State Agency Land Leases

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State Agency Land Leases

A Selective Comparison

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September 18, 2012
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State Agency Land Leases
A Selective Comparison

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Introduction
In order to develop and prepare a single, clear and consistent policy on the use and lease of state lands for agriculture, grazing, forestry, and bioenergy feedstock production as mandated by the Hawaii Bioenergy Master Plan, the Hawaii Natural Energy Institute has requested a summary of selected land areas currently managed under lease by the State of Hawaii through certain of its agencies and departments. Based on these areas and leases, the Hawaii Natural Energy Institute has asked for a summary of the instruments, processes and policies by which land is leased, with priority given to those unites managing extended land areas necessary for bioenergy/biofuel feedstock production, in response to an Action Item in the legislatively mandated 2009 Hawaii Bioenergy Master Plan to “Develop and prepare a single, clear, consistent policy on use and lease of State lands for agriculture, grazing, forestry, and bioenergy feedstock production”. What follows represents research conducted as noted below as the initial steps in responding to that Action Item.

After conferring with Scott Turn and Cameron Black together with several discussions among ourselves, the coauthors of this report identified relevant departments and agencies and selected typical leases and prototypes, and then identified relevant provisions in each for comparison. These are: method and authority to dispose of public lands; procurement process for leases; valuation of lease; lease restrictions generally; sublease and assignment; special provisions for special leases (energy, agricultural uses, for example).

The general comparisons for the relevant departments are set out, department by department, in a Part I a narrative analysis, followed by a Part II conveying much of the same information in the form of spreadsheets for comparative purposes, followed by a Part III which mirrors the particular areas of comparison noted above.

While certain disparities and consistencies are readily apparent from the aforesaid spreadsheets, careful review and analysis of these areas is somewhat beyond the scope of this project, as is the identification of measures that could be undertaken to increase the level of consistency between agencies’ instruments, processes and policies for leasing.
Below are the requested lease provisions from the DLNR General Lease Template for agricultural, pasture, residential, commercial and industrial uses. In addition to the requested provisions, I have included two sets of optional Special Conditions that are part of the template and are incorporated into some of DLNR’s existing leases. Morris Atta, the Special Projects Coordinator at DLNR’s Land Division informed me that DLNR adheres to the General Lease Template in all its leasing projects. After reviewing multiple renewable energy, commercial and industrial leases, I have included in the appended chart three fairly recent leases best representative of those used for renewable energy projects, industrial and commercial uses. Since there was only one template available I have provided the requested provisions in full below and included in the other memo a brief summary of both the lease award process and lease provisions required by statute.

I. Lease Provisions From DLNR General Lease Template

A. Rent, Term of Lease, Reservations, Agreements and Covenants between Parties

    Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America. (DLNR General Lease Template (“General Lease”), 5).

    Determination of Rent Upon Reopening

    The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

    (1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

    (2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

    Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor's receipt of Lessee’s notification, Lessee’s appraiser and the Board's appraiser shall appoint a third appraiser, unless Lessee's appraiser and the Board's appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee’s own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board’s appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

    Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board’s appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. (DLNR General Lease Template, 2-3).
**Percentage Rent: Determination of base rent and percentage rent upon reopening.** The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

1. An employee of the Department of Land and Natural Resources qualified to appraise lands; or

2. A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor’s receipt of Lessee’s notification, Lessee’s appraiser and the Board’s appraiser shall appoint a third appraiser, unless Lessee's appraiser and the Board's appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee’s own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board’s appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board’s appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. (DLNR General Lease Template, 3-4).

**Interest Rate for Unpaid and Delinquent Rentals**

The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment. (DLNR General Lease Template, 4).

**Improvements**

Ownership of improvements. [Reserving unto the Lessor] [t]he ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land. (General Lease, 4).

Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee’s sole cost and expense. (General Lease, 6).
Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted. (General Lease, 7).

Historic Preservation

Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes. (General Lease, 17).

Assignment

Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit “___.” The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit “___.” (General Lease, 7).

Subletting

Subleasing. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises. (General Lease, 8).
Character of Use

Character of use. The Lessee shall use or allow the premises leased to be used solely for purpose(s). (General Lease, 7).

Indemnity

Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. (General Lease, 8).

Withdrawal

Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops. (General Lease, 14).

Costs of Litigation

Costs of litigation. In case the Lessor shall, without any fault on Lessor’s part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

Liability Insurance

Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least $1,000,000.00 for each occurrence and $2,000,000.00 aggregate, and with coverage terms acceptable to the
Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy. (General Lease, 9).

Surrender

Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease. (General Lease, 16).

Breach

Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure,
by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages. (General Lease, 11-12).

Hazardous Materials

Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease “hazardous material” shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted. (General Lease, 16-17).

Non-Warranty.

Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is. (General Lease, 16).

Condemnation.

Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to
which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor. (General Lease, 13).

**Extension of Time.**

Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants. (General Lease, 14).

**B. Special Conditions 1**

Full utilization of the land. The Lessee shall, within the first ________ ( ) years of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a conservation plan pursuant to paragraph 42, Good husbandry and conservation program of this lease. (General Lease, 17).

Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within one (1) year following lease commencement. The conservation plan shall include, but not be limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson. (General Lease, 17).

Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government. (General Lease, 17).

Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished. (General Lease, 18).
Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops. (General Lease, 18).

Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances. (General Lease, 18).

Restriction on residential use. The premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the premises for residential purposes is strictly prohibited. (General Lease, 18).

Hunting. No hunting shall be allowed on the premises during the term of this lease. (General Lease, 18).

Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee concerning its operations under this lease. (General Lease, 18).

Commercial operations. The Lessee, its employees, customers, guests, agents or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. Except as otherwise provided in this lease, no commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor. (General Lease, 19).

Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense. (General Lease, 19).

Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation. (General Lease, 19).

Dwelling restriction. The Lessee shall not place or construct any dwelling unit in excess of one family dwelling unit on the premises; provided, further, that this dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson of the Board of Land and Natural Resources. (General Lease, 19).
**Fire and extended coverage insurance.** The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived. (General Lease, 18-19).

**Removal of trash.** The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee’s consent, and whether or not placed on the premises prior to the term of this lease. (General Lease, 20).

**Phase I environmental site assessment.** Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee. (General Lease, 20).

**Survey and boundary stakeout.** The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises. (General Lease, 20).

**C. Special Conditions 2**

**Improvements.** The Lessee shall, at its own cost and expense, within ( ) years as of the date of lease commencement, complete the construction of , at a cost of not less than DOLLARS ($) (“Building Requirement”), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations. (General Lease, 21).
**Bond, improvement.** The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the Building Requirement, but in no event shall the amount be less than NO/100 DOLLARS ($ ), which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the Building Requirement contained in this lease, the completion of the Building Requirement on or before the specified date of completion free from all liens and claims, and that the Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the Building Requirement. (General Lease, 21).

**Fire and extended coverage insurance.** The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagor, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived. 52. (General Lease, 21-22).

**Environmental regulations.** Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation. (General Lease, 22).

**Phase I environmental site assessment.** Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee. __________________. (General Lease, 22).
## II. Selected Lease Provisions Spreadsheet Comparison

<table>
<thead>
<tr>
<th>GEN. LEASE #</th>
<th>LEASE TYPE</th>
<th>DATE</th>
<th>LESSOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-5731</td>
<td>ALT. ENERGY</td>
<td>2005</td>
<td>Kaheawa Wind Power</td>
</tr>
<tr>
<td>S-6011</td>
<td>COMMERCIAL</td>
<td>2011</td>
<td>4 Wheels Auto LLC</td>
</tr>
<tr>
<td>S-5848</td>
<td>INDUSTRIAL</td>
<td>2006</td>
<td>David S. Delu, Sr. Trust</td>
</tr>
</tbody>
</table>

### LENGTH (YRS)
- **20 years with option to extend for additional 20 years provided Lessee is in full compliance of lease.** (p. 1) (See also pgh. 57).
- **65 years.** (p. 1).
- **20 years** (p.1).

### RENT COMMENCEMENT DATE
- **MODIFIED** - First year rent waived. For second year to tenth year, Lessee pays rent in “equal semi-annual installments on January 1st and July 1st, payable in advance, without notice or demand.” (p.2)
- **MODIFIED** - Minimum base rent payable “in equal semi-annual installments on May 1st and November 1st of each and every year.” *Id.*
- **MODIFIED** - Annual rent payable in advance in “equal semi-annual installments on January 1st and July 1st of each and every year.” (p.1).

### RENT PAYMENTS
- **MODIFIED** - For the above rent payments for the second to tenth year, Lessee pays “Percent Rent in an amount equal to two and one-half percent (2.5%) of Gross Revenue . . . to the extent such amount exceeds the Minimum, Annual Rent in any year.” (p.2). Percentage rent that is over Minimum Annual Rent is due and payable within thirty days of the second year of the term and within thirty days of the anniversary of that date for each year after. *Id.*
- **MODIFIED** - Minimum annual base rent and increases at the end of the tenth and twentieth year. (p. 1-2). There are additional provisions for the calculation of this rent. (p. 2).
- **MODIFIED** - For the first ten years, rent is at a fixed amount. (p. 1). On the tenth year, “the annual rental reserved shall be reopened and redetermined.” *Id.*

### RENT REOPENING
- **MODIFIED** - Mostly BP (rental shall be fair market value at time of reopening, as determined at least six months prior to reopening), but adds “provided that for the 11th-Year Reopening only, the Percentage Rent shall not be less than 2.5% nor higher than 3.5%.” (p. 3). Minor differences include more specific dates for Lessor and Lessee appointed appraisers to follow in the event of the Lessee’s disagreement with the Lessor’s appraiser’s rent valuation. (p. 3).
- **BP**
- **MODIFIED** - Mostly BP, but includes minor differences such as more detailed instructions and specific dates for Lessor and Lessee appointed appraisers to follow in the event of the Lessee’s disagreement with the Lessor’s appraiser’s rent valuation. (p. 2). In the event disagreement, the Lessee and Lessor’s appraisers must exchange reports within 45 days of the Lessee’s appraisal. If there are still unresolved differences after 14 days, the two appraisers have 7 days to appoint a third appraiser to prepare an independent appraisal report and furnish this report to the other two.
<table>
<thead>
<tr>
<th>Prehistoric Remains</th>
<th><strong>MODIFIED</strong></th>
<th>BP on Historic Preservation divided into two clauses. Prehistoric and historic remains: “Any regulatory rights and ownership of the State of Hawaii over prehistoric or historic remains found in, on or under the premises, established pursuant to state law, including Chapter 6(E) Hawaii Revised Statutes.” (p. 5). Archeological sites: largely BP-C language for Historic Preservation, but includes examples of historic sites and remains such as “shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls.” (p.17).</th>
<th>BP</th>
<th>BP</th>
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<tbody>
<tr>
<td>Right of Withdrawal</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Reservation of Easements</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Compensation for Takings</td>
<td>BP (p. 15) under Condemnation heading.</td>
<td>BP (p. 15) under Condemnation heading.</td>
<td>BP (p. 15) under Condemnation heading.</td>
<td>BP (p. 15) under Condemnation heading.</td>
</tr>
<tr>
<td>Improvements</td>
<td><strong>MODIFIED</strong></td>
<td>Largely BP, but add that the Lessee shall complete construction of a 30-megawatt wind project or Project improvements within three years of commencement of lease term. (p. 7). These improvements must comply with plans and specifications approved by the Chairperson and construction cannot commence until DLNR has evidence of financing of the construction costs. <strong>Id.</strong></td>
<td><strong>MODIFIED</strong></td>
<td>BP but also adds a second provision that restates that should Lessee wish to commence construction of improvements on the premises, the Lessee must obtain written approval from the Chairperson and the improvements. (p. 17). These “improvements shall be at the Lessee’s costs and expense and shall be in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.” <strong>Id.</strong></td>
</tr>
<tr>
<td>Ownership of Improvements</td>
<td><strong>MODIFIED</strong></td>
<td>As in BP, Lessee owns improvements during term of lease and is responsible for removing improvements at Lessee’s expense at</td>
<td>BP</td>
<td>BP</td>
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</table>
termination of lease unless Lessor elects to take over ownership. Lease adds that wind turbine foundations must be removed to a depth of two feet below grade and that no liens for work, labor, services, or materials may stand against premises. (p. 8).

| PERMITTED USES/ZONING & USE RESTRICTIONS | MODIFIED | Lists what the premises may be used for, including wind and weather monitoring, construction of wind turbines, construction of transmission and support structures, “use and enjoyment of free flow of wind across the premises without interference from Lessor,” and a non-exclusive easement in gross across access routes to and from the premises (p. 9). |
| - | MODIFIED | “The Lessee shall use or allow the premises leased to be used solely for business, commercial, and/or light industrial purposes.” (p. 6) |

<p>| ASSIGNMENT | MODIFIED | Includes pg 1 of BP assignment provisions. Modifies and adds language as follows. Contrary to BP, if Lessee is a partnership, joint venture, or corporation, sale or transfer of 51% or more (as opposed to 20% or more in BP) constitutes an assignment unless the Lessee retains control of the partnership, joint venture, or corporation. (p. 10). In addition, “Lessee shall at all times have the right to sell, assign, encumber, or transfer any or all of its rights and interests under this lease without Lessor’s consent and without payment of any premium to any entity predominantly owned or controlled by or under common ownership or control with Lessee; provided . . . that the term of any such transfer shall not extend beyond the term of this lease and that any and all such transfers shall be expressly made subject to all of the terms, covenants and conditions of this lease. No such sale, assignment, transfer, or easement shall relieve Lessee of its obligations under this lease.” (p.10). |</p>
<table>
<thead>
<tr>
<th><strong>Subletting</strong></th>
<th>MODIFIED</th>
<th>BP except this lease does not include template provision that Board may waive prior approval written requirement.</th>
<th>BP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insurance</strong></td>
<td>MODIFIED</td>
<td>Same as BP except changes insurance minimum to 5 million dollars. (p. 12). Also includes Fire and Extended Coverage Insurance requirement. (p. 19).</td>
<td>BP. Also adds the BP Fire and Extended Coverage Insurance as a Special Condition. (p. 17).</td>
</tr>
<tr>
<td><strong>Indemnity</strong></td>
<td>MODIFIED</td>
<td>BP with minor modifications and added section. Lessee must pay all costs including expenses and attorney’s fees if the Lessor is faultless and named a party in litigation commenced against Lessee. (p. 11). Lessee must also pay expenses the Lessor may incur in enforcing covenants and provisions of the lease, in recovering possession of the premises, or in collecting delinquent taxes and other charges. <em>Id.</em></td>
<td>BP</td>
</tr>
<tr>
<td><strong>Termination/ Surrender</strong></td>
<td></td>
<td>Breach provision same as BP with addition: “<em>The Lessee may request a twelve-month license following termination to remove such improvements and personalty.</em>” (p. 15). Surrender Provision same as BP with minor changes. (p. 18).</td>
<td>BP</td>
</tr>
<tr>
<td><strong>Hazardous Substances</strong></td>
<td>MODIFIED</td>
<td>Same as BP with minor additions, including, “Lessor hereby consents to the lawful and reasonable use of lubricating oil and grease, normal paint and cleaning compounds.”*” (p. 19).</td>
<td>BP</td>
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</table>

- **BP** indicates base provision.
- **MODIFIED** indicates modifications to the base provision.
<table>
<thead>
<tr>
<th><strong>NON-WARRANTY</strong></th>
<th><strong>MODIFIED</strong></th>
<th><strong>BP</strong></th>
<th><strong>BP</strong></th>
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<tbody>
<tr>
<td>Adds to BP that “Lessor promises, represents and warrants to Lessee that (i) Lessor owns the entire premises in fee simple, subject to no liens or encumbrances except as disclosed in writing to Lessee in a title report or other document delivered to Lessee on or prior to the execution of this lease by Lessor; (ii) Lessor and each person signing this lease on behalf of Lessor has the full and unrestricted power and authority to execute and deliver this lease, and to lease the premises and the rights herein granted; and (iii) there are no tenants on the premises, or such tenants have prior to or concurrent with the execution of this lease, delivered a subordination agreement to Lessor in form and substance satisfactory to Lessee.” (p. 18).</td>
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<tr>
<th><strong>CONDEMNATION</strong></th>
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<tr>
<th><strong>EXTENSION OF TIME (“FORCE MAJEURE”)</strong></th>
<th><strong>BP</strong></th>
<th><strong>BP</strong></th>
<th><strong>MODIFIED</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>BP but also contains a no extension of time provision for this particular lease: “Board does not intend to allow extension of this lease pursuant to Chapter 171-36(b), Hawaii Revised Statutes.” (p. 19).</td>
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<tr>
<th><strong>HI LAW/FILING</strong></th>
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<tr>
<th><strong>OTHER</strong></th>
<th><strong>Special Conditions:</strong></th>
<th><strong>Special Conditions:</strong></th>
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<tbody>
<tr>
<td>Other provisions unique to renewable energy lease include some BP Special Conditions as well as the following:</td>
<td></td>
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<tr>
<td></td>
<td>- Repowering (p. 4)</td>
<td>- Improvements (p. 17)</td>
</tr>
<tr>
<td></td>
<td>- Compliance with CDUP (p. 20)</td>
<td>- Bond, improvement (p. 17)</td>
</tr>
<tr>
<td></td>
<td>- Wind Data Rights (p. 20)</td>
<td>- Fire and extended coverage insurance (p.17)</td>
</tr>
<tr>
<td></td>
<td>- Further Assurances (p. 20)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Clearances (p. 22)</td>
<td></td>
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<td></td>
<td>- Hunting (p. 23)</td>
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</tr>
<tr>
<td></td>
<td>- Environmental Regulations (p. 23)</td>
<td>- Environmental regulations (p. 18)</td>
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<td>- Public Utility Commission Approval (p.25)</td>
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<td>- Hunting (p. 18)</td>
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***Note, some other renewable energy leases include this BP provision:
- Phase I environmental site assessment (p. 25).
A. Board of Land and Natural Resources Authority to Dispose of Public Lands

The Board of Land and Natural Resources (BLNR) is responsible for disposing of public lands held by DLNR. Haw. Rev. Stat. § 171-13 (West, Westlaw through 2012). Disposition includes sale in fee simple, by lease, lease with purchase option, license, permit, and easement. Id. Before issuing notice of any intended land disposition, BLNR must classify the land use, “determine specific use or uses for which the disposition is intended”; parcel land into economic units, determine requirements for the construction of improvements on land necessary for “the highest use of the land”; determine the upset price or lease rental, based upon the fair market value of the land employed to the specific use or uses for which the disposition is being made, with due consideration for all of the terms and conditions of the disposition,” determine other conditions of the disposition; for leases establish the minimum tenure required to support the intended use and “the necessity for periodic rent openings in long-term leases to assure the State a fair return,” prepare documents and make them available to the public; two years before the lease expires determine “whether the premises are to be demised for the same use or uses under a new lease or whether all or any part thereof is to be reserved for other use or uses and then promptly notify the lessee of the determination.” Haw. Rev. Stat. § 171-33 (West, Westlaw though 2012). For dispositions intended for agricultural or pasture use, BLNR must follow additional requirements outlined in HRS § 171-34. Haw. Rev. Stat. § 171-34 (West, Westlaw though 2012).

In each land district, BLNR maintains a permanent register in which persons wishing to acquire public lands may register. Haw. Rev. Stat. § 171-12 (West, Westlaw though 2012). BLNR submits annual written reports to the legislature of all land dispositions made the previous year, including “sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges, and setting aside of lands by executive order.” Haw. Rev. Stat. § 171-29(a)(West, Westlaw though 2012).

B. Procurement Process for Leases

1. Eligibility

Aside from the requirements for qualified applicants listed in public notice for the sale or lease of specific parcels, described below, persons who have had an easement, lease, license, permit or sale of public lands in the five years preceding the date of disposition cancelled for a failure to satisfy terms and conditions of the disposition are ineligible to purchase or lease, or obtain a license, easement or permit of public lands. Haw. Rev. Stat. § 171-13 (West, Westlaw through 2012).

The DLNR Land Agent processing the lease request is responsible for conducting due diligence for the lessee to be considered credit worthy. Interview with Morris Atta, Special Projects Coordinator, Department of Land and Natural Resources Land Division, Haw. (Aug. 3, 2012).
2. Award of Lease Process

   a. Disposition by auction

   Process. Under HRS § 171-32, “Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 171-14 and 171-16.” Haw. Rev. Stat. § 171-32 (West, Westlaw through 2012). Public auctions for the disposition of public lands may be held after following public notice procedures outlined in HRS § 171-16(a). Haw. Rev. Stat. § 171-16(a) (West, Westlaw through 2012). Auctions are held in the land district in which the property is located and are conducted by the chairperson, a land agent, or other authorized employee of DLNR and supervised by BLNR. Haw. Rev. Stat. § 171-14 (West, Westlaw through 2012). Applicants only qualify to bid in an action for agricultural and pasture leases if they satisfy additional requirements outlined in HRS § 171-14.5. Id.

   Notice. Public notice of any dispositions by auction must be provided once statewide and once in the county in which the land is located as well as on the internet. Haw. Rev. Stat. § 171-16(a), (e). Section 171-16(a) outlines specific items to be included in the notice, including the time and place of auction, general description of the property, proposed uses of the property price or rent of property. Id.

   b. Disposition by drawing

   Process. Public lands may be sold or leased by drawing. Applications must be filed with BLNR within two weeks of the last publication date. Id. Within forty-five days of the closing date for applications, the BLNR will identify and notify qualified applicants, and conduct the drawing. Id. Leases and patents are issued within ninety days of the drawing, or when requisite conditions are satisfied. Id.

   Notice. BLNR must provide public notice as per HRS sections 171-15 and 171-16(b). Haw. Rev. Stat. § 171-15 (West, Westlaw through 2012). Public notice of disposition by drawings must be provided once statewide and once in the county in which the property is located as well as on the internet. Id. §§ 171-16(b), (e). As per HRS section 171-16(b) notice must include requisite qualifications of applicants, general description of the land, specific use of property, and application filing date. Id. § 171-16(b).

   c. Disposition by negotiation


   Notice. BLNR must adhere to public notice procedures in HRS section 171-16(a) and (c). Id.
**d. Disposition for renewable energy producers**

BLNR may lease or renew leases to renewable energy producers without public auction only if there is a public process that includes public notice as described in section 1-28.5 and provides “other interested renewable energy producers opportunity to participate in the process; provided that nothing in this section shall be construed to prevent the board from conducting direct negotiations.” Haw. Rev. Stat. § 171-95.3(a) (West, Westlaw through 2012). The renewable energy producer must submit as part of the proposal for board evaluation, a series of items including a project timeline, financial plan, conceptual design, business concept, landscape and acreage requirements. Id. § 171-95.3(a). Prior to approving the lease or lease renewal, DLNR must conduct at least two public hearings on the island upon which the public land for the proposed renewable energy project will be located. Id. § 171-95.3(c).

**e. Disposition to governments, governmental agencies, public utilities, and renewable energy producers**

BLNR may lease public lands without public auction procedures to agencies, governments, public utilities and renewable energy producers for terms up to sixty-five years. Haw. Rev. Stat. § 171-95(West, Westlaw though 2012).

**f. Disposition by Public Land Development Corporation**

Currently the PLDC “may lease the lands from the agency having the control and management of those lands, upon such terms and conditions as may be agreed to by the parties.” Haw. Rev. Stat. § 171C-16(b) (West, Westlaw through 2012). The only limitation on the lease of public lands under PLDC control is that “no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, or any department or board thereof.” Id. § 171C-16(c). Neither the statute nor the draft administrative rules provide further guidance on leasing process or procedures for lands held by PLDC. *Id.*

### 3. Rent Valuation

**a. Auction**

Appraisals for determining the upset price of public lands for sale or lease by public action are performed by a BLNR employee who is qualified to appraise lands or by one “but not more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested appraisal whenever prudent management so dictates.” Haw. Rev. Stat. § 171-17(a) (West, Westlaw through 2012).
b. Drawing or negotiation

Sale price or lease rental price can be no less than the price determined by a qualified BLNR employee or a disinterested appraiser contracted for by the board at the cost of the purchaser. *Id.* § 171-17(b). If purchaser fails to agree on a purchase price or lease rental price, the price will be determined by arbitration under HRS Chapter 658A. *Id.*

c. Reopening lease rental

For no percentage rent and percentage rent, the rental for the period ensuing after the reopening of the rental to be paid on a lease is the fair market rental at time of the reopening. Haw. Rev. Stat. § 171-17(d). Fair market value is determined at least six months before the time of the reopening by a qualified employee of DLNR or a disinterested appraiser contracted by BLNR. *Id.* For percentage rent, this fair market rental value must include base rent and percentage rent. *DLNR Lease Template, 3.* Should the lessee disagree with appraisal for fair market rental, lessee can appoint an appraiser and the board and lessee will together appoint a third appraiser and the rental value will be determined by arbitration under HRS Chapter 658A. Haw. Rev. Stat. § 171-17(d).

d. Subleases

For subleases on unimproved lands or subleases of State owned improvements, BLNR revises the rent to include “as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.” May 26 2000 Agenda Item D-24, Board Approved the “Revision to Sublease Rent Participation Policy” available at D-Land-Submittals-D12.pdf

For subleases improvements not owned by the State, BLNR will not receive a portion of the sublease rents from subleasing the improved area unless the lease states a specific right and method of calculation. *Id.*

e. Minimum rent policy

DLNR Established a Minimum Rent Policy for New Dispositions, May 13, 2005, of $480 per annum. https://docs.google.com/viewer?a=v&q=cache:2_6h-y0NvO8J:hawaii.gov/dlnr/chair/meeting/submittals/120309/D-Land-Submittals-D3.pdf+&hl=en&gl=us&pid=bl&srcid=ADGEESiDDLdY2TzMhKWhWbWhOOS5TV75ntTUeCrC8V_ZUWE75rJJTax2tgCD_Trt6lzWpGazb2OWg--w8zebL6f3eqM1iN96dusVzCd5nebNYjfVR3EjFgfwVAsGopRKZERmxI4aAbrM&sig=AHIEtbTTLTohDGDUNvEmP4XwYUt0ei8UYw
f. Interest rate on unpaid or delinquent rentals

Interest rate on all unpaid or delinquent rentals is one percent per month and an additional service charge of fifty dollars per month for every delinquent payment. **DLNR Lease Template, 4.**

g. Rent reevaluation upon condemnation of portion of leased lands

When a portion of leased public land is condemned for public purposes by the State, or any county, city, or other governmental agency or subdivision, the rent will be "reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority (1) the value of growing crops, if any, which the lessee is not permitted to harvest and (2) the proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided that the lessee may, in the alternative, remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee." Haw. Rev. Stat. § 171-38 (West, Westlaw through 2012). Should the condemned portion of land render the remaining property under lease unusable, the lessee may surrender the lease and be discharged of any liability so long as the lessee removes improvements to the property within a time period determined by BLNR. **Id.**

C. Leases

1. General Lease Provisions Required by Statute

HRS section 171-35 requires that all leases issued by BLNR must contain the following items:

(1) The **specific use or uses** to which the land is to be employed;

(2) The **improvements** required; provided that a minimum reasonable time be allowed for the completion of the improvements;

(3) Restrictions against alienation as set forth in section 171-36;

(4) The **rent**, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;

(5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and

(6) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter. Haw. Rev. Stat. § 171-35 (West, Westlaw through 2012).

Leases, licenses, and permits issued by BLNR are also subject to real property taxes “assessed on a pro rata basis against the lessee, licensee or the permittee and the lessee’s, licensee’s or permittee’s successor in interest.” Haw. Rev. Stat. § 171-27 (West, Westlaw through 2012). Reservation to State of rights to historic and prehistoric remains on leased premises. Haw. Rev. Stat. § 171-36.1 (West, Westlaw through 2012).
BLNR shall terminate lease if the Lessee or tenant violates any terms or conditions of the lease. BLNR can “take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.” Haw. Rev. Stat. § 171-39 (West, Westlaw through 2012).

When the lease expires, BLNR may choose to permit lessee to remain on the land “for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested.” After the one-year extension, BLNR “may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe.” Haw. Rev. Stat. § 171-40 (West, Westlaw through 2012).

2. Lease Restrictions Required by Statute

a. General restrictions

Unless state otherwise, under HRS § 171-36 the following restrictions apply to DLNR leases:

(1) Options for renewal of terms.

(2) Except residential leaseholds subject to additional conditions, lease cannot extend beyond a sixty-five year term.

(3) “No lease shall be made for any land under a lease which has more than two years to run.”

(4) “No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county.”

(5) “No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.”

(6) The lessee cannot sublet without BLNR approval of the sublessee and rent to be charged.

(7) The lease must be for a specific use and cannot include “waste lands, unless it is impractical to provide otherwise.”

(8) “Mineral and metallic rights and surface and ground water shall be reserved to the State.”
(9) “No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term “lease”, for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies.” Haw. Rev. Stat. § 171-36 (West, Westlaw through 2012).

b. Additional restrictions

All leases for agricultural and pasture uses are subject to additional restrictions under HRS section 171-37. Haw. Rev. Stat. § 171-37 (West, Westlaw through 2012). Aside from specific exceptions for lessees who occupy the premises as a personal residence or for lands which require “a longer term . . . to amortize the lessee’s investment,” leases for these uses cannot be less than fifteen years or more than thirty five years. Id. § 171-37(1), (2). These lands are also subject to withdrawal by BLNR without compensation unless used for public purposes. Id. § 171-37(3).

3. BLNR authorized to make adjustments to statutory lease restrictions

BLNR may for “any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, “ modify or eliminate restrictions detailed in HRS § 171-36, extend or modify rental period of the lease as long as the total of the original lease term and the extension does not exceed sixty five years, and extend the lease terms subject to additional provisions. Haw. Rev. Stat. § 171-36(b). In addition, BLNR may permit alternative agriculture, aquaculture, or mariculture uses on these properties and make necessary adjustments in the lease rent and provisions. Id. Section 171-36(c) provides conditions for alternative uses, including an application by the lessee, consent of holders of security interest in the leasehold, and BLNR finding of uses as in the public interest. Id. § 171-36(c). BLNR may for “any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease,” make modifications or eliminate restrictions from HRS § 171-36(a), “extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by” State disasters or government exercise of eminent domain, conservation easements or withdrawals. Id. § 171-36(d),(e).

4. Additional lease process, provisions and restrictions required by statute for specific uses


b. BLNR will approve leases for commercial, industrial, and other business uses subject to a development plan, “which provides for careful placement of complementary enterprises consistent with county zoning requirements; except that development plans for leases of parcels in industrial parks developed under section 171-134(b) shall provide for careful placement of complementary enterprises consistent with the final plans and specifications under section 171-134(b).” Haw. Rev. Stat. § 171-41(a) (West, Westlaw through 2012). This section also grants BLNR authority to include provisions that make the proposed uses compatible with surrounding developments, including landscaping, architecture, and protection from
nuisances. *Id.* Section 171-41.5 includes additional information for the process of amending commercial, hotel and industrial leases including a public hearing process. Haw. Rev. Stat. § 171-41.5 (West, Westlaw through 2012).

c. Public land “may be leased for hotel or resort development, if the department of business, economic development, and tourism finds that the land possesses the amenities for a successful hotel and resort development and that the advantages of its placement for such use outweigh those inherent in free public use in its natural state.” Haw. Rev. Stat. § 171-42 (West, Westlaw through 2012). Section 171-42 outlines in detail the process for leasing for these uses.

d. BLNR can lease without public auction to “any eleemosynary or religious organization campsites or sites for youth athletic and/or educational activities in a state park area or on lands under the control of the department of land and natural resources at nominal consideration.” Haw. Rev. Stat. § 171-43 (West, Westlaw through 2012); see also Haw. Rev. Stat. § 171-43.1 (West, Westlaw through 2012). Most general lease provisions still apply to these leases.

e. BLNR can grant leases for recreation and residence on state parks or forest reserves through process of direct negotiation, rather than public auction, and for periods up to twenty years. Haw. Rev. Stat. § 171-44 (West, Westlaw through 2012).

f. Residential Leases are subject to additional provisions. BLNR can lease by public auction as per section 171-14 and 171-16 or by drawing under 171-15 and 171-16. Haw. Rev. Stat. § 171-45 (West, Westlaw through 2012). In addition to requirements of section 171-33, BLNR must also consider the following before disposing of public land for residential use:

1. Make a determination of the demand for houselots in the area of the intended disposition;
2. Make a thorough investigation of the costs of the residential development;
3. Wherever possible locate the residential development adjacent to an existing urban center;
4. Subdivide and improve the land, in conformity with county or city and county zoning and subdivision requirements, including the construction of necessary roads; and

In addition, BLNR is authorized under section 171-47 to “petition for the construction of necessary subdivision improvements pursuant to applicable improvement district statutes or ordinances of any county or city and county in subdividing public lands for residential purposes. The board shall dispose of the residential lots so improved subject to liens consisting of the improvement assessments. For the purpose of this section the board is authorized to encumber and impose liens on public lands.” Haw. Rev. Stat. § 171-47 (West, Westlaw through 2012).


**B. DEPARTMENT OF HAWAIIAN HOME LANDS**

**I. Lease Provisions From DHHL Commercial & Industrial Lease Templates**

The Commercial Lease Template (Appendix B-4) and the Industrial Lease Template (Appendix B-3) are largely boilerplate, however there are some differences between them. Differences from the **Commercial Lease Template** are in red; and differences from the **Industrial Lease Template** are in blue. Text that remains in black is the **same for both lease templates**. Double asterisks (“**””) indicate areas where there are additions based on my comparisons to the leases below.

Community Benefits. This provision is unique to the Commercial lease template and other commercial leases. It provides that the lessee will “cooperate with and support” DHHL’s housing and job training program for native Hawaiians. Similar provisions show up only in the “Alternative Energy” lease (included in “Other” category of Lease Provisions Chart).

**Community Benefits.** LESSEE agrees to cooperate with and support LESSOR’s Home Ownership Assistance Program (HOAP) to provide training and job opportunities to native Hawaiians in a manner consistent with applicable federal and state labor law. LESSEE also agrees to include in its community support program support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands on the island of _________________. 
[Commercial, Appendix B-4 p.1]

Prehistoric and Historic Remains. This clause assures Lessee that Lessor has no record of any historic remains on the subject premises. If historic remains are discovered and the site cannot be developed, the portion of the property rendered useless will be excluded from the leased premises and the rent will be adjusted. In the Commercial template, the lessee assumes the risk from any delays in the event of the discovery of historic remains.

**Prehistoric and Historic Remains.** LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, or the protection or removal of such sites or remains. [Commercial, Appendix B-4, p.2; Industrial, Appendix B-3, p.2]

Right of Withdrawal. DHHL reserves the right to withdraw “all or any portion” of the leased premises after two years prior written notice to lessee. In the event of withdrawal, lessee shall be paid just compensation for the premises and/or improvements and the annual base rental will be reduced. Note: The portion of the clause in brackets is an area that is most often modified. “Any Hawaiian home lands general lease issued by the department after June 20, 1985, shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.” HHCA § 204(a)(2).

**Right of Withdrawal.** The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after [not less than two (2) years] prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease [shall] [will] also be proportionately reduced also as provided in Section 5 of this Article Two. [Commercial, Appendix B-4, p.2; Industrial p.2]
Reservation of Easements in Favor of LESSOR. DHHL reserves the right, with “the reasonable consent of lessee,” to designate, grant, and relocate (“from time to time”) necessary easements for underground utilities and services across and through premises. The easements cannot cross through or under permanent or planned structures and the construction work must be done in a way that does not disrupt lessee’s operation or use of premises. DHHL incurs all costs of building and maintenance.

Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility. [Commercial, Appendix B-4, p.2-3; Industrial Appendix B-3, p.2]

Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. If the premises (or a portion of it) is taken or withdrawn lessee is entitled to “just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain.” The annual base rental will be reduced (by ratio between fair market value before and after taking/withdrawal) and the lessor will pay to lessee a portion of the value of lessee’s permanent improvements that cannot be relocated. If the portion of the premises taken makes the Premises unusable “in Lessee’s reasonable determination” lessee can surrender the premises or partially surrender the lease.

Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. ** If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denial to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above. [Commercial, Appendix B-4, p.3; Industrial Appendix B-3, p.2-3]
Rent Commencement Date. The “Rent Commencement Date” is not a distinct provision; rather, it is included within Article 3, Section 1 of each lease. Determination of the “Rent Commencement Date” differs depending on what type of property (Commercial/Industrial) is being leased.

[Commercial, Appendix B-4, p.4] Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is that date which is the earlier of (a) date or (b) the date on which LESSEE opens the Premises for business. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

LESSOR holds LESSEE’s bid deposit in the amount of $_________. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

[Industrial, Appendix B-3, p.4] Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is ________________. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

Annual Base Rental (Payment of Rent). Lease rent for the first ten years is fixed. Between years 11-25, the rent increases each 5 years. During lease years 26-end of lease (usually 65 years), the annual base rent is re-opened. The Lease term cannot exceed 65 years permitted by HRS § 171-36(a)(2).

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

[Commercial, Appendix B-4, p.4] Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: ______________________ Dollars ($__________) per annum ($__________) per month, from and after the Rent Commencement Date only;

Lease years 11 through 15: ______________________ Dollars ($__________) per annum ($__________ per month);

Lease years 16 through 20: ______________________ Dollars ($__________) per annum ($__________ per month); and

Lease years 21 through 25: ______________________ Dollars ($__________) per annum ($__________ per month).

Lease years 26 through 65: annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is that date which is the earlier of (a) ___________ or (b) the date on which LESSEE opens the Premises for business. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

LESSOR holds LESSEE’s bid deposit in the amount of $_________. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

[Industrial, Appendix B-3, p. 3] Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to
LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: ________________________________ Dollars ($______.00) per annum ($_____.__ per month);

Lease years 11 through 15: ________________________________ Dollars ($______.00) per annum ($_____.__ per month);

Lease years 16 through 20: ________________________________ Dollars ($______.00) per annum ($_____.__ per month); and

Lease years 21 through 25: ________________________________ Dollars ($______.00) per annum ($_____.__ per month).

Lease years 26 through 40: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. **The “Rent Commencement Date” is ________________.** The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

**Reopening of Annual Base Rental.** The annual base rental will be reopened and re-determined to an amount “equal to the then fair market rental value of the Premises.” If the lessor and lessee do not agree on the fair market rental value, there are processes set forth for determining that value through arbitration.

