken away from you by the Landlord.

38. LANDLORD'S RIGHT TO DENY ACCESS:

You agree that it will be the Landlord's right to deny any and all undesirable persons access to your unit or any part of the premises at all times.

39. EMPLOYEES AND AGENTS OF THE LANDLORD:

If you request an employee or agent of the Landlord to perform a service for you, and the service is not one which the Landlord is expected to perform for you, that employee or agent will be considered as your employee or agent. The Landlord will not be responsible for damages to property or injury of any kind to any persons related in any way to the service being performed for you by that employee or agent.

40. CHANGE IN RENTAL AGREEMENT:

The Landlord may, with the prior approval of USDA-RD, change the terms and conditions of this Lease Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify you of change and must offer you a new Lease Agreement or an amendment to the existing Lease Agreement. You must receive the notice at least 60 days before the proposed effective date of the change. You may accept the changed terms and conditions by signing the New Lease Agreement or the amendment to the existing Lease Agreement and returning it to the Landlord. You may reject the changed terms and conditions by giving the Landlord written notice that you intend to terminate the tenancy. You must give such notice at least 30 days before the proposed change will go into effect. If you do not accept the amended agreement, the Landlord may require you to move from the Project, as provided in Paragraph 31 and in accordance with USDA-RD procedures.

41. OVERCROWDING OR UNDERUTILIZATION:

If Tenant's unit should become overcrowded or underutilized or should the Tenant no longer meet the eligibility requirements of the project during the term of the Lease Agreement, you will be required to vacate the unit at the end of the lease term unless eligibility can be established following specified steps, such as moving to an appropriate sized unit, or an exception is granted by Landlord.

42. HANDICAPPED UNITS:

The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the Tenant may remain in the unit with accessibility

features until the first available unit in the project becomes available and then must move within 30 days.

43. NOTICES:

Any notice required in this Lease Agreement must be in writing.

- a. Any notice given to the Landlord by you must be mailed or delivered to the Landlord's duly authorized agent, Mark Development, Inc., at 3165 Waialae Avenue, Suite 200, Honolulu, Hawaii, 96816.
- b. Any notice given to you by the Landlord must be:
  - (1) mailed to you at your dwelling unit;
  - (2) delivered personally to you. If there is more than one Tenant, the notice may be delivered to any one or more of the co-tenants;
  - (3) given to an adult occupant of the unit; or
  - (4) attached to your door.

44. LEGAL FEES:

If the Landlord employs an attorney to collect unpaid rent or any other amount owed by you to the Landlord, you agree to pay reasonable attorney's fees, as allowed by law, plus court costs and interest at the rate of one percent per month, on all unpaid balances, until the amount owed is paid in full. You understand that you will not be required to pay for attorney's fees or other legal costs if a court determines you are not responsible for such payments. You understand that the Landlord may begin court proceedings to correct any nonperformance on your part of any provision of this Lease Agreement. The Landlord may begin and conclude any court proceedings against you regardless of the following:

- a. whether your rent has been accepted by the Landlord; or
- b. whether this Lease Agreement has been terminated.

If you vacate the premises in violation of this Lease Agreement, the Landlord may collect from you the equivalent of one month's Market Rent as liquidated damages. You understand that liquidated damages are completely separate from any other damages to which the Landlord may be entitled due to your loss or destruction of the Landlord's property.

45. NONDISCRIMINATION:

The project in which Tenant rents is Rural Development financed and is subject to nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Americans with Disabilities Act. All complaints are to be directed to the Administrator, USDA Rural Development, Washington DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington DC 20410.

46. RENT ESCALATION:

It may become necessary to change rent or occupancy charges PRIOR TO THE EXPIRATION of this Lease Agreement due to changes in utility or other operating costs. All increases must be approved by USDA-RD, but if the escalation of rent is approved, it will take effect upon 45 days' notice, EVEN IF THE

LEASE TERM HAS NOT EXPIRED. No increase will be due to prepayment of the Rural Development loan. In the event that Owner's Federal subsidy is curtailed due to a default of Owner, rent shall not change over that which would have been required if the subsidy remained in place.

47. RECEIPT OF RENTAL BENEFITS TO WHICH TENANT IS NOT ENTITLED:

Tenant understands that should you receive rental benefits to which you are not entitled due to your failure to provide information or due to incorrect information provided by you or on your behalf by others, or for any other household member, you may be required to make restitution and you agree to pay any amount of benefits to which you are not entitled.