**Reopening of Annual Base Rental.** The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and re-determined at the expiration of the 35th, 45th and 55th lease years for each of the next ensuing three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. **If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their
determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent. [Commercial, Appendix B-4, p.4-5; Industrial Appendix B-3, pp.4-5].

**Improvements.** The first part of the “Improvements” clause (“Government Approvals and Permits”) is the same for both lease templates. The second clause differs quite a bit. Note that both “Improvements” clauses do not always include that DHHL owns the improvements upon expiration of the lease. However, in the “Surrender” clause, there is a mention of DHHL owning improvements (but lessor owning all “trade fixtures”).

For Commercial Construction of Improvements, DHHL requires compliance with a detailed plot plan and building specifications, which must be prepared by a licensed architect and previously approved in writing by DHHL. If DHHL exercises its option to hire a licensed architect regarding the approval of the lessee’s plans, the lessor must reimburse DHHL for the “reasonable fees of such architect and/or engineer.” [Commercial, Appendix B-4, p.7]

(a) **Governmental Approvals and Permits.** Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) **Construction of Improvements.** LESSEE will not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifty Thousand Dollars ($50,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except in accordance with plans and specifications, including a detailed plot plan, which shall be prepared by a licensed architect, first submitted by LESSEE and approved in writing by LESSOR. In connection with any request for approval of plans by LESSEE, LESSOR may, but shall not be obligated to, retain the services of an architect and/or engineer, and the reasonable fees of such architect and/or engineer to LESSOR shall be reimbursed to LESSOR by LESSEE. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications therefor are not acceptable to the architect or engineer (if any) retained by LESSOR to review the same. LESSOR’s approval of any plans or suggestions for the revision thereof shall not be construed to be an agreement or representation on LESSOR’s part of adequacy or suitability for their intended purpose, of the alterations, additions and improvements shown or their compliance with applicable building codes or other governmental requirements.

For Industrial Construction of Improvements, DHHL only requires the lessor to get prior written consent. DHHL owns the improvements upon the expiration of the lease. [Industrial, Appendix B-3, p.7]

(b) **Governmental Approvals and Permits.** Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which
may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) **Construction of Improvements.** LESSEE **shall** not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than **Fifteen Thousand Dollars ($15,000)** to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, **except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.**

The Industrial Lease Template also includes an “Initial Development” template requiring a scheduled program of development. This is noted when it is seen in the sampling of leases.

(a) **Initial Development.** Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.

**Assignment.** In order to assign the lease, lessee needs written consent of lessor; any assignment without written consent is void. Lessor cannot unreasonably withhold consent for assignment. If lessor gives consent to an assignment in writing, the assignee is bound by all terms, covenants, and conditions of the assignor’s lease. Lessor can deny any assignment unless the assignment meets the required HRS § 171-36(a)(5) (included below).

**Assignment.** [Commercial, Appendix B-4, p.9-10; Industrial Appendix B-3, p.9-10].

(a) **No Assignment Without Consent.** LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

(b) **Assumption of Lease.** Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) **Compliance with Hawaii Revised Statutes §171-36(a)(5).** LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

(d) **No Change of Use.** No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;
(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE 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 LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

[Not included in lease] **HRS § 171-36(a)(5)** – Except as otherwise provided, the following restrictions shall apply to all leases: No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

**Subletting.** Lessee also needs written consent of lessor in order to sublet the premises. In the Industrial Lease Template, it discusses a “Sublease Rent Participation Policy” which is included in some of the general leases.

**Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises[7], provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit 5, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

[Commercial, Appendix B-4, p.10; Industrial Appendix B-3, p.10]
Permitted Uses.

Permitted Uses. The Premises will be used only for the following purposes: _______________________. In no event shall the Premises be used for the construction of any residential lots, units or project. [Commercial, Appendix B-4, p.10; Industrial Appendix B-3, p.10]

Indemnity.

Indemnity. [Commercial, Appendix B-4, p.11; Industrial Appendix B-3, p.11]

(a) LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

Insurance. For both commercial and industrial lessee’s, DHHL requires lessee to maintain the following types of insurance: (a) Commercial property insurance, (b) liability insurance, (c) umbrella liability, and (d) builder’s and installation risk. DHHL reserves the right to periodically review insurance coverage, form, and amount of insurance required by the lease not more than once every three years. If lessor, using “reasonable judgment,” feels the insurance provisions in the lease “do not provide adequate protection for the lessor,” lessor may require lessee to obtain insurance to effect additional protection. These new requirements imposed by DHHL shall be “reasonable” and “designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.” DHHL must notify lessee in writing of their change to the insurance requirements, and lessee must incorporate said changes within 60 days of receipt of such notice. The Commercial Lease Template also includes a “Business Auto Policy” clause. [Commercial, Appendix B-4, p.11; Industrial Appendix B-3, p.11]

Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used
in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) **Trust.** In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) **Use of Proceeds.** In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of [Section 17] [Section 16] of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) **Liability Insurance.**

(i) **Commercial General Liability Insurance.** Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products – Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) **Limits.** Limits for such coverage shall be determined.
(1) **Limits.** Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit — $3,000,000 per occurrence, subject to $3,000,000 general aggregate per policy year; $3,000,000 Products and Completed Operations aggregate per policy year; Personal and Advertising Injury — $1,000,000 per person/organization per policy year, subject to $3,000,000 general aggregate per policy year; Fire Legal Liability — $250,000 per fire, subject to $3,000,000 general aggregate per policy year; and Medical Expense — $5,000 each injury.

(2) **Deductible.** Except with LESSOR’s prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(3) **Application of General Aggregate.** The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) **Business Auto Policy.** Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- $1,000,000 each person and $1,000,000 each accident; Property Damage -- $1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) **Umbrella Liability.** Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(d) **Builder’s and Installation Risk.** Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) **General Policy Terms.** All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSOR will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and
maintain renewal or additional policies in like manner and to like extent. All general liability, property
damage and other casualty policies shall be written as primary policies, not contributing with and not in
excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more
frequently than once every three (3) years, to review the coverage, form, and amount of the insurance
required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do
not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar
properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage,
form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and
shall be designed to assure protection for and against the kind and extent of the risks which exist at the time
a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance
requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with
LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice
from LESSOR.

Costs of Litigation.

Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation
commenced by the other party or against the other party (other than condemnation proceedings), the other
party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the
party joined without fault on its part. [Commercial, Appendix B-4, p.11; Industrial Appendix B-3, p.11]

Landscaping. The landscaping clause is only present in the Commercial Lease Template.

Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the
premises in the same or similar fashion as shown on LESSEE’s landscape plan dated
____________________. LESSOR acknowledges and agrees that (a) LESSEE may change the landscaping
from time to time without LESSOR’s consent and (b) comparability, not precise compliance, with the
above-referenced landscape plan is all that is required. [Commercial, Appendix B-4, p.14]

Termination/Surrender. Upon lease termination or surrender, lessee must turn over land and all buildings or
improvements to DHHL. Provided, however, that if lessee is not in default, it may remove “trade fixtures” lessee
installed on premises, but must repair, “to lessor’s satisfaction” all damaged caused by such removal. Provided,
further, if DHHL, “in its sole discretion,” determines that improvements or portions of improvements on the
premises should be removed, it must give lessee written notice within 30 days of this determination, and lessee
must pay for removal of improvements. Hazardous Materials. Lessee must also legally remove all hazardous
materials from the premises that “may cause damage or injury to the environment or health” before turning over the
premises. If lessee does not comply, DHHL may remove the improvements or other materials at lessee’s expense,
which lessee has 30 days to re-pay lessor for (with interest). Holdover Tenant. If lessee does not surrender
premises, or does not comply with DHHL’s requests for removal of improvements or hazardous materials, lessee
must pay two times the monthly lease rent.

Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE
shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and
other improvements upon or belonging to the same, by whomsoever made, in good repair, order and
condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided,
however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it
on the Premises but shall repair promptly to LESSOR’s satisfaction all damage caused by such removal;
provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions
thereof should be removed and shall give LESSEE written notice of such determination within thirty (30)
days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is
reasonably possible, shall remove promptly said improvements or portions thereof in accordance with
applicable law and shall leave the Premises in clean and orderly condition free of all debris.
Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE [shall] [will], within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

**Hazardous Materials.** The Hazardous Materials clause differs significantly from lease to lease. In fact, only one of the general leases contains boilerplate language.

**Hazardous Materials.** [Commercial, Appendix B-4, p.16; Industrial, Appendix B-3, p.15]

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.
LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

**Underground Storage Tank.** There is a separate provision, related to Hazardous Materials, regarding underground storage tanks. If lessor needs a UST, it must gain the consent from lessor before installation. Once installed, lessee must pay to have it removed at the expiration of the Lease and must provide a UST closure report by a Hawaii environmental engineer. If any clean up is necessary, lessee must pay for the clean up work to be completed.

**Underground Storage Tank (UST).** A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

**Non-Warranty.**

**Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties. [Commercial, Appendix B-4, p.17; Industrial Appendix B-3, p.17]
**Condemnation.**

*Condemnation.* If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR. [Commercial, Appendix B-4 p.22-23; Industrial Appendix B-3, p.22]

**Extension of Time.** Each lease contains a Force Majeure clause for events that prevent, delay, retard, or hinders a party’s performance of acts as required by the lease (other than payment of money for rent).

*Extension of Time.* Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control. [Commercial, Appendix B-4, p.23; Industrial Appendix B-3, p.23]

**Hawaii Law/Filing.**

*Hawaii Law/Filing.* This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease. [Commercial, Appendix B-4, p.24; Industrial Appendix B-3, p.23]
**II. Selected DHHL Lease Provisions Spreadsheet Comparison**

Key:
- = No clause  
**BP** = Boilerplate clause (Commercial & Industrial Template have the same clause)  
**BP-C** = Boilerplate clause consistent with Commercial Template  
**BP-I** = Boilerplate clause consistent with Industrial Template  
*MODIFIED* = Change  
“Dated version” = Clause is very different from template language due to the age of the contract.

Blue columns represent Industrial Leases  
Red columns represent Commercial Leases  
Orange column represents the sole Alternative Energy Lease

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<tr>
<th>GEN. LEASE #</th>
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<th>LEASED TO</th>
<th>LENGTH (YRS)</th>
<th>RENT COMMENCEMENT DATE</th>
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<td></td>
<td></td>
<td>258</td>
<td>INDUSTRIAL 2002</td>
<td>55</td>
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</table>
|             |            | 260        | COMMERCIAL 2004 | 65 | **BP-C**  
“The ‘Rent Commencement Date’ is that date which is the earlier of (a) April 1, 2005 or (b) the date on which lessee opens the premises for business.” (p.2) |
|             |            | 264        | INDUSTRIAL 2005 | 65 | **BP-I**  
Minor differences “Annual base rental shall be proportionately reduced for any partial month during the term. The ‘Rent Commencement Date’ shall be the Effective Date.” (p.3) |
|             |            | 284        | COMMERCIAL 2009 | 60 | **-MODIFIED-**  
Distinct RCD section includes: detailed determination of RCD; RCD “subject to extension”; requires separate agreement to be signed by lessee to confirm RCD. (p.2) |
|             |            | 294        | ALT. ENERGY 2011 | 20 | **-MODIFIED-**  
“Commencing on the earlier of April 1, 2013 or the date lessee begins construction of its Solar Facilities (unless lessee elects to terminate prior to such date by notice to lessor due to the failure to execute and receive necessary approvals for a power purchase agreement)...” (p.5) |
|             |            | 295        | INDUSTRIAL 2012 | 55 | **BP-I** (p.4) |

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<th>APPENDICES</th>
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<th>260</th>
<th>COMMERCIAL 2004</th>
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<th>RENT PAYMENT</th>
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</table>
|            | Dated Version (p.1) | **BP-C** Rent due monthly. Rent reopening | **-MODIFIED-**  
Mostly **BP-I**, minor differences. Rent due monthly. Rent |
|            |            | **-MODIFIED-**  
Modifications reflect TIC. Rent due monthly. No rent due |
|            |            | **-MODIFIED-**  
Mostly **BP-C**, minor differences. Rent due monthly. Rent does | **-MODIFIED-** |

Rent due monthly. (p.3)
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**RENT REOPENING**
- **Dated Version (p.2)**
  - “The base rent hereinabove reserved shall be reopened and redetermined at the expiration of the 25th and the 40th years of the lease term, rent to be stepped-up in 5-year intervals.” Rent raised by the “fair market value at the time of reopening.”

- **-MODIFIED-**
  - Mostly BP, but places a 20% cap on the annual base rental increase, but without a cap on the first rental increase.
  - “…the increase in such annual base rental shall not be more than 20% above the annual base rental payable during the immediately preceding ten year period under this Lease.” (p.2)

- **BP**
  - Minor differences, dated version. “The annual base rental herein above reserved shall be reopened and redetermined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period…” (p.2)

- **No rent reopening.**

**PREHISTORIC REMAINS**
- **Dated Version:**
  - Reserving unto the lessor . . . “All prehistoric and historic remains

- **BP-C** (p.4)

- **BP-C w/Addition**
  - Uses full commercial clause with an added sentence at the end: “Lessee shall, at all

- **BP-I** (p.8)

- **BP-C** (p.4)

- **BP-I** (p.2)
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- **Right of Withdrawal**
  - **Dated Version**
    - “The right to withdraw all or any portion of the premises for any public purpose (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised premises for other than a public use, which demised premises shall, at the time of withdrawal, constitute an economic unit...” (p.4)
  - **BP Modified**
    - “…not less than five (5) years prior written notice to lessee...” (p.4)
  - **BP Modified**
    - “…not less than five (5) years prior written notice to lessee...” (p.4)
  - **BP**
    - Modified only to reflect tenancy in common. (p.9)

- **Reservation of Easements**
  - **BP** (p.4)
  - **-MODIFIED-**
    - Mostly BP, however, uses “book value” rather than fair market value for compensation. “...Lessee shall be
  - **-MODIFIED-**
    - Stipulates that easements cannot be within 60 feet of permanent structures unless otherwise agreed to; lessor is

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*found on the premises*” (p.4)
times, comply fully with all applicable laws and regulations with respect to all prehistoric or historic remains or sites of archaeological significance present or discovered at the Premises.” (p.4)

**RIGHT OF WITHDRAWAL**

Dated Version

“The right to withdraw all or any portion of the premises for any public purpose (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised premises for other than a public use, which demised premises shall, at the time of withdrawal, constitute an economic unit...” (p.4)

**BP Modified**

“…not less than five (5) years prior written notice to lessee...” (p.4)

**BP Modified**

“…not less than five (5) years prior written notice to lessee...” (p.4)

**BP**

Modified only to reflect tenancy in common. (p.9)

**BP** (p.4)

**BP** (p.2)

**Reservation of Easements**

- **BP** (p.4)
  - **-MODIFIED-**
    - Mostly BP, however, uses “book value” rather than fair market value for compensation. “...Lessee shall be
  - **-MODIFIED-**
    - Stipulates that easements cannot be within 60 feet of permanent structures unless otherwise agreed to; lessor is

**BP** (p.4)

**BP** (p.2)
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**Compensation for Takings**

- **BP w/Addition**
  “…Hawaii under its power of eminent domain; provided, however, that in no event shall the compensation payable to lessee be less than the portion of the value of lessee’s improvements so taken in the proportion that the unexpired term of the Lease bears to the entire term of the lease.” (p.5)

- **MODIFIED-**
  Uses “book value” rather than fair market value:
  “…lessee shall be entitled to receive from lessor the then book value of the portion of the permanent improvements constructed by lessee situated on the portion of the Land so taken, withdrawn, or of which lessee is denied use, which lessor and lessee hereby agree constitutes just compensation therefor.” (p.5)

- **BP w/Addition**
  “…Hawaii under its power of eminent domain; provided, however, that in no event shall the compensation payable to lessees be less than the portion of the value of lessee’s improvements so taken in the proportion that the unexpired term of the Lease bears to the entire term of the lease.” (p.10)

- **BP** (p.5)

- **BP** (p.3)
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<th>IMPROVEMENTS</th>
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<td>Requires written consent of lessor prior to improvements; caps the cost of improvements lessee may make without DHHL consent. “The lessee may make nonstructural alterations not exceeding $25,000 in cumulative costs per alteration...without lessor’s consent.” (p.6).</td>
<td>“...Lessee shall have the right to make interior, structural, and non-structural repairs and improvements, including the right to relocate all exterior customer and loading doors and entryways in the building without lessor’s consent. <strong>Lessor</strong> agrees to execute any and all instruments necessary to obtain licenses and permits...to make such repairs and/or alterations, provided lessor has approved the ‘permit set’ plans for such repairs or alterations.” (p.7)</td>
</tr>
<tr>
<td><strong>BP-I Initial Development Clause</strong></td>
<td>“Because time is of the essence, lessee shall implement a scheduled program of development. Plans for the scheduled development program shall be submitted to lessor for approval within six (6) months from the commencement date of the lease...” (p.12)</td>
<td><strong>BP-I w/modification</strong> “Initial Development Clause” (p.16)</td>
</tr>
<tr>
<td></td>
<td><strong>BP-C</strong> (p.8) Minor modification in that they added “Solar Facilities” into the improvements clause.</td>
<td><strong>BP-I + Initial Development Clause</strong> Contains “Initial Development” clause (p.6)</td>
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**OWNERSHIP OF IMPROVEMENTS**

- Vests ownership in DHHL at expiration of lease. “Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in lessor.” (p.6)
- Vests ownership in DHHL at expiration of lease. “Lessee shall own these improvements until the expiration or termination of the Lease, at which time the ownership shall automatically be vested in lessor.” (p.7)
- Vests ownership in DHHL at expiration of lease. “Lessee shall own these improvements until the expiration or termination of the Lease, at which time the ownership shall automatically be vested in lessor.” (p.7)
- Vests ownership in DHHL at expiration of the lease. Contains a separate clause. “Lessees shall own all building and other improvements located on the Premises until the expiration of the Term or sooner termination of the Lease, at which time ownership shall automatically be vested in lessor.” (p.7)
- —

**PERMITTED USES/ZONING & USE RESTRICTIONS**

- **Dated Version**
  - “Character of Use”: The parties herein covenant and agree as follows . . . “That lessee shall use the demised premises solely for Limited (General) Industrial purposes . . . no construction of any residential structures shall be permitted.” (p.7)

- **MODIFIED**
  - “The premises may be used for a home improvement store or any other uses permitted by the applicable County zoning . . .” (p.9)
  - Lists what the Premises may be used for; “…provided, however that the lessor understands that lessee may construct separate rentable spaces for warehouse, office, service, and/or retail use, on the Premises, which spaces may be sublet to third parties, subject to the then existing zoning laws… consent provisions…and the Sublease Rent Participation provisions.” (p.9)

- **BP** (p.11)

- **MODIFIED**
  - Zoned MCX, which permits retail; no residential lots, units or project. (p.22)

- **BP** (p.10)
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**ASSIGNMENT**

Dated version  
“That lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession,...”  (p.7)

Dated Version  
“Lessee shall not, without the prior written consent of lessor, which consent shall not be unreasonably withheld or delayed, transfer, assign, or permit any other person to occupy or use the Premises or any portion thereof (other than employees, agents, contractors, and other similar parties not having a possessory interest in the premises)...”  (p.9)

Dated Version  
Same information, less detail. “…Any change of stock ownership or control of lessee or any sharing or transferring of use or occupancy of the premises to any of the following entities: (a) an entity resulting from a merger or consolidation of lessee with any organization..., (b)...(c)...(d)..., shall constitute an assignment hereunder requiring the prior written consent of lessor.”  (p.9)

BP w/Addition  
“...provided that less may, without lessor’s consent, assign this lease to an affiliate, a wholly-owned subsidiary or successor of lessee.”  (p.10)

**SUBLETTING**

Dated version  
“That lessee shall not rent or sublet the whole or any part of the premises except to other non-profit organizations sharing common goals and serving similar functions as lessee and with the prior written consent of lessor, provided, however, that prior to the approval, lessee shall have the right to...

BP-C w/Addition  
“...portion of the Premises except that lessee may, without the consent of lessor, sublet space within any of the buildings constructed on the Premises.”  (p.9)

- MODIFIED-  
First sentence is BP. “In the event lessee subleases the Premises, or any portion thereof, the payment of all amounts described in the Sublease Rent Participation Approved by the Hawaiian Homes Commission on April 24, 1987.”  (p.10)

BP-C  
(Modifications are mostly to reflect the tenancy in common. (p.20)

BP-I  
(p.10)
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**APPENDICES**

| review and approve the rent to be charged to the proposed sublessee...” (p.7) |

**INDEMNITY**

| Dated Version | “That lessee shall indemnify, defend and hold lessor harmless (a) from and against any claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from any use, occupancy, maintenance of enjoyment...” (p.8) |
| Dated Version | “Lessee shall indemnify, defend and hold lessor harmless (a) from and against any third-party claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from lessee’s use, occupancy, maintenance, or enjoyment of the premises after the Effective Date, including any accident, fire or nuisance...” (p.10) |
| Dated Version | Same information, less detail. “Lessee shall indemnify, defend and hold lessor harmless (1) from and against any third-party claims or demands for loss, liability or damage...” (p.10) |
| BP (p.22) | BP (p.12) | BP (p.10) |

**INSURANCE**

| -MODIFIED- | Modifications reflect TIC. Periodic review of insurance coverage cannot be more often than every 5 years. No business auto policy. (p.23-26) |
| -MODIFIED- | Mostly BP-C, minor modifications. Business auto policy included. “General policy terms” clause significantly shortened. Missing clauses: Trust; Use of Proceeds; Builder’s |

**-MODIFIED-**

Mostly BP-C, minor modifications. Periodic review of insurance coverage cannot be more often than every 5 years. No business auto policy. (p.23-26)
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**LANDSCAPING**

- **Specific & detailed version:** “The primary landscaping material used...will serve in enhancing the environment...Trees should not only provide shade when mature, but also have character and interesting color as they grow...” (p.13)

- **BP-C (p.13)**

**TERMINATION/SURRENDER**

- **Dated Version (p.13)**
  - Also contains “Abandonment by Lessee” clause – if lessee breaches lease, lessee still owes rent.
  - Lessor has no duty to mitigate its damages.

- **[MODIFIED-]**
  - “All inventory, trade fixtures, furniture, machinery and equipment that lessee uses or installs on the Premises and any other personal property, shall remain lessee’s property and may be removed by lessee. Furthermore...should lessee fail to remove any and all of lessee’s personal property from the Premises, after notice thereof, lessor may remove any and all personal property from the Premises” (p.13)

- **[MODIFIED-]**
  - “At the end of or earlier termination of this Lease, lessee shall, peaceably deliver unto lessor possession of the Premises, together with all buildings, in good order and condition, reasonable wear and tear excepted, and free and clear of all liens and encumbrances other than those listen in Exhibit “A” attached hereto. All inventory, trade fixtures, ...” (p.13)

- **[MODIFIED-]**
  - Mostly BP. Lessees may remove any trade fixtures. Lessor does not need to reimburse lessees for residual value of lessees’ improvements. Plus, other slight modifications.

- **[MODIFIED-]**
  - Mostly BP. “At the end of the term or sooner determination of all or a portion of this Lease, lessee will peaceably deliver up to lessor possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if...” (p.14)
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**HAZARDOUS MATERIALS**

Dated Version (p.19)  
Also contains a list of statues and regulations that the lessee must abide by.

- **MODIFIED** - Much more detailed than BP language.  
  Changed to permit some hazardous substances: **“Lessee shall not allow the storage or use of hazardous materials in any manner not sanctioned by law, nor allow to be brought into the Premises any such materials except in the ordinary course of lessee’s business.”** (p.22)

BP, mostly  
**“...If any Hazardous materials on or released from the Premises shall be discovered during the construction of lessee’s improvements, lessee may, at its option, either terminate this Lease by notice to lessor, or elect to remove such materials and clean and remediate the Premises at lessee’s cost and expense.”** (p.20)

BP (p.27)

- **MODIFIED** - States that this clause does not require lessee to account for any unknown and undiscovered hazardous materials that are present on the Premises. Lessee has option to terminate the lease if discovery of hazardous materials affects use of Premises. (p.15)

BP (p.15)

**UNDERGROUND STORAGE TANK (UST)**

Dated Version (p.20)  
Only install UST w/permission of DHHL. UST must be removed at end of lease. Lessee must test surrounding ground for contamin.

BP (p.15)

BP (p.13)

BP (p.28)

- **MODIFIED** - Shorter – **“Lessee shall not, without lessor’s prior written consent, install on, upon or under the Premises any UST,**

BP (p.16)
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**NON-WARRANTY**

- **Dated Version**
  - The parties herein covenant and agree as follows . . . “That lessor does not warrant the conditions of the premises, as the same is being leased as is.” (p.13)

- **MODIFIED**
  - “Lessor does not make any warranties with respect to the condition of the Premises, and the Premises are being leased ‘AS IS’. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.” (p.15)

**CONDEMNATION**

- **Dated version**
  - “That, if at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any governmental agency or subdivision, the rental shall be...” (p.18)

- **BP**
  - If all or a portion of the lease premises is condemned (or required for any public purpose by the State, County, or other governmental agency), Lessee is entitled to “just compensation to the same extent and according to the same principles and rules of law as if the

- **MODIFIED**
  - “Lessee Accepts all risks of any defects or deficiencies in said premises, whether known or unknown, & lessee acknowledges that lessor makes no express warranties or any nature whatsoever pertaining to said premises. Lessee further acknowledges and agrees that lessor is not responsible for any latent defects, hidden defects or defects which time may reveal...” (p.14)

- **BP**
  - If all or a portion of the lease premises is condemned (or required for any public purpose by the State, County, or other governmental agency), Lessee is entitled to “just compensation to the same extent and according to the same principles and rules of law as if the

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**Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain.”**

The lessee can recover other costs (crops, improvements) “from the condemning authority.” (p.16)

**Extension of Time (“Force Majeure”)**

**Dated version**

“...lessor may for good cause shown, allow additional time beyond the time or times specified in the lease for lessee to comply...” (p.17)

BP (p.21)

–

BP (p.37)

BP (p.23)

BP (p.22)

**HI Law/Filing**

**Dated version:** “This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.” (p.20)

BP w/Addition

“Lessor warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.” (p.24)

BP w/Addition

“Lessor warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.” (p.21)

BP* (p.38)

BP w/Addition

“Each party shall have the right to enforce the terms and conditions of this Lease in a Court in the State of Hawaii with jurisdiction to hear and resolve the dispute between the parties arising from this Lease.” (p.24)

BP (p.23)

**Other**

**Waiver of Rental clause (waives first years of rent because lessee is req. to put substantial improvements on property) (p.3)**

Use Restriction:

“Lessor will not hereafter lease any land or space within one and one half (1.5) miles of the Premises to, or allow the use of

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• Termination Rights section gives lessees an option to terminate their tenancy in common at certain points in the lease. (p.2)

• Community Benefits: “Lessee agrees to invest in lessor’s future housing program fund as set forth and
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- any such leased space by, any tenant or user whose principal business is a home improvement center, lumber yard or hardware store.” (p.25)
- “Due Diligence” section describes the financial obligations tenants have to each other. (p.2)
- “Hazardous Material” clause is significantly modified (p.15)
- Special Conditions: Environmental Assessment, HRS CH 343 and Lessee support of future DHHL housing program (“Lessee agrees to invest 1% of its gross annual revenue to fund Lessor’s future housing program”) (Exhibit D)
- described [herein]”. (p.2)
- Purpose of Lease: detailed list of lease purposes (p.2)
A. Disposition of Hawaiian Home Lands

The Department of Hawaiian Home Lands (DHHL) is responsible for the disposition of certain public lands transferred through the Hawaiian Homes Commission Act of 1920, as amended (HHCA), along with various other parcels that have been transferred to DHHL, including parcels from the Department of Land and Natural Resources (DLNR), since the Act took effect. Hawaiian Homes Commission Act, 1920 (HHCA) § 204 (West, Westlaw though 2012). The HHCA authorizes the DHHL to dispose by lease to the “public” of “retained available lands not required for leasing” to native Hawaiians for certain statutory purposes. HHCA § 204(a)(2) (2012). “The powers and duties of the governor and [BLNR], in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title.” HHCA § 206 (2012); see also Haw. Rev. Stat. § 171-2 (West, Westlaw though 2012) (exempting “[l]ands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended” from being considered “public lands” for all of HRS chapter 171).

Upon passage of HHCA, all “available lands” (as defined by HHCA § 203) are designated “Hawaiian home lands” and to be “used and disposed” of by DHHL in accordance with HHCA. HHCA § 204(a) (2012). Furthermore, “[a]ny available land . . . not leased as authorized by section 207(a) of this Act [homestead development leases], may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department.” HHCA § 204(a)(2) (2012). If DHHL turns the land over to BLNR, the provisions of HHCA § 212 control. If DHHL chooses to retain the parcel for management and disposition (rather than turn it over to BLNR), DHHL “may dispose of those lands or any improvements thereon to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes….” HHCA § 204(a)(2) (2012). However, the department cannot sell or dispose of lands in fee simple, except as authorized under HHCA § 205. Id.

DHHL is authorized to “enter into and carry out contracts to develop available lands for homestead, commercial, and multipurpose projects.” HCCA § 220.5 (2012). Specifically, the Land Management Division (LMD) is responsible for the management of all DHHL non-homestead assets. These lands comprise the bulk of Hawaiian Home Lands Trust inventory (approximately 80%) and include those utilized for agricultural production, pastoral purposes, and commercial and industrial use. Through its various land dispositions, LMD generates revenue to support homestead development projects. LMD also provides support to DHHL’s Land Development Division (LDD) by issuing permits and licenses, such as Right of Entry and License Easements to the various state and county agencies which require access and use of Hawaiian home lands for infrastructure and utilities purposes. It is the goal of the LMD to be proactive in maintaining and increasing revenues for the trust. One recent example is the Kalaeloa Solar project, a recently approved renewable energy project on Hawaiian home lands. Ho’omaluhia, the department’s Energy Policy, which began several years ago, continues to grow as LMD works to provide leasing opportunities to developers of renewable energy projects on DHHL properties. In its endeavors to be a model of self-sufficiency and green energy sustainability, DHHL, in cooperation with the Department of Business, Economic Development and Tourism’s Hawaii State Energy Office, has become a leader in the state with its clean-energy initiatives, having issued several solar projects on trust land. 2010-11 Annual DHHL Report, p. 39-40.

The Department of Hawaiian Home Lands (DHHL) uses chapter 171 of HRS, as directed by HHCA sections 204 and 207 (207 is for homestead). Section 95 of chapter 171 will apply mostly here (Haw. Rev. Stat. 171-95). DHHL does not lease land from the private sector, with the exception of their office space downtown.

B. Procurement Process for Leases

1. Public Bidding Process

“Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 171-14
and 171-16.” Haw. Rev. Stat. § 171-32 (2012). DHHL uses either one of two processes in leasing land: (1) **Public Auction** (Voice Bid Process) or (2) **Public Auction by Negotiation** (Sealed Bid Process). Public auctions for the disposition of public lands may be held after following public notice procedures outlined in HRS § 171-16(a). Haw. Rev. Stat. § 171-16(a) (2012). Auctions are held in the land district in which the property is located and are conducted by the chairperson, a land agent, or other authorized employee of DLNR and supervised by BLNR. Haw. Rev. Stat. § 171-14 (2012). Applicants only qualify to bid in an action for agricultural and pasture leases if they satisfy additional requirements outlined in HRS § 171-14.5. *Id.*

According to HRS § 171-95 (disposition to renewable energy producers), a public auction is not required of DHHL when leasing to “governments, agencies, public utilities, and renewable energy producers*,” however Linda Chinn of the LMD assures me that DHHL uses the auction process. “Renewable Energy Producers” means:

“(1) **Any producer of electrical or thermal energy** produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, **biofuels or fuels derived from organic sources**, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or

(2) **Any grower or producer of plant or animal materials** used primarily for the production of **biofuels or other fuels**; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes.”

In both cases, due diligence is conducted on the bidder or potential lessee. Most of the financial requirements are set out in the “information packets” and once applications are submitted, on time, the due diligence is conducted internally by DHHL. If an applicant fails due diligence requirements, they are not able to bid or be a potential lessee.

**Public Hearings.** The DHHL Commission needs to give permission to all lease approvals, and the hearings are public. Following the requirements of HRS 171-95, two general public hearing processes take place before the lease is accepted.

**Public Viewing of Existing Leases.** The public can access and view the current leases held by DHLL either on DHHL website (www.hawaii.gov/dhhl/) or through the Bureau of Conveyances “Memorandum of Leases”.

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2. **Eligibility**

In addition to DHHL’s Applicant Qualification Criteria (discussed below), an applicant who has had during the last five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions is not eligible to purchase or lease lands, or to be granted a license, permit or easement covering public lands. Haw. Rev. Stat. § 171-13 (2012).

Further, an applicant will be automatically disqualified for either type of disposition process if that person: (a) is in arrears in the payment of taxes, rents of other obligations owing to the State of Hawaii or to any of its political subdivisions; (b) is a minor. If the applicant is eligible to proceed (i.e., they have received a letter from DHHL that they are eligible to bid in either process), but that person fails to submit (a) a detailed development plan, (b) a sealed rent proposal, or (c) an “earnest money deposit** in the form of certified or cashier’s check, then they are not eligible to bid for that specific general lease.

*The required earnest money deposit is an amount, equal to ¼ of the annual upset rent for the first year that gives some assurance that the qualified prospective bidders are dealing in good faith. All earnest money deposit checks shall remain uncashed and in the possession of DHHL until bidding opens. At that time, the Successful Bidder’s earnest money deposit shall be deposited and become non-refundable as lease
negotiations commence. If negotiations are successfully completed, the deposit shall be applied to future
lease rents. All earnest money deposit checks from unsuccessful bidders shall be returned uncashed.

[a.] **Due Diligence**

The leasing process involves conducting due diligence before the lessee can be considered credit worthy. 
Applicant qualification criteria differ depending on what type of parcel it is. DHHL always performs the due 
diligence in-house.

- For a **Industrial/Commercial Mixed-Use Development** (MCX) Lease: (Appendix B-1, p. 14-16)
  o A two step process shall be used to determine an applicant’s eligibility and qualification to enter 
    into a general lease for the property.
  o Step 1 – Completed Applications. All persons or entities interested in obtaining a lease for the 
    subject property must submit a completed application by the deadline which includes the 
    following:
    - 1. Completed application form
    - 2. A conceptual development plan with enough details to describe the type, size, and use of
       the improvements envisioned on the site
    - 3. Information describing applicant’s experience and capacity for completing the
       development as envisioned together with supporting documents
    - 4. Financial information showing estimated budget, planning funding sources for
       applicant’s proposed development, etc.
  o DHHL evaluates applications and informs persons or entities in writing if they are “eligible” or
    “not eligible” to bid.
  o Step 2 – Bid Qualification. Those persons who have submitted a completed application and have 
    received DHHL’s written confirmation declaring them eligible to bid shall have until a certain time
    to submit the following:
    - 1. A current Certificate of Good Standing (business entities only) issued by the State
       Department of Commerce and Consumer Affairs. If the business has not yet been
       registered to operate in the State of Hawaii, applicant should provide written statement of
       applicant’s intent to register.
    - 2. A current Tax Clearance Application…
    - 3. A detailed concept which shall include…
    - 4. Eligible bidder must demonstrate the financial capacity to complete the proposed project 
      as envisioned.

- For **Limited Industrial Use** (ML-20) Lease: (Appendix B-2, p. 7-8)
  o 1. Applicant must establish proof of the necessary experience and ability to be able to successfully 
     complete an industrial development in Hawaii. Must demonstrate each the following: [a,b,c]
  o 2. Applicant must demonstrate a feasible plan for completing the proposed development or
     renovation of existing improvements within a 36-month construction period. Applicant must
     submit: [a,b,c]
  o 3. Applicant must possess the financial capability to complete the proposed project. Applicant 
     must submit: [a,b,c].

3. **Disposition by “Public Auction” (Voice Bid process)**

**Notice.** “Public notice of any proposed disposition by auction shall be given at least once statewide and
once in the county where the land being disposed of is located. Notice of the auction shall contain the following: (1)
Time and place of the auction; (2) General description of the land, including the address and tax map key; (3)
Specific use for which the disposition is intended; and (4) Upset price or rental to be charged.” Haw. Rev. Stat. § 
171-16(a) (2012). In addition to any public notice, notice must also be posted in the internet in an “easily-located 

**Process.** Disposition by public auction is usually used for smaller industrial leases. A sample of the
“Notice of Public Auction” packet published by DHHL can be found in Appendix B-2. After “Legal Notice of
Public Auction” is first published, individuals, companies, and/or corporations interested in leasing the properties
described in the legal notice shall have 45 days from the date of the posting to submit an application for consideration by DHHL. All prospective bidders must be pre-qualified pursuant to the qualification guidelines as established by DHHL Applicant Qualification Criteria. (See Appendix B-2, page 7-8). The qualified applicant who bids the highest rent that meets or exceeds the minimum upset rent for the first ten (10) years of the lease shall be granted the opportunity to lease the property.

4. Disposition by “Public Auction by Negotiation” (Sealed Bid Process)
   
   **Notice.** “Public notice of a proposed disposition by negotiation shall be given at least once statewide and once in the county where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general terms the size, location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.” Haw. Rev. Stat. § 171-16(c) (2012). In addition to any public notice, notice must also be posted in the internet in an “easily-located manner.” Haw. Rev. Stat. § 171-16(e) (2012).

   **Process.** Disposition by public auction by negotiation is used for larger projects. The public notice requirement, stipulated in HRS § 171-60(a)(3) requires DHHL to publish a packet with a variety of information. (See Appendix B-1 for an example of DHHL’s “Public Notice of Proposed Disposition by Lease Negotiation” packet.). After this public notice is first published, individuals, companies, and/or corporations interested in leasing the properties described in the legal notice shall have 45 days from the date of the posting to submit an application for consideration by DHHL. All prospective bidders must be pre-qualified pursuant to the qualification guidelines as established by DHHL Applicant Qualification Criteria. (See Appendix B-1, p. 14-16)

   **Development by Contract & Development by Project Developer Agreement.** Prior to entering into a project developer agreement with a developer, DHHL shall (1) Set by appraisal the minimum rental of lands to be disposed of on the basis of the fair market value of the lands; (2) Give notice of the proposed disposition in accordance with applicable procedures and requirements of HRS § 171-60(a)(3); (3) Establish reasonable criteria for the selection of a private developer; and (4) Determine within forty-five days of the last day for filing applications the applicant or applicants who meet the criteria for selection, and notify all applicants of its determination within seven days of such determination. HHCA § 220.5.

5. Rent Valuation

   **[a.] Upset Rental Price.** The upset rental price is determined by appraisal. Haw. Rev. Stat. § 171-17 (2012). There are multiple authorities for using HRS § 171-17(b) for determining rent:

   - “Notwithstanding the provisions of section 171-95, Hawaii Revised Statutes, in the leasing of Hawaiian home lands by the board to a public utility or other governmental agency, where such use directly benefits the department of Hawaiian home lands or the homestead lessees, the rental may be nominal; in all other instances, the lease rental shall be no less than the value determined in accordance with section 171-17(b), Hawaii Revised Statutes.” HHCA § 212.

   - “In any disposition to public utilities under this section: The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); provided that such sale price or lease rental may be on a nominal basis, if the board finds that such easement is required in connection with a government project.” Haw. Rev. Stat. § 171-95(b)(1) (2012) (specifically for “disposition to . . . renewable energy producers.”).

   DHHL has the option to use an in-house appraiser (must be qualified), but usually hires a third-party appraiser. Haw. Rev. Stat. § 171-17(b) (2012). The purchaser pays the cost of the appraisal. *Id.* The lease of rental lands “shall be no less than the value determined by: (1) An employee of the board qualified to appraise the lands; or (2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and such appraisal, and any further appraisal with the approval of the board, shall be at the cost of the purchaser.” Haw. Rev.
[b.] Procedures in the Event of Disagreement on Appraisal of Lease Rent. If the purchaser and DHHL disagree on the lease rent, the purchaser has the option, with DHHL’s approval, to hire a third appraiser, the cost of which will be split between the purchaser and DHHL. “[T]he purchaser may appoint an appraiser who together with the board’s advisor shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658A which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.” Haw. Rev. Stat. § 171-17(b) (2012).

c. Reopening Lease Rental. Most of the DHHL contracts include a rent reopening clause if the lease extends beyond 25 years, usually with 5-year step-ups. “In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by: (1) An employee of the department qualified to appraise lands; or (2) A disinterested appraiser whose services shall be contracted for by the board.” Haw. Rev. Stat. § 171-17(d) (2012). The lessee must be promptly notified of the determination, and should DHHL and the lessee disagree with the appraisal of the fair market rental, “the lessee may appoint the lessee's own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 658A. The lessee shall pay for the lessee's own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996.” Id.

d. Rent Reevaluation Upon Condemnation of Portion of Leased Lands. Value of compensation for condemnation is usually based upon “fair market value.” If all or a portion of the lease premises is condemned (or required for any public purpose by the State, County, or other governmental agency), Lessee is entitled to “just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain.” The amount of just compensation is to be determined by appraisal of fair market value. If lessee determines that the remainder of the leased premises are unusable as a result of the condemnation, lessee may surrender the premises and termination the lease upon delivery of written notice to lessor.

C. Leases

1. Length of Lease

Lease terms typically cannot exceed sixty-five (65) years in length due to limitations set forth in HRS § 171-36(a)(2). Exceptions to this are for residential leasehold, “which may provide for an initial term of fifty-five years with the privilege of extension,” provided that the total length of lease does not exceed seventy-five years.

2. Rental Payments. Rental payments are required monthly.* In most cases, lessee can pay in advance, but not more than a year in advance. If lessee does not vacate the premises at the expiration of the lease according to lease terms, lessee owes 2x monthly rent until the terms of the lease are satisfied.

*One lease (General Lease #258) requires quarterly rental payments.


HRS § 171-35 (Appendix B-6) requires that all leases issued by DHHL contain the following items:

- The specific use or uses to which the land is to be employed;
- (2) The **improvements** required; provided that a minimum reasonable time be allowed for the completion of the improvements;
- (3) Restrictions against alienation as set forth in section 171-36;
- (4) The **rent**, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semianual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
- (6) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter. Haw. Rev. Stat. § 171-35 (West, Westlaw through 2012).

Both DHHL and DLNR follow the same statute for General Lease Provisions. The following information is the same as on p.22-24, and also applies to DHHL.

Leases, licenses, and permits issued by BLNR are also subject to real property taxes “assessed on a pro rata basis against the lessee, licensee or the permittee and the lessee’s, licensee’s or permittee’s successor in interest.” Haw. Rev. Stat. § 171-27 (West, Westlaw through 2012). Reservation to State of rights to historic and prehistoric remains on leased premises. Haw. Rev. Stat. § 171-36.1 (West, Westlaw through 2012).

BLNR shall terminate lease if the Lessee or tenant violates any terms or conditions of the lease. BLNR can “take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.” Haw. Rev. Stat. § 171-39 (West, Westlaw through 2012).

When the lease expires, BLNR may choose to permit lessee to remain on the land “for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested.” After the one-year extension, BLNR “may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe.” Haw. Rev. Stat. § 171-40 (West, Westlaw through 2012).

4. **Lease Restrictions Required by Statute.**

HRS § 171-36 (Appendix B-6)
- (1) Options for renewal of terms.
- (2) Except residential leaseholds subject to additional conditions, **lease cannot extend beyond a sixty-five year term.**
- (3) “No lease shall be made for any land under a lease which has more than two years to run.”
- (4) “No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county.”
- (5) “No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.”

Other restrictions:

- DHHL retains the rights to all prehistoric and historic remains found on lease lands. HRS § 171-36.1 (Appendix B-6).
- Special requirements for commercial or mixed-purpose (HHCA 228 – see Appendix B-5).
- Withdrawal Clause. “Any Hawaiian home lands general leas issued by the department after June 20, 1985, shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.” HHCA § 204(a)(2) (Appendix B-5).
C. Department of Agriculture (DOA) and the Agribusiness Development Corporation (ADC)

Five instruments disposing of interests in public land are compared below. Two were issued by the Department of Agriculture (DOA) and three by the Agribusiness Development Corporation (ADC). The oldest is from 2001; the others were issued in either 2011 or 2012. Because the ADC does not make boilerplate templates available for public review, all five instruments are measured against a lease template provided by DOA. (See appendix C-1.)

The DOA issues two types of leases for agricultural land under its management: Agricultural Park (AP) lot leases and Non-Agricultural Park (NAP) lot leases. AP and NAP leases are generally the same except for maximum length and possibility of renewal. Leases for AP lots can range from 15 to 55 years and are not renewable or extendable, except where an extension is necessary for the lessee to qualify for a mortgage. Leases for NAP lots can range from 15 to 65 years and can be extended for purposes of securing a mortgage and for amortizing lessee-constructed improvements. The average term of both AP and NAP lot leases is 35 years. Extension of either type of lease cannot result in an aggregate lease length greater than the maximum allowable (55 and 65 years, respectively). Leases for NAP lots can also be effectively renewed through a process known as “conversion,” under which an existing encumbrance is extinguished and a new long-term lease is issued in its place. Selected terms and provisions of DOA’s newest AP lot lease (executed in 2001) and of one recent NAP lot lease are broken down below. One additional AP lease and one additional NAP lease are attached as appendices for further depth and reference. Since governors began transferring NAP lots from the Department of Land and Natural Resources (DLNR) to DOA in 2003, no new NAP leases have been signed by DOA and only two have undergone conversion. The two NAP leases attached, therefore, are the only ones thus far issued by DOA as lessor.

The ADC utilizes three instrument types to rent out the agricultural lands it manages: leases, licenses, and revocable permits. The ADC to date has issued only one lease, and that lease is compared in the table below. Historically, the ADC has employed licenses and revocable permits, many issued by DLNR before the land was transferred to ADC. Because the revocable permits examined for ADC-controlled lands were issued by the Department of Land and Natural Resources (DLNR), none are considered below, though one such revocable permit is attached for reference. Licenses for ADC-managed land have been issued by the ADC in its own name. Two such licenses, both for alternative energy uses, have been included in the comparison of terms and conditions. An additional license for non-energy use has been attached for reference.

I. Selected Lease Provisions from DOA Agricultural Park (AP) Lot Lease Template

Payment Terms and Conditions (p. 2)
“... the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a net annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments ...”

Base Annual Rental (p.2)
“For the first ten (10) years, the base annual rental shall be the sum of _____ DOLLARS ($_____), computed at _____ AND XX/100 DOLLARS ($_____) per acre per annum for arable land, and _____ AND NO/100 DOLLAR ($_____) per acre per annum for non-arable land, provided that if any non-arable land is converted to arable land, the base annual rental for such land will be computed at _____ AND XX/100 DOLLARS ($_____) per acre per annum, commencing on the date of final execution of this lease, or the date of such conversion, whichever is later, and such base annual rental shall be prorated ratably for the period; except, the Board may permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than
two years of base annual rental, the evidence of which shall be submitted to and approved by the Lessor within the first year of the lease term.”

Additional Rental (p. 3)

“Each year on or before the 31st day of March, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the report, the Lessee shall pay to the Lessor any additional rental due, which amount shall be determined in the manner described below: From the report, determine a value representing _____ per cent (_____%) of the gross proceeds, which includes revenues from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.”

Reopening of Annual Rental (p. 3)

“The base annual rental and additional rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years of the term, provided however, in no event shall the base annual rental be revised downward.”

Determination of Annual Rental upon Reopening (p. 4)

“The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report. The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor. In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may treat the failure as a breach of the lease and terminate this lease.”

Facilities Capital Recovery Fee (p. 5)

“The Lessee shall pay a facilities capital recovery (‘FCR’) fee commencing on the date the Lessor installs improvements in support of the Lessee's operations or the commencement of the term of this lease, whichever is later. The FCR fee is based on one-tenth of one per cent of the Lessor's expenditures and will be added to the base annual rental each year.”

Interest on Delinquent Rental (p. 5)
“Interest at the rate of one per cent (1%) per month shall be charged on delinquent rentals.”

Minerals and Water Rights (p. 5)

“(a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. ‘Minerals’, as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the premises, fast or submerged; provided that ‘minerals’ shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others.

“(b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right, shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee's improvements taken.”

Prehistoric and Historic Remains (p. 6)

“All prehistoric and historic remains found in, on, or under the premises shall be reserved to the Lessor.”

Ownership of Fixed Improvements (p. 6)

“The ownership of all improvements, including but not limited to fences and stockwater systems located on the demised land prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.”

Withdrawal (p. 6)

“The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the premises shall be subject to the right of the Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the premises withdrawn or made unusable. If any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the premises by the Lessee of the leased land being withdrawn. In the case of tree crops, the Lessor shall pay to the Lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also.”

Taxes, Assessments, etc. (p. 8)
“The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.”

Utility Services (p. 8)

“The Lessee shall pay when due all charges, duties, and rates of every description, including, but not limited to, water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the term, whether assessed to or payable by the Lessor or the Lessee.”

Irrigation Costs (p. 8)

“Without limiting the provisions of the preceding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system, if any, which provides irrigation water to _____ Agricultural Park including the demised premises. The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, Hawaii Revised Statutes, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set, and the Lessee agrees to abide by and to pay when due all assessments, tolls, fees, and charges set by such project.”

Character of Use (p. 9)

“(a) The Lessee shall use the premises hereby demised solely for diversified agriculture purposes, subject to the covenants, conditions, and restrictions of any and all encumbrances on the premises existing as of the date of this lease. No other use shall be permitted except as provided in section 4-153-33, Hawaii Administrative Rules.

“(b) No livestock production operations shall be conducted on the premises without the prior approval of the Department of Health.

“(c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the Department of Health.

“(d) No cesspools shall be constructed on the premises. However, upon approval from the Department of Health, the Lessee may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

“(e) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health.

“(f) Unless otherwise provided, the covenants, conditions, and restrictions contained in this section shall run with the land until the time that the premises is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.”

Utilization and Development of the Land (p. 10)

“The development of the premises shall be completed within three (3) years from the commencement date of this lease, with not less than fifty percent (50%) developed within the first two (2) years of the term. Utilization and development of the premises shall be in accordance with a plan of utilization and development which shall be prepared by the Lessee and approved by the Lessor before execution of this lease. Any modification or deviation
from the plan without the prior written approval of the Lessor may constitute a breach of this lease and cause for the termination thereof.”

**Good Husbandry and Conservation Practices (p. 10)**

“The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a conservation plan developed by the Lessor in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the conservation plan, the Lessor shall notify the Lessee of the discrepancy, and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.”

**Major Portion of Income (p. 11)**

“Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty per cent (50%) of the Lessee's total annual income; except, that this restriction shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and verification by the Lessor who may impose additional requirements to carry out the requirements of this section.”

**Sanitation (p. 11)**

“The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.”

**Waste and Unlawful, Improper, or Offensive Use of the Premises (p. 11)**

“The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, nor cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.”

**Inspection of Premises (p. 12)**

“The Lessee shall permit the Lessor and its agents, at all reasonable times during the term, to enter the premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.”

**Improvements (p. 12)**

“At any time during the term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, signs, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.”
Repairs to Improvements (p. 12)

“The Lessee shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted. Said buildings, structures, and improvements shall include, without limitation, roadways, drainage facilities, ditches, drains, culverts, reservoirs, flumes, pipelines, water courses, fences, gates, bridges, sidewalks, curbs, sewers, parking areas, fillings, pumps, wells, boundary markers and monuments, and other works and structures.”

Dwelling Restrictions (p. 13)

“The Board may permit farm dwellings on the premises if the need is clearly demonstrated. The farm dwellings shall be used in direct connection with agricultural activities on the premises and shall not be used for rental or any other purposes. The dwellings shall be subject to such additional terms and conditions as the Board may require including, but not limited to, an adjustment of the lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations, and rules, including, but not limited to, laws regarding environmental quality control.”

Insurance (p. 13)

“At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage, and the Lessee shall receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to retain the balance of the proceeds.”

Right of First Refusal (p. 14)

“An agricultural park lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the Board, as follows:

“(1) The Board shall have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this section, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements, and "appreciated value" means the replacement cost for developing the demised premises.

“(2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value.

“(3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who, together with the Lessor's appraiser, shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In this event, the Lessee
shall pay for the Lessee's appraiser, the Lessor shall pay for the Lessor's appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

“(4) The Board may re-purchase the lease and improvements with funds from the agricultural park special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-153-19 and 4-153-22, Hawaii Administrative Rules.

“(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase.

“(6) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35, Hawaii Administrative Rules.”

Assignments of Lease, Lease Interest, etc. (p. 16)

“(a) Any transferee, assignee, or sublessee of an agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender this lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

“(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

“(1) The lease contains the principal residence of the Lessee;

“(2) The Lessee becomes mentally or physically disabled;

“(3) Extreme economic hardship is demonstrated to the satisfaction of the Board; or

“(4) The assignment is to the corporate successor of the Lessee; provided that with the prior written approval of the Board, the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on March 6, 1992; as amended, a copy of which is attached hereto as Exhibit “C.” The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual and percentage (additional) rental pursuant to section 4-153-18, Hawaii Administrative Rules.”

Subletting (p. 18)

“The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the base
annual rental and percentage (additional) rental of the demised premises based upon the rental rate charged to the sublessee; and provided further that the base annual rental and percentage (additional) rental may not be revised downward.”

**Mortgage (p. 18)**

“Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest therein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without approval shall be void. Upon application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the leasehold of the demised premises. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the premises or any interest therein.”

**Breach (p. 19)**

“Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the premises covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of a holder of a security interest. Without limiting the foregoing, the Board, after due notice of default, shall terminate this lease or tenancy and take possession of the leased premises together with all improvements placed thereon without demand or previous entry and without legal process and shall retain all rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.”

**Liability Insurance (p. 22)**

“The Lessee shall procure and maintain during the entire period of this lease a policy or policies of commercial general liability insurance as will protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The minimum limit of said policy or policies shall not be less than the single limit of $1,000,000.00, approved by the Board and subject to periodic review and adjustment every two (2) year(s), insuring the Lessor and the Lessee against all claims for personal injury, death, and property damage. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.”

**Performance bond (p. 23)**

“The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a performance bond in an amount equal to two times the annual base rental as a surety for the satisfactory compliance of lease terms, conditions, and covenants. The bond shall provide that in case of a breach or
default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to
the Lessor as liquidated and ascertained damages and not as a penalty. The Lessor may waive or suspend the
performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms,
conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the bond
requirement at any time throughout the term of this lease.”

Justification of Sureties (p. 23)

“The bonds that are required herein shall be supported by the obligation of a corporate surety organized for
the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two
personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20,
Hawaii Revised Statutes; provided that the Lessee may furnish a written bond in the same amount and with the
same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at
times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by
the Lessor.”

Indemnity (p. 24)

“The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand
for loss, liability, or damage, including claims for property damage, personal injury, or wrongful death, arising out
of any occurrence on the demised premises or on sidewalks, parking areas, and roadways adjacent thereto, or
occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon, or growing
out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act
or omission of the Lessee, and from and against all actions, suits, damages, and claims by whomsoever brought or
made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or
the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this
paragraph shall survive the expiration or earlier termination of this lease.

Costs of Litigation (p. 24)

“If the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than
condemnation proceedings), without any fault on the Lessor's part, the Lessee shall pay all costs and expenses
incurred by or imposed on the Lessor including, but not limited to, attorney's fees; furthermore, the Lessee shall pay
all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements
of this lease, in recovering possession of the demised premises, or in the collection of delinquent rental, taxes, and
any and all other charges.”

Liens (p. 25)

“The Lessee will not commit or suffer any act or neglect whereby the premises, any improvement, or the
estate of the Lessee in the same shall become subject to any attachment, lien, charge, or encumbrance, except as
provided herein, and shall indemnify, defend, and hold harmless the Lessor from and against all attachments, liens,
charges, and encumbrances and all expenses resulting therefrom.”

Lessor's Lien (p. 25)

“The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee,
on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the
rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for
all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided
in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.”
**Condemnation (p. 25)**

“If any portion of the demised premises shall be condemned for public purposes by the Lessor, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority:

“(a) The value of growing crops which it is not permitted to harvest; and

“(b) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this lease; provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the premises occupied by the Lessee.

“The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the premises were demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.”

**Right to Enter (p. 26)**

“The Lessor, the City and County of Honolulu, or their representatives shall have the right at all reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee’s use and enjoyment of the premises.”

**Extension of Time (p. 26)**

“Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown, may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.”

**Surrender (p. 27)**

“At the end of the term or other sooner termination of this lease, the Lessee shall peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise in this lease. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of the Lessee's personal property from the premises, the Lessor may remove or dispose of any and all personal property from the premises and either deem the property abandoned and dispose of the property or place such property in storage at the cost and expense of the Lessee, and the Lessee shall pay all costs and expenses for removal, disposal, transporting, and storage of the personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.”

**Non-warranty (p. 28)**

“The Lessor does not warrant the conditions of the demised premises, as the same is being leased ‘as is.’”

**Hazardous Materials (p. 28)**

“(a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials,
except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

“(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation:

“(1) all foreseeable and unforeseeable consequential damages;
“(2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans;
“(3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto;
“(4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and
“(5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

“(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.”

Covenant Against Discrimination (p. 29)

“The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or physical handicap.”

Fences (p. 29)

“The Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised premises if such fencing shall be required by the Lessor or should be so required by any law now in force or that may hereafter be enacted and shall and will maintain in good order and condition throughout the period of this lease the fences so constructed and those now existing on the demised premises.”

Setback Requirements (p. 30)

“Building setback lines shall be in accordance with applicable city and county ordinances and rules.”

Drainage Easements (p. 30)

“The demised premises shall be subject to drainage and flowage easements as applicable. The easement area shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainageway. The Lessee shall accept the storm runoff draining into and through the easement area and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.”
Roadway and Utility Easements (p. 30)

“The demised premises shall be subject to roadway and utility easements as applicable, which easements shall be in favor of property owners served by the easements; provided that the Lessee may cross the easements at any point; provided further that the Lessee shall be responsible for maintenance of the easements.”

Compliance with Laws (p. 30)

“The Lessee shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the premises which are now in force or later may be in force.”

Partial Invalidity (p. 31)

“If any term, provision, covenant, or condition of this lease should be held to be invalid, void, or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.”

Governing Law (p. 31)

“This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.”

Subdivision of Premises (p. 32)

“The Lessee shall allow the Lessor to subdivide the premises, with reimbursement of Lessee's reasonable costs.”
II. Selected Lease and License Provisions Spreadsheet Comparison

The instruments compared in the table below are:

1. DOA AP Lot Lease: General Lease No. S-4936 between DOA and Glad’s Landscaping and Tree Trimming, Inc., dated May 1, 2001, for approx. 9.4 acres on Oahu. (See appendix C-2.)
2. DOA NAP Lot Lease: General Lease No. S-3771 between DOA and Contemporary Landscaping, LLC, dated August 23, 2011, for approx. 10 acres on Oahu. (See appendix C-3.)
3. ADC Lease: General Lease No. LE-K1201 between ADC and BASF Plant Science, L.P., dated July 16, 2012, for approx. 10 acres on Kauai. (See appendix C-4.)
4. ADC License: License No. LI-K1102 between ADC and Green Energy Team, LLC, dated May 3, 2011, for approx. 5,870 acres on Kauai. (See appendix C-5.)
5. ADC License: License No. LI-K1101 between ADC and Pacific Light and Power, Inc., dated April 15, 2011, for approx. 1,985 acres on Kauai. (See appendix C-6.)

Attached for reference, but not included below, are the following instruments:

1. DOA AP Lot Lease: General Lease No. S-4923 between DOA and Frank F. Sekiya, dated November 14, 1986, for Lot 2, Waimanalo Agricultural Park Phase 1 on Oahu. (See appendix C-7.)
2. DOA NAP Lot Lease: General Lease No. S-3766 between DOA and Contemporary Landscaping, LLC, dated August 23, 2011, for approx. 7 acres on Oahu. (See appendix C-8)
3. ADC License: License No. LI-K1001 between ADC and Sunrise Capital, Inc., dated July 21, 2009, for approx. 434 acres on Kauai. (See appendix C-9.)
4. DLNR Revocable Permit: Permit No. S-7452 between DLNR and Leslie P. Milnes, dated November 1, 2010, for approx. 587 acres on Kauai managed by ADC. (See appendix C-10.)

Key:

I = identical to the template
C = some differences in language but consistent with the substance of the template
M = minor differences from the substance of the template
S = significant and major differences from the substance of the template
X = template provision not in lease
(text) = provides page number in lease and sets out selected similarities to, or differences from, the template and/or other instruments
GREEN = DOA leases
BLUE = ADC instruments
<table>
<thead>
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<th>Lease/License #</th>
<th>Type</th>
<th>Date</th>
<th>Lessee/Licensee</th>
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<tr>
<td>LE-K1201 ADC Lease 2012</td>
<td>Contemporary Landscaping C-3</td>
<td>BASF Plant Science C-4</td>
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<tr>
<td>LI-K1102 ADC License 2011</td>
<td>Contemporary Landscaping C-3</td>
<td>Green Energy Team C-5</td>
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<tr>
<td>LI-K1101 ADC License 2011</td>
<td>Contemporary Landscaping C-3</td>
<td>Pacific Light and Power C-6</td>
<td></td>
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<table>
<thead>
<tr>
<th>Appendix#</th>
<th>Lease or License Length</th>
<th>Payment Terms and Conditions</th>
<th>Base Annual Rental</th>
<th>Additional Rental</th>
<th>Reopening of Annual Rental</th>
<th>Determination of Annual Rental upon Reopening</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-4936 Doa AP Lease 2001</td>
<td>45 Years</td>
<td>I (p. 2)</td>
<td>M (base annual rental is calculated for first 15 years, not first 10 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 2)</td>
<td>S (failure to submit report on gross proceeds and to pay additional rental due within 30 days of date due constitutes breach, p. 2)</td>
<td>S (re-openings at 15th, 25th, and 35th years; lacks clause that base annual rental cannot be revised downward, p. 3)</td>
<td>I (p. 3)</td>
</tr>
<tr>
<td>S-3771 Doa NAP Lease 2011</td>
<td>35 years</td>
<td>I (p. 2)</td>
<td>M (does not distinguish between arable and non-arable lands, p. 2; rental offsets for land clearance or leasehold improvements do not apply to lease extensions or conversions, p. 33)</td>
<td>C (April 30, instead of March 31, is date for submission of report disclosing gross proceeds for calculation of additional rental, p. 2)</td>
<td>I (p. 3)</td>
<td>I (p. 3)</td>
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<tr>
<td>LE-K1201 ADC Lease 2012</td>
<td>35 Years</td>
<td>S (monthly installments, p. 5)</td>
<td>S (base annual rental is calculated for first 5 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 5)</td>
<td>S (in the event of lease conversion, a premium is added to annual rental amount for up to seven years, p. 33)</td>
<td>S (re-openings at 5th, 10th, 15th, 20th, and 25th years, p. 5)</td>
<td>I (p. 3)</td>
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<tr>
<td>LI-K1102 ADC License 2011</td>
<td>22 years or until such time licensee ceases to operate the permitted use</td>
<td>S (monthly installments, p. 3)</td>
<td>S (increasing scale of annual rental every one or two years over the life of the license, either specified by dollars/acre or as percentage of increase over preceding year, p. 3)</td>
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<tr>
<td>LI-K1101 ADC License 2011</td>
<td>25 years or until such time licensee ceases to operate the permitted use</td>
<td>S (monthly installments, p. 3)</td>
<td>S (similar to scale used in Green Energy license, except that arable and non-arable acres rent at different rates, p. 2)</td>
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**Notes:**
- **I** indicates that the lease/license includes an alternative clause.
- **S** indicates that the lease/license includes a scale clause.
- **X** indicates that the lease/license is not applicable.
- **M** indicates that the lease/license includes a premium clause.

**Base Annual Rental Notes:**
- **M** (base annual rental is calculated for first 15 years, not first 10 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 2)
- **S** (base annual rental is calculated for first 5 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 5)
- **X** (does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 33)

**Additional Rental Notes:**
- **M** (failure to accept terms of section is not considered in the alternative as a breach allowing lessor to terminate, p. 5)
- **S** (in the event of lease conversion, a premium is added to annual rental amount for up to seven years, p. 33)

**Reopening of Annual Rental Notes:**
- **S** (re-openings at 15th, 25th, and 35th years; lacks clause that base annual rental cannot be revised downward, p. 3)
- **S** (re-openings at 5th, 10th, 15th, 20th, and 25th years, p. 5)
- **X** (does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 33)
<table>
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<tr>
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<td>DOA AP Lease 2001</td>
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<td>M (adds language removing Capital Improvement Projects not used by lessee from calculation of FCR fee, p. 4)</td>
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<td>S-3771</td>
<td>DOA NAP Lease 2011</td>
<td>CONTEMPORARY LANDSCAPING C-3</td>
<td>M (in addition to 1% per month interest, lessee pays $50 per month service fee for each delinquent payment, p. 7)</td>
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<td>LE-K1201</td>
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<td>LI-K1101</td>
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<td>M (same as ADC lease and Green Energy license, p. 4)</td>
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<td>FACILITIES CAPITAL RECOVERY FEE</td>
<td>X (p. 5)</td>
<td>I (p. 5)</td>
<td>I (p. 5)</td>
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<td>INTEREST ON DELINQUENT RENTAL</td>
<td>X (p. 5)</td>
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<td>M (same as ADC lease, p. 4)</td>
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<td>MINERALS AND WATER RIGHTS</td>
<td>X (p. 5)</td>
<td>I (p. 6)</td>
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<td>PREHISTORIC AND HISTORIC REMAINS</td>
<td>X (p. 6)</td>
<td>I (p. 6)</td>
<td>I (p. 6)</td>
<td>S (terms more detailed than template and include examples; no provision that lessor owns remains; requirement to follow HRS chapter 6E, p. 23)</td>
<td>S (same as ADC lease, p. 19)</td>
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<td>OWNERSHIP OF FIXED IMPROVEMENTS</td>
<td>X (p. 6)</td>
<td>I (p. 6)</td>
<td>C (p. 6)</td>
<td>M (covered under section titled “improvements” at p. 15; improvements made by lessee either vest in lessor or are to be removed at lessee’s sole cost and expense.)</td>
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<td>WITHDRAWAL</td>
<td>X (p. 6)</td>
<td>C (p. 7)</td>
<td>C (p. 7)</td>
<td>M (section titled “withdrawal for public purposes”; mostly consistent, but includes appraisal process for determining compensation, p. 14)</td>
<td>S (similar to ADC lease, but provides that licensee can terminate if it deems taking leaves premises unusable; refers to ¶ 76, p. 23, which states withdrawal can only be for emergency roadways and irrigation systems, p. 11)</td>
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<td>TAXES, ASSESSMENTS, ETC.</td>
<td>X (p. 8)</td>
<td>C (p. 8)</td>
<td>C (p. 8)</td>
<td>C (section combines utilities and taxes provisions, p. 7)</td>
<td>C (same as ADC lease, p. 4)</td>
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**UTILITY SERVICES**
- I (p. 8)
- C (p. 8)
- C (combined with “Taxes, Assessments, etc.,” above, p. 7)
- C (combined with “Taxes, Assessments, etc.,” above, p. 4)
- M (combined with “Taxes, Assessments, etc.,” above, p. 5)

**IRRIGATION COSTS**
- C (p. 8)
- C (add sentence specifying that lessee “shall use due care” to protect the irrigation system, p. 8)
- X
- S (section titled “irrigation system maintenance”;
  licensee must maintain irrigation system on premises in good condition. p. 23)
- S (similar to Green Energy license, p. 5)

**CHARACTER OF USE**
- I (p. 9)
- M (cites to rules for NAP, not AP program; removes two clauses regarding livestock production operations, p. 9)
- S (most of the terms from template have been omitted, with the exception of prohibition of cesspools, p. 7)
- S (more similar to template than ADC lease, but adds soil erosion provision and omits section on assignments, subleases, and covenants; also incorporates some provisions from template section on waste and nuisance, p. 4)
- S (similar to Green Energy license, p. 5)

**UTILIZATION AND DEVELOPMENT OF THE LAND**
- I (p. 10)
- C (p. 10)
- S (omits terms requiring 50% development within 2 years and 100% within 3 years; property must be developed according to plans submitted and deviations therefrom must be approved, p. 8)
- S (lessee must follow a ten year harvesting plan, p. 5; within 3 years, initial clearing must begin on 50% of parcel and licensee must justify that 100% of parcel will be needed for the project, p. 22)
- S (specifically references plan attached as exhibit, p. 6; within 3 years, licensee must show activity in at least 50% of arable acreage and that entire acreage will be needed for Hydro Power Project, p. 23)

**GOOD HUSBANDRY AND CONSERVATION PRACTICES**
- I (p. 11)
- C (p. 11)
- X
- S (licensee must submit conservation plan developed with soil and water conservation district; covers land clearing, irrigation, drainage, noxious weed control, and general environmental degradation, p. 5; within 2 years of execution, licensee must
- S (same as Green Energy license, pp. 6, 18, 22)
<table>
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<td>Pacific Light and Power</td>
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</table>

submit soil and water conservation plan, p. 22; Licensee cannot engage in activities that result in soil erosion from water or wind; licensee must fill in small washes and ditches; prior to termination of license, licensee must submit erosion control plan, p. 18)

M (consistent with template except for brief reference to common infrastructure costs) (see below); Lessee enters into MOA with Kekaha Agricultural Cooperative and pays share of construction and maintenance costs as specified, p. 3; section titled “improvements” is generally consistent with template, p. 7)

C (same as Green Energy license, p.7)
<table>
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### Improvements Covered Under the Clause
- **S-4936**: Improvements covered under the clause, p. 13.
- **S-3771**: Improvements covered under the clause, p. 13.
- **LE-K1201**: Improvements, p. 9, is consistent with template, plus limitation on payment for “common infrastructure improvements.”
- **LI-K1102**: Improvements costs share percentage; see that provision, below, p. 7.
- **LI-K1101**: Improvements,” p. 7, is consistent with template, plus limitation on payment for “common infrastructure improvements.”

### Dwelling Restrictions
- **S-4936**: I (p. 13)
- **S-3771**: C (p. 10)
- **LE-K1201**: C (emphasizes only farm dwellings allowed with permission, p. 9)
- **LI-K1102**: S (all dwellings strictly prohibited; licensee cannot use premises for residence, p. 7)
- **LI-K1101**: S (same as Green Energy license, p. 8)

### Insurance
- **S-4936**: I (p. 13)
- **S-3771**: I (p. 13)
- **LE-K1201**: S (section titled “property insurance”; specifies “full replacement value”; submission of certificate of insurance made a condition of lease award, p. 12)
- **LI-K1102**: S (generally similar to but much shorter than ADC lease; specifies “full insurable value,” “state-owned improvements,” and policy must waive subrogation claims against state or its officers, p. 10)
- **LI-K1101**: S (same as Green Energy license, p. 10)

### Right of First Refusal
- **S-4936**: I (p. 14)
- **S-3771**: C (references are to NAP parks and to NAP chapters of HRS and rules, p. 14)
- **LE-K1201**: X
- **LI-K1102**: X
- **LI-K1101**: X

### Assignments of Lease, Lease Interest, Etc.
- **S-4936**: S (the clause does not mention the March 6, 1992, “Assignment of Lease Evaluation Policy” and associated calculations for determining premium to be paid, p. 16)
- **S-3771**: M (includes additional reason for assignment—primary residence—as specified in relevant NAP administrative rules; references more recent “Assignment of Lease Evaluation Policy” document, which is attached; cites to NAP program rules, p. 16)
- **LE-K1201**: S (short clause prohibiting any assignment or mortgage without prior approval of lessor, “which consent will not be unreasonably withheld,” p. 11)
- **LI-K1102**: S (similar to ADC lease, but states that “consent may be withheld in licensor’s sole discretion,” p. 8)
- **LI-K1101**: Extensive section titled “assignment,” with multiple, separately numbered subparts, treats assignment and related issues in depth. (p. 24)

### Subletting
- **S-4936**: I (p. 18)
- **S-3771**: C (p.18)
- **LE-K1201**: S (section titled “subleasing”; only allowed with prior approval; “profit on an sublease charges is neither allowed, nor shall be
- **LI-K1102**: S (similar to ADC lease; section titled “sublicensing”; licensee can sublicense with consent of licensor, but
- **LI-K1101**: S (similar to Green Energy license, but “consent may be withheld at licensor’s sole discretion,” p. 6)
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<tr>
<th>Mortgage</th>
<th>I (p. 18)</th>
<th>I (p. 18)</th>
<th>X (not included as a separate clause; however, assignments clause simply states that any mortgage must be approve by lessor, p. 11)</th>
<th>X (not included as a separate clause; however, assignments clause simply states that any mortgage must be approve by lessor, p. 8)</th>
<th>Subpart to assignments section specifies that mortgage must be approved by licensor. (p. 24)</th>
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<tr>
<td>Breach</td>
<td>C (p. 19)</td>
<td>I (p. 18)</td>
<td>M (generally same as template, but includes bankruptcy and failure to pay common infrastructure improvements costs as causes for breach and termination; does not mention advance rent retainable as liquidated damages, p. 10)</td>
<td>M (titled “breach or default”; similar to ADC lease, p. 7)</td>
<td>M (same as Green Energy license, p. 8)</td>
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<td>Liability Insurance</td>
<td>I (p. 22)</td>
<td>M (insurance “shall be in an amount to be determined by the lessor” and other differences, p. 23)</td>
<td>M ($500K/occurrence, $1M total coverage specified; no insurance needed for activities of agricultural cooperative; lessor reserves right to review coverage and require more if inadequate to risks on the property, p. 11)</td>
<td>M (similar to ADC lease, p. 8)</td>
<td>M (same as Green Energy license, p. 9)</td>
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<tr>
<td>Performance Bond</td>
<td>I (p. 23)</td>
<td>C (p. 23)</td>
<td>C (p. 25)</td>
<td>S (Licensee must submit surety bond to support commitment to remove all trees and vegetation from land and restore it to arable pasture land condition; calculation for increasing amount of bond set out, p. 22)</td>
<td>S (untitled section; licensee must submit surety bond to support commitment to return property to previous condition prior to vacation, p. 23)</td>
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<td>C (p. 28)</td>
<td>I (p. 14)</td>
<td>C (p. 10)</td>
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- **Surrender**
  - I (p. 28) : C (p. 28) : I (p. 14) : C (p. 10) : X
  - "extension of time" is identical to section in template, p. 16)
  - Section on p. 12 is same as Green Energy license.