48. OTHER LEASE PROVISIONS:

- a. You understand that should the Project be sold to a buyer approved by USDA-RD, the lease will be transferred to the new Owner.
- b. Disposition of lease if building becomes untenable because of fire or other disaster. Right of Owner to repair or rehabilitate the building within a certain period or terminate the lease.
- c. Tenant's grievance or appeal from a decision of Owner/Management shall be resolved in accordance with procedures consistent with applicable USDA-RD regulations. USDA-RD regulations governing grievance or appeal procedures are posted in the management office
- d. That in the event of borrower prepayment of the USDA-RD loan all leases will be handled in accordance with USDA-RD regulations. No Tenant contribution to rent may be increased by reason of prepayment for the term of the Lease. Or when rental assistance or interest credit is terminated due to the fault of Management or the Owner, or due to liquidation and acceleration of the loan, Tenant contribution to rent may not be increased. An escalation clause for rent changes approved by USDA-RD for budgetary reasons will continue to be applicable.
- e. It is required that during acceleration and foreclosure proceedings:
  - (1) The tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and
  - (2) The terms of the lease will remain in effect until the date acceleration and/or foreclosure is resolved.

49. ATTACHMENT:

You certify that you have received a copy of this Lease Agreement and the following Attachments to this Lease Agreement. You understand that the Attachments are part of this Lease Agreement.

- a. Attachment No. 1: House Rules.
- b. Attachment No. 2: Form RD 3560-8.
- c. Attachment No. 3: Unit Inspection Report.



50. SIGNATURES:

CAUTION: This Lease Agreement is effective on the lease date when executed by the Tenant and Management (authorized by the Owner to execute the Lease and all other documents on its behalf). In signing this Lease, **Tenant agrees that he/she has read the Lease and enters into Agreement of his/her own free will.** The Tenant will receive a duplicate original of this Agreement.

**TENANT(S):**

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

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

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

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

**LANDLORD:**

By: MARK DEVELOPMENT, INC.  
Its Managing Agent

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



## WHITMORE CIRCLE APARTMENTS RESIDENTIAL LEASE RIDER

THIS RESIDENTIAL LEASE RIDER (hereinafter referred to as the "Rider") is made and entered into «lease start date» to that certain Lease Agreement dated «lease start date» (hereinafter referred to as the "Lease") and is entered into by and between Mark Development, Inc. (hereinafter referred to as "Lessor") and «head name» and «spouse name» and «cotenant name 1» and «cotenant name 2» and «cotenant name 3» (hereinafter referred to as "Lessee") who resides in Wahiawa, in the State of Hawaii relating to the residential unit known as Unit #«apt nbr» in the Apartment Complex commonly referred to as Whitmore Circle Apartments (the "Premises").

NOW THEREFORE, notwithstanding any other provisions to the contrary contained in the Lease, the parties hereto covenant and agree that the Lease shall be modified and amended as follows:

LESSEE ACKNOWLEDGES and agrees that the subject Premises are specifically identified and under the administrative control of the Section 42 Low Income Housing Tax Credit Program (hereinafter referred to as the "Program"), which limits occupants to an annual income level and provides lower rent rates to households who meet certain Program criteria (hereinafter referred to as "Qualified Households").

LESSEE ACKNOWLEDGES and agrees that participation in the Program allows the owner or its agent to increase the monthly rent rate based upon maximum allowable rents annually revised and published by the U.S. Department of Housing and Urban Development. Lessor reserves the right to increase rent rates in accordance with Program guidelines, subject to thirty (30) days written notice to Lessee, effective for the balance of said lease term.

LESSEE ACKNOWLEDGES and agrees that participation in the Program also requires that Qualified Households must meet certain income limitations based upon the number of persons residing in the Premises and Lessee(s) agrees to notify Lessor immediately of any increases or decreases in the number of persons residing in the Premises.

LESSEE ACKNOWLEDGES and agrees that participation in the Program requires re-certification by the Lessee every twelve (12) months as required by the Program. Lessee(s) agrees to submit all necessary documentation required by the Program to Lessor for the purpose of insuring that Lessee(s) remains a Qualified Household. In the event that Lessee(s) fails to deliver such information thirty (30) days prior to the applicable re-certification deadline, Lessor reserves the right to issue a written notice to vacate to Lessee(s). Lessee acknowledges that he/she has received the information on the Program re-certification and understands such requirements.

LESSEE ACKNOWLEDGES and agrees that participation in the Program is limited to specific restrictions with respect to students and that qualification to remain a Qualified Household is at all

times dependent upon the household meeting all student status requirements. Should Lessee(s) fail to meet these requirements at any time, Lessee(s) will be deemed an unqualified household and will be subject to immediate eviction and shall be issued a written thirty (30) day notice to vacate. Lessee(s) agrees to notify Lessor immediately of any change in student status by any member of the household.

Except as otherwise modified and amended herein, all other terms and conditions shall remain in effect under the original lease.

**LANDLORD:**

**MARK DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Its Managing Agent

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

**TENANT(S):**

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

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

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

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