- **Non-Warranty**
  - I (p. 28) : C (p. 28)
  - C (adds “lessee assumes all risks incidental to use of the property, p. 17)
  - S (same as ADC lease, but adds provisions specifically exempting licensee from any hazardous materials claims resulting from discharge prior to execution of license, p. 13)
  - S (same as Green Energy license, p. 13)

- **Hazardous Materials**
  - I (p. 28) : I (p. 30)
  - S (in addition to template provisions, section adds clauses making lessor responsible for contamination caused prior to execution of lease, allows lessor to demand testing and affidavits to ascertain whether hazardous materials are stored or have been released on the premises. (p. 20)
  - S (similar to ADC lease, but allows hazmat on the site with express permission of licensor or if used in normal course of licensee’s operations, p. 15)
  - S (same as Green Energy license, but notes that licensee remains responsible under DLNR agreement for some issues during Kekaha Sugar’s occupation of the premises, p. 16)

- **Covenant Against Discrimination**
  - I (p. 30)
  - M (adds factors upon which lessee may not discriminate, including family status, ancestry, disability, age, and HIV infection, p. 28)
  - C (longer than template, but less detailed than clause in NAP lease; does not mention family status, ancestry, disability, age, and HIV infection, p. 10)
  - C (similar to ADC lease, p. 7)
  - C (same as Green Energy license, p. 8)

- **Fences**
  - I (p. 30)
  - M (requires “stockproof fence” to be installed within six months of the date of lease execution; clause titled “Boundary Fences,” p. 32)
  - X
  - I (p. 14); additional clause near end of license, however, stipulates that licensee has fulfilled obligation to install boundary fencing. (p. 23)
  - I (p. 15)
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<td>I (p. 22)</td>
<td>I (p. 22)</td>
<td>C (p. 22)</td>
<td>C (p. 30)</td>
<td>I (p. 19)</td>
<td>I (p. 19)</td>
</tr>
<tr>
<td></td>
<td>X</td>
<td>X</td>
<td>M (same as ADC lease, p. 15)</td>
<td>I (p. 18)</td>
<td>I (p. 18)</td>
<td>I (p. 18)</td>
<td>C (same as ADC lease, p. 15)</td>
<td>C (same as ADC lease and Green Energy license, p. 15)</td>
<td>M (nearly identical to Green Energy license, but Kalepa Koalition cooperative not mentioned by name, p. 15)</td>
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<tr>
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<td>X</td>
<td>X (same as ADC lease, p. 29)</td>
<td>I (p. 15)</td>
<td>I (p. 15)</td>
<td>I (p. 15)</td>
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<td>C (same as ADC lease and Green Energy license, p. 15)</td>
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</table>

- **Setback Requirements**: Information about the setback requirements for the property.
- **Drainage Easements**: Details about drainage easements, including the ability to alter drainage ways with consent of lessor.
- **Roadway and Utility Easements**: Information about roadway and utility easements, including maintenance responsibilities.
- **Compliance with Laws**: Details about compliance with laws, including animal feeding operations.
- **Interpretation**: Interpretation and headings sections.
- **Headings**: Information about headings in the lease/license.
- **Partial Invalidity**: Details about partial invalidity of clauses.
- **Governing Law**: Information about the governing law.
- **Subdivision of Premises**: Details about subdivision of premises.
- **Terms not in Template**: Indicates if terms are not included in the lease/license template.
<table>
<thead>
<tr>
<th>Lease/License #</th>
<th>Type</th>
<th>Date</th>
<th>Lessee/License</th>
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<tbody>
<tr>
<td>S-4936</td>
<td>DOA AP Lease</td>
<td>2001</td>
<td>GLAD’S LANDSCAPING AND TREE TRIMMING</td>
</tr>
<tr>
<td>S-3771</td>
<td>DOA NAP Lease</td>
<td>2011</td>
<td>CONTEMPORARY LANDSCAPING</td>
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<td>LE-K1201</td>
<td>ADC Lease</td>
<td>2012</td>
<td>BASF PLANT SCIENCE</td>
</tr>
<tr>
<td>LI-K1102</td>
<td>ADC License</td>
<td>2011</td>
<td>GREEN ENERGY TEAM</td>
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<td>LI-K1101</td>
<td>ADC License</td>
<td>2011</td>
<td>PACIFIC LIGHT AND POWER</td>
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### Appendix #

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<tr>
<th>Holdover</th>
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<tbody>
<tr>
<td>X</td>
<td>Upon expiration of the lease term, if the land is not otherwise disposed of, the Lessor may allow the Lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the Lessor may prescribe, and further as provided in section 4-148-31, Hawaii Administrative Rules.” (p. 5)</td>
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### Hazardous Waste Evaluation

<table>
<thead>
<tr>
<th>X</th>
<th>Requires Level One Hazardous Waste Evaluation per EPA standards. (p. 31)</th>
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</table>

### Commercial Operations

<table>
<thead>
<tr>
<th>X</th>
<th>Lessor must approve any commercial operations (p. 32)</th>
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### Security Deposit

<table>
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<tr>
<th>X</th>
<th>Deposit equivalent to 2 months’ rent due at execution; refundable after all terms and conditions of lease have been fulfilled. (p. 11)</th>
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<tr>
<td><strong>Lease/License #</strong></td>
<td><strong>Type</strong></td>
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<td>DOA NAP Lease</td>
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<td>ADC Lease</td>
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<td>ADC License</td>
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<td>LI-K1101</td>
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<tr>
<td>Lease/License #</td>
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<td>LI-K1101</td>
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<tr>
<td>COMMON INFRASTRUCTURE IMPROVEMENT COSTS</td>
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<td>CROP CHANGES</td>
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III. Statutes, Rules, and Policies Controlling the Disposition of Interests in Public Lands Managed by DOA and the ADC

Information regarding DOA authority, requirements, and procedures for disposing of public land was taken from (1) applicable chapters of Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR); (2) materials publicly available on DOA’s website; (3) other materials provided by DOA, including a parcel list and a lease application package; and (4) an interview and subsequent correspondence with Randolph Y. Teruya, Agricultural Asset Manager for DOA’s Agricultural Resource Management (ARM) division.

Sources of law, policy, and process for ADC land dispositions are less abundant. The ADC has not yet published administrative rules and declined interview. There is, however, an HRS chapter dedicated to the ADC, and the corporation maintains a page on DOA’s website with some downloadable resources. The ADC via e-mail provided a land application form and tax map key (TMK) numbers for parcels under ADC management.

A. Department of Agriculture (DOA)

1. Lands Leasable from DOA

   a. DOA authority to manage, administer, and control land

   DOA derives its authority to manage, administer, and control state lands from at least three statutory sources. First, Hawaii Revised Statutes (HRS) § 171-2(8) exempts from the definition of “public lands” administered by the Department of Land and Natural Resources (DLNR) all “[l]ands to which . . . [DOA] holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed . . . under chapter 167.” Haw. Rev. Stat. § 171-2(8) (West, Westlaw through Act 129). HRS Chapter 167 (“Irrigation Water Development”) allows DOA to charge farmers for water supplied from DOA irrigation projects, to obtain security interests in real and personal property for resulting debts, to foreclose on those security interests if necessary, and then to lease (or sell) such property to recover what is owed. Haw. Rev. Stat. § 167-6 (West, Westlaw through Act 129). HRS section 155-4(11) also gives DOA authority to lease out such lands. Haw. Rev. Stat. § 155-4(11) (West, Westlaw through Act 129).

   Second, HRS section 171-3(b) mandates that “beginning January 1, 2010, the authority to manage, administer, and exercise control over any public lands that are designated important agricultural lands [IAL] pursuant to section 205-44.5, shall be transferred to [DOA].” Haw. Rev. Stat. § 171-3(b) (West, Westlaw through Act 129). HRS section 141-1(9) gives DOA the power to lease out IAL. Haw. Rev. Stat. § 141-1(9) (West, Westlaw through Act 129). IAL are defined as “those lands . . . that: (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) Contribute to the State’s economic base by producing agricultural commodities for export or local consumption; or (3) Are needed to promote the expansion of agricultural activities and income for the future, even if not currently in production.” Haw. Rev. Stat. § 205-44.5 (West, Westlaw through Act 129).

   Third, HRS section 171-11 allows the governor, “with the prior approval of the board of land and natural resources [BLNR], [to] set aside public lands to any department or agency of the State . . . for public use or purpose.” Haw. Rev. Stat. § 171-11 (West, Westlaw through Act 129). The definition of “public purpose” in chapter 171 includes the “development of . . . farmlots.” Haw. Rev. Stat. § 171-1 (West, Westlaw through Act 129). HRS section 171-112 establishes that (1) DLNR may “lease, exchange, direct purchase, or eminent domain private property for agricultural purposes[,]” and (2) that after June 30, 1986, the DOA may request the governor set aside and transfer
to DOA via Executive Land Order (ELO) such property “for use as an agricultural park [AP].” Haw. Rev. Stat. § 171-112 (West, Westlaw through Act 129). While section 171-11 generally requires BLNR approval for the subsequent disposition (including leasing) of lands transferred, it exempts from BLNR approval the disposition of lands transferred to DOA “for use as agricultural parks pursuant to chapter 166.” § 171-11. Section 171-11 also appears to authorize, but does not specifically cite, transfers from DLNR to DOA of Non-Agricultural Park (NAP) lots pursuant to HRS section 166E-3. Haw. Rev. Stat. § 166E-3 (West, Westlaw through Act 129). As with transferred AP lots, the subsequent disposition (including leasing) of transferred NAP lots is exempt from BLNR approval, but under separate statute. Haw. Rev. Stat. § 166E-12 (West, Westlaw through Act 129). AP and NAP lands are further distinguished below.

The three statutory source categories—chapter 167 lands, IAL, and section 171-11 transferred lands—appear to be non-exclusive and could overlap. For example, lands controlled by DOA under HRS section 171-2(8) and chapter 167 could be IAL and leased out as farmlots. Moreover, all ELOs dated after January 1, 2010, transferring land from DLNR to DOA reference HRS section 171-11 for authority, which requires BLNR approval for transfer, but some of these lands could also be IAL and thus fall under HRS section 171-3(b), which does not require BLNR approval. Http://hawaii.gov/gov/newsroom/executive-orders; Haw. Rev. Stat. §§ 171-11, 171-3(b). Source distinctions are of limited relevance to the DOA lease procurement process and lease terms, Interview with Randolph Y. Teruya, Agricultural Asset Manager, Agricultural Resource Management Division, Hawaii DOA, in Honolulu, Haw. (July 10, 2012) (Revised written summary at appendix C-11), with the notable exception that NAP lots transferred to DOA, if not “utilized or required for the public purpose stated” in the corresponding ELO “shall be withdrawn and the lands shall be returned to DLNR.” Haw. Rev. Stat. § 166E-3(c) (West, Westlaw through Act 129). There is no similar statute mandating return of AP lots, IAL, or lands controlled under section 171-2(8) and chapter 167.

Regardless of where DOA derives its statutory leasing authority for any particular parcel, all agricultural lands leased out by DOA fall into one of two exclusive categories: Agricultural Park (AP) Lands and Non-Agricultural Park (NAP) Lands. Teruya Interview (July 10, 2012). Designation as AP or NAP land is the primary land distinction in DOA leasing and determines certain basic lease provisions. Id. The term “Non-Agricultural Park” is potentially confusing as both APs and NAPs are used for agricultural purposes. Id. “Non-Agricultural Park” simply covers all lands leasable from the DOA that are not specifically designated as APs. Id.

The DOA does not generally lease land from other governmental agencies or private entities. Id.

b. Agricultural parks

i. Characteristics, purpose, and quantity of AP lots

APs are chiefly covered under HRS chapter 166 (“Agricultural Parks”) and HAR chapter 153 (“Agricultural Park Program Rules”). Haw. Rev. Stat. §§ 166-1 to 166-11 (West, Westlaw through Act 129); Haw. Admin. Rules § 4-153-1 to -37 (West, Westlaw through July 2012). An AP is defined as “any agricultural or aquacultural complex so designated by the board [of agriculture], for which state land or state funds are used, in order to meet the goals and objectives stated in section 166-1. Agricultural buildings, farm residences, and employee dwellings . . . may be considered part of the [AP].” Haw. Rev. Stat. § 166-2. Pursuant to HRS section 166-3, the DOA can develop APs on (1) lands specifically set aside and transferred to DOA by the governor for that purpose; (2) other lands subject to a partnership agreement in joint venture (JV) “with a federal agency, a county, or a private party” as set out in

---

1 For example, DOA acquired the former Hamakua Sugar lands on the Big Island pursuant to HRS chapter 167 and now leases that land as multiple lots in an agricultural park of 509 total acres. Interview with Randolph Y. Teruya, Agricultural Asset Manager, Agricultural Resource Management Division, DOA, in Honolulu, Haw. (July 10, 2012).
Among other things, HRS section 166-1 (“Legislative findings”) establishes that AP lands are chiefly intended for new and displaced farmers and should be leased at “reasonable cost with long tenure and security from urbanization pressure.” § 166-1. Randolph Teruya confirmed that APs are intended to foster new farmers and start-up agricultural producers and to accommodate displaced farmers, such as those forced to relocate for the construction of the H3 Interstate Highway. Teruya Interview (July 10, 2012). While section 161-1 implies that APs are to be developed on IAL, § 166-1, most APs to date have been developed on marginal lands. Teruya Interview (July 10, 2012). There is, however, a new AP in planning on prime land. Id.

According to the DOA website, there are currently 10 APs owned and operated by DOA consisting of 227 total lots. [link] APs generally consist of smaller lots ranging from 5 to 20 acres and are developed in clusters of up to 3 or 4 dozen contiguous lots. Teruya Interview (July 10, 2012). The number of AP lots has remained stable in recent years. Id.

ii. Lease terms specific to AP lots

With regard to basic lease terms, APs essentially differ from NAPs in relation to maximum lease length and renewability. Teruya Interview (July 10, 2012). AP lots are leased for 15 – 55 years, and the leases are generally not renewable. § 166-6(a)(4); §§ 4-153-33(1), (2). The only exception to the renewal prohibition on AP lot leases is an extension “to qualify the lease for mortgage lending or guaranty purposes . . . [provided that] the aggregate of the initial term and the extension shall not be for more than fifty-five years.” §§ 4-153-33(b), (b)(3). NAP lot leases, however, can run from 15 – 65 years, Haw. Rev. Stat. § 166E-8(b)(4)(E), and they are extendable if the current use and lessee satisfy certain criteria, provided the aggregate lease term does not exceed sixty-five years. Haw. Admin. Rules §§ 4-158-9, -11(a) - (b), -12 (West, Westlaw through July 2012). Furthermore, NAP lots leases can effectively be renewed under a process called “conversion,” which “means the extinguishing of an existing encumbrance and the issuance of a new long-term lease to the existing lessee.” Haw. Admin. Rules § 4-158-1 (West, Westlaw through July 2012). (Conversion is discussed in detail below.) Otherwise, AP and NAP lease terms are generally the same and leases of both AP and NAP lots average 35 years. Teryua Interview (July 10, 2012).

c. Non-agricultural parks: characteristics, purpose, and quantity

NAPs are primarily covered under HRS chapter 166E (“Non-Agricultural Park Lands”) and HAR chapter 4-158 (“Non-Agricultural Park Lands Program Rules”). Haw. Rev. Stat. §§ 166E-1 to -13 (West, Westlaw through Act 129); Haw. Admin. Rules §§ 4-158-1 to -40 (West, Westlaw through July 2012). Under HRS section 166E-9, DOA can develop NAPs on (1) lands specifically set aside and transferred to DOA by the governor under HRS section 177-11 for that purpose; (2) other lands subject to a JV partnership agreement with “a federal agency, a county, or a private party” under HRS section 166E-10; and (3) lands obtained by the DOA under chapter 167 and leased under HRS § 155-4(11). § 166E-9. As with APs, there are currently in operation no JVs involving NAP lands. Teruya Interview (July 10, 2012). AP and NAP lots are administered separately: “The [NAP] program and its rules shall be separate and distinct from the [AP] program and its rules. [NAP] lands are not the same as, and shall not be selected or managed as are lands under [AP] leases.” § 166E-3(b).

Pursuant to HRS section 166E-1, “certain public lands classified for agricultural use by [DLNR] should be transferred to [DOA]” for use as NAP lands in accord with Haw. Const. Art. XI, sec. 10, which mandates that “the public lands shall be used for the development of farm and homeownership on as widespread a basis as possible.” § 166E-1. The transfer of such lands is intended to “ensure the long-term productive use of public lands . . . for agricultural purposes.” Id. NAP lands are defined by statute as “lands that are not designated as agricultural parks
pursuant to chapter 166.” § 166E-2. “For any encumbered or unencumbered [NAP] lands transferred to [DOA] that are not being utilized for the public purpose stated [in the ELO], the order setting aside the lands shall be withdrawn and the lands shall be returned to [DLNR].” § 166E-3(c). There is no similar statutory provision applicable to AP lands transferred from DLNR to DOA.

According to a list available on the DOA website, 119 NAP lots had been transferred from DLNR to DOA as of December 11, 2007. http://hawaii.gov/hdoa/arm/non-ag-park-lease-transfers-from-dlnr-to-hdoa (see appendix C-12). An unofficial listed updated to August 9, 2012, reflects an increase of 37 lots, for a total NAP lot inventory of 157: forty-six lots are on Oahu, 43 on the Big Island, 54 on Kauai, 12 on Maui, and 2 on Molokai. “Properties Transferred from DLNR to HDOA by Governor’s Executive Order as of August 9, 2012,” submitted by Randolph Y. Teruya via e-mail to David Robyak (August 9, 2012, 18:17 HST) (on file with author) (see appendix C-13). NAP lots are spread widely across the state, usually non-contiguous, and range from 2 to 5,000 acres, with the larger lots generally used for ranching. Teruya Interview (July 10, 2012). Unlike APs, which are mostly developed on marginal lands, NAP lots are developed on a wide range of lands, contingent on use. Id. NAP lots are generally for use by established farmers and ranchers. Id.

d. Joint ventures

There are currently no JVs in operation between DOA and governmental or private entities, Teruya Interview (July 10, 2012); however, DOA is authorized by statute to enter JV agreements to develop both AP and NAP lands. §§ 166-3, -5, 166E-9. JVs may be developed by either disposition or contract, at the discretion of the BOA. Haw. Admin. Rules §§ 4-153-11(a)(1)(A), 4-158-16(a) (West, Westlaw through July 2012). JV partners may include “a federal agency, a county, or a private party.” §§ 166-4, 166E-10. In the case of JV development of AP lands, HAR section 4-153-10 specifically includes “irrigation systems” and defines “partner” as “a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development or subdivision of land for agricultural or aquacultural uses and has the financial ability satisfactory to the board to develop and subdivide the land.” §§ 4-153-10 (a) - (b). There is neither express mention of irrigation systems nor similar definition of “partner” in the rules relating to JV development of NAP lands.

Pertinent statutes suggest that AP and NAP lands transferred to DOA from DLNR under HRS section 177-11 may not be open to JV development, but rather that JVs are to be developed “on other lands with the approval of the board [or agriculture].” §§ 166-3, 166E-9(2). The same and nearby sections further imply that lands obtained by DOA through chapter 167 and leased under HRS § 155-4(11) may not be open to JV development. §§ 166-3, 166E-9(3). Neither HRS nor HAR, however, expressly indicates exactly what lands are open to JV development and one could plausibly argue that all are, given the ambiguity in the statutes.

AP and NAP lands developed as JVs with governmental or private entities are to be subject to a partnership agreement which at minimum provides: “(1) A determination by the board [of agriculture] that it is in the public interest to enter into the partnership agreement; (2) Long-term assurance that the land will be utilized for agricultural or aquacultural purposes; (3) Board approval of the [AP or NAP lands] development plans and specifications; (4) Selection and management of lessees in a manner approved by the board; and (5) Conditions to ensure a public benefit from any state funds expended for the project.” § 166-5(1) – (5); § 4-158-15(1) – (5). HAR sections specific to DOA JVs cover a host of other conditions and requirements for JV development of AP and NAP lands. §§ 4-153-11 to -12, 4-158-16 to -17. Among other things, those rules set out conditions and requirements relating to: (1) manner of disposition, (2) minimum improvements, (3) possible exemption from land use and building standards, (4) application procedures and timelines, (5) partner qualifications, (5) surety, (6) rent determination, and (7) subleasing and assignment. Id. Specific conditions and requirements for JVs, especially where they differ from general ones, are addressed below.
e. Exemption from land use regime

The BOA enjoys statutory discretion to “exempt [AP and NAP lots] from all statutes, ordinances, charter provisions and rules of any governmental agency relating to planning, zoning, construction standard for subdivisions, development and improvement of land, and the construction of buildings thereon.”\(^2\) §§ 166-4, 166E-10. That discretion is subject to several conditions, including: (1) the development must satisfy the intent and purpose of the respective statutory chapter, as well as minimum health and safety requirements, §§ 166-4(1), 166E-10(1); (2) the development does not violate any tariffs or safety standards established by the public utilities commission, §§ 166-4(2), 166E-10(2); and (3) the county where the AP or NAP land is located must approve the development. §§ 166-4(3), 166E-10(3). The county in question has forty-five days to approve or disapprove the development following submission of preliminary plans; developments are deemed approved if the county takes no action by the forty-fifth day. §§ 166-4(3)(A), 166E-10(3)(A). Final plans for the proposed AP or NAP development are deemed approved by the county “provided they do not substantially deviate from the preliminary plans and specifications,” and such “final plans . . . shall constitute the planning, zoning, building, construction, and subdivision standards” for the AP or NAP lands. §§ 166-4(3)(C), 166E-10(3)(C). The county and its officials are immune from any legal action relating to the approval or disapproval of AP and NAP development plans. §§ 166-4(3)(B), 166E-10(3)(B). In the event roads within AP or NAP lands are developed exempt from county standards, the state “shall assume the responsibility for maintaining” them. §§ 166-4(4), 166E-10(4). Additionally, in the case of NAP lands, the state is also responsible for maintaining any infrastructure improvements developed exempt from county standards. § 166E-10(4). “If the [AP or NAP land] improvements are to be developed exempt from county zoning and subdivision requirements . . . the project plans and specifications shall include detailed information on the method and costs of maintaining the exempt improvements.” §§ 4-153-8(c), 4-158-13(c).

2. Lease Procurement Process

a. Notice of lands available for lease

DOA notifies the public of AP and NAP lands available for lease in three ways: (1) newspaper publication determined by the method of disposition, (2) post to registered parties whose preferences match the land available, and (3) listing on DOA website. Teruya E-mail (July 18, 2012). Notice of land disposition is not covered in HRS Division I, Title 11 (“Agriculture and Animals”), the HRS sections specific to DOA, Haw. Rev. Stat. §§ 141-1 to 169-3 (West, Westlaw through Act 129), but rather in the HRS sections covering notice of disposition of public lands generally. Haw. Rev. Stat. §§ 171-15 to -16 (West, Westlaw through Act 129). The administrative rules governing notice for AP and NAP lands programs accordingly cite to HRS § 171-16 for authority. §§ 4-153-19(1), -20, -21(a), -22, 4-158-29. As noted above, however, HRS section 171-2(8) excludes from the definition of “public lands” any lands acquired by the DOA under chapter 167. § 171-2(8). As Chapter 171 pertains to the “Management and Disposition of Public Lands,” Haw. Rev. Stat. §§ 171-1 to -156 (West, Westlaw through Act 129), lands acquired by DOA under chapter 167 may be technically exempt from chapter 171 notice requirements. Nonetheless, nothing suggests that DOA treats notice of disposition for such lands any differently than the other lands under its management and control, and no express distinction is made in the pertinent HAR sections.

i. Public notice via newspaper publication

Publication requirements set out in HRS section 171-16 and pertinent HAR sections differ based on the method of land disposition. § 171-16; §§ 4-153-19(1), -20, -21(a), -22, 4-158-29. HRS section 171-16 treats each method of

\(^2\) Randolph Y. Teruya, in corrections made to his written interview summary and transmitted via e-mail of July 18, 2012, states that land use exemptions only apply to AP parcels. Teruya Interview (July 10, 2012); E-mail from Randolph Y. Teruya to David Robyak (July 18, 2012, 17:37 HST) (on file with author). While this may be practice-in-fact at DOA, the BOA may exempt either type of lot, subject to various conditions. The statutes granting that authority employ nearly identical language for AP and NAP lots, as discussed below.
§ 171-16. In addition to method-specific requirements, DOA rules for AP and NAP lands programs generally require that any public notice of disposition contain:

(1) General information regarding all the parcels of lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualifications of applicants, procedure for filing application, conditions of award, if any, and time and place at which more detailed information regarding the lease disposition may be obtained; and (2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and (3) The lessee’s responsibility for applicable lease disposition costs pursuant to section 4-153-6.

§§ 4-153-22(a)(1) – (3), 4-158-29(b)(1) – (3).

In the case of proposed JV agreements, the BOA shall

[.] give notice of the proposed partnership agreement by publication at least once in each of three successive weeks in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by [DOA], which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by interested persons.

§§ 4-153-11(a)(3), 4-158-16(a)(3).

(a) Auction

HRS section 171-16(a) mandates that, “[p]ublic notice of any proposed disposition by auction shall be given at least one statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following: (1) Time and place of the auction; (2) General description of the land, including the address and tax map key; (3) specific use for which the disposition is intended; and (4) Upset price or rental to be charged.” §171-16(a). Maps and metes and bounds descriptions must be available at the offices of the BLNR and its county land agent for public inspection. Id. There is no mention of newspaper publication as the specific manner of giving “public notice,” Id, and “public notice” is not defined in the definitions section of the statute. § 171-1.

(i) Agricultural park lands

Notice requirements for public auctions of AP parcels are covered under HAR sections 4-153-21(a), 4-153-22(a), and 4-153-22(d). §§ 4-153-21(a), -22(a), -22(d). “Notice of any proposed disposition by public auction shall be published at least once in each of three successive weeks in a newspaper of general circulation in the State and, in addition, in a newspaper of general circulation in the appropriate county. The last publication shall not be less than ten days before the date of the auction.” § 4-153-22(d). The rules otherwise restate requirements established in HRS section 171-16(a) or in HAR for disposition of any AP parcel. § 4-153-22(d)(1) – (5).
(ii) Non-agricultural park lands

Notice requirements for public auctions of NAP parcels are covered under HAR sections 4-158-24(a) and 4-158-29(c) and substantially restate the requirements of HRS section 171-16(a). § 4-158-24(a), -29(c)(1) – (4). There is no mention of newspaper publication as the specific manner of giving “public notice,” § 4-158-29(c), and “public notice” is not defined in the rules. § 4-158-1.

(b) Drawings

HRS section 171-16(b) requires that, “[w]henever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once statewide and once in the county where the land being disposed of is located. The notice shall contain: (1) The qualifications required of applicants; (2) A general description of the land, including the address and tax map key; (3) Specific use for which the disposition is intended; and (4) Date by which all applications must be filed, which date shall not be less than fourteen days after the last notice.” § 171-16(b). There is no mention in the statute of newspaper publication as the specific manner of giving “public notice.” Id.

(i) Agricultural park lands

Notice requirements for drawing by lots of AP parcels are covered under HAR sections 4-153-20, 4-153-22(a), and 4-153-22(c). §§ 4-153-20, -22(a), -22(c). “Notice inviting applications to participate in the drawing shall be published once a week for three successive weeks in a newspaper of general circulation in the State and, in addition, in a newspaper of general circulation in the appropriate county.” § 4-153-22(c). The rules otherwise restate requirements established in HRS section 171-16(b) or in HAR for disposition of any AP parcel. §§ 4-153-22(c)(1) – (5). HAR section 4-153-23 (“Conduct of drawing”) further specifies that “[t]he public notice of lease disposition shall identify intended restricted use, if any, and the priority of the preference categories” set out in HAR section 4-153-16(1) – (5). § 4-153-23(f). (See below for categories of applicants to be given preference.) After notifying applicants qualified to participate in a drawing for AP lots, “the administrator shall publish the notice of drawing [again] at least three times within a period of ten days in a newspaper of general circulation in the State and, in addition, in a newspaper of general circulation in the appropriate county, each publication to be not more than once in two successive days.” § 4-153-22(c).

(ii) Non-Agricultural Park Lands

Notice requirements for drawing by lots of NAP parcels are covered under HAR sections 4-158-23 and 4-158-29(d) and substantially restate the notice requirements of HRS section 171-6(a) and HAR for disposition of any NAP parcel. §§ 4-158-29(d)(1) – (5). There is no mention of newspaper publication as the specific manner of giving “public notice.” § 4-158-29(d). HAR section 4-158-25 (“Conduct of drawing”) further specifies that “[t]he public notice of lease disposition shall identify intended restricted use, if any, and the priority of the preference categories” set out in HAR section 4-158-28(a)(1). § 4-158-25(f). (See below for preference categories.) Unlike the requirements for drawing by lots for AP parcels (above), the rules do not mandate a second newspaper publication for NAP parcels after notification of qualified applicants.

(c) Negotiation

HRS section 171-16(c) governs notice of disposition by negotiation:

Public notice of a proposed disposition by negotiation shall be given at least once statewide and once in the county where the land being disposed of is located . . . . The notice shall invite proposals and state in general terms the size location and . . . rental of lots to be . . . leased, the terms of . . . lease, and the last date on which application will be received by the board, which date
shall not be less than thirty days after the last date of the notice. The notice shall also state the
times and places at which more detailed information with respect to the . . . lease may be secured
by interested persons.

§ 171-16(c). There is no mention of newspaper publication as the specific manner of giving “public notice.” Id.

(i) Agricultural park lands

Notice requirements for negotiation of leases of AP lands fall under HAR sections 4-153-19(b)(1) and 4-153-22(b).
§§ 4-153-19(b)(1), -22(b). HAR section 4-153-19(b)(1) mandates that DOA “[g]ive public notice in accordance
with the procedure set forth in section 4-153-22(b), of [DOA’s] intention to lease agricultural park land through
negotiation, setting forth the minimum conditions thereunder, and the uses for which the land will be leased. Any
person interested in securing the lease shall file an application with the administrator not later than forty-five days
after the first date of publication of the notice.” § 4-153-19(b)(1) (emphasis added). HAR section 4-153-22(b),
however, contradicts § 4-153-19(b)(1) with regard to the application timeline: “Notice of a proposed disposition by
negotiation shall be published at least once in each of three successive weeks in a newspaper of general circulation
in the State and in addition in a newspaper of general circulation in the appropriate county. The notice shall invite
proposals and state in general terms the size, location, and minimum rental of lots to be leased, the terms of the
lease, and the last date on which application shall be received by the [DOA], which date shall be not less than
thirty days after the last date of publication of the notice.” § 4-153-22(b) (emphasis added).

(ii) Non-agricultural park lands

Notice requirements for disposition of NAP parcels by lease negotiation are covered under HAR sections 4-158-
22(a), 4-158-29(a), and 4-158-29(e). §§ 4-158-22(a), -29(a), -29(e). Pursuant to HAR section 4-158-22(a), the
BOA must “[g]ive notice in accordance with the procedure set forth in section 4-158-30(d) [sic: should be 4-158-
29(e)] of [DOA’s] intention to lease [NAP] lands through negotiation, setting forth the minimum conditions
thereunder, and the uses for which the land will be leased. Any person interested in securing the lease shall file an
application with [DOA] not later than forty-five days after the first publication of the notice.” § 4-158-22(b)(1)
(emphasis added). In addition to the mistaken section reference, HAR section 4-158-22(b)(1) also contradicts the
timeline for application set forth in HAR section 4-158-29(e): “Public notice of a proposed disposition by
negotiation shall be given at least once in the land district where the land being disposed of is located . . . . The
notice shall invite proposals and state in general the terms and conditions that will be negotiable and those terms
which shall be predetermined and the last date on which application will be received by the [DOA] which date shall
not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which
more detailed information with respect to the . . . lease may be secured by interested person [sic].” § 4-158-29(e)
(emphasis added). There is no mention of newspaper publication as the specific manner of giving “public notice.” Id.
An exception exists to the notice requirement for lease disposition by negotiation: “[d]isposition of [NAP]
lands set aside for common use or for the processing of agricultural products may be negotiated without regard to
the limitations set forth in this section and section 4-158-29,” including those requiring public notice, “provided
that the disposition encourages competition within the agricultural processing industry and shall not exceed a
maximum term of thirty-five years.” § 4-158-22(e).

(d) Conversion

Conversion is a listed method of disposition under statues applicable to NAP lands, § 166E-8(a), and is defined
under NAP program rules as “the extinguishing of an existing encumbrance and the issuance of a new long-term
lease to the existing lessee.” § 4-158-1. Nonetheless, the public notice provisions of HRS section 171-16 do not
mention conversion, § 171-16, and the relevant HAR section does not set out public notice requirements for
disposition by conversion. § 4-158-8. Presumably, notice requirements in sections 4-158-29(a) and (b) for “any
disposition of public lands” would apply to disposition by conversion. §§ 4-158-29(a) - (b). In his interview,
Randolph Teruya did not discuss notice with regard to disposition by conversion and, in corrections to his written
interview summary, stated that “[c]onversion is not one of the methods of disposition within the statute or rules.” Teruya Interview (July 10, 2012).

ii. DOA register of prospective lessees

DOA rules require that “the administrator shall establish and maintain a register in which all persons desiring to acquire [AP] lands may register,” § 4-153-14, with “administrator” defined as “the head of the division of agricultural resource management, [DOA], or any officer or employee to whom authority has been delegated.” § 4-153-1. In practice, those interested in registering do so through an Expression of Interest (EOI) form available on the DOA website. http://hawaii.gov/hdoa/arm/arm_agparks/Expression%20of%20Interest%20form%20-%20rev.%2004-09.pdf (see appendix C-14). Although the rules covering NAP lands make no mention of a register, the EOI form is used for both AP and NAP leasing programs. E-mail from Randolph Y. Teruya to David Robyak (July 18, 2012, 17:37 HST) (on file with author). The EOI form allows interested parties to select (1) the desired island and district, (2) preferred parcel size (5-10, 10-20, or 20+ acres), and (3) the type of farming intended, as well as gathering basic information on qualifications and eligibility. Http://hawaii.gov/hdoa/arm/arm_agparks/Expression%20of%20Interest%20form%20-%20rev.%2004-09.pdf. Registration expires two years after the date the form is received by DOA or when a registered party fails to respond to an invitation to apply for a lease. Id. Whenever a suitable parcel becomes available for lease, the DOA posts a copy of the public notice and an invitation to apply for a lease to the registered party. Teruya E-mail (July 18, 2012).

iii. DOA website

Pursuant to HRS section 171-16(e), “[i]n addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner.” § 171-16(e). With regard to disposition of NAP lands, HAR section 4-158-29(a) mandates that “[i]n addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner, or on [DOA’s] website.” § 4-158-29(a). The HAR rules pertinent to disposition of AP lands, however, have no similar Internet notice provision. § 4-153-22(a). In practice, DOA maintains a list of all lots available for lease on its website. http://hawaii.gov/hdoa/arm/arm_agparks/arm_agparks.

b. Eligibility and qualifications

i. Agricultural park lands

Under HRS section 166-7, “[a]ny person, including a revocable living trust, partnership, corporation, limited liability company, association, or an agricultural cooperative” may lease an AP lot, provided that 75% of the membership of any such group qualify individually under the rules set out by the DOA. § 166-7. General rules for filing an application for an AP lot lease are found in HAR section 4-153-5, while HAR sections 4-153-13 and -15 set out eligibility requirements and necessary qualifications for applicants for AP lot leases. §§ 4-153-5, 4-153-13 to -15. Applicants must file applications with DOA’s Agricultural Resource Management (ARM) Division on “forms provided by the department, together with any supporting documentation required to verify qualification.” § 4-153-5(a) - (b). Fully completed applications are required for DOA review; incomplete applications not corrected “within ten . . . days of notification of deficiency . . . shall be deemed incomplete and disapproved.” § 4-153-5(c). Pursuant to HAR section 4-153-13, an applicant: (1) must be a United States citizen resident in Hawaii for at least three years or a permanent alien resident in Hawaii for at least 5 years; (2) must be a “bona fide farmer” or “new farmer”; (3) must not have had “a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof” within 5 years of leasing an AP lot; and (4) must not be “in arrears in the payment of taxes or other obligations to the State or any of its counties.” § 4-153-13. “Bona fide farmer” and “new farmer” are extensively defined in HAR section 4-153-1. § 4-153-1. Applicants must also submit, among other things: (1) a resume of farming experience; (2) a preliminary utilization and development plan, including a financial projection and cost estimates; (3) tax clearances and copies of state income tax returns.
for the preceding five years; and (4) a financial statement. § 4-153-15. Additional requirements apply to partnerships, corporations, associations, and agricultural cooperatives. *Id.* Under HRS section 166-8 and HAR section 4-153-16, preference is given to applicants who fall into one of the following categories: (1) honorably discharged military veterans; (2) individuals who became displaced farmers within 5 years preceding application or will become displaced farmers within 10 years after application, because the farm premises they owned or leased “were condemned, taken, or repossessed by a governmental authority or private person”; (3) operators of farms in zoning districts where such use is nonconforming; or (4) new farmers. § 166-8; § 4-153-16. Applicants seeking preference must furnish proof of same. § 4-153-17. Such preferential treatment applies “in any disposition of [AP] lots.” § 4-153-16.

### ii. Non-agricultural park lands

For NAP lands transferred to DOA already encumbered with an existing lease, “(1) the lessee . . . shall perform in full compliance with the existing lease or permit; (2) the lessee . . . shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county; [and] (3) the lessee’s . . . agricultural operation shall be economically viable as specified by the board [of agriculture].” §§ 166E-3(b)(1 – 3). DOA is prohibited from reducing the length of term or the rental amount for transferred lands so encumbered. § 166E-5. Moreover, “[n]o encumbered or unencumbered [NAP] lands with soils classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be transferred for the use or development of golf courses, golf driving ranges, and country clubs.” § 166E-3(b)(4). HRS section 166E-6 provides that the BOA “shall adopt additional rules . . . including eligibility requirements for each disposition and applicant qualifications.” § 166E-6. Those rules are set out in HAR section 4-158-27. § 4-158-27.

Under HAR section 4-158-27(a), an applicant must satisfy one or more of the following qualifications: (1) qualify as a “bona fide farmer,” (2) qualify as a “new farmer,” (3) meet other qualifications the board may impose under section 4-158-2, or (4) qualify as a citizen or non-resident alien and either be a “bona fide farmer” or “new farmer.” § 4-158-27(a). To qualify as a citizen, the applicant must have resided in Hawaii for at least three years. § 4-158-27(a)(4). To qualify as a non-resident alien, the applicant must have resided in Hawaii for at least five years. *Id.* “Bona fide farmer” and “new farmer” are extensively defined in HAR section 4-158-1. § 4-158-1. Furthermore, under HAR section 4-158-27(b), “all applicants shall demonstrate the ability to perform the lease terms” by submitting, among other things: (1) a resume of farming experience; (1) a preliminary utilization and development plan, including a financial projection and cost estimates; (3) tax clearances and copies of state income tax returns for the preceding five years; and (4) a financial statement. § 4-158-27(b). Additional requirements apply to partnerships, corporations, associations, and agricultural cooperatives. § 4-158-27(c). HAR section 4-158-28(a) establishes that preference shall be given to applicants who fall into one of the following categories: (1) honorably discharged military veterans; (2) individuals who became displaced farmers within 5 years preceding application or will become displaced farmers within 5 years after application, because the farm premises they owned or leased “were condemned, taken, or repossessed by a governmental authority or private person”; (3) operators of farms in zoning districts where such use is nonconforming; (4) new farmers; and (5) individuals that have “been displaced by reason of any natural disaster as defined in this chapter.” § 4-158-28(a). Applicants seeking preference must furnish proof of same. § 4-158-28(b). Unlike conditions for preferential treatment in the disposition of AP lot leases, which apply to all forms of disposition, § 4-153-16, preference in leasing NAP lots is only granted in disposition by drawing of lots. § 4-158-28(a).

### c. Application

#### i. Agricultural park lands

HAR chapter 153 (“Agricultural Park Program Rules”) establishes that “[u]nless otherwise provided in a public notice of disposition of [AP] lands, the applicant shall file an application with [DOA] . . . on forms furnished by [DOA], together with any supporting documentation required to verify qualification.” §§ 4-153-5(a) – (b). A financial statement in DOA approved format is a mandatory supporting document. § 4-153-5(b). Failure to correct
an incomplete application within ten days of notice of deficiency from DOA results in the application being “deemed incomplete and disapproved.” § 4-153-5(c). Moreover, “[e]ach applicant shall authorize [DOA] in writing to verify the applicant’s qualifications and any other information submitted.” § 4-153-5(d). HAR section 4-153-15 (“All applicants”) sets out specific supporting documents and affidavits required for application. § 4-153-15. Under chapter 153, “applicant” is defined as “any person, association, partnership, or corporation . . . which acts to acquire or obtain a lease or any interest therein.” § 4-153-1.

HAR sections 4-153-19 and 4-153-20, which cover, respectively, disposition by negotiation and by drawing of lots for AP lands, explicitly refer to “applicants” and “applications” and provide timelines for the filing of applications. §§ 4-152-19, -20. In the case of public auction for disposition of AP lands, however, the pertinent HAR sections make no mention of “applicants” or “applications,” but instead state that “[t]o be eligible to bid in an auction for an [AP] lease, a bidder shall qualify as a bona fide farmer or new farmer as defined in this chapter.” § 4-153-21(b). “Bidder” is not defined in HAR chapter 153. § 4-153-1. Given the definition of “applicant” (see above), bidders are presumably subject to the application requirements of sections 4-153-5(a) – (b) and 4-153-15.

ii. Non-agricultural park lands

HAR chapter 158 (“Non-Agricultural Park Lands Program Rules”) does not include a general section on application forms similar to section 4-153-5 for AP lots; however, chapter 158 sections covering notice and process for lease disposition by negotiation and drawing of lot require submission of an application. §§ 4-158-22(b)(1), -23, -29(d), -29(e). Chapter 158 sections covering disposition by public auction do not mention submission of applications. §§ 4-158-24, -29(c). Instead, HAR section 4-158-24 states that “[t]o be eligible to bid in an auction for a [NAP] lands lease, a bidder shall qualify as a bona fide farmer or new farmer as defined in this chapter.” § 4-158-24(b). HAR section 4-158-27 (“Application requirements”), however, mandates a host of conditions that must be met for all applicants and sets out specific supporting documents and affidavits required for application. § 4-158-27. Chapter 158 defines “applicant” as “any person or entity, which acts to acquire or obtain a lease of any interest therein,” § 4-158-1, so presumably section 4-158-27 covers auction bidders in addition to applicants for NAP land leases by negotiation and drawing of lots. HAR section 4-158-8 (“Conversion of qualified and encumbered lands”) makes no mention of application forms, but rather sets out criteria for conversion if the existing lessee requests it. § 4-158-8.

iii. Joint ventures

HAR sections relating to JV development of both AP and NAP lands require the submission of applications, §§ 4-153-11(a)(3), 4-158-16(a)(3), which presumably fall under the requirements set forth in HAR section 4-153-15 (“All applicants”) for AP lands and in section 4-158-27 (“Application requirements”) for NAP lands. §§ 4-153-15, 4-148-27. In addition, parties interested in JV agreements may be required to submit other information, including “performance experience records in agricultural or related development,” and to “answer, under oath . . . questions contained in a questionnaire prepared by [DOA].” §§ 4-153-11(a)(4), 4-158-16(a)(5). Applications to develop AP and NAP parcels in partnership with DOA must be received by DOA “not less than thirty days or more than ninety days after the last date of publication” of notice inviting applications. §§ 4-153-11(a)(3), 4-158-16(a)(3).

iv. DOA application packet

DOA uses the same application packet for leases for AP and NAP lots. Teruya Interview (July 10, 2012); Teruya E-mail (July 18, 2012). That application packet consists of five appendices: (1) “Application and Qualification Questionnaire”; (2) “Memorandum of Lease”; (3) “Personal Financial Statement Form”; (4) “Cash Flow Projection Form”; and (5) “Tax Clearance Information.” DOA Lease Application Packet submitted via e-mail from Randolph Y. Teruya to David Robyak (July 20, 2012, 07:26 HST) (on file with author) (Lease Application Packet) (see appendix C-15). Together, the five appendices cover in detail the numerous eligibility and qualifications requirements described above.
d. Disposition

HRS section 166-6 ("Agricultural Parks, Disposition") establishes that, “any provision of this chapter to the contrary notwithstanding, the board [of agriculture] may by negotiation, drawing of lot, or public auction, directly dispose of public lands and related facilities set aside and designated for use as agricultural parks, and any other lands and facilities under the jurisdiction of the department pursuant to section 166-3 and notwithstanding chapter 171.” § 166-6(a). Such dispositions “may be by lease” and “are subject . . . to . . . limitations[,]” including:

1. The property shall be disposed of for agricultural or aquacultural purposes only;
2. The lessee shall derive the major portion of the lessee’s total annual income from the lessee’s activities on the premises; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted;
3. The lessee shall comply with all federal and state laws regarding environmental quality control; [and]
4. The board [of agriculture] shall determine the specific uses for which the disposition is intended; parcel the land into minimum size economic units sufficient for the intended uses; [and] make, or require the lessee to make improvements as are required to achieve the intended uses . . . .

§§ 166-6(a), (a)(1) – (4). In addition to negotiation, drawing of lot, and public auction, HRS section 166-5 ("Agricultural parks, Joint ventures") creates what may effectively be a fourth method of disposition for AP lands—or perhaps a variant of disposition by negotiation. § 166-5. “Any agricultural park developed by [DOA] in partnership with a federal agency, a county, or a private party shall be subject to a partnership agreement approved by the [BOA], which agreement shall provide, at a minimum: . . . (4) Selection and management of lessees in a manner approved by the board . . . .” §§ 166-5, -5(4) (emphasis added). HAR sections covering JVs on AP lands reinforce a rebuttable presumption that joint ventures constitute a fourth method of disposition for AP lands. §§ 4-153-11, -12.

HRS section 166E-8 ("Non-Agricultural Park Lands, Disposition") allows DOA to dispose of public lands under its control and jurisdiction by lease via “negotiation, drawing of lot, conversion, or public auction.” § 166E-8(a). Such disposition is subject to the same limitations as disposition of AP lands, above. § 166E-8(b). Although HRS section 166E-9 permits the development of NAPs on lands “that may be subject to a joint venture partnership agreement,” it does not establish an independent selection process for JV lessees. § 166E-9(2). HAR sections covering JVs on NAP lands, however, are identical to those for AP lands and may effectively create a fifth method of disposition for NAP lands. §§ 4-158-16, -17.

If a prospective lessee of an AP parcel fails “to execute the lease within thirty days after presentation thereof, the board . . . shall terminate the lease or tenancy and take possession of the leased land together with all improvements placed thereon.” § 4-153-36. There is no similar provision in the rules for the NAP lands program.

i. Auction

Auction is not favored by DOA and has not been used to dispose of AP or NAP lands for at least sixteen years. Teruya Interview (July 10, 2012). DOA’s mission is not to find the highest or best use of the lands it controls, as that would drive up rents and thus increase food costs, but to assist farmers and educate the public. Id. Pursuant to HAR sections 4-153-21 and 4-158-24, “[a]ll public auctions [of AP and NAP lands] shall be held at the [DOA] or at any other convenient place in the district in which the land is located, and shall be conducted by the administrator or by an authorized employee of the division [of agricultural resource management] under the direction of the administrator, who shall perform the service without extra compensation.” §§ 4-153-21(a), 4-158-24(a).
ii. Drawing of lots

(a) Agricultural park lands

Pursuant to HAR sections 4-153-20:

Applications to participate in the drawing [for AP lands] shall be filed with the [DOA] within two weeks after the last publication date of the notice [inviting applications]. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. . . . All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board [of agriculture] at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled.

§ 4-153-20. HAR section 4-153-23 sets out the specific rules for conduct of drawing of lots for leases for AP lands:

(a) Qualified applicants shall be present in person or shall be represented by an agent with appropriate credentials. Applicants who are not present or arrive late at the drawing shall be disqualified.

(b) All qualified applicants shall be placed in the following groups:

(1) Group I, All persons given preference pursuant to section 4-153-16; or
(2) Group II, Bona fide farmers as defined in this chapter.

(c) [DOA] may determine the order of lot selection as follows:

(1) Within Group I, by prioritizing in any sequence the different preference categories identified in section 4-153-16(1) through 4-153-16(5).
(2) Within Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for [AP] lots intended for restricted use. [DOA] may also reserve or limit the number of intended restricted use lots designated to a subgroup and may determine the order in which lots for different restricted uses shall be drawn. If there is an insufficient number of qualified applicants for the first intended restricted use, the remaining lots may be made available for selection for an alternate intended restricted use, and thereafter for selection for non-restrictive permitted use until all lots are selected.

(d) Within each group or subgroup, the applicant whose name is first drawn shall be the first to select a lot and the drawing of names shall continue until all lots are selected or all applicants have selected, whichever occurs first. When subgroups have been established for intended restricted use lots, names of applicants from Group I subgroups shall be drawn first, in the sequence established pursuant to subsection (c), followed by Group II subgroups, then remaining Group I applicants, followed by remaining Group II applicants. When no such subgroups have been established, names of applicants from Group I shall be drawn before those from Group II, in the sequence established pursuant to subsection (c).

(e) After all lots have been selected, five additional names each may be drawn as alternates from Group I and Group II remaining applicants. In the event awards are canceled for failure to satisfy conditions of award or other reason, the lots made available shall be offered for award to the alternates, first form Group I and then from Group II in the order in which their names were drawn.

(f) . . . ‘Restricted use’ as used in this section means limited to use for a crop or agricultural product determined by the board to be the most appropriate use for the particular lot, based on consideration of the sire selection analysis, development plan and preliminary engineering report and agricultural feasibility analysis.

§ 4-153-23(a) – (f).
(b) Non-agricultural park lands

Rules for the drawing of lots for leases of NAP lands are covered under HAR sections 4-158-24, 4-158-25, and 4-158-29(d) and are virtually identical in language and substance to the rules for drawing of lots for AP lands. §§ 4-158-24, -25, -29(d).

iii. Negotiation

(a) Agricultural park lands

HRS section 166-11 directly covers “lease negotiation” for AP lands; however, the statute appears obsolete: “The [DOA] may negotiate and enter into leases with any person who: (1) As of July 1, 1996, holds a revocable permit for agricultural purposes; or (2) Has formerly held an agricultural lease which expired within the last ten years preceding July 1, 1996, and has continued to occupy the state land . . . .” § 161-11 (emphasis added). This statute is almost certainly no longer relevant given the conditions precedent for operation.

HAR sections 4-153-19 and 4-153-22(b) regulate negotiation of leases for AP lands. §§ 4-153-19, -22(b). Section 4-153-19 mandates that:

(a) A lease of [AP] land may be disposed of through negotiation upon a finding by the board that the public interest demands it.
(b)(1) . . . Any person interested in securing the lease shall file an application . . . not later than forty-five days after the first publication of notice;
(b)(2) [The administrator shall] . . . [d]etermine the applicants who meet the criteria for selection set by the board and notify all applicants of the administrator’s determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant’s objections, and the grounds therefor, in writing, within twenty days of the receipt of notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of [DOA] to follow the conditions and criteria.
(c) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in subsection (b)(2), dispose of the lease by negotiation.
(d) If two or more applicants meet the criteria for selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid . . . .
(e) Disposition of [AP] lands set aside for common use of for the processing of agricultural products may be negotiated without regard to the limitations set forth in this section and section 4-153-22; provided that the disposition encourages competition within the agricultural processing industry and shall not exceed a maximum term of thirty-five years.
(f) The lease shall be issued when conditions of the award of lease are fulfilled.
(g) Notwithstanding the provisions of this section and section 4-153-22 [which covers public notice of proposed disposition by negotiation], the board may renegotiate leases as provided in section 4-153-3.

§§ 4-153-19(a) – (g). HAR section 4-153-3, which sets out powers of the DOA administrator with regard to leasing, appears to apply to lease “renegotiation” in the sense that the administrator is authorized, among other things, to approve assignments, transfers, and subleases, establish additional criteria for selection of lessees, restrict land uses, and impose charges for services rendered by DOA. § 4-153-3.

(b) Non-agricultural park lands

HRS section 166E-11 addresses lease negotiation for NAP lands. § 166E-11. That section uses nearly the same language as section 166-11 (see above) but, among other differences, section 166E-11 lacks the date restrictions that make section 166-11 appear obsolete.
(a) [DOA] may negotiate and enter into leases with any person who:
   (1) Holds a revocable permit for agricultural purposes;
   (2) Has formerly held an agricultural lease or holdover lease of public lands that expired within the last ten years and has continued to occupy the lands; or
   (3) Is determined by the department to have a beneficial impact on agriculture.

(b) Lands eligible for lease negotiation under this section are limited to lands that are:
   (1) Zoned and used for agricultural purposes;
   (2) Set aside for agricultural uses only, by the governor through an executive order to the department; and
   (3) Not needed by any state or county agency for any other purpose.

(c) In negotiating and executing a lease as authorized, the board shall:
   (1) Require the appraisal of the parcel using standards of national appraiser organizations to determine the rental, including percentage rent;
   (2) Require the payment of a premium, computed at twenty-five per cent of the annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except that the premium period shall not exceed four years; and
   (3) Recover from the lessee the costs of expenditures required by [DOA] to convert the parcel into a leasehold.

[DOA] shall notify in writing those eligible for lease negotiations under this section and shall inform the applicants of the terms, conditions, and restrictions provided by this section. Any eligible person may apply for a lease by submitting a written application to [DOA] within thirty days from the date of receipt of notification; provided that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualifications requirements for a lease.

Id. HAR sections covering disposition of NAP lands by negotiation contain no rules implementing section 166E-11. §§ 4-158-22, -29(e). Rather, the NAP program rules are nearly identical to the corresponding rules for AP lands—sections 4-153-19 and 4-153-22(b), above. The NAP rules differ only in requiring that disposition by negotiation be in the public interest “as provided by HRS § 171-18.” § 4-158-22(a). HRS section 171-18 states that “[a]ll funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State,” and proceeds from returned “ceded” lands “be held as a public trust” for the support of specified objectives, one of which is “the development of farm and homeownership on as widespread a basis as possible.” § 171-18.

iv. Conversion (applicable to NAP lands only)

HRS chapter 166E (“Non-Agricultural Park Lands”) treats disposition by conversion only so far as to grant DOA authority to establish criteria and rules to “convert qualified and encumbered [NAP] lands to [DOA] leases or other forms of encumbrance.” § 166E-4. HAR section 4-158-8 covers conversion in greater detail:

(a) The board [of agriculture] may offer to convert an existing encumbrance on those lands transferred [from DLNR] into new long-term leases. Prior to the board making an offer to convert an existing encumbrance to a long-term lease, the board shall determine that it is in the public interest to assist those holding encumbrances, who presently operate or operated a viable agricultural activity for a livelihood. Further, by allowing conversion of existing encumbrances into new long-term leases, the State would realize greater returns and reduce disruptions to current ongoing farming operations. The lessee may request conversion of the lease if the remaining term is less than ten years, but more than five years. For land with encumbrances, conversion shall be limited to those lands:
   (1) Not needed by any state or county agencies for any other public purpose; and
   (2) Zoned, classified, or lease for agricultural activity.

§ 4-158-8(a). In disposing of NAP leases by conversion, the state may also (1) require a new appraisal of the land; (2) impose additional conditions consistent with CHR chapter 158; (3) recover any subdivision costs; (4) add a
twenty-five percent premium to the new rental amount for up to seven years for every year the current lessee has occupied the land; and (5) “require those qualifying [for conversion] to meet the bona fide farmer criteria . . . .” § 4-158-8(b). In converting existing leases under section 4-158-8, DOA may disregard section 4-158-30. § 4-158-8(c). HAR section 4-158-30 makes ineligible any lease applicants who in the preceding five years have (1) had a lease canceled for failure to satisfy terms, (2) are in arrears in the payment of state or county taxes, or (3) are not of legal age. § 4-158-30.

v. Joint ventures

(a) Agricultural park lands

HRS section 166-5 covers JVs on AP lands. § 166-5. Among other things, section 166-5 requires a partnership agreement which provides for “[s]election and management of lessees in a manner approved by the board [of agriculture].” § 166-5(4). HAR section 4-153-11 allows JV development of AP lands by disposition or contract and, among other things, sets out the process for selecting partners for JVs on AP lands. §§ 4-153-11(a)(1)(A), -11(a) (2) – (7), -11(b). Under section 4-153-11, the BOA shall:

(a)(5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as possible including but not limited to the following: the interested person’s proposal as to how and when the person intends to develop the land in partnership with the board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person’s costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;

(6) Establish reasonable criteria for the selection of a private party or parties as a partner; and

(7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board’s determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board may enter into a partnership agreement with the partner; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that meet the criteria, select the person who submitted the best proposal. The board may then negotiate the details of the partnership agreement; provided that the terms of the agreement shall not be less than those proposed by the partner in the application.

§§ 4-153-11(a)(5) – (7), (b).

(b) Non-agricultural park lands

HRS sections 166E-9 and 166E-10 authorize DOA to develop NAP lands in JV partnership with “a federal agency, a county, or a private party,” but leave the details of such JV development to the administrative rules under HAR chapter 158. §§ 166E-9(2), 166E-10. HAR sections 4-158-15 to 4-158-17 cover JVs on NAP lands. §§ 4-158-15 to -17. The process for selection of JV partners is virtually identical to that established for AP lands, above. §§ 4-158-16(a)(3) – (7), -16(b).
e. Conditions of lease award

i. Agricultural park lands

HAR chapter 153 (“Agricultural Park Program Rules”) empowers the board of agriculture to “[e]stablish conditions of award which must be met to the satisfaction of the administrator prior to lease execution, the condition to be included in the public notice of lease disposition.” § 4-153-3(b)(6).

In addition to requiring lessees to submit proof of eligibility, qualifications, and preference rights (set out above) as a condition of awarding a lease for AP lands, HAR Chapter 153 provides that:

(b) The lessee shall furnish the department, prior to the issuance of the executed lease, the following;

(1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the department and approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and

(2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with the lease terms and the lessee’s lot is substantially developed according to plans approved by the department; provided further that the department may reinstate the waived bond at any time during the term of the lease.

(d) The lessee shall utilize the agricultural park land only for the purposes specified in the lease, in accordance with a plan of development and utilization which, in the case of original lessees of agricultural park lots, shall be submitted for the administrator’s approval prior to the issuance of the lease.”

§§4-153-32(b), (d) (emphasis added). HRS chapter 166 (“Agricultural Parks”) does not specify conditions for lease awards.

ii. Non-agricultural park lands

The conditions for awarding a lease of NAP lands under HAR chapter 158 (“Non-Agricultural Park Lands Program Rules”) are the same as those for AP lands. §§ 4-158-2(b)(19); 4-158-20(b), (d). HRS chapter 166E (“Non-Agricultural Park Lands”) does not specify conditions for lease awards.

iii. General

In his interview, Randolph Teruya confirmed that the above conditions are current DOA practice. Teruya Interview (July 10, 2012). Teruya also recited conditions not expressly required in the statutes and administrative rules pertaining to leases of AP and NAP lands. Id. According to Teruya, the prospective lessee (i.e., the winner of the auction, drawing of lots, or bid for negotiation) is generally given a six-month right of entry to the parcel to prepare whatever is necessary to meet pre-signing conditions. Id. Beyond the conditions noted above, the lessee must secure approval of a conservation plan (CP) covering soil and water. Completing the CP within six months, Teruya said, is usually the most difficult condition to meet. Id. Prospective lessees have four options for preparing a CP: (1) work with Oahu Resource Conservation and Development (ORCD), a local non-profit; (2) hire a private civil engineering firm at significant expense; (3) self-create a CP using the website of the Natural Resources Conservation Service (NRCS), an agency of the U.S. Department of Agriculture; (4) work with the NRCS in preparing a CP. Id. The fourth option, Teruya said, is generally unviable because the wait time averages from one to two years. Id. Regardless of how the CP is prepared, it must be approved at a Soil and Water Conservation District meeting. Id.
f. Challenges to DOA leasing decisions

HRS sections specific to the DOA do not set out remedies for appealing DOA actions, except that “any person who feels aggrieved at any decision of any inspector . . . shall have the right to appeal from the decision to the board of agriculture.” Haw. Rev. Stat. § 141-6 (West, Westlaw through Act 129). Any resulting decision is “subject to judicial review.” Id. That section does not appear relevant to leasing because lease awards are made by the administrator of the division of agricultural resource management and confirmed by the board of agriculture. §§ 4-153-3(a); 4-158-2, -21.

The HAR chapters covering the AP and NAP programs do not mention any process for contesting decisions to award or not to award leases, with the exception of leases disposed of by negotiation. §§ 4-153-20(b)(2), 4-158-22(b)(2). The rules for both lands programs allow that an unsuccessful applicant for disposition by negotiation “may examine the basis of the determination . . . in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.” Id.

The HAR chapter on general DOA administration establishes rules for contesting various BOA actions but does not expressly mention challenges to land leasing decisions. Haw. Admin. Rules §§ 4-1-1 to -52 (West, Westlaw through July 2012). The rules create a framework for general proceedings before the board, §§ 4-1-11 to -22, and specifically address remedies for (1) rulemaking decisions, (2) denials of licenses, permits, or certificates, and (3) contested cases. §§ 4-1-23 to -49. Any interested person may petition the board regarding rulemaking, § 4-1-23(a), and applicants denied licenses, permits, or certificates are entitled to a hearing before the board. § 4-1-33. Contested cases may be initiated in several ways, but do not appear to cover challenges to leasing decisions. § 4-1-35 to -36. In his interview, Randolph Teruya stated that, while lease awards are approved by the board of agriculture at public meetings, there is no public hearing process for lease approval. Teruya Interview (July 10, 2012). According to Teruya, once lease awardees are announced by the board, the public has twenty days to file a challenge with the board. Id. Teruya maintained that this process is separate and distinct from that established for contested cases. Id. It is unclear where DOA derives authority to permit public challenges to lease awards.

3. Lease Terms and Conditions of Interest

a. Valuation; determination and payment of rents; re-opening

i. Appraisals and setting of lease rents

As established in the relevant HAR chapters, methods for appraising rental values of Agricultural Park Lands and Non-Agricultural Park Lands are generally similar and both are contingent, among other things, on method of disposition. §§ 4-153-18, 4-158-21.

(a) Agricultural park lands

HAR section 4-153-18 covers appraisals and setting of lease rents for most situations:

(a) Public auction. The appraisal of agricultural park lands for the determination of the upset lease rental at public auction may be made by an employee of the department qualified to appraise lands, or by one but not more than three disinterested appraisers contracted for by the administrator; provided that the upset lease rental shall be determined by disinterested appraisal when prudent management so dictates. Except as otherwise provided in this subchapter, no such lands shall be leased for a sum less than the rental value.
fixed by appraisal; provided that for any lease at public auction, the board may establish the upset lease rental at less than the appraised value set by an employee of the department and the land may be leased at that price. The department shall be reimbursed by the lessee for the cost of any appraisal made by a disinterested appraiser or appraisers contracted for by the department.

(b) **Drawing or negotiation.** The base rental and additional rental of agricultural park lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal, and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) **Reopening.** In the case of reopenings of the rental for an agricultural park lease, the base rental and additional rental of an ensuing period shall be the rental value at the time of the reopening determined in accordance with generally accepted appraisal methods. At least six months prior to the time of reopening, the rental value of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the administrator, and the lessee shall be promptly notified of the determination; provided that should the lessee disagree with the appraised rental, the lessee may appoint the lessee’s own appraiser who together with the department’s appraiser shall appoint a third appraiser, and the appraised rental shall be determined by arbitration as provided in chapter 658, [HRS]. In that case, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

**Automatic escalation of the appraised rental at reopening may be permitted.** The increase shall be based on the “Consumer Price Index for all Urban Consumers, U.S. City Average”, published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor, labeled as “CPI”. The calculation of the escalated value shall be based on a base index and a reopening period index, both of which are arithmetic averages over a set period of time. The quotient of these two indexes will set the rate of increase, which is then multiplied by the existing rental, giving the rental for the ensuing period.

In the event publication of the CPI is discontinued or not available, any comparable statistics, equivalent to the CPI, published by an agency of the United States or by a responsible financial periodical of recognized authority, shall be used to calculate the indexes as described in the preceding paragraph. The CPI computation shall be conclusive and binding, but shall not preclude any adjustment in the event of a published amendment to the CPI or an error in the computation; provided the lessee, within thirty days after receipt of notice, shall notify the lessor of the claimed error or dispute therein.

(d) **Assignment of lease.** In the event of an assignment of lease, the base rental and additional rental for any ensuing period may be redetermined by the board pursuant to appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator; provided that the base rental and additional rental shall be the rental value at the time of assignment determined by generally accepted appraisal methods. The cost of redetermining the base rental and additional rental shall be borne by the lessee.

(e) When more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for review by the public.

(f) **Notwithstanding anything to the contrary contained in this chapter 4-153, the administrator may recommend to the board for approval an adjustment of an appraised value.** The administrator may recommend using any of the following adjustments.

1. An adjustment of the fee simple value determined through appraisal as necessary to maintain equitable fee simple values between, among, or throughout the department's agricultural park system for parks having the same designated use and which are put out to lease within twelve months of each other.

2. An adjustment of the rental value determined through appraisal by:
   
   (A) Applying a percentage of the rate of return used in the appraisal instead of the appraisal's rate of return. An adjusted rate of return may be applied in the following cases:
   
   (i) For those uses which require extensive or large capital expenditures to meet lease terms and conditions;
   
   (ii) For those uses involving a crop of low yield value; and
   
   (iii) For those uses involving a crop or product which does not generate revenues for a substantial period of time after award of the lease, provided that the adjusted
rate of return shall apply only for the period of time in which revenues are not generated.

(B) Factoring in an agricultural park lot's unproductive acreage, e.g., drainageways, wastelands, restricted easements, common usage, and uncontributory land areas, for those agricultural park lots for which the specified use is for crops to be grown “in the soil or ground.”

(C) Factoring in extraordinary start-up costs for those crops or uses which require heavy initial capital investments before any returns are realized, e.g., shadehouse crops, wetland crops, etc., or those crops or uses which have unusually little or no return during the initial years of the lease.

(D) Delaying collection of the rental for those crops or specific uses where no income is realized during the first five to seven years. Generally, this adjustment would apply to orchard type crops where a plant must reach a certain maturity before bearing fruit, e.g., macadamia nut trees and guava and other tropical fruit plants. The proposed rental structure may factor in the no revenue years with low rent and the revenue years with a “catch-up” rent, making a multi-tier rental structure during the initial rental period.

(3) An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:

(A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the agricultural use value of the leasehold since commencement of the lease.

(B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time.

§ 4-153-18 (emphasis added to distinguish differences from NAP provisions, below).

If, with the approval of the board of agriculture, the lessee sublets the encumbered parcel, “the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the lessee by the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent and percentage rental, if applicable, of the demised premises based upon the rental rate charged to the sublessee; and provided further that the rent and percentage rental may not be revised downward.” § 4-153-33(a)(7). In the event the board of agriculture requires improvements to a leased AP parcel as a condition of the lease, “the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental.” § 4-153-24(2). “The board, at its discretion, may permit a farm dwelling or dwellings on an agricultural park lot if the need is clearly demonstrated. . . . The dwelling shall be subject to . . . adjustment of the base rental to reflect residential use.” § 4-153-32(c).

(b) Non-agricultural park lands

With the exception of the paragraphs establishing possible automatic rental escalation at the time of lease reopening (italicized above), HAR section 4-158-21, which covers appraisals and setting of lease rents for NAP lands, is almost identical to the provisions for AP lands set out in section 4-153-1. § 4-158-21. There is no express provision for automatic rental escalation at lease reopening in the NAP lands program rules. In the case of conversion, a process only applicable to NAP lands, the board of agriculture may “[r]equire the payment of annual lease rent by appraisal and a premium computed at twenty-five per cent of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years.” § 4-158-8(b)(4). The provisions of HAR section 4-158-29(6), which treats potential rental adjustments in the event an encumbered NAP parcel is sublet, are the same as for sublet AP parcels in HAR section 4-153-33(a)(7), above. §§ 4-158-29(6), 4-153-33(a)(7). In the event the board of agriculture requires improvements to a leased NAP parcel as a condition of the lease, “the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental.” § 4-158-18(2). Such offsets, however, do not apply to lease conversions. Id. “The board, at its discretion, may permit a farm dwelling
or dwellings on a leased lot if the need is clearly demonstrated. . . . The dwelling shall be subject to . . . adjustment of the base rental to reflect residential use.” § 4-158-20(c).

**ii. Compensation for eminent domain actions**

(a) Agricultural park lands

HAR section 4-153-28 provides that

whenever a portion of the public land under lease is condemned for public purposes by the State, a county, or any other governmental agency, the base rental shall be reduced in proportion to the value of the portion of the premises condemned. The lessee shall be entitled to receive from the condemning authority:

(1) The value of growing crops, if any, which the lessee is not permitted to harvest; and
(2) The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease;

provided that the lessee may, in the alternative, remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee. The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lease and be discharged from any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within such reasonable period allowed by the State.

§ 4-153-28.

(b) Non-agricultural park lands

The compensation provisions for condemnation of leased NAP land are identical to those for AP land, above. § 4-158-38(b).

**iii. Changes in rent for lease extensions**

(a) Agricultural park lands

Leases of AP lands may only be extended “to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency.” § 4-153-33(b). In that event, the rules merely state that “[t]he board may increase the rent and adjust the rental period.” § 4-153-33(b)(4). The process for calculating increased rent for lease extension is not specified.

(b) Non-agricultural park lands

Leases of NAP lands may be extended to qualify for a mortgage or to “amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing.” § 4-158-10(d). “All extensions shall require the determination of the base rent and additional rents,” either by one or more appraisers contracted by the administrator or, if the lessee disagrees, by the applicable provisions of section 4-158-21, which covers calculation of lease rents by manner of disposition. § 4-158-10(b). “In no case shall the base annual rent of the existing encumbrance be reduced from its current rate.” Id.
iv. Terms for payment of rent: when, how, and how often

The terms for payment of rent for AP and NAP parcels are the same. §§ 4-153-24(4), 4-158-18(4). “The rents as established by the board or at public auction . . . shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments.” The AP and NAP Program Rules do not specify any particular manner of payment (e.g., bank transfer, cashier’s check, etc.).

b. Assignment and subletting

Rules controlling assignments, transfers, and subletting of AP and NAP leases are substantially the same and permit all three actions subject to approval by the administrator of ARM. §§ 4-153-3(b)(4), 4-158-2(a)(9). Moreover, “the board [of agriculture] may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands.” Id. In general, “[a]ny transferee, assignee, or sublessee of an AP or NAP lease shall first qualify as an applicant under [the respective] chapter.” §§ 4-153-33(a)(5), 4-158-19(a)(3).

HAR section 4-153-33 sets out four situations in which assignment or transfer of an AP lease is permitted: “(A) The lease contains the principal residence of the lessee; (B) The lessee becomes mentally or physically disabled; (C) Extreme economic hardship is demonstrated to the satisfaction of the board; or (D) The assignment is to the corporate successor of the lessee[,]” subject to BOA review of the consideration paid by the assignee and the payment of a premium by the lessee to DOA. § 4-153-33(a)(6)(A) – (D). NAP program rules allow assignment or transfer in the event of disability, economic hardship, and corporate succession, as above, but not for principal residence. § 4-158-19(a)(4), (5). Neither the AP nor the NAP program rules address specific situations in which subletting is permitted.

Rules for both the AP and NAP programs require that a “lease . . . shall not be transferred or assigned unless the lease and improvements . . . are first surrendered to the board,” which has an option to repurchase the lease for either the remainder of the purchase price or fair market value less depreciation. §§ 4-153-29, -29(1); 4-158-35(a), -35(a)(1). The rules set out an appraisal process for determining fair market value. §§ 4-153-29(3), 4-158-35(a)(3). Instead of repurchasing the lease itself, the BOA may also allow “a qualified applicant to purchase the lease and improvements . . . for not less than the amount to be paid therefor by the board.” §§ 4-153-29(4), 4-158-35(a)(4).

c. Use restrictions

Pursuant to HRS chapters 166 and 166E, “[t]he [BOA] shall determine the specific uses for which the disposition of AP not NAP lots is intended; parcel the land into minimum size economic units sufficient for the intended uses; and make or require the lessee to make improvements as required to achieve the intended uses.” §§ 166-6(a)(4), 166E-8(b)(4)(A) – (C). The rules for both AP and NAP lands programs contain numerous, frequently similar provisions regarding how leased parcels may and may not be used, including:

- The BOA is empowered to establish use restrictions for all parcels leased. §§ 4-153-4(5), 4-153-11(a)(1)(C); 4-158-2(2), 4-158-16(a)(1)(C).
- The agricultural resource management division is required to analyze, inspect, and map AP and NAP lots to ensure suitability for intended uses and obtain a “land use district boundary amendment and county plan and zoning amendments as required.” §§ 4-153-8(b)(1), (5); 4-158-13(b)(1), (5).
- The administrator of ARM is required to note the use or uses for which the land will be leased in any public notice of disposition by negotiation, auction, drawing by lot. §§ 4-153-19(b)(1), 4-153-22 (c)(3), -22(d)(3), 4-153-23(f); 4-158-22(b)(1), 4-158-25(f), 4-158-29(c)(2), -29(d)(3).
- In the case of disposition of leases by drawing of lots, the DOA may prioritize intended restricted uses, create subgroups reflecting those priorities, and give preference to applicants based on those subgroups. §§ 4-153-23(c)(2), 4-158-25(d).
Every lease of AP or NAP lots must set out “[t]he specific use or uses to which the land is to be employed.” §§ 4-153-24(1), 4-158-18(1).

Lessees may only utilize land for the purposes set out in the lease and in the plan of utilization and development which must be submitted to the administrator of the division of agricultural resource management prior to issuance of the lease. §§ 4-153-32(d), 4-158-20(d).

In order to qualify for an extension of an AP or NAP lease, the lessee must be using the land as specified in the plan of utilization and development submitted to and approved by the DOA. §§ 4-153-(b)(1), 4-158-10(d)(1).

Mining rights on leased AP and NAP parcels are reserved to the State. §§ 4-153-32(f), 4-158-7. Additionally, surface and ground water are reserved to the State under any lease of AP land. § 4-153-32(f).

The BOA may permit alternative uses of the property as circumstances require. §§ 4-153-33(c), 4-158-20(d).

d. Risk of loss for destruction of leasehold property

In his interview, Randolph Teruya stated that the lessee bears the risk of loss in case of destruction of leasehold property, unless the AP or NAP lot is developed as part of a JV with DOA, in which case the JV agreement would apportion risk. Teruya Interview (July 10, 2012). There are currently no JVs on AP or NAP lands involving the DOA. Id. HRS chapters 166 and 166E, which cover AP and NAP lands, respectively, do not mention allocation of risk of loss for destruction of leasehold property. §§ 166-1 to -11, 166E-1 to -13. Administrative rules governing the AP and NAP programs likewise make no mention of who bears the risk of loss for destruction of leasehold property. For both AP and NAP leases, however, the rules empower the BOA to “[w]aive rental payments due to natural catastrophes and other external factors beyond the lessee’s control and determine the period for the waiver.” §§ 4-153-3(b)(8), 4-158-2(10).

e. Hazardous substances

Neither the HRS nor HAR chapters relevant to the AP and NAP lands programs expressly treat requirements, restrictions, or prohibitions relating to hazardous substances. Presumably, however, hazardous substances fall under the many general provisions in the statutes and rules that require lessees to obey health and safety laws and environmental regulations, protect watersheds, carry liability insurance, etc. For instance, HRS section 166-4 provides that BOA development of AP lots must “meet[] minimum requirements of health and safety,” § 166-4(1), while HRS section 166-6 establishes that any “lessee [of an AP lot] shall comply with all federal and state laws regarding environmental control.” § 166-6(a)(3).

f. Ownership of improvements at expiration of lease

Under HRS chapters 166 (“Agricultural Parks”) and 166E (“Non-Agricultural Park Lands”), the BOA may “require the lessee to make improvements as are required to achieve the intended uses” of the leased AP or NAP lot, but those chapters are silent on who owns improvements made by the lessee at expiration of the lease. §§ 166-6(a)(4), 166E-8(b)(4)(C). Corresponding administrative rules are likewise mute on the issue, although they treat lessee-built improvements in other contexts. The rules mandate that “all construction on the . . . lot shall be in accordance with plans approved by the administrator and . . . with all applicable federal, State, and county laws, ordinances, and rules.” §§ 4-153-32(e), 4-158-20(e). The rules also establish that AP and NAP lot leases set out “[t]he improvements required,” the cost of which the BOA may use at its discretion to offset up to two years of lease rental. §§ 4-153-24(2), 4-158-18(2). And, in the case of eminent domain actions, if any taking destroys or makes unusable “any permanent improvement constructed upon the land by the lessee, the proportionate value thereof shall be paid based upon the unexpired term of the lease.” §§ 4-153-33(d), 4-158-36. In his interview, Randolph Teruya stated that the ownership at lease expiration of any structure constructed by the lessee is usually determined at the time the structure is approved by the DOA and is later set out in the corresponding lease. Teruya Interview (July 10, 2012). Typically, Teruya said, larger and more valuable structures will be hauled off the lot by the lessee, assuming that such removal has been negotiated and approved. Id. All other improvements vest in the DOA at lease expiration. Id.
g. Permitting requirements as they relate to leasing

As detailed above, the DOA may allow lessees to develop AP and NAP lots exempt from elements of the state and local land use regimes, subject to approval by the county where the lot is located. As Randolph Teruya emphasized in written corrections to his interview summary, however, “DOA strongly prefers to develop APs [and, presumably, NAPS] in consonance with the county building/subdivision codes so that the roadways within the AP may be dedicated to the county, thus providing lessees with the ability to receive county services.” Interview summary edited by Randolph Teruya attached to e-mail from Teruya to David Robyak (July 18, 2012, 17:37 HST) (on file with author). “There are no permitting requirements at lease execution,” but rather permitting from federal agencies and the state department of health usually takes place after a farm is up and running. *Id.*

h. Parcel size requirements based on lease type

As noted above, AP and NAP parcels come in a range of sizes. Teruya Interview (July 10, 2012). Larger NAP parcels tend to be used for ranching. *Id.* Statutes require the board of agriculture to subdivide parcels so they are at least the minimum size necessary to be economically viable for the use intended. §§ 166-6(a)(4), 166E-8(b)(4)(B). But there are no statutes or rules mandating specific size ranges for different lease types or land uses.

i. Leasing for energy production

The AP and NAP lands programs’ statutes and rules define “agriculture” and “agricultural activities” broadly, so as to appear inclusive of bioenergy feedstock production, but they do not address bioenergy uses specifically. §§ 166-2, 166E-2; 4-153-1, 4-158-1. Statutes covering DOA generally, however, state that DOA “shall . . . promote and support worthwhile energy feedstock production activities in the State.” § 141-9(a)(1). HRS section 141-9 (“Energy feedstock program”) gives DOA several responsibilities to that end and, among other things, directs that “[t]he chairperson of the [BOA] shall also consult and coordinate with research programs and activities at the University of Hawaii that will assist in the further growth and promotion of the energy feedstock production industry in Hawaii.” § 141-9(c). The DOA “Overview of Strategic Plan” available online obliquely notes that DOA is “striv[ing] to achieve the most efficient and productive use of the state’s lands to attain the state’s food and energy objectives.” [http://hawaii.gov/hdoa/meetings_reports/HDOA%20Strategic%20Plan%2012.16.08%20-%20final.pdf](http://hawaii.gov/hdoa/meetings_reports/HDOA%20Strategic%20Plan%2012.16.08%20-%20final.pdf) (see appendix C-16).

B. Agribusiness Development Corporation (ADC)

The ADC is a public corporation created in 1994 that retains the option to become a private non-profit. ADC Strategic Plan, October 15, 2008 (available at [http://hawaii.gov/hdoa/adc/adc](http://hawaii.gov/hdoa/adc/adc)) (see appendix C-17). The corporation is exempt from Public Utilities Commission regulations, HRS chapter 171 statutes covering management of public lands, and all state taxes and civil service regulations, and it has the power to issue bonds with legislative approval. *Id.* The ADC is principally covered under HRS chapter 163D (“Agribusiness Development Corporation”). Haw. Rev. Stat. §§ 163D-1 to -33 (West, Westlaw through Act 129). The ADC is empowered by statute to adopt administrative rules “necessary to effectuate this chapter in connection with its projects, operations, and properties,” § 163D-4(a)(4), but has not yet done so. E-mail from Cameron Black, Hawaii State Energy Office, Department of Business, Economic Development, and Tourism, to David Robyak (July 31, 2012, 13:47 HST) (on file with author) (Black E-mail). HRS section 163D-1 (“Findings and purpose”) envisions the ADC as “a vehicle to process and make optimal use of agricultural assets” amid the downsizing of the sugar and pineapple industries that has left surplus agricultural land, irrigation water, and facilities. § 163D-1. According to the mission statement in ADC’s Strategic Plan, “The mission of the [ADC] is to acquire, and manage in partnership with farmers, ranchers, and aquaculture groups, selected high-value lands, water systems, and
infrastructure for commercial agricultural use and to direct research into areas that will lead to the development of new crops, markets, and lower production costs.” ADC Strategic Plan, October 15, 2008.

1. Lands Available for Lease, License, or Permit from the ADC

The ADC derives its authority to manage, administer, and control land from at least three statutory sources:

1. Lands Available for Lease, License, or Permit from the ADC

   The ADC derives its authority to manage, administer, and control land from at least three statutory sources:
   
   (1) The ADC may, “by itself, or in partnership with qualified persons,” purchase, develop, encumber, and dispose of any real or personal property in any fashion it chooses. § 163D-4(a)(7), (8).
   (2) The governor may transfer public lands “located within a project area to [the ADC] for its use.” § 163D-16(a).
   (3) With the approval of the governor, the ADC may lease state lands from other public agencies “upon such terms and conditions as may be agreed to by the parties.” § 163D-16(b).

HRS section 171-2 exempts all lands owned, managed, or controlled by the ADC from the definition of “public lands” controlled by DLNR, § 171-2(10), and section 163D-6 establishes that real property assets acquired by the corporation “shall not be subject to chapter 171 [‘Management and Disposition of Public Lands’].” § 163D-6(b)(3). There are, however, limits on ADC authority beyond those exercised by and through the governor, who directly appoints 8 of 11 members of the ADC board of directors. § 163D-3(b). “All agricultural projects, agricultural development plans, and project facility programs developed by the corporation must be approved by the board of agriculture [BOA] before implementation.” § 163D-8.5. Moreover, “[t]he agricultural planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.” § 163D-7(f). Statutes also establish that “[t]he legislature may authorize the corporation to acquire agricultural lands,” but it is unclear whether this requires legislative authorization for all land purchases or constitutes another manner by which the ADC may acquire land. § 163D-31(a).

“ADC currently manages two parcels of State land, both on Kauai: 12,800 acres of agricultural land in Kekaha . . . and 6,200 acres of agricultural land in Kalepa. [I]n Kekaha, approximately 800 acres of mauka land is vacant. All of the Kalepa lands are currently rented out.” E-mail from Lynn Owan, ADC, to David Robyak (August 1, 2012, 12:38 HST) (on file with author) (Owan E-mail). The tax map numbers for those parcels are:

- Kekaha—TMK (4)-1-2-002: Por 1, and
- Kalepa—TMKs (4)-3-9-001:002; (4)-3-9-002:001, 009 and 020; 4-2-001:003. Id.


2. Lease/License/Permit Procurement Process

   a. Notice of lands available for lease

HRS chapter 163D makes no mention of how the ADC shall notify interested parties of lands available for disposition, §§ 163D-1 to -33, and the ADC has not adopted rules for same. Other sources consulted, including the ADC web page and ADC reports and brochures, are likewise silent on the manner and requirements of notice, if any.

   b. Eligibility and qualifications

HRS chapter 163D makes no mention of specific eligibility or qualification requirements for prospective lessees, licensees, or permittees, §§ 163D-1 to -33, and the ADC has not adopted rules for same. Other sources consulted,
including the ADC web page and ADC reports and brochures, are likewise silent on eligibility and qualifications. Based on the ADC’s “Request for Lands Application Form,” however, one could infer that eligibility and qualifications necessary for ADC leases, licenses, and permits are generally similar to those required by the DOA in Part III, A, above. Attachment to Owan E-mail (see appendix C-19).

c. Application

“Individuals or organizations interested in renting ADC-managed agricultural land must complete [a] Request for Lands Application Form, which must be submitted to the ADC Board of Directors for approval.” Owan E-mail. A copy of the application is included at appendix C-19, although it is unclear how interested parties learn of or obtain the form, short of contacting the ADC directly to inquire about process. The application is not available on ADC’s web page and is not mentioned in HRS chapter 163D. §§ 163D-1 to -33. In addition to basic contact and personal information and the location where land is sought, the application form requires applicants to provide details regarding:

- (1) citizenship or permanent resident status;
- (2) past failure to satisfy the terms and conditions of an sale, lease, license, permit, or easement covering public lands;
- (3) delinquent taxes or other obligations owed to the state;
- (4) status as either a “bona fide farmer” or “new farmer”;
- (5) relevant education, training, and experience;
- (6) plan of utilization and development for the land being applied for;
- (7) business plan; and
- (8) financial capacity, including a personal financial statement.

ADC “Request for Lands Application Form,” Attachment to Owan E-mail.

d. Disposition

HRS section 163D-4 expressly allows ADC to lease out lands and renew those leases “on the terms and conditions it deems advisable.” § 163D-4(a)(7), (8), (14). According to e-mail correspondence with the ADC, the corporation disposes of land via three instruments: lease, license, or revocable permit. Owan E-mail. This is confirmed by the ADC’s “Request for Lands Application Form.” Attachment to Owan E-mail. As indicated on the application, (1) revocable permits are good for 30 days, renewable, and must be reissued annually; (2) licenses are effective for up to twenty years; and (3) any lease requires a survey and subdivision approval by the appropriate county. Id. The usual or preferred method by which ADC disposes of land is not treated in the sources considered, although one might infer disposition by negotiation, due to the lack of statutory requirements for auction or drawing and the contents of the application form.

e. Conditions of lease, license, or permit award

HRS chapter 163D makes no mention of conditions for the award of a lease, license, or permit, §§ 163D-1 to -33, and the ADC has not adopted rules for same. Other sources consulted, including the ADC web page and ADC reports and brochures, are likewise silent on conditions for issuance of leases, licenses, or permits. Please see Part II, above, reviewing terms of actual ADC instruments for additional information.

f. Challenges to ADC disposition decisions

HRS chapter 163D makes no mention of whether or how interested parties or the public may challenge ADC disposition decisions, §§ 163D-1 to -33, and the ADC has not adopted rules for same. Other sources consulted, including the ADC web page and ADC reports and brochures, are likewise silent on challenges to ADC decisions.
3. Specific Lease/License/Permits Terms and Conditions of Interest

Please see Part II, above, which reviews terms of actual ADC instruments, for information on terms and conditions of rental agreements for ADC managed land. Terms and conditions are not covered in a meaningful way in HRS chapter 163D, §§ 163D-1 to -33, and the ADC has yet to adopt administrative rules. Lacking boilerplate templates for ADC instruments, standard terms and how much they may vary cannot be determined.
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
GENERAL LEASE NO. S-5731
between
STATE OF HAWAII
and
KAHEAWA WIND POWER, LLC
covering a Portion of Government (Crown) Land of Ukumehame
situate at Ukumehame, Lahaina, Wailuku, Maui, Hawaii

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 501
HONOLULU, HAWAII 96809

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5731

THIS LEASE, made this 19th day of January 2005, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," whose address is Post Office Box 621, Honolulu, Hawaii, 96809, and KAHEAWA WIND POWER, LLC, a Delaware limited liability company, hereinafter referred to as the "Lessee," whose address is c/o UPC Wind Management, LLC, 100 Wells Avenue, Suite 201, Newton, Massachusetts. 02459.

WITNESSETH:

Lessor, pursuant to Section 171-95(a)(2), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of Lessee to be kept, observed and performed, does lease unto Lessee, and Lessee does lease from Lessor the premises at Ukumehame, Lahaina, Wailuku, Island of Maui, State of Hawaii situate in the County of Maui and temporarily identified as "Lease Area (for Wind Farm Purposes) together with access and electrical transmission line easements," more particularly described in Exhibit A attached hereto and made a part hereof. Lessee understands and agrees that Exhibit A is only a temporary map. Within six (6) months from lease commencement, Lessee shall, at its own cost, provide to the Lessor a survey-standard CAD map of the legal metes and bounds of the parcel (which shall not exceed 200 acres) together with the access and electrical transmission line easements, by a surveyor licensed to do business in Hawaii and in accordance with the standards established by the Department of Accounting and General Services (DAGS), Land Survey Division, such map to be confirmed and converted to a CSF map and description by the DAGS Land Survey Division. The parties hereto specifically agree to amend this Lease by replacing Exhibit A with the DAGS Land Survey Division CSF map and description.

TO HAVE AND TO HOLD the premises unto Lessee for the term of twenty (20) years with an option to extend for an additional twenty (20) years subject to Paragraph 57, commencing on the 1st day of February, 2005, up to and including the 31st day of January, 2025, unless sooner terminated as hereinafter

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DEPARTMENT OF LAND AND NATURAL RESOURCES
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P.O. BOX 821
HONOLULU, HAWAII 96809

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provided, Lessor reserving and Lessee yielding and paying to Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinafter:

A. First year rent waived. All rent shall be waived for the first year of the term.

B. Minimum Annual Rent. For the second (2nd) to tenth (10th) years of the term, Lessee shall pay a Minimum Annual Rent of ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) due in equal semi-annual installments on January 1st and July 1st, payable in advance, without notice or demand.

C. Percentage Rent. For the second (2nd) to tenth (10th) years of the term, the Lessee shall pay Percentage Rent in an amount equal to TWO AND ONE-HALF PERCENT (2.5%) of Gross Revenue, as defined below, to the extent such amount exceeds the Minimum Annual Rent in any year. Any Percentage Rent over and above the Minimum Annual Rent shall be due and payable within thirty (30) days of the end of the second year of the term and within thirty (30) days of each anniversary date thereafter. Each payment shall be accompanied by a Rent Report as defined below.

D. Gross Revenue defined. "Gross Revenue" shall be defined as all revenues earned relating to electrical energy generated on the premises by Lessee and delivered to purchasers of generated electricity or used in-house ("Energy"), and all revenues from green tag/certificates, pollution or environmental credits or offsets, and carbon credits (collectively "Green Certificates"), excluding, however, all revenues from other sources, including without limitation, federal and/or state production and investment tax credits, financing activities or the sale of the wind farm project. Gross Revenue shall be calculated in any given period on the basis of actual sales of Energy and Green Certificates. Energy and/or Green Certificates generated at the premises that are donated or bartered shall, for the purpose of calculating Gross Revenue, be valued at the rate of their most recent prior sale by the Lessee to the recipient of the donated or bartered Energy and/ or Green Certificates or at prevailing commercial rates, whichever is higher.

E. Rent Reports. Lessee shall keep an accurate record and account of all Gross Revenues earned for the payment period in accordance with acceptable record keeping practices.
within the business community. Lessee shall forward to the Lessor itemized statements ("Rent Reports") showing the amount actually earned for the last payment period. The Rent Reports shall be in reasonable and sufficient detail to enable Lessor to verify the accuracy of the rental payments provided for herein.

F. Rental reopenings, dates. The rental reserved, including both the Minimum Annual Rent and Percentage Rent shall be reopened and redetermined as of the day following the expiration of the tenth (10th) year of the term (hereinafter referred to as "11th-Year Reopening") and at Repowering (as defined in Paragraph 59).

G. Rental reopenings, conduct of. The rental for any ensuing period shall be the fair market rental at the time of reopening, provided that for the 11th-Year Reopening only, the Percentage Rent shall not be less than 2.5% nor higher than 3.5%. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658A, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraiser or independent appraiser, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20)
days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658A-23 and 658A-24, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments.

H. Repowering. Lessee shall notify Lessor in writing of any intent to repower the Wind Project no less than nine (9) months prior to Repowering. The Lessee shall be responsible for obtaining any permits or approvals necessary for any Repowering. Following receipt of a Repowering notice by Lessee, new Minimum Annual Rent and Percentage Rent shall be renegotiated in accordance with Section G. above.

I. Interest and service charges. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas,
coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that minerals shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken, damaged or rendered unusable or commercially unproductive at the site.

2. Prehistoric and historic remains. Any regulatory rights and ownership of the State of Hawaii over prehistoric or historic remains found in, on or under the premises, established pursuant to state law, including Chapter 6(E) Hawaii Revised Statutes.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

LESSEE AND LESSOR COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any...
assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease. All taxes and assessments for partial years during the term of this lease shall be prorated. Lessee shall have the right, at its own cost and expense, to refuse to pay and to contest the amount or validity of any tax or assessment by an appropriate proceeding diligently conducted in good faith which shall operate to prevent the collection of any such tax or assessment so contested or the sale of the premises to satisfy the same. Pending final judgment in an appeal from any such proceeding, Lessor shall not have the right to pay, remove, or discharge any tax or assessment thereby contested, provided that Lessee shall protect Lessor and the premises from any lien by adequate surety bond or other appropriate security.

3. Utility services. The Lessee shall be responsible for obtaining any utility services deemed necessary for Lessee's use and enjoyment of the premises and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or Lessee may become liable for during the term as a result of Lessee's use. The Lessee is authorized to grant to Maui Electric Company, Limited, hereinafter referred to as "MECO," a right of entry upon the premises for the construction, maintenance, repair and operation of MECO's poles, wire lines, underground power lines, guys, conduits and other appliances and equipment as may be necessary for the transmission of electricity to be used for light and power and communication and control circuits.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or
offensive use of the premises or any part thereof, nor, without
the prior written consent of the Lessor which shall not be
unreasonably withheld, conditioned or delayed, cut down, remove
or destroy, or suffer to be cut down, removed or destroyed, any
trees now growing on the premises.

7. Compliance with laws. The Lessee, in its
exercise of its rights under this lease, shall comply with all
of the requirements of all municipal, state, and federal
authorities and observe all municipal, state and federal laws
applicable to the premises, now in force or which may be in
force.

8. Right to Enter. The Lessor or the County and
their agents or representatives shall have the right to enter
and cross any portion of the premises for the purpose of
performing any public or official duties; provided, however, in
the exercise of these rights, the Lessor or the County shall not
interfere unreasonably with the Lessee or Lessee's use and
enjoyment of the premises.

9. Improvements. The Lessee shall, at its own cost
and expense, within three (3) years from the commencement of the
lease term, complete the construction of a 30-megawatt wind
power project or Project Improvements, in accordance with plans
and specifications submitted by the Lessee to and approved in
writing by the Chairperson and in full compliance with all
applicable laws, ordinances, rules and regulations, such
approval not to be unreasonably withheld or delayed. Initial
construction or installation of the Project Improvements shall
not commence until the Department of Land and Natural Resources
has been provided evidence of full financing of the construction
costs of the project, and the construction and installation of
the Project Improvements shall be completed free and clear from
all liens and claims. Any grading, realigning and/or paving of
the existing access road by the Lessee for the safe transporting
of heavy equipment to the premises during the construction phase
shall be at the Lessee's sole cost and expense. Thereafter, the
Lessee shall not construct, place, maintain or install on the
premises any building, structure or improvement of any kind
except with the prior written approval of the Chairperson and
upon those conditions the Chairperson may impose, including but
not limited to any adjustment of rent, unless otherwise
explicitly provided in this lease. The Lessee shall name the
Lessor as an obligee on all its contractor bonds and guaranty
agreements, including but not limited to: (a) Performance Bond
and Labor and Materialman's Bond issued by Goodfellow Brothers,
Inc., and (b) the guaranty agreements issued by GE Company and ABB, Inc.

10. [Intentionally omitted.]

11. Ownership of improvements. During the term of this lease, the improvements constructed by the Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of the Lessee. At early termination for whatever reason or expiration of this lease, all existing improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall be removed at the Lessee's sole expense, unless the Lessor elects to assume ownership of improvements as provided herein. Wind turbine foundations shall be removed to a depth of two (2) feet below grade. Those improvements of which Lessor assumes ownership shall transfer to the Lessor free of cost and free of subsequent liability to the Lessee. Throughout the term of the lease, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer or other similar liens to stand against the premises for work or labor done, services performed, or materials used or furnished to be used in or about the premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of the Lessor under this lease.

12. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements hereafter constructed or installed on the premises by Lessee in good order, condition and repair, reasonable wear and tear excepted. The Lessee shall also be obligated to repair and maintain any improvements shared with Lessor to the extent of Lessee's use of such improvements.

13. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses. The Lessee shall have
the right to contest any attachments or liens recorded against Lessor or the premises and resulting from any works of improvement made by or for Lessee provided (i) Lessee contests such attachment or lien by appropriate proceeding diligently conducted in good faith, and (ii) at the request of Lessor, Lessee shall furnish a lien release bond or other security acceptable to Lessor in the principle amount of such attachment or lien.

14. Character of use. The Lessee shall use or allow the premises to be used solely for the following purpose(s): (i) to conduct wind and weather monitoring activities, including the erection, relocation, maintenance and operation of anemometers and other wind and weather monitoring equipment, steel towers, concrete slabs, fences and buildings to properly operate, house, protect and otherwise facilitate Lessee’s wind and weather monitoring activities, the location of such equipment and related facilities to be determined by Lessee in its sole discretion; (ii) the erection, relocation, maintenance and operation of large wind turbine generators ("Turbines") and all related equipment and improvements necessary or useful for the conversion of wind energy into electricity, including but not limited to steel towers, foundations and concrete pads, footings, guy wires, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, required lines and substation facilities to transfer power from the Turbines to power transmission lines, energy storage devices, and other power production equipment, all in such number and in such locations as Lessee, in its sole discretion, may determine; (iii) the erection, maintenance and operation of power transmission lines, poles, anchors, support structures, underground cables, substations and interconnection facilities and associated roads for access and for installation and maintenance purposes as Lessee in its sole discretion deems to be necessary or appropriate to transmit power and transport workers, tools, material, equipment and other necessary items to and from or across the premises; and (iv) the use and enjoyment of the free flow of wind across the premises without interference from Lessor. Lessor also hereby grants to Lessee a non-exclusive easement in gross on, over and across any and all access routes to and from the premises for purposes of ingress and egress to and from the premises.

15. Assignments, etc. Except as otherwise provided in this lease, the Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion

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thereof or transfer or assign this lease or any interest herein, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession and any transfer or assignment made contrary to the terms hereof shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit B. The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 51% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph. Notwithstanding the above, a sale or transfer by Lessee of an ownership interest in the project greater than 51% in connection with any tax financing of the project shall not be deemed an assignment for purposes of this Paragraph 15, provided that Lessee retains control of the partnership, joint venture or corporation.

Notwithstanding the foregoing provisions of this Paragraph 15, Lessee shall at all times have the right to sell, assign, encumber, or transfer any or all of its rights and interests under this lease without Lessor’s consent and without payment of any premium to any entity predominantly owned or controlled by or under common ownership or control with Lessee; provided, however, that the term of any such transfer shall not extend beyond the term of this lease and that any and all such transfers shall be expressly made subject to all of the terms, covenants and conditions of this lease. No such sale, assignment, transfer, or easement shall relieve Lessee of its obligations under this lease.

16. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior
written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee’s gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

17. Indemnity. Except to the extent caused by the negligent or intentional acts of the Lessor or its employees, contractors or agents, the Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Lessee or its employees, contractors or agents relating to the Lessee’s use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the portion of the premises in the Lessee’s use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee’s non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee with respect to this lease or Lessee’s occupancy or use of the premises (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney’s fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney’s fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other applicable charges attributable to the premises.

18. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to Lessor, in full force and effect throughout the term of this lease,
commercial general liability insurance, with a minimum combined occurrence and annual limitation of Five Million Dollars ($5,000,000) with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.
19. **Bond, performance.** The Lessee shall, at its own cost and expense, within seventy-five (75) days from the commencement of the term of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease (and any additional period of time that the Lessee requires to remove the Project Improvements and restore the premises) a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000). This bond shall provide that: (a) in case of Lessee's uncured breach or default of any of the lease terms, covenants, conditions, and agreements, the Lessor may draw upon the bond for liquidated and ascertained damages and not as a penalty, and (b) that upon the expiration, cancellation or early termination of this Lease, the Lessor may draw upon the bond in order to remove the Project Improvements (except for access roads) and to restore the premises to its original or better condition. Any portion of a bond or security deposit held by Lessor and not applied to cure a breach or default of Lessee hereunder or not applied to remove the Project Improvements and restore the premises as herein provided shall be returned to Lessee. This provision shall survive the expiration, cancellation or other early termination of this Lease.

20. **Lessor's lien.** Subject to the other provisions of this lease, the Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

21. **Mortgage.** Except as provided in this lease or in any separate instrument executed by the Chairperson, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void. Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land to a third
party to the extent necessary to secure financing for the project. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee or holder, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "mortgagee or holder" shall mean and include any mortgagee or holder of a security interest in the premises and Lessee's interests under the lease, as well as any insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

Should Lessee mortgage any of its interest as provided in the preceding paragraph, Lessee and Lessor expressly agree between themselves and for the benefit of any mortgagee or holder (collectively, "Lenders") as follows:

(a) The Lenders shall have the right to do any act or thing required to be performed by Lessee under this lease, and any such act or thing performed by a Lender shall be as effective to prevent a default under this lease and/or a forfeiture of any of Lessee's rights under this lease as if done by Lessee itself.

(b) No default which requires the giving of notice to Lessee shall be effective unless a like notice is given to all Lenders. If Lessor shall become entitled to terminate this lease due to an uncured default by Lessee, Lessor will not terminate this lease unless it has first given written notice of such uncured default and of its intent to terminate this lease to each Lender and has given each Lender at least thirty (30) days to cure the default to prevent such termination of this lease. Furthermore, if within such thirty (30) day period a Lender notifies Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under
this lease in order to cure the default, Lessor shall not terminate this lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Lessee’s interest under this lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Lessee. Upon the sale or other transfer of any interest in and rights granted hereunder by any Lender, such Lender shall have no further duties or obligations hereunder.

22. Breach. Time is of the essence in this lease and if the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee’s property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to Lessee at its last known address and to each Lender or holder of record having a security interest in the premises, and subject to the provisions of Paragraph 21 above, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part thereof, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements and personalty not removed by Lessee within three-hundred sixty-five (365) days after such termination shall remain and become the property of the Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages. The Lessee may request a twelve-month license following termination to remove such improvements and personalty.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority the proportionate value
of the Lessee’s improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, but shall not be required to in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

25. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor’s right of re-entry for breach of covenant, nor of the Lessor’s right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

26. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times...
specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

28. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.
29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, restore and peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition and with or without the Project Improvements as in accordance with Paragraph 11 of this lease. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises within the prescribed period, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all reasonable costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

31. Non-warranty. Except as set forth in this Paragraph 31 and Paragraph 32 below, Lessor does not warrant the condition or prior uses of the premises, as the same are being leased as is. Notwithstanding the foregoing, Lessor promises, represents and warrants to Lessee that (i) Lessor owns the entire premises in fee simple, subject to no liens or encumbrances except as disclosed in writing to Lessee in a title report or other document delivered to Lessee on or prior to the execution of this lease by Lessor; (ii) Lessor and each person signing this lease on behalf of Lessor has the full and unrestricted power and authority to execute and deliver this lease, and to lease the premises and the rights herein granted; and (iii) there are no tenants on the premises, or such tenants have prior to or concurrent with the execution of this lease, delivered a subordination agreement to Lessor in form and substance satisfactory to Lessee.

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the
industry for the storage and use of such materials, nor allow to
be brought onto the premises any such materials except to use in
the ordinary course of Lessee’s business, and then only after
written notice is given to Lessor of the identity of such
materials and upon Lessor’s consent which consent may be
withheld at Lessor’s sole and absolute discretion. Lessor
hereby consents to the lawful and reasonable use of lubricating
oil and grease, normal paint and cleaning compounds. If any
lender or governmental agency shall ever require testing to
ascertain whether or not there has been any release of hazardous
materials by Lessee, then the Lessee shall be responsible for
the reasonable costs thereof. In addition, Lessee shall execute
affidavits, representations and the like from time to time at
Lessor’s request concerning Lessee’s best knowledge and belief
regarding the presence of hazardous materials on the premises
placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor
harmless, from any damages and claims resulting from the release
of hazardous materials on the premises if (i) such release is
caused by any person other than Lessor and such release occurs
on or at any portion of the premises that is under the control
of Lessee or (ii) such release is caused by Lessee or persons
acting under Lessee and such release occurs on or at any portion
of the premises that is not under the control of Lessee. These
covenants shall survive the expiration or earlier termination of
the lease.

For the purpose of this lease "hazardous material"
shall mean any pollutant, toxic substance, hazardous waste,
hazardous material, hazardous substance, or oil as defined in or
pursuant to the Resource Conservation and Recovery Act, as
amended, the Comprehensive Environmental Response, Compensation,
and Liability Act, as amended, the Federal Clean Water Act, or
any other federal, state, or local environmental law,
regulation, ordinance, rule, or by-law, whether existing as of
the date hereof, previously enforced, or subsequently enacted.

33. Fire and extended coverage insurance. The
Lessee, at its cost and expense, shall procure and maintain at
all times during the term of this lease, fire and extended
coverage insurance with an insurance company(s) licensed to do
business in the State of Hawaii, insuring all buildings and
improvements erected on the land leased in the joint names of
Lessor and Lessee, with the standard mortgage clause for any
Lender, as their interest may appear, in an amount equal to the
replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same facilities in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

34. **Compliance with CDUP.** The Lessee shall comply with all terms and conditions of Conservation District Use Permit (CDUP) No. MA-3103 as approved by the Board at its meeting of January 24, 2003 under agenda item D-9 and as may be thereafter amended.

35. **Wind data rights.** Upon termination or expiration of this lease for whatever reason, the Lessee shall provide the Lessor with copies of all Wind Data relating to the premises. The Lessor shall have an unlimited license to use such data for any purpose, whether for its own purposes or for distribution to third parties, without charge.

36. **Further assurances.** (a) Each of the parties to this lease agrees to perform all such acts (including but not limited to, executing and delivering such instruments and documents) as reasonably may be necessary to fully effectuate each and all of the purposes and intent of this lease, including consents to any assignments, pledges, subleases or transfers permitted under Paragraphs 15, 16 and 21 herein as may be
required by any Lender or required in connection with the transfer by Lessee of the rights granted under this lease.

(b) Lessor expressly agrees that it will from time to time enter into reasonable nondisturbance agreements with any Lender which requires such an agreement providing that Lessor shall recognize the rights of the Lender and not disturb its possession of the premises so long as it is not in default of any of the provisions of this lease. Lessor and Lessee further agree that they shall, at any time during the term of this lease within (10) days after a written request by the other party, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this lease is unmodified and in full force and effect (or modified and stating the modifications). The statements shall also state the dates on which the payments and any other charges have been paid and that there are no defaults existing or that defaults exist and the nature of such defaults.

(c) The Lessor may not take any action on the premises which interferes with or is incompatible with Lessee's use and enjoyment of the premises or which in any way interferes with the wind flow across the premises. Lessor may replace, rebuild, or reconstruct any improvement in existence on the premises at the time of execution of this lease in the same or substantially the same form as such improvement existed at such time, and Lessor may build, construct, or locate new improvement(s) on the premises, provided that any such improvement(s) shall not (i) interfere with the wind flow across the premises, (ii) interfere with or obstruct Lessee's rights under this lease or its operations on the premises, nor (iii) impede or obstruct Lessee's access to the premises. In no event during the term of this lease shall Lessor construct, build, or locate or allow others to construct, build, or locate any wind energy conversion system, wind turbine, or similar project on the premises. Lessee shall have the right to remedy any such interference by any appropriate means.

37. Notices. All notices or other communications required or permitted hereunder, including notices to Lenders, shall, unless otherwise provided herein, be in writing, shall be personally delivered, delivered by reputable overnight courier, or sent by first class mail and postage prepaid, addressed to the parties at the addresses set forth on the first page of this lease. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing
date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notice of change of address shall be given by written notice in the manner detailed in this Paragraph 37, provided that Lessee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Lessees hereunder, notice to one Lessee shall be deemed notice to all Lessees.

38. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

39. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

40. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

41. [Intentionally omitted].

42. Time is of the essence. Time is of the essence in all provisions of this lease.

43. Archaeological sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

44. [Intentionally omitted.]

45. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances, permits and approvals.

46. Hunting. No hunting shall be allowed on the premises during the term of this lease.

47. Records. The Lessee shall prepare, maintain, and keep records in accordance with acceptable record keeping practices. A clear, complete, detailed record and accounting of business affecting payment due the Lessor and Project Improvements, electric production and delivery to the power
purchaser shall be maintained at a location in Hawaii for a
period of at least four (4) years following payment of rent.
Further, the Lessee shall prepare, maintain and keep records of
Wind Data, as defined herein, and management practices conducted
on the premises, including but not limited to, the use of
pesticides, for the term of this lease or as required by law or
any permit.

48. Audit and examination of books, etc. The Lessee
shall, at all reasonable times, permit the Lessor and/or its
authorized agents and employees, upon reasonable notice given by
the Lessor, to audit, examine and to make copies of all books,
accounts, records and receipts of the Lessee, including any
power purchase agreements, for the purpose of verifying the
amount of electric production and delivery to the power
purchaser and/or proceeds received by the Lessee from the
premises or for the purpose of determining and enforcing
compliance with the provisions of this lease. If an audit shows
a deviation of more than three percent (3%) from the Gross
Revenue rental payment made to the State, the Lessee shall pay
the difference and pay for the cost of the audit. The Lessee
shall immediately pay all such additional amounts due plus
interest from the date such payment was originally due and
payable but in no case later than thirty (30) days after notice
of the additional amount due.

49. Environmental regulations. Lessee shall comply
with all applicable federal, state and county environmental
impact regulations, including but not limited to Chapter 343,
Hawaii Revised Statutes, as amended, and regulations governing
historic preservation. Within thirty (30) days after the
expiration or termination of this lease, Lessee shall conduct a
Phase One Hazardous Waste Evaluation (record research only). In
addition, Lessee shall be required to remove and abate any
hazardous materials that have been released, disposed of or
stored by Lessee on or at the premises during the term hereof
promptly following the expiration or termination of this lease
to the extent required by then existing federal, state and
county environmental impact regulations. This Paragraph 49
shall survive the expiration or termination of this lease.

50. Fair interpretation. The parties agree that the
terms and provisions of this lease embody their mutual intent
and that such terms and conditions are not to be construed more
liberally in favor, nor more strictly against, either party.
51. Partial invalidity. If any term or provision of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

52. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

53. [Intentionally omitted.]

54. Counterparts. This lease may be executed and recorded in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

55. Complete agreement. This lease, and the exhibits and riders hereto, contains the entire agreement between the parties hereto with respect to the subject matter hereof and any prior agreements, discussions or understandings, written or oral, are superceded by this lease and shall be of no force or effect. No addition or modification of any term or provision of this lease shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

56. Renewable energy producer. Lessee understands and agrees that this Lease is being issued by direct negotiation pursuant to Section 171-95, Hawaii Revised Statutes (HRS). Throughout the term of this Lease, the Lessee shall be and remain a "renewable energy producer" and Lessee shall not assign or transfer this Lease to any entity that does not qualify as a "renewable energy producer." A violation or other breach of this provision shall be considered a material default under this Lease.

57. Extension of lease term. Provided the Lessee is in full compliance with all of the terms and conditions of this Lease, Lessee may exercise its option to extend this Lease for an additional twenty (20) year term by submitting a written request to Lessor no later than nine (9) months prior to the expiration of the Lease. The Minimum Annual Rental and Percentage Rent during any extended term shall be determined in accordance with Section G (Rental reopenings, conduct of)
this Lease. Notwithstanding the foregoing, any extension of this Lease is contingent upon and subject to the parties mutually agreement on such terms and conditions to be added to or amended in the Lease for the purpose of achieving the most current industry leasing standards for wind energy projects.

58. **Public Utilities Commission approval.** The Lessee shall obtain approval from the Public Utilities Commission for the power purchase agreement with MECO and shall provide Lessor written evidence of such approval. The Lessee shall also provide Lessor a copy of the duly executed power purchase agreement with MECO.

59. **Additional definitions.** As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "County" means the County of Maui.

(c) "Days" shall mean calendar days, unless otherwise specified.

(d) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(e) "Lessee" means and includes Lessee and its successors or permitted assigns.

(f) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(g) "Project Improvements" includes wind turbines, all appurtenant meteorological towers and equipment, electrical components (overhead and underground power lines and their supporting structures, transformers, switching and connection enclosures, metering systems, communication lines and auxiliary equipment), service buildings, access controls (gates, cattle guards and fences), safety and wind project identification signage, erosion and fire control features and roads that may be used in connection therewith located on the premises.
(h) "Renewable energy producer" means any producer of electrical energy produced by wind that sells all of the net power produced from the demised premises to an electric utility company regulated under Chapter 269, Hawaii Revised Statutes. Up to twenty-five percent of the power produced by a renewable energy producer and sold to the utility may be derived from fossil fuels.

(i) "Repowering" means: (1) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models or (2) a significant modification to that portion of the Wind Project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises. The following shall not constitute Repowering: (1) reuse of the Project Improvements, including roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of the Wind Project substation for any reason, (3) replacement of wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and Project Improvements on the premises as a result of casualty or loss.

(j) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(k) "Wind Data" means maps showing the locations and orientation of anemometer or other towers, including UTM coordinates and heights of towers, all wind survey data collected (data shall be formatted to include at a minimum monthly speed, direction and other useful reports generated by off-the-shelf commercial software provided by the manufacturer of the wind monitoring equipment) and any interpretations, reports or conclusions derived from this data.

(l) "Wind Project" means the wind energy facility consisting of wind turbines interconnected by an electrical collection system and their associated project improvements. A Wind Project may extend across State land and other ownership in a given area.
STATE OF HAWAI'I

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5848

between

STATE OF HAWAI'I

and

DAVID S. DELUZ, SR., Trustee of the David S. Deluz, Sr. Trust dated October 23, 1991, with powers to buy, sell, mortgage, or lease real or personal property owned by the trust or any interest therein, as amended, unrecorded

covering

Waiakea House Lots, Lots 15 and 16, Block 39, combined containing an area of 39,000 square feet for general industrial purposes
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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5848

THIS LEASE, made this 24th day of February, 20..., by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and DAVID S. DELUZ, SR., Trustee of the David S. Deluz, Sr. Trust dated October 23, 1991, with powers to buy, sell, mortgage, or lease real or personal property owned by the trust or any interest therein, as amended, unrecorded, whose address is 811 Kanoelehua Avenue, Hilo, Hawaii 96720, hereinafter referred to as the "Lessees."

WITNESSETH:

The Lessor, pursuant to Section 171-35, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, and identified as "Waiakea House Lots, Lots 15 and 16, Block 39 Combined," containing an area of 39,000 square feet, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of twenty (20) years, commencing on the 1st day of January, 2006, up to and including the 31st day of December, 2026, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal semi-annual installments on January 1st and July 1st of each and every year during the term as follows:

A. For the first ten (10) years, the sum of SEVENTY TWO THOUSAND AND NO/100 DOLLARS ($72,000.00) per annum.

B. The annual rental reserved shall be reopened and redetermined on the tenth (10th) year.
C. Determination of rental upon reopening of the
annual rental. The rental for any ensuing period shall be the
fair market rental at the time of reopening. Except as provided
herein, the provisions in Hawaii Revised Statutes chapter 658A,
shall be followed. At least six (6) months prior to the time of
reopening, the fair market rental shall be determined by a staff
appraiser or independent appraiser, as allowed by law, whose
services shall be contracted for by the Lessor, and the Lessee
shall be promptly notified by certified mail, return receipt
requested, of the fair market rental as determined by Lessor's
appraiser; provided, that should the Lessee fail to notify Lessor
in writing within thirty (30) days after receipt thereof that
Lessee disagrees with the fair market rental as determined by
Lessor's appraiser and that Lessee has appointed its own
appraiser to prepare an independent appraisal report, then the
fair market rental as determined by Lessor's appraiser shall be
deemed to have been accepted by Lessee and shall be the fair
market rental as of the date of reopening. If Lessee has
notified Lessor and appointed his appraiser as stated
hereinabove, Lessee's appraiser shall complete his appraisal and
the two appraisers shall then exchange their reports within
forty-five (45) days from the date of Lessee's appointment of the
appraiser.

The two appraisers shall review each other's reports
and make every effort to resolve whatever differences they may
have. However, should differences still exist fourteen (14) days
after the exchange, the two appraisers shall within seven (7)
days thereafter appoint a third appraiser who shall also prepare
an independent appraisal report based on the review of the two
appraisal reports prepared and any other data. Copies thereof
shall be furnished to the first two appraisers within forty-five
(45) days of the appointment. Within twenty (20) days after
receiving the third appraisal report, all three shall meet and
determine the fair market rental in issue. The fair market
rental as determined by a majority of the appraisers shall be
final and binding upon both Lessor and Lessee, subject to
vacation, modification or correction in accordance with the
provisions of chapter 658A, Hawaii Revised Statutes. Each party
shall pay for its own appraiser and the cost of the services of
the third appraiser shall be borne equally by the Lessor and the
Lessee. All appraisal reports shall become part of the public
record of the Lessor.

In the event that the appraisers are unable to
determine the fair market rental before the reopening date, or by
the foregoing prescribed time, whichever is later, the Lessee
shall pay the fair market rental as determined by Lessor's new
appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment.
RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.
7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for general industrial purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer.
of this lease, or any portion, may be made in accordance with
current industry standards, as determined by the Board; provided,
further, that prior to the approval of any assignment of lease,
the Board shall have the right to review and approve the
consideration paid by the Assignee and may condition its consent
to the assignment of the lease on payment by the Lessee of a
premium based on the amount by which the consideration for the
assignment, whether by cash, credit, or otherwise, exceeds the
straight-line depreciated cost of improvements and trade fixtures
being transferred to the Assignee pursuant to the Assignment of
Lease Evaluation Policy adopted by the Board on December 15,
1989, as amended, a copy of which is attached hereto as Exhibit
"C." The premium on any subsequent assignments shall be
determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event
of foreclosure or sale, the above-described premium shall be
assessed only after the encumbrances of record and any other
advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or
corporation, the sale or transfer of 20% or more of ownership
interest or stocks by dissolution, merger or any other means
shall be deemed an assignment for purposes of this paragraph and
subject to the right of the Lessor to impose the foregoing
premium as set forth in Exhibit "C."

14. Subletting. The Lessee shall not rent or sublet
the whole or any portion of the premises, without the prior
written approval of the Board; provided, however, that prior to
this approval, the Board shall have the right to review and
approve the rent to be charged to the proposed sublessee and that
in the case where the Lessee is required to pay rent based on a
percentage of its gross receipts, the receipts of the sublessee
or any subsequent sublessees shall be included as part of the
Lessee's gross receipts, and the Board shall have the right to
revise the rent for the premises based upon the rental rate
charged to the sublessee including the percentage rent, if
applicable, and provided, further, that the rent may not be
revised downward. For good cause, the Board may waive the
requirement that the Lessee obtain prior written approval to rent
or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend,
and hold the Lessor harmless from and against any claim or demand
for loss, liability, or damage, including claims for bodily
injury, wrongful death, or property damage, arising out of or
resulting from: 1) any act or omission on the part of Lessee
relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, or its equivalent, in an amount of at least $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.
The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the
Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this
failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to dispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a
remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispersion shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispersion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispersion which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter
upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the
Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to re activate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.
32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall
in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordace with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.
SPECIAL CONDITIONS

41. Improvements. The Lessee shall, at its own cost and expense, within two (2) years as of the date of lease commencement, complete the construction of improvements, renovations and/or repairs having a value of not less than FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) ("Building Requirement"), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the Building Requirement, but in no event shall the amount be less than FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00), which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the Building Requirement contained in this lease, the completion of the Building Requirement on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the Building Requirement.

43. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the
unexpired term of this lease, at the time of the loss or damage,
bears to the whole of the term, with the Lesscr to be paid the
balance of the proceeds.

The Lessee shall furnish the Lessor on or before the
commencement date of this lease, a certificate showing the
policy(s) to be in full force and effect and shall furnish a like
certificate upon each renewal of the policy(s). Each
certificate(s) shall contain or be accompanied by an assurance of
the insurer not to cancel the insurance, limit the scope of the
coverage, or fail or refuse to renew the policy(s) until after
thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State
of Hawaii, its officers, employees, and agents are waived.

44. Environmental regulations. Lessee shall comply
with all applicable federal, state and county environmental
impact regulations, including but not limited to chapter 343,
Hawaii Revised Statutes, as amended, and regulations governing
historic preservation.

45. Phase I environmental site assessment. Prior to
the termination of this lease or the assignment of the leasehold,
Lessee shall conduct a Phase I environmental site assessment and
conduct a complete abatement and disposal, if necessary,
satisfactory to the standards required by the Federal
Environmental Protection Agency and the Department of Land and
Natural Resources. Any assignment or voluntary termination by
the Lessee will not be approved by the Board of Land and Natural
Resources unless this evaluation and abatement provision has been
executed. This provision shall survive and continue in effect
after termination of this lease.

46. Underground injection control wells. The Lessee
shall properly register and obtain the necessary permits for the
underground injection control wells on the leased premises in
conjunction with the State of Hawaii, Department of Health,
Environmental Management Division, and the Underground Injection
Control Program.

The Lessee will be responsible for the inspection
and/or improvements in conjunction with the Underground Injection
Control Program on existing drainage injection wells located on
the leased premises.

47. Drainage system. The Lessee shall have a licensed
professional engineer conduct an analysis of the existing on-site
drainage system to determine whether it is sufficient to handle the increase in run-off created by existing and/or proposed improvements, subject to approval by the County of Hawaii, Department of Public Works.

Should there be inadequate or insufficient drainage system, the Lessee will be required to provide the necessary improvements to dispose of the increase in runoff caused by the existing and/or proposed improvements. The drainage analysis and/or improvements shall be conducted by a licensed civil engineer according to State of Hawaii and County of Hawaii standards.

48. No extension. The Lessee acknowledges that the term of this lease is set to coincide with the expiration of the surrounding state leases for planning purposes and the Board does not intend to allow extension of this lease pursuant to Chapter 171-36(b), Hawaii Revised Statutes.

49. Hunting. No hunting shall be allowed on the premises during the term of this lease.
Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.
STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-6011

between

STATE OF HAWAII

and

4 WHEELS AUTO LLC, a Hawaii limited liability company

covering

Hart Street Industrial Lease Lot

situate at Kapalama, Honolulu, Oahu, Hawaii

containing an area of 26,678 square feet
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
GENERAL LEASE NO. S-6011

THIS LEASE, made this 12th day of October, 20__, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and 4 WHEELS AUTO LLC, a Hawaii limited liability company, whose address is Post Office Box 17600, Honolulu, Hawaii 96817, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-35 Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Kapalama, Honolulu, Oahu, Hawaii, and identified as "Hart Street Industrial Lease Lot," containing an area of 26,678 square feet, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the 1st day of May, 2011, up to and including the 30th day of April, 2076, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow:

A. Minimum Annual Base Rent.

1. Minimum annual base rent for the first ten (10) years shall be ONE HUNDRED TEN THOUSAND AND NO/100 DOLLARS ($110,000.00) per annum.

2. Fixed increases in minimum annual base rent. The annual rental reserved shall have fixed increases taking effect at the end of the tenth (10th) and twentieth (20th) years as follows:
a. Minimum annual base rent for years eleven (11) through twenty (20) shall be equal to the first year's minimum base rent multiplied by 1.30, and shall be in the amount of ONE HUNDRED FORTY THREE THOUSAND AND NO/100 DOLLARS ($143,000.00) per annum.

b. Minimum annual base rent for years twenty-one (21) through thirty (30) shall be equal to the first year's minimum base rent multiplied by 1.60, and shall be in the amount of ONE HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS ($176,000.00) per annum.

3. Minimum annual base rent shall be payable in advance, without notice or demand, in equal semi-annual installments on May 1st and November 1st of each and every year.

B. The annual rental reserved shall be reopened and redetermined on the thirtieth (30th), fortieth (40th), and fiftieth (50th) years.

C. If the Lessee constructs improvements on the premises from which it will conduct its operations, the lease rent may be waived for a period up to the first twelve (12) months after the commencement date of the lease or until the improvements are completed, whichever occurs first. The cost of such improvements must have a value which is equal to or greater than the minimum annual base rent in order to qualify for rent to be waived. All improvements are subject to the prior written approval of the Chairperson, and any waiver of lease rent is contingent upon obtaining the prior written approval of the improvements.

D. Determination of rent upon reopening. The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees.
with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor’s receipt of Lessee’s notification, Lessee’s appraiser and the Board’s appraiser shall appoint a third appraiser, unless Lessee's appraiser and the Board's appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee’s own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board’s appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board’s appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

E. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment.
RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.
7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for business, commercial and/or light industrial purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer
of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 19, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee
relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least $1,000,000.00 for each occurrence and $2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the
policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on
all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record.
having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest,
or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to resindpose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispasion shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispasion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispasion which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing
any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the
Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal
property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease “hazardous material” shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.
35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.
SPECIAL CONDITIONS

41. **Improvements.** In the event that Lessee desires to commence construction of any improvements on the premises, the Lessee shall obtain the written approval of the Chairperson and such improvements shall be at the Lessee’s costs and expense and shall be in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. **Bond, improvement.** In the event that Lessee commences construction of any improvements on the premises, the Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction, which bond shall name the State as obligee. The improvements shall be free from all liens and claims, and the Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed.

43. **Fire and extended coverage insurance.** The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the
commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

44. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

45. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.
Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.
INFORMATION PACKET

Public Notice of Proposed Disposition by Public Auction for
15.574 Acre (678,403 Square Foot)
Industrial/Commercial Mixed Use Property (MCX)
Located in Waiakea, South Hilo, Island of Hawaii
TMK: (3) 2-2-47:59

Requesting Agency

State of Hawaii
Department of Hawaiian Home Lands

91-5420 Kapolei Parkway
Honolulu, Hawaii 96707

June 13, 2008
INFORMATION PACKET
For Industrial/Commercial Mixed-Use (MCX District) Development
Portion of the Hawaiian Home Land situated in
Waiakea, South Hilo, Island of Hawaii, Hawaii

LISTING OF ITEMS CONTAINED IN INFORMATION PACKET:

Legal Notice – Proposed Disposition of Hawaiian Home Lands by Public Auction of a General Lease for Industrial/Commercial Mixed-Use Development........2-4

I. Introduction, Objectives and General Information .............................................5

II. Public Auction Guidelines ..................................................................................6-8

III. Application and Qualification Form .................................................................9-12

IV. Applicant Qualification Criteria .....................................................................13-15

V. Conduct of Disposition ......................................................................................16-18

VI. General Property Information ..........................................................................19-22

APPENDICES:

Exhibit 1 – Legal Description of the Subject Property (to be provided at a later date)

Exhibit 2 – County Approved Survey Map of the Subject Property

Exhibit 3 – Copy (Proforma) of Typical General Lease Document

Exhibit 4 – Memorandum of Lease (Exhibit “C” to General Lease Document)

Exhibit 5 – Sublease Rent Participation Policy

Exhibit 6 – Legal Description of the “Relocation” Property (to be provided at a later date)

Exhibit 7 – Preliminary survey map of “Relocation” Property

LIST OF ITEM(S) AVAILABLE FOR REVIEW IN DHHL OFFICE:

A. Appraisal Report – March 17, 2008 (date of valuation).

NOTE: While the data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and professional sources, it is not guaranteed. DHHL bears no responsibility for Applicant’s actual reliance on the data provided. Applicant should make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.
LEGAL PUBLIC NOTICE

PROPOSED DISPOSITION OF HAWAIIAN HOME LANDS
BY NEGOTIATION OF A GENERAL LEASE
FOR INDUSTRIAL/COMMERCIAL MIXED-USE DEVELOPMENT

Property Location: Waiakea, South Hilo, Island of Hawaii

The Department of Hawaiian Home Lands (DHHL) is seeking applications from qualified individuals or entities to enter into a general lease agreement for the construction, operation and management of an industrial/commercial mixed-use development and related facilities on Hawaiian home lands further described below. As authorized by §204(a)(2), Hawaiian Homes Commission Act, 1920, as amended, all parties interested in leasing the property herein described shall have 45 days from the date this “NOTICE OF PROPOSED DISPOSITION” is first published, that date being Friday, June 13th, 2008, in which to submit completed applications for DHHL consideration.

Interested applicants may obtain a prospectus (“Information Packet”) beginning on Friday, June 13th, 2008. All completed applications received by 4:00 p.m. (HST), Monday, July 28th, 2008, shall be reviewed and only those applicants that meet DHHL’s initial objectives and criteria shall be notified in writing as being eligible for further consideration of their proposals. Eligible applicants shall be required to submit detailed development plan information, a sealed rent bid proposal and an earnest money deposit to DHHL by no later than 4:00 p.m. (HST), Friday, September 26th, 2008. After DHHL reviews the detailed development plan information, those eligible applicants who meet DHHL’s additional objectives and criteria shall be deemed “qualified” to attend the opening of all qualifying sealed bids to be conducted at DHHL’s Honolulu Office located at 91-5420 Kapolei Parkway, Kapolei, Hawaii on Friday, October 11th, 2008, at 10:00 a.m. (HST).

Information Packets containing an application form, property information and other requirements for completing the application process are available for pick up by prospective applicants during regular office hours at DHHL’s Honolulu Office located at 91-5420 Kapolei Parkway, or at the district offices located on the neighbor islands. The appraisal report, which shall not be removed from DHHL’s office, may be reviewed during regular office hours. Please call (808) 620-9456 (Honolulu) for the locations of neighbor island district offices and/or to make an appointment to review the appraisal report.

Land to be disposed: The property to be disposed is located at the northwestern corner of Makaala Street and Railroad Avenue in Waiakea, South Hilo, Island of Hawaii and identified as Tax Map Key No. (3) 2-2-47: 59. This subdivided parcel is designated as Lot 5-A-1 and contains approximately 15.574 acres (678,403 square feet) of land. The lot has excellent street frontage and exposure to existing traffic patterns.

Purpose/Use: The property is being offered for Industrial/Commercial Mixed Use development. Improvements and uses shall conform to those allowed in a MCX zoning district and all applicable permit requirements consistent therewith. Further, the use must comply with the “non-competitive provision” in the lease agreement with the Home Depot Center (any lessee or user whose principal business is a home improvement center, lumberyard, or hardware store will not be permissible) whose premises is located well within one and one-half (1.5) miles of the subject property to be disposed.
Lease Term: Flexible: Minimum of twenty-five (25) years but not to exceed a maximum term of sixty-five (65) years.

Minimum Upset Rent: This disposition will be conducted by a sealed bid auction. The minimum upset rent for the first twenty-five (25) years is as follows:

<table>
<thead>
<tr>
<th>Annual Rent</th>
<th>Period</th>
<th>Escalation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$568,460.00/Per Annum</td>
<td>Years 1-10</td>
<td>--</td>
</tr>
<tr>
<td>$727,686.00/Per Annum</td>
<td>Years 11-15</td>
<td>1.2801</td>
</tr>
<tr>
<td>$823,304.00/Per Annum</td>
<td>Years 16-20</td>
<td>1.1314</td>
</tr>
<tr>
<td>$931,486.00/Per Annum</td>
<td>Years 21-25</td>
<td>1.1314</td>
</tr>
</tbody>
</table>

The highest sealed Rent Bid, at or greater than the Upset Rent, submitted by the prospective applicant for the first twenty-five (25) years of the lease will be the determining factor in the final selection of the successful bidder by DHHL to enter into an agreement. The stepped-rent determinations are based on a constant escalation rate of two and a half percent (2.5%) per year, on a compound basis.

Rent Reopening: If the term of the lease extends beyond 25 years, the rent shall be re-determined by an independent appraisal prior to commencement of the 26th, 36th, 46th and 56th years.

Earnest Money “Bid” Deposit: Payment in the amount of one hundred forty-two thousand one hundred fifteen and no/dollars ($142,115.00) (equal to three (3) months of the Minimum Upset monthly rent) in the form of a cashier’s or certified check payable to the Department of Hawaiian Home Lands for assurance of selected applicant’s commitment to the project.

Utilities: All public utilities, including water, sewer and electricity are available to the subject property along and within surrounding public roadways. Connection to all utilities is the sole responsibility of the successful applicant.

Special Condition: In order to make the subject parcel more attractive for development, a DHHL lessee occupying a portion of the subject parcel has agreed to relocate to another nearby site. An application for subdivision of the nearby site has been submitted, however, county approval has been deferred until certain subdivision requirements are met. The successful applicant to be granted a lease for the subject parcel shall be required to participate in and bear all cost to obtain final county subdivision approval of the nearby site and construct the necessary improvements accordingly. More detailed information is available in the General Property Information, section VI, of the Information Packet.

Telecommunication Service: Sandwich Isles Communications, Inc. (SIC) will provide telephone and broadband services to the project at a time when such services are needed.

Chapter 343, Environmental Assessment: The successful bidder shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the start of any demolition or construction activity on the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding environment, such as infrastructure, traffic, parking, noise, etc.
The Department of Hawaiian Home Lands reserves the right to cancel or modify this disposition from time to time as to all or any of the items listed hereunder by public announcement to that effect by order of the Chairman, Hawaiian Homes Commission.

For additional information and/or inquiry, you may contact Peter "Kahana" Albinio, Jr., Property Development Agent, Department of Hawaiian Home Lands, Land Management Division, at (808) 620-9454 on Oahu or email peter.k.albinio.jr@hawaii.gov.

Date: Honolulu, Hawaii \(6/13/08\)

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

Honolulu Star Bulletin &
Hilo Tribune Herald
(Local Newspaper Publication)
Date: \(6/13/08\)

Approved as to form:

Deputy Attorney General
State of Hawaii
I. INTRODUCTION, OBJECTIVES AND GENERAL INFORMATION
   For Industrial/Commercial Mixed-Use (MCX District) Development
   Portion of the Hawaiian Home Land Panaewa, Tract 1
   Waiakea, South Hilo, Island of Hawaii, Hawaii

Introduction:

The Department of Hawaiian Home Lands (DHHL) is soliciting proposals from qualified parties (applicants) to lease land situated in Waiakea, South Hilo, Island of Hawaii, Hawaii. The term of the lease shall be a minimum of twenty-five (25) years and a maximum of sixty-five (65) years.

Applicants shall be required to submit details regarding their planned use and development of the site, meet certain criteria, and submit rent proposals as further described throughout the Information Packet that follows.

The applicant that best meets DHHL objectives and criteria, and who submits the highest rent proposal which meets or exceeds the minimum upset rent set for the first twenty-five (25) years shall be given the opportunity to negotiate a lease for the property.

Objectives:

DHHL wishes to lease the subject parcel for development at its highest and best use, which has been designated as an industrial/commercial mixed use zone under the County of Hawaii’s MCX District zoning requirements. Proposed uses that are controversial, incompatible with the character of the surrounding neighborhood, or create significant negative impacts on the community may be denied. DHHL does not feel that residential uses on this site are compatible with its objectives.

General Information:

- The qualified applicant who proposes the highest rent that exceeds the minimum upset rent for the first twenty-five (25) years of the lease shall be given the opportunity to negotiate a lease for the property. A comparative present value analysis of the rents proposed by each qualified applicant shall determine the highest bid.

- Prior to commencement of any demolition or construction on the site, Lessee shall comply with Chapter 343 of the Hawaii Revised Statutes, as amended, which requires that an assessment be made to determine the impacts the development may have on the surrounding environment. Such compliance shall be considered completed upon the issuance of a Finding of No Significant Impact (FONSI) or final approval and acceptance of an Environmental Impact Statement (EIS), which ever is applicable.

- Telecommunications for the site shall be provided by Sandwich Isles Communications, Inc. (SIC).
II. PUBLIC AUCTION BY NEGOTIATION GUIDELINES
For Industrial/Commercial Mixed-Use Development (MCX)
Panaewa, Tract I Area
Waiakea, South Hilo, Island of Hawaii

The opening of all qualifying sealed bids shall be held on Friday, October 17, 2008, at 10:00 a.m. (HST), at DHHL’s Honolulu Office located at 91-5420 Kapolei Parkway, Honolulu, Hawaii.

Any person or entity shall be eligible to bid for a general lease at this auction, except a person who:

a) Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;

b) Is a minor;

c) Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;

d) Fails to submit a “completed application”, as described in the Applicant Qualification Criteria included in this Information Packet (Section IV), by no later than 4:00 p.m. (HST), Monday, July 28, 2008;

e) Fails to meet the eligibility criteria as outlined in the Applicant Qualification Criteria and has been informed by DHHL, in writing, that applicant has not met the eligibility criteria;

f) If eligible to proceed fails to submit detailed development plan information, a sealed rent proposal, or an “earnest money deposit” in the form of a certified or cashier’s check made payable to the Department of Hawaiian Home Lands in the amount of $142,115.00 by no later than 4:00 p.m. (HST), Friday, September 26, 2008; or

g) Fails to meet any deadline set for submitting additional information, if requested.

All prospective applicants are responsible for thoroughly reading and understanding the terms, covenants, reservations and conditions of the lease offering by reviewing a copy of the Legal Notice of Proposed Disposition, all data contained in the Information Packet, and other informational items available for review in DHHL’s office located at 91-5420 Kapolei Parkway.

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1 The required Earnest Money Deposit is an amount, equal to ¼ of the annual upset rent for the first year that gives some assurance that the qualified prospective bidders are dealing in good faith. All earnest money deposit checks shall remain uncashed and in the possession of DHHL until bid opening on October 17, 2008. At that time the Successful Bidder’s earnest money deposit shall be deposited and become non-refundable as lease negotiations commence. If negotiations are successfully completed, the deposit shall be applied to future lease rents. All earnest money deposit checks from unsuccessful bidders shall be returned uncashed.
Parkway, Honolulu, Hawaii, or at the DHHL District Offices in Hilo and Waimea, Hawaii; Hoolehua, Molokai; Wailuku, Maui and Lihue, Kauai. By request, out-of-state applicants can make arrangements to obtain the information by contacting DHHL’s Income Property Branch at (808) 620-9456.

Prospective applicants are encouraged to physically inspect the property provided DHHL is indemnified and held harmless from personal injury or damages that result from such property inspection. You may make an appointment for a site inspection by contacting DHHL’s Income Property Branch at (808) 620-9456, on Oahu.

Furthermore, all prospective applicants are advised that Sandwich Isles Communications, Inc. shall provide telecommunications services for the project.

A general step-by-step procedure established for the Disposition by Negotiation is as follows:


- Prospective Applicants shall have 45 days from the first publication of the Legal Notice in which to visit a DHHL office, pick up an Information Packet, and make an appointment to review the Appraisal and other informational reports which shall not be removed from DHHL’s office. (Out-of-state applicants may call to make arrangements for delivery of the Information Packet and other informational reports.)

- Any person or entity that intends to bid for a general lease of the property must submit a completed application. The completed application must be received by DHHL no later than 4:00 p.m. (HST) on Monday, July 28, 2008.

- By Monday, August 11, 2008, written notices will be sent to all persons or entities that have submitted a completed application on or before the deadline. Those who have met DHHL’s objectives and eligibility criteria shall be informed that they are “eligible” to bid. Those not meeting DHHL’s objectives and eligibility criteria shall be informed that they are not eligible to bid.

- Eligible bidders shall have until 4:00 p.m. (HST), Friday, September 26, 2008, in which to submit detailed development plan information, a rent proposal sealed in a separate envelope marked (Sealed Bid), and an earnest money deposit meeting the parameters set out in item “f” on the preceding page. The detailed information submitted by each eligible bidder shall be evaluated and those lacking sufficient information or not meeting DHHL’s objectives may be disqualified.

- At 10:00 a.m. (HST), Friday, October 17, 2008, in DHHL’s office at 91-5420 Kapolei Parkway, Honolulu, HI, all sealed bids not previously disqualified shall be opened for the first time and, after a comparative present value analysis, the highest bidder shall be deemed the “Successful Bidder”.

All qualified bidders or their authorized corporate representatives are invited, but not required, to attend the opening of the sealed bids.
DHHL reserves the right to negotiate with respect to any and all terms and conditions of the lease including all rent provisions, provided, however, that any negotiated adjustments to the rent do not result in such adjustments being less than the amount of rent offered by the Successful Bidder for the first twenty-five (25) years of the lease term.

Should the Successful Bidder fail to conclude general lease negotiations within the stipulated timeframe of one hundred twenty (120) days, DHHL reserves the right to negotiate with the next highest Qualified Bidder and such negotiation with the next highest Qualified Bidder shall not constitute a waiver of any rights or recourse that DHHL has or may have against the defaulting Successful Bidder.

Information Packet and Consultant’s Reports

The data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and reliable sources, however it is NOT GUARANTEED. Applicant is advised to make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.

SIGNIFICANT DATES:

- **Friday, June 13th, 2008** Advertisement of Legal Notice
- **Monday, July 28th, 2008** Applications and Initial Proposals Due  
  Time: 4:00 p.m. (HST)  
  Location: Department of Hawaiian Home Lands  
  91-5420 Kapolei Parkway  
  Honolulu, Hawaii 96707
- **Monday, August 11th, 2008** Notice of Eligibility mailed to Applicants
- **Friday, September 26th, 2008** Final Proposals Due  
  Time: 4:00 p.m. (HST)  
  Location: Department of Hawaiian Home Lands  
  91-5420 Kapolei Parkway  
  Honolulu, Hawaii 96707
- **Friday, October 17th, 2008** Sealed Bid Opening  
  Time: 10:00 a.m. (HST)  
  Location: Department of Hawaiian Home Lands  
  91-5420 Kapolei Parkway  
  Honolulu, Hawaii 96707
III. APPLICATION AND QUALIFICATION FORM
For Industrial/Commercial Mixed-Use Development (MCX)
Panaewa, Tract I Area
Waiakea, South Hilo, Island of Hawaii

_____________________________________  _____________________________________
Name of Applicant                  Person to Contact / Title

_____________________________________  _____________________________________
Applicant’s Address      Contact Person’s Address

_____________________________________  _____________________________________
City, State, Zip Code        City, State, Zip Code

_____________________________________  _____________________________________
Applicant’s Telephone No.              Contact Person’s Telephone No.

_____________________________________  _____________________________________
Applicant’s Facsimile No.              Contact Person’s Facsimile No.

List of Corporate Officers and Directors or Individual Partners, Joint Ventures or Owners.

Name:_____________________________           Name:_____________________________
Title:_____________________________           Title:_____________________________
Telephone No.:_________________________         Telephone No.:_________________________
Address:_____________________________           Address:_____________________________

_______________________________________  _______________________________________
Name:_____________________________           Name:_____________________________
Title:_____________________________           Title:_____________________________
Telephone No.:_________________________         Telephone No.:_________________________
Address:_____________________________           Address:_____________________________

_______________________________________  _______________________________________
NOTE: Please attach a separate page if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes.

Corporate Shareholders / Partners Holding 25% or More of the Outstanding Shares:

Name: _______________________________   Name:_________________________________
Title:_________________________________  Title:__________________________________
Telephone No.:________________________  Telephone No.:_________________________
Address:______________________________  Address:_______________________________

Name: _______________________________   Name:_________________________________
Title:_________________________________  Title:__________________________________
Telephone No.:________________________  Telephone No.:_________________________
Address:______________________________  Address:_______________________________

Applicant intends to bid on the following Parcel:

Property No.___________________________   TMK No.____________________________________
Intended Use ________________________________________________________________________

Project Description:

Include a narrative and any supportive materials that provides information pertaining of the proposed development at the subject property. Attach additional pages to this application. See Applicant Qualification Criteria for list of requested information.
### Project Development Team

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<thead>
<tr>
<th>Developer</th>
<th>Company / Address</th>
<th>Contact / Person Telephone No./email address</th>
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<td>Site Contractor</td>
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<td>Contractor</td>
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<tr>
<td>Financing</td>
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</table>

### Financial Information

**Note:** Financial information submitted to DHHL shall be kept confidential and shall not be considered as a public record as defined in Chapter 92, Hawaii Revised Statutes. Financial information shall not be released without the express written consent of the applicant.

1. **All** Applicants shall include the following:

   (a) If applicable a certified copy of the Articles of Incorporation.
   (b) If applicable a certified copy of the By-Laws.
   (c) If applicable, a certified copy of the Corporation Resolution.
   (d) If applicable, a certified copy of the Partnership Certificate.
   (e) If applicable, a certified copy of the Joint Venture Agreement.
   (f) A current Certificate of Good Standing from the Department of Commerce and Consumer Affairs.
   (g) A current Tax Clearance from the Department of Taxation and Internal Revenue Service.
   (h) Applicant’s proposed plan within 36 month construction period.
   (i) Detailed budget / cost estimate showing the estimated cost of construction.
   (j) If applicable, a description of any financial default, modification of terms, and conditions of financing to avoid default, or legal actions taken or pending against the applicant and borrowing and guaranteeing entities and their principals.

Please attach a description of the Applicant’s company experience which supports the foregoing requirement and which includes the following information:

   (a) A list of industrial / commercial projects developed;
(b) The role of the applicant in developing the listed industrial/commercial projects;

(c) A brief description of the industrial / commercial projects;

(d) If applicable, a description of all industrial / commercial projects or facilities owned and operated by the applicants;

(e) If applicable, a statement of the applicant’s past or current involvement with the Department of Hawaiian Home Lands (DHHL).

(f) THE UNDERSIGNED APPLICANT, understands that DHHL is relying on the information provided herein to qualify the undersigned as an eligible Developer under the Hawaiian Homes Commission Act, 1920, as amended. The undersigned represents and warrants that the information provided is true and complete and that DHHL may consider the information as continuing to be true and correct until a written notice of a change is given to DHHL by the undersigned. The Undersigned agrees to provide and other information that DHHL deems necessary to determine the qualifications of the applicant.

__________________________________________
Name of Company

By:_________________________________________
    Signature

__________________________________________
Title

__________________________________________
Date
IV. APPLICANT QUALIFICATION CRITERIA
For Industrial/Commercial Mixed-Use Development (MCX)
Panaewa, Tract I Area
Waiakea, South Hilo, Island of Hawaii

The Department of Hawaiian Home Lands (DHHL) has established the following qualification criteria to: 1) identify willing and capable applicants who are deemed “eligible” to bid for a general lease of the property described as the Panaewa, Tract I Area (hereinafter the “Property”), identified as a portion of Tax Map Key No. (3)2-2-047:parcel 059; 2) determine those eligible bidders who, at the time of the sealed bid opening, are “qualified” to bid; and 3) select the successful bidder who makes the highest offer to rent the subject property from amongst all qualified bidders.

Prior to the Sealed Bid Opening, a two step process shall be used to determine an applicant’s eligibility and qualification to enter into a general lease for the property.

- **STEP ONE** - Completed Applications

All persons or entities interested in obtaining a lease for the subject property must submit a “completed application” by no later than **4:00 p.m. (HST), Monday, July 28, 2008**. A completed application shall include the following:

1. A completed “Application and Qualification Form” or other printed material that provides the same information as that requested in the Application and Qualification Form (Section III) included with the Information Packet;

2. A conceptual development plan with enough detail to describe the type, size, and use of the improvements envisioned on the site;

3. Information describing applicant’s experience and capacity for completing the development as envisioned together with supporting documents;

4. Information showing a preliminary or estimated development budget, planned funding sources for applicant’s proposed development, and the demonstrates the financial capacity of each principal member and/or entity of the applicant’s development team together with supporting documents; and

5. Any other information that supports the applicant’s ability to develop the property as envisioned.

**SEALED RENT BIDS AND/OR BID DEPOSITS ARE NOT TO BE SUBMITTED DURING STEP ONE OF THE PROCESS.**

DHHL is the sole entity that will evaluate the information provided above which will be reviewed to determine if the applicant’s conceptual development plan meets DHHL’s objectives as described in the Introduction to the Information Packet. By Monday, August 11, 2008, DHHL will send out written notices to all persons or entities who have submitted completed applications on or before the deadline. Those applicants who have met DHHL’s objectives and
eligibility criteria shall be informed that they are “eligible” to bid. Those not meeting DHHL’s objectives and eligibility criteria shall be informed that they are not eligible to bid.

- **STEP TWO - Bid Qualification**

Those persons who have submitted a completed application and have received DHHL’s written confirmation declaring them eligible to bid (Eligible Bidders) shall have until 4:00 p.m. (HST), Friday, September 26, 2008, to submit the following:

1. A current Certificate of Good Standing (business entities only) issued by the State Department of Commerce and Consumer Affairs. If the business has not yet been registered to operate in the State of Hawaii, then applicant shall provide a written statement that it is the applicant’s intent to register to do business in the State of Hawaii and that applicant, if selected as the successful bidder, will provide evidence of such registration prior to execution of a lease for the property;

2. A current (not more than 60-days old) Tax Clearance Application stamped by both the IRS (federal) and State Departments of Taxation indicating that the applicant is not delinquent on taxes. If the business has not yet been registered to operate in the State of Hawaii, then applicant shall provide a federal tax clearance and a written statement that applicant, if selected as the successful bidder, will provide evidence of an application for, or receipt of, a State of Hawaii taxpayer identification number prior to execution of a lease for the property;

3. A detailed development concept which shall include:

   a) A narrative of the Eligible Bidder’s proposed development plan, including phasing of the development, if any, describing the intended uses, or purposes for the development;

   b) A site development plan showing where improvements are planned, the square footage of each structure, maximum floor area, parking requirements, landscaped areas, elevations, and renderings;

   c) An estimated construction schedule with a timeline for all major tasks to be completed, including, but not limited to, HRS Chapter 343 compliance, site preparation construction of offsite infrastructure (if required), etc.;

   d) Other details, renderings, maps, surveys, feasibility studies or photographs that may help convey a clearer understanding of the proposed development; and

   e) Letters of commitment or interest from potential tenants or occupants.

4. The Eligible Bidder must demonstrate the financial capacity to complete the proposed project as envisioned. In addition to information provided in the completed application, the Eligible Bidder shall submit the following:
a) A refined construction budget/estimate including contractors’ or subcontractors’ cost estimates, if any;

b) Current financial statements or tax returns, financing commitments from lending institutions, and any documents identifying other financial resources which the Eligible Bidder is relying upon to complete the proposed project;

c) An “earnest money deposit” in the form of a certified or cashier’s check made payable to the Department of Hawaiian Home Lands in the amount of $142,115.00. The earnest money deposit shall be held uncashed by DHHL until the successful bidder has been determined. Earnest money deposits submitted by unsuccessful bidders shall be returned; and

d) A rent proposal sealed in a separate envelope marked (sealed rent proposal) stating the annual rent that the Eligible Bidder intends to pay for each of the first twenty-five (25) years of the lease. The rent proposed cannot be less than the minimum upset rent as stated in the copy of the legal notice included with the Information Packet.

DHHL is the sole entity that will evaluate the information received from Eligible Bidders. The evaluation will be based on the Eligible Bidder’s meeting DHHL’s objectives and criteria. DHHL reserves the right to disqualify any proposal that lacks sufficient information to clearly define an Eligible Bidder’s development concept. Information submitted after the deadlines established herein will not be accepted unless the deadline is extended at DHHL’s sole discretion. If not previously disqualified, only those proposals that contain a bid deposit and sealed rent bid shall qualify for bid opening scheduled for 10:00 a.m. (HST), on Friday, October 17, 2008.
V. CONDUCT OF DISPOSITION
For Industrial/Commercial Mixed-Use Development (MCX)
Panaewa, Tract I Area
Waiakea, South Hilo, Island of Hawaii

The following procedures, terms and conditions are applicable to this disposition of a general lease of Hawaiian home lands by public auction.

Any proposed disposition of a general lease may be cancelled, postponed or continued by order of the Chairman, Hawaiian Homes Commission.

A. ELIGIBLE TO BID:

1. A completed application, as defined in the Applicant Qualification Criteria section of the Information Packet, must be submitted to DHHL by no later than 4:00 p.m. (HST), Monday, July 28, 2008.

2. An applicant may be declared ineligible to bid for any of the following reasons:
   a. If the completed application is late, incomplete or does not adhere to the format and instructions;
   b. If it is shown that inaccurate statements were made in the completed application;
   c. If the applicant fails to meet any of information requested in the Applicant Qualification Criteria;
   d. Is declared ineligible for reasons cited in the Public Auction Guidelines section of the Information Packet; or
   e. If its proposal does not meet the objectives or is not in the best interest of the Department of Hawaiian Home Lands' Trust and/or its beneficiaries.

3. By Monday, August 11, 2008, each person or entity that has submitted a completed application will be sent a written notice of eligibility or ineligibility to bid.

B. QUALIFIED TO BID:

1. Those persons or entities that received notice that they are eligible to bid shall have until 4:00 p.m. (HST), Friday, September 26, 2008, in which to submit additional information and meet requirements described in Step Two - Bid Qualification, of the Applicant Qualification Criteria (Section IV).

2. An eligible bidder may be disqualified from bidding for any of the following reasons:
   a. If the additional information is submitted late, incomplete, lacks sufficient detail or does not adhere to the format and instructions;
   b. If it is shown that inaccurate statements were made;
c. Failure to provide an earnest money deposit by remitting a certified or cashier's check, payable to the Department of Hawaiian Home Lands in the amount of $142,115.00 by no later than 4:00 p.m. (HST), Friday September 26, 2008; and

d. Failure to include a sealed rent proposal (bid) in a separate, sealed envelope by 4:00 p.m. (HST), Friday September 26, 2008;

3. If submitted on time, the information provided shall be reviewed by DHHL. Eligible applicants shall be notified if they are disqualified from bidding due to any one of the reasons stated in item 2 above, or because their proposals are not in the best interest of the Department of Hawaiian Home Lands' Trust and/or its beneficiaries. Those who meet all conditions of the bid Applicant Qualification Criteria (Qualified Bidder) shall be invited to attend the sealed bid opening at 10:00 a.m. (HST), on Friday, October 17, 2008.

Notwithstanding the above paragraph, DHHL may reject any or all bids and waive any defects when, in its opinion, such rejection or waiver will be for the best interest of its beneficiaries.

C. DETERMINATION AND DUTIES OF SUCCESSFUL BIDDER

1. At 10:00 a.m. (HST), on Friday, October 17, 2008, all sealed rent bids not previously disqualified (for reasons other than the amount of rent proposed) shall be opened for the first time.

2. Sealed rent bids shall be compared on the basis of the present value of the rent proposed for the first twenty-five (25) years of the lease term. Any rent proposal that does not meet or exceed the present value of the minimum upset rent established by market value appraisal and enumerated in the legal notice shall be disqualified.

3. The Qualified Bidder who submits the highest proposed rent (based on its present value) for the first twenty-five (25) years of the lease term shall be declared the “Successful Bidder”.

4. The earnest money deposit of $142,115.00 remitted by the Successful Bidder shall be deposited and shall then become non-refundable. All bid deposits remitted by unsuccessful bidders shall be returned, uncashed.

5. Within five (5) working days of being notified as the Successful Bidder, the Successful Bidder shall execute an affidavit stating that the Successful Bidder is not in arrears in the payment of taxes, rents or any other obligations owing the State of Hawaii or any of its political subdivisions, and that, within the preceding five (5) years, the successful bidder has not had any leases, licenses or permits issued by the State of Hawaii or its political subdivisions, rescinded, cancelled or terminated due to the successful bidder’s lack of performance.
6. The Successful Bidder and DHHL shall then enter into negotiations for a general lease of the subject site. DHHL reserves the right to negotiate with respect to any and all terms and conditions of the lease including all rent provisions, provided, however, that any negotiated adjustments to the rent do not result in such adjustments being less than the amount of rent offered by the Successful Bidder for the first twenty-five (25) years of the lease term.

7. Negotiations must be completed and a general lease signed by no later than 120 days after the date the Successful Bidder has been selected and notified.

8. Upon signing of the lease, the earnest money deposit of $142,115.00 shall be applied to rent due under the lease. Additionally, Lessee will also be required to reimburse DHHL for cost of the appraisal, legal fees and any consultant charges associated with the disposition.

D. CANCELLATION

The Department of Hawaiian Home Lands (DHHL) requires that lease negotiations are concluded and a lease signed no later than one hundred twenty (120) days following the selection of the Successful Bidder provided that, for good cause shown, an extension of time to the negotiation period may be granted at the sole discretion of the Chairman, Hawaiian Homes Commission.

In the event the successful bidder fails to comply with the requirements as described above, DHHL may, at its option, declare default on the part of the successful bidder, terminate all further negotiations, withdraw the offer of a general lease for the subject property, and retain any amounts paid by the defaulting bidder as damages. The foregoing shall not exclude any other remedies available to DHHL.
VI. GENERAL PROPERTY INFORMATION
For Industrial/Commercial Mixed-Use Development (MCX)
Panaewa, Tract I Area
Waiakea, South Hilo, Island of Hawaii

The parcel of land (the “Property”) being offered for general lease is located in the Panaewa, Tract I area, in the Waiakea, South Hilo, Island of Hawaii. The Property is currently identified on the tax maps of the State of Hawaii as a portion of Division 3, Zone 2, Section 2, Plat 47, Parcels 059, 067, 068 & 71. The Department of Hawaiian Home Lands (DHHL) has selected and designated the site for industrial/commercial mixed-use development because of its attractive location at the intersection of Makaala Street and Railroad Avenue. The site is situated directly across Makaala Street from the new Home Depot Store and, also, within easy walking distance of Waiakea Center (Wal-Mart) and Prince Kuhio Plaza. The subject neighborhood is considered the principal, regional shopping district for the City of Hilo and greater East Hawaii.

The site is generally square-shaped, with an irregular northern boundary and offers extensive roadway frontage and exposure along Makaala Street and Railroad Avenue. Besides the access from two major thoroughfares that traverse the industrial and commercial area of Hilo, the Property is at the hub of an area where land for industrial/commercial sites are in high demand.

DHHL has received the COUNTY OF HAWAII’S approval to subdivide the Parcels 059, 067, 068 & 071 into two lots, one of which will be a parcel containing an area of approximately 1.5-acres, more or less, and the other (the subject property) containing approximately 15.5-acres, more or less. The Property, as subdivided, will contain the 15.5-acre portion to the south and the balance of 1.5-acres to the north.

PROPERTY DATA

Legal Description – A copy of the map that accompanied DHHL subdivision application is included in the Information Packet (see Exhibit 1, immediately following this section). Once the subdivision plan is recorded, the Property will be identified as Lot 5-A-1, and assigned a new tax map parcel number.

Land Area Lot 5-A-1 will comprise approx. 15.574 acres (678,403 square feet)

County Zoning – The subject site is zoned MG-1, General Industrial but will be valued as if it had a Industrial/Commercial Mixed-Use District Classification. The Department of Hawaiian Home Lands (DHHL) is not subject to county and state land use zoning and plans to designate this site for development under MCX guidelines for planning and permitting purposes.

Flood Hazard Districts - Flood Hazard Districts are delineated on Flood Boundary and Floodway Maps and the Federal Insurance Rate Maps prepared by the Federal Insurance Administration and Federal Emergency Management Agency. The subject site is situated within an area designated Zone X (unshaded), an area determined to be outside the 500-year plain. (FEMA Flood Insurance Rate Map 1551660885 dated September 16, 1988).
Utilities – All public utilities will be available to the subject site including water, sanitary sewer, electricity, and telephone service. The capacity of the existing sewer line could represent possible constraints to the development project.

Water service is provided by the County of Hawaii Department of Water Supply.

Sewer service is provided by the county Department of Environmental Services.

Electricity service is provided by Hawaii Electric Light Company, Inc.

Telephone service will be provided by Sandwich Isles Communications, Inc.

PROPERTY DESCRIPTION & CONDITION

Size and Shape - The Property contains 678,403 square feet (15.574 acres) of gross land area. It is generally square-shaped, with an irregularly shaped northern boundary and extensive roadway frontage and exposure along both Makaala Street and Railroad Avenue. The site will have approximately 906 linear feet of frontage on Railroad Avenue (eastern boundary) and approximately 959 linear feet of frontage on Makaala Street (southern boundary).

The site is generally level at surrounding street elevation and appears to have been cleared and graded in the past.

Special Condition – As referenced in the Legal Public Notice, the successful applicant shall be required to participate in and bear all cost to obtain final county subdivision approval of the nearby site, to which the existing lessee occupying a portion of the subject parcel has agreed to be relocated, and construct the necessary improvements in accordance with county subdivision requirements. The relocation site is identified as TMK No.: (3) 2-1-25:90, Lot 89. Per professional survey consultants, Imata & Associates, Inc., DHHL must adhere to and be in full and strict compliance with the following subdivision county requirements:

- Any road easement created with the subdivision application must be improved. Also a curve return will be required at the entrance.

- Commercial or Industrial Use: Easement width required is 60-ft. with asphalt pavement and concrete sidewalks, curbs and gutters (County Standards). Improvements will be constructed approximately 80 feet along Lot 89-B. The plat map also reflects a future extension of Roadway Lot A, which may be revised depending on future subdivision and/or uses of Lot 89-C. The extension is also being reflected so the County is aware of future development. The existing driveway serving Lot 89-A (Sandwich Isle) is in close proximity to Roadway Lot A and will present a conflict. Possible resolution is to relocate Sandwich Isle’s driveway to access from Roadway Lot A or relocate Roadway Lot A. The County will require curve returns at the entrance of Roadway Lot A.

- Waterline within easement with water meters at lot boundary. Also fire protection (fire hydrants) may be required. A turn-around at the end of the easement may be required.

- Water Facilities Charges: $5,500.00 per lot.
To date, a preliminary plat map dated August 9, 2005, further described in Exhibit “7” attached hereto has been submitted to the Hawaii County, Planning Department for review and approval. By correspondence dated October 11, 2005, the Hawaii County Planning Department is deferring any further action until the following item can be appropriately addressed:

1. Submit a statement regarding the type of water system to be installed, including the source, quality and quantity of water.

Please contact Peter “Kahana” Albinio, Jr., Property Development Agent, Land Management Division at (808) 620-9454 to further clarify and discuss details of the special condition.

Soils Condition – A detailed geotechnical study of soil and sub-soil located on the Property has not been done.

Hazardous Materials/Contaminants – An assessment or investigation for possible hazardous material or contamination has not been conducted for the Property.

Improvements – The property is presently improved with a number of older, industrial structures and was also recently utilized as a temporary base yard during the construction period of the nearby Home Depot Store.

Environs – The subject property is located within the City of Hilo, in the South Hilo District of the Island of Hawaii. The South Hilo District is located on the eastern or windward side of the Island of Hawaii and features a very diverse environment from extensive coastal areas to the 6,000 foot elevation along the lower slopes of Mauna Kea and Mauna Loa summits. Climatic conditions with the South Hilo District are predominantly humid and tropical. Temperatures are moderate, ranging on the average from 71 to 76 degrees Fahrenheit, and rainfall is substantial, averaging about 135 inches a year. Vegetation is lush and waterfalls are plentiful, particularly along the northern coast.

Historically, the South Hilo District and the City of Hilo have represented the dominant areas of urban development and population for the entire Island of Hawaii. More recently, however, the Kona and Kohala Districts have grown increasingly less dependent upon the Hilo area. As such, the present role of the South Hilo District and the City of Hilo as a major regional urban center is somewhat more limited to primarily the East Hawaii region. The City of Hilo, however, remains the County seat and is the location of all major government activity. Hilo’s deep-draft harbor facilities and its airport at General Lyman Field function as primary transportation gateways to the Island of Hawaii.

The subject property’s immediate neighborhood is the Waiakea area of the City of Hilo, in the Panaewa to Puainako area. A significant amount of land in this particular part of the city is owned and managed by the Department of Hawaiian Home Lands’ (DHHL). The initial development of Prince Kuhio Plaza on DHHL property shifted the historical commercial retail focus of the City of Hilo to the subjects Panaewa to Puainako area. Other major retail developments concentrated in this neighborhood include Waiakea Center (anchored by Walmart), Home Depot, KTA’s Puainako Center, Puainako Town Center, and Ginger Patch Commercial Center.
NOTE: Additional information and demographics are contained in the four reports listed at the beginning of the Information Packet. Due to the limited number of copies of these reports, they may only be reviewed in a DHHL office. To make an appointment to review these reports, contact Marla at (808) 620-9456. Copies will also be available at DHHL offices on the outer islands.

While the data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and professional sources, it is not guaranteed. DHHL bears no responsibility for Applicant’s actual reliance on the data provided. Applicant should make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.
EXHIBIT 1

Legal Description of Property “to be provided at a later date”

(This page intentionally left blank)
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _______

between

STATE OF HAWAII

and

covering

HAWAIIAN HOME LANDS

situated at

Tax Map Key (3) 2-2-47:59
Waiakea, South Hilo,
Island of Hawaii
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THIS INDENTURE OF LEASE (the “Lease”), is made as of the _____ day of__________, 20___, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and ____________________________________________, a ________________________(sole proprietor or ________ corporation), whose business and mailing address is ___________________________________________________, hereinafter called “LESSEE.”

WITNESSETH:

ARTICLE ONE

DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kaei Hana I, Waiakea, South Hilo, Island of Hawaii, County of Hawaii, and further identified as Lots __ and __, comprising _______ acre, more or less, of Hawaiian home lands, more particularly described in Exhibit “A”, and as shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on ____________________________ (which shall be the Effective Date of the Lease), and ending as of midnight on ________________ unless sooner terminated as hereinafter provided.

ARTICLE TWO

RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporite, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral
substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2.  Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3.  Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4.  Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5.  Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or
LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

| Lease years 1 through 10: | __________________________ | Dollars ($______.00) per annum ($_____. _) per month; |
Lease years 11 through 15: ________________________________ Dollars ($______.00) per annum ($_____.__ per month);

Lease years 16 through 20: ________________________________ Dollars ($______.00) per annum ($_____.__ per month); and

Lease years 21 through 25: ________________________________ Dollars ($______.00) per annum ($_____.__ per month).

Lease years 26 through 40: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is ________________. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the thirty-fifth lease year for each of the next ensuing two ten-year periods comprising lease years 36-45, and 46-55, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a
party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or
proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. **Utility Services.** LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. **Improvements Required by Law.** LESSEE shall, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. **Observance of Laws.** LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. **Inspection of Premises.** Upon reasonable notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE shall repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.
7. **Improvements.**

(a) **Initial Development.** Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.

(b) **Governmental Approvals and Permits.** Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) **Construction of Improvements.** LESSEE shall not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifteen Thousand Dollars ($15,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

(d) **Bonds and Security Deposit.** LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.
It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

(e) **Compliance with Americans with Disabilities Act.**

(i) **Applicable Laws.** LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183,12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. Seq., the Architectural Barriers Act of 1968, 42, U.S.C.4151 et. Seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C.790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) **Responsibility for Compliance.** Notwithstanding LESSOR’S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR’s investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. **Repairs to Improvements.** LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.
9. **Assignment.**

   (a) **No Assignment Without Consent.** LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

   (b) **Assumption of Lease.** Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

   (c) **Compliance with Hawaii Revised Statutes §171-36(a)(5).** LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

   (d) **No Change of Use.** No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

   (e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

   (f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

      (i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

      (ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

      (iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

      (iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten
percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE 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 LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit 5, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. **Liens.** LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. **Permitted Uses.** The Premises shall be used only for the following purposes: __________________________. In no event shall the Premises be used for the construction of any residential lots, units or project.
13. **Indemnity.**

(a) LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance.**

(i) **Coverage.** A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without
deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products -
Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) **Limits.** Limits for such coverage shall be determined.

(2) **Deductible.** Except with LESSOR’s prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(3) **Application of General Aggregate.** The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) **Umbrella Liability.** Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(d) **Builder’s and Installation Risk.** Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) **General Policy Terms.** All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR,
although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR’s satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by
LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE shall, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

17. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR’s standard fees for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.


LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous
Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.
20. **Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

**ARTICLE FIVE**

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Mortgage.** Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:
(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by
LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee
or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commence and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the
time period provided herein, or within such additional period as LESSOR may allow for good
cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and
subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other
rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-
enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in
and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension)
ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the
whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the
Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the
part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all
persons from the Premises using such force as may be necessary therefor, (ii) remove all
personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce
any rights LESSOR may have against said personal property, or store the same in any public or
private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or
owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned.
Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to
have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues
before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to
obtain possession of the Premises, except as LESSOR may otherwise expressly provide in
writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful
detainer and the surrender of possession pursuant to such notice shall not be deemed to be a
termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may
otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to
forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security
interest may, at its option, cure or remedy the default or breach, if the same can be cured or
remedied by the payment of money or, if such is not the case, by performing or undertaking in
writing to perform all of the terms, covenants and conditions contained in the Lease on
LESSEE’s part to be performed, capable of performance by the holder, as determined by
LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within
any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the
cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its
option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the
mortgage debt, together with interest and penalties, and secure an assignment of the debt and
mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in
the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the
conveyance of the privilege, interest or estate upon payment to the holder of the amount of the
mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any re disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the re disposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon re disposition which exceeds the fair market lease value of the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. **Condemnation.** If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. **Right to Enter.** LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. **Inspection by Prospective Bidders.** LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or
designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease.
12. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:
_________________________________
_________________________________
_________________________________

If to LESSOR: Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attn: Land Management Division

And a copy to: Department of the Attorney General
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: AG - PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESFOR" shall mean and include LESSOR herein, its successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed
on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

By

LESSEE

B-55
EXHIBIT “B”

SUBDIVISION MAP
MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is made and entered into as of ____________ ____ 2006 by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and ____________________________________, whose business and mailing address is ________________, hereinafter called “LESSEE.

1. TERM AND PREMISES. For a lease term commencing on ______________, and ending as of midnight on ______________, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE (“Lease”), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property (“Premises”) located at _______________________________________________ 

______________________________________________________________________________

______________________________________________________________________________

Island of ______, Hawaii, comprising ______ acres, more or less, of Hawaiian home lands, more particularly described in Exhibit “A”, together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for
the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for ____________
   ____________________________________________________________________.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

   IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

   State of Hawaii
   DEPARTMENT OF HAWAIIAN HOME LANDS

   By
   Micah A. Kane, Chairman
   Hawaiian Homes Commission

   APPROVED AS TO FORM:

   LESSOR

   Deputy Attorney General
   State of Hawaii

   a ______________ corporation

   By
   ________________
   ________________

   LESSEE
Sublease Rent Participation Approved by the Hawaiian Homes Commission on April 24, 1987

"That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit "C".

2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.

3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.

4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy."

Extract from Exhibit "C":

Gross Annual Sublease Rent
LESS: 4% General Excise Tax (if paid by sublessor)
EQUALS: Effective Annual Sublease Rent
LESS: Allowances (costs and investment returns)
EQUALS: Income Attributable to Land
LESS: Allocated Basic Lease Rent
EQUALS: Amount of Increase in Lease Rent Due to Subleasing (if any)
X 50% EQUALS: Amount Due to DHHL
EXHIBIT 5

DEFINITION OF TERMS
Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/liability insurance policies.

Line 4e: SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.
II. RETURN OF INVESTMENT
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4f: RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: INDICATED ADDITIONAL RENT
Line 5 (Annual Income Attributable to Land) less Line 6 (Allocated Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: ADDITIONAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY
(No subleasing of building space)

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.
EXHIBIT 5

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: Allocated Annual Base Lease Rent
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 5: Indicated Annual Additional Rent
Line 3 minus Line 4, but not less than zero.

Line 6: Additional Annual Rent Payable to DHHL
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.
EXHIBIT 5

SUBLEASE RENT PARTICIPATION WORKSHEET

I. SUBLEASING OF BUILDING SPACE:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (_______)
Line 3: EQUALS Effective Annual Sublease Rent ________
Line 4: Less Allowances:
   a. Management, Credit Loss $_______
   b. Repair and Maintenance ________
   c. Real Property Taxes ________
   d. Insurance Premiums ________
   e. Surety Bond Premium ________
   f. Return OF Investment ________
   g. Return ON Investment ________
Line 5: EQUALS Annual Income Attributable to Land ________
Line 6: Less Allocated Annual Base Lease Rent ________
Line 7: EQUALS Indicated Additional Annual Rent ________
   TIMES 50% X 0.50 ________
Line 8: EQUALS Additional Annual Rent Payable to DHHL ________

II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (_______)
Line 3: EQUALS Effective Annual Sublease Rent ________
Line 4: Less Allocated Annual Base Lease Rent ________
Line 5: EQUALS Indicated Annual Additional Rent ________
   TIMES 50% X 0.50 ________
Line 6: EQUALS Additional Annual Rent Payable to DHHL ________

Exhibit "C"
HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease: $8,000

Effective Annual Sublease Rent: $3,000

Total Land Area of Leasehold Premises: 24,000 sq. ft.

Subleased Land Area: 6,000 sq. ft.

RATIO: \( \frac{6}{24} = 0.25 \times \$8,000 = \$2,000 \) Allocated Annual Base Lease Rent

Effective Annual Sublease Rent: $3,000

Allocated Annual Base Lease Rent: $2,000

Indicated Additional Rent: $1,000

Times 50% \( = 0.50 \)

SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL $500
EXHIBIT 6

Legal Description of Property "to be provided at a later date"
Exhibit 7

Akana Relocation Site

Subdivision Map

Land situated at Waiakea, South Hilo, Island of Hawaii.

Being Lot 89, Panaewa House and Farm Lots,
Section 1 (File Plan 1487)
Subdivision of Lot 89 into Lots 89-A, 89-B,
and Roadway Lot A.

Vicinity Map

Not to Scale
INFORMATION PACKET

NOTICE OF PUBLIC AUCTION

Proposed Disposition of Hawaiian Home Lands
Limited Industrial Use (ML-20) Leases
Waiakea, S. Hilo, Island of Hawaii

Requesting Agency

State of Hawaii
Department of Hawaiian Home Lands

91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

November 30, 2011
INFORMATION PACKET
For Limited Industrial-Use (ML-20 District) Development
Portions of Hawaiian Home Lands situated in Kaei Hana I, Industrial Subdivision
Waiakea, South Hilo, Island of Hawaii, Hawaii

LISTING OF ITEMS CONTAINED IN INFORMATION PACKET:

Legal Notice of Public Auction – Proposed Disposition of Hawaiian Home Lands for General Lease of Limited Industrial-Use (ML-20) Development .......................... 2-4

I. Introduction, Objectives and General Information ........................................... 5-6
II. Applicant Qualification Criteria ........................................................................ 7-8
III. Public Auction Guidelines .............................................................................. 9-10
IV. Application and Qualification Form ............................................................... 11-14
V. Conduct of Disposition .................................................................................... 15-17
VI. General Property Information ........................................................................ 18-19

APPENDICES:

Exhibit 1 - Legal Description of the Property, including copy of survey map.
   "A" – TMK No. (3)2.2.060.032;
   "B" – TMK No. (3)2.2.060.039

Exhibit 2 - Tax Map

Exhibit 3 - Copy (Proforma) of Typical General Lease Document

Exhibit 4 - Memorandum of Lease (Exhibit “C” to General Lease Document)

Exhibit 5 - Sublease Rent Participation Policy

LIST OF ITEM(S) AVAILABLE FOR REVIEW IN DHHL OFFICE:

A. Appraisal Report – May 1, 2011 (date of valuation)

NOTE: While the data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and professional sources, it is not guaranteed. DHHL bears no responsibility for Applicant’s actual reliance on the data provided. Applicant should make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.
LEGAL NOTICE OF PUBLIC AUCTION

PROPOSED DISPOSITION OF HAWAIIAN HOME LANDS
FOR GENERAL LEASE OF LIMITED INDUSTRIAL-USE DEVELOPMENT

Property Location: Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii

The Department of Hawaiian Home Lands (DHHL) intends to dispose of lands by public auction. As authorized by §204(a)(2), Hawaiian Homes Commission Act, 1920, as amended, individuals, companies and/or corporations interested in leasing the properties herein described shall have 45 days from the date this “LEGAL NOTICE OF PUBLIC AUCTION” is first published, that date being Wednesday, November 30, 2011, in which to submit completed applications for DHHL consideration.

All completed applications received by 4:00 p.m. on Friday, January 13, 2012, shall be reviewed and only those applicants that meet DHHL’s initial objectives and criteria shall be notified in writing as being qualified to attend and bid at the scheduled Public Auction as follows:

<table>
<thead>
<tr>
<th>DATE &amp; TIME:</th>
<th>Friday, February 17, 2012 at 10:00 A.M.</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCATION:</td>
<td>DHHL East Hawaii District Office</td>
</tr>
<tr>
<td></td>
<td>160 Baker Avenue</td>
</tr>
<tr>
<td></td>
<td>Hilo, Hawaii 96720</td>
</tr>
<tr>
<td>PARCELS BEING OFFERED</td>
<td>TMK No.’s: (3)2.2.060:032 and (3)2.2.060:039</td>
</tr>
</tbody>
</table>

Packets containing an application form, property information and other requirements for completing the application process are available for pick up by prospective applicants during regular office hours at DHHL’s Oahu Office located at 91-5420 Kapolei Parkway, Kapolei 96707 or by visiting DHHL’s website at www.hawaiianhomelands.org. The appraisal report, which shall not be removed from DHHL’s office, may be reviewed during regular office hours. Please call 808.620.6450 (Kapolei) for the locations of neighbor island district offices and/or to make an appointment to review the appraisal report.

Land to be disposed: The properties to be disposed are identified as follows:

<table>
<thead>
<tr>
<th>Tax Map Key No.</th>
<th>Land Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3)2.2.060:032</td>
<td>20,250/sf</td>
</tr>
<tr>
<td>(3)2.2.060:039</td>
<td>37,713/sf</td>
</tr>
</tbody>
</table>
**Purpose/Use:** The properties are being offered for Limited Industrial Use development. Improvements and uses shall conform to those allowed in a ML-20 zoning district and all applicable permit requirements consistent therewith.

**Term:** Fifty-five (55) years.

**Rent:** The minimum upset rent for the first twenty-five 25 years is as follows:

<table>
<thead>
<tr>
<th>Tax Map Key</th>
<th>Term</th>
<th>Minimum Upset Rent Per Annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3)2.2.060.032</td>
<td>Years 1 – 10</td>
<td>$21,100.00</td>
</tr>
<tr>
<td></td>
<td>Years 11 – 15</td>
<td>Rent shall be increased and adjusted by escalation factor rate of 1.218994% against the rent established for preceding ten (10) year period</td>
</tr>
<tr>
<td>(3)2.2.060.039</td>
<td>Years 16 – 20</td>
<td>Rent shall be increased and adjusted by escalation factor rate of 1.104081% against the rent established for preceding five (5) year period</td>
</tr>
<tr>
<td></td>
<td>Years 21 – 25</td>
<td>Rent shall be increased and adjusted by escalation factor rate of 1.104081% against the rent established for preceding five (5) year period</td>
</tr>
</tbody>
</table>

| Years 1 – 10 | Rent shall be increased and adjusted by escalation factor rate of 1.218994% against the rent established for preceding ten (10) year period |
| Years 11 – 15| Rent shall be increased and adjusted by escalation factor rate of 1.104081% against the rent established for preceding five (5) year period |
| Years 16 – 20| Rent shall be increased and adjusted by escalation factor rate of 1.104081% against the rent established for preceding five (5) year period |
| Years 21 – 25| Rent shall be increased and adjusted by escalation factor rate of 1.104081% against the rent established for preceding five (5) year period |

**Rent Reopening:** The rent shall be re-determined by an independent fair market appraisal prior to commencement of the twenty-sixth (26th), and forty-first (41st) years with five (5)-year step-ups.

**Telecommunication Service:** Sandwich Isles Communications, Inc. (SIC) will provide telephone and broadband services to the project at a time when such services are needed.

**Chapter 343, Environmental Assessment:** The successful bidder shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the start of any demolition or construction activity on the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding environment, such as infrastructure, traffic, parking, noise, etc.
You may review and obtain the Legal Notice of Public Auction packet with Application and all pertinent information at the DHHL office in Kapolei or by visiting DHHL’s website at hawaiianhomelands.org. Applications submitted by prospective bidders must be received by 4:00 P.M., Friday, January 13, 2012, at DHHL’s Kapolei office.

Applicants who have submitted their application to bid by the deadline of 4:00 P.M., Friday, January 13, 2012, will have their applications and proposals reviewed by DHHL. By Friday, February 3, 2012, each applicant will be sent written notification, informing them as to their qualification or non-qualification to bid at the auction. See the Legal Notice of Public Auction packet for further instructions, application criteria, maps, legal descriptions and a draft of the general lease document with the detailed terms and conditions of the lease.

For additional information and to receive a Notice of Public Auction packet, contact Peter “Kahana” Albinio, Jr., Property Development Agent, at Department of Hawaiian Home Lands, Land Management Division, 808.620.9454 on Oahu or email peter.k.albinio.jr@hawaii.gov. You may also visit DHHL’s website at www.hawaiianhomelands.org.

This Legal Notice of Public Auction is authorized by and may be cancelled, postponed, modified or continued from time to time by public announcement to that effect by Albert “Alapaki” Nahale-a, Chairman, Hawaiian Homes Commission.

Date: Honolulu, Hawaii  November 9, 2011

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By_____________________
Albert “Alapaki” Nahale-a, Chairman
Hawaiian Homes Commission

Honolulu Star Advertiser &
Hawaii Tribune Herald
(Local Newspapers)
Date: November 30, 2011
You may review and obtain the Legal Notice of Public Auction packet with Application and all pertinent information at the DHHL office in Kapolei or by visiting DHHL’s website at hawaiianhomelands.org. Applications submitted by prospective bidders must be received by 4:00 P.M., Friday, January 13, 2012, at DHHL’s Kapolei office.

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Date: Honolulu, Hawaii November 9, 2011

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By Albert “Alapaki” Nahale-a, Chairman
Hawaiian Homes Commission

Honolulu Star Advertiser &
Hawaii Tribune Herald
(Local Newspapers)
Date: November 30, 2011
I. INTRODUCTION, OBJECTIVES AND GENERAL INFORMATION
For Limited Industrial -Use (ML-20 District) Development
Hawaiian Home Land situated in Kaei Hana I, Industrial Subdivision,
Waiakea, South Hilo, Island of Hawaii, Hawaii

Introduction:

The Department of Hawaiian Home Lands (DHHL), Land Management
Division, will be conducting a public auction for long term general lease dispositions of
Hawaiian Home Lands’ specifically identified by TMK’s: (3) 2-2-060:032 & (3)2-2-
060:039, situated in Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of
Hawaii, Hawaii as follows:

| DATE & TIME: | Friday, February 17, 2012 at 10:00 A.M. |
| LOCATION: | DHHL  |
| | East Hawaii District Office |
| | 160 Baker Avenue |
| | Hilo, Hawaii 96720 |
| PARCELS BEING OFFERED | TMK No.’s: (3)2.2.060:032 and (3)2.2.060:039 |

Applications submitted by individuals or corporations to bid on Hawaiian Home
Lands as described above will be accepted by the Department of Hawaiian Home
Lands’ (DHHL) for consideration as authorized by §204(a)(2), Hawaiian Homes
Commission Act, 1920, as amended, for a period of forty-five (45) days from the first
date of publication of this Notice being Wednesday, November 30, 2011 to Friday,

All prospective bidders must be pre-qualified pursuant to the qualification
guidelines as established by DHHL Applicant Qualification Criteria. The qualified
bidder making the highest bid which meets or exceeds the minimum upset rent set
for the first ten (10) years at the fall of the gavel shall be the successful bidder and
shall be granted the opportunity to lease the property. The annual rent for the
eleventh (11th) through fifteenth (15th) years shall be escalated by a factor rate of
1.218994% over the rent for the preceding ten (10) year period. The annual rent for
the sixteenth (16th) through (20th) years shall be escalated by a factor rate of 1.04081%
over the rent for the preceding five (5) year period. Then the annual rent for the 20th
(twentieth) through twenty-fifth (25th) years shall also be increased be escalated by a
factor rate of 1.04081% over the rent for the preceding five (5) year period.

The rent shall be re-determined by an independent fair market appraisal prior to
commencement of the twenty-sixth (26th), and forty-first (41st) years with five (5) year
step-ups.
Objectives:

DHHL wishes to lease the subject parcel for development at its highest and best use, which has been designated as a Limited Industrial use zone under the County of Hawai‘i’s ML-20 District zoning requirements. Proposed uses that are controversial or incompatible with the character of the surrounding neighborhood, or create significant negative impacts on the community may be denied. DHHL does not feel that residential uses on this site are compatible with its objectives.

General Information:

- The qualified applicant who bids the highest rent that meets or exceeds the minimum upset rent for the first ten (10) years of the lease shall be granted the opportunity to lease the property.

- Prior to commencement of any demolition or construction on the site, Lessee shall comply with Chapter 343 of the Hawaii Revised Statutes, as amended, which requires that an assessment be made to determine the impacts the development may have on the surrounding environment. Such compliance shall be considered completed upon the issuance of a Finding of No Significant Impact (FONSI) or final approval and acceptance of an Environmental Impact Statement (EIS), which ever is applicable.

- Telecommunications for the site shall be provided by Sandwich Isles Communications, Inc. (SIC).
II. APPLICANT QUALIFICATION CRITERIA
   For Limited Industrial-Use Development (ML-20)
   Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii

   The Department of Hawaiian Home Lands (DHHL) has established the qualification criteria described below to 1) identify willing and capable applicants who are deemed “eligible” to bid for separate general lease dispositions of the properties situated within the Kaei Hana I, Industrial Subdivision Area (hereinafter the “Properties”), identified more specifically as Tax Map Key Nos. (3)2.2.060.032, Lot 43; and (3)2.2.060.039, Lot ; and (2) select the successful bidder who makes the highest offer to rent the subject property from amongst all qualified bidders.

   QUALIFICATION GUIDELINES

   Each applicant must satisfy the following requirements:

1. The applicant must establish proof of the necessary experience and ability to be able to successfully complete an industrial development in Hawaii. To meet the criteria the applicant must demonstrate each of the following:

   a) Must have worked in such capacity that will demonstrate experience in the specific area/field of operation in the State of Hawaii as the applicant’s principal activity for not less than two of the last five years. The applicant must establish this eligibility by submitting a resume or income tax return;

   b) Must demonstrate knowledge and/or personal experience in dealing with federal, state, and county regulations and other agencies governing such projects and establish compliance by documenting participation in land use issues and the building permit process, either personally or through a consultant; and

   c) Must submit a current Certificate of Good Standing (corporations only), a current Tax clearance certificate from both the federal and state departments of taxation.

2. The applicant must demonstrate a feasible plan for completing the proposed development or renovation of existing improvements within a thirty-six (36)-month construction period. In order to determine whether the applicant meets the criteria, the applicant must submit the information as described below:

   a) The applicant’s proposed plan;
b) A map or site plan depicting the planned improvements to be constructed;

c) A time-line that shows all major tasks that must be accomplished by the end of the thirty-six (36)-month construction period.

Failure to complete and submit the information mentioned above will not automatically result in the applicant’s failure to meet the feasibility criteria, however, such failure will be considered by DHHL in determining whether the applicant has the ability to complete the proposed project by the end of the required construction period.

3. The applicant must possess the financial capability to complete the proposed project. In order for DHHL to determine whether the applicant meets the financial capability criteria, the applicant must submit each of the following:

a) A detailed budget/cost estimate showing the estimated cost of construction of the proposed project;

b) Current financial statement or tax return; and

c) Documents identifying all financial resources upon which the applicant is relying on to complete the proposed project together with evidence (such as signed loan commitment or notice of intent to lease from prospective tenants) that financing is committed to the project.

DHHL is the sole entity that will evaluate the applicant’s financial qualifications. The evaluation will be based on the applicant’s documentation of financial capability to complete the proposed project as submitted to DHHL. All contingencies to which any proposed financing must be described in the documents submitted with the Application.
III. PUBLIC AUCTION GUIDELINES
For Limited Industrial-Use Development (ML-20)
Kaei Hana I, Industrial Subdivision,
Waiakea, South Hilo, Island of Hawaii

The public auction shall be held on Friday, February 17, 2012 at 10:00 a.m., at
DHHL’s East Hawaii District Office located at 160 Baker Avenue, Hilo, Hawaii 96720.

Any person or entity shall be eligible to bid for a general lease at this auction, except a person who:

a) Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;

b) Is a minor;

c) Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;

d) Fails to show proof of having on hand, upon demand of the Chairman of the Hawaiian Homes Commission or his agent at the public auction, Advanced Rent Payment in cash, certified, or cashier’s check, (payable to the Department of Hawaiian Home Lands) an amount equal to one-fourth of the minimum upset annual rental as listed below:

<table>
<thead>
<tr>
<th>Tax Map Key</th>
<th>Annual Rent</th>
<th>Advanced Rent Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3)2.2.060.032</td>
<td>$21,100.00</td>
<td>$5,275.00</td>
</tr>
<tr>
<td>(3)2.2.060.039</td>
<td>$35,800.00</td>
<td>$8,950.00</td>
</tr>
</tbody>
</table>

e) Fails to meet the pre-qualifying criteria as outlined in the Qualification Guidelines

All prospective applicants are responsible for thoroughly reading and understanding the terms, covenants, reservations and conditions of the lease offering by reviewing a copy of the Legal Notice of Public Auction, all data contained in the Information Packet, and other informational items available for review in DHHL’s office located at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, or by visiting DHHL’s website at www.hawaiianhomelands.org. By request, out-of-state applicants can make arrangements to obtain the information by contacting DHHL’s Income Property Branch at 808.620.9456.

Furthermore, prospective applicants are encouraged to physically inspect the property provided DHHL is indemnified and held harmless from personal injury or damages that result from such property inspection. You may make an appointment for
a site inspection by contacting DHHL’s Income Property Branch at 808.620.9456, on Oahu.

All prospective bidders must be pre-qualified pursuant to the above-referenced qualification guidelines. All qualified bidders or authorized corporate representatives must be present in person at the auction. All qualified bidders must bring a picture identification card and funds pursuant to the Public Auction Guidelines, section (d). Bidding shall commence at the upset minimum annual rental for the first ten (10) years as stated in the Legal Notice of Public Auction and the qualified bidder making the highest bid at the fall of the gavel shall be the successful bidder of the lease. The annual rent for the eleventh (11th) through fifteenth (15th) years shall be escalated by a factor rate of 1.218994% over the rent for the preceding ten (10) year period. The annual rent for the sixteenth (16th) through (20th) years shall be escalated by a factor rate of 1.04081% over the rent for the preceding five (5) year period. Then the annual rent for the 20th (twentieth) through twenty-fifth (25th) years shall also be escalated by a factor rate of 1.04081% over the rent for the preceding five (5) year period.

The rent shall be re-determined by an independent fair market appraisal prior to commencement of the twenty-sixth (26th), and forty-first (41st) years with five (5)-year step-ups.

DHHL reserves the right to negotiate with respect to any and all terms and conditions of the lease including all rent provisions, provided, however, that any negotiated adjustments to the rent do not result in such adjustments being less than the amount of rent offered by the Successful Bidder for the first ten (10) years of the lease term.

DHHL reserves the right to negotiate with the qualified applicant with the next highest offer, should the selected applicant fail to conclude negotiation with respect to the lease.

**Information Packet and Consultant’s Reports**

The data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and reliable sources, however it is **NOT GUARANTEED**. Applicant is advised to make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.
SIGNIFICANT DATES:

- **Wednesday, November 30, 2011**  
  Advertisement of Legal Notice

- **Friday, January 13, 2012**  
  Applications and Proposals Due  
  Time: 4:00 p.m. (HST)  
  Location: Department of Hawaiian Home Lands  
  91-5420 Kapolei Parkway  
  Honolulu, Hawaii 96707

- **Friday, February 3, 2012**  
  Notice of qualification mailed to Applicants

- **Friday, February 17, 2012**  
  Public Auction  
  Time: 10:00 a.m. (HST)  
  Location: Department of Hawaiian Home Lands  
  East Hawaii District Office  
  160 Baker Avenue  
  Hilo, Hawaii 96720
IV. APPLICATION AND QUALIFICATION FORM
For Limited Industrial-Use Development (ML-20)
Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii

<table>
<thead>
<tr>
<th>Name of Applicant</th>
<th>Person to Contact / Title</th>
</tr>
</thead>
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<thead>
<tr>
<th>Applicant’s Address</th>
<th>Contact Person’s Address</th>
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<tr>
<th>City, State, Zip Code</th>
<th>City, State, Zip Code</th>
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<tr>
<th>Applicant’s Telephone No.</th>
<th>Contact Person’s Telephone No.</th>
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<tr>
<th>Applicant’s Facsimile No.</th>
<th>Contact Person’s Facsimile No.</th>
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List of Corporate Officers and Directors or Individual Partners, Joint Ventures or Owners.

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<thead>
<tr>
<th>Name:</th>
<th>Name:</th>
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NOTE: Please attach a separate page if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes.

Corporate Shareholders / Partners Holding 25% or More of the Outstanding Shares:

Name: ___________________________ Name: ___________________________

Title: ___________________________ Title: ___________________________

Telephone No.: ____________________ Telephone No.: ____________________

Address: __________________________ Address: __________________________

Name: ___________________________ Name: ___________________________

Title: ___________________________ Title: ___________________________

Telephone No.: ____________________ Telephone No.: ____________________

Address: __________________________ Address: __________________________

Applicant intends to bid on the following Parcels:

Property No._______________________ TMK No.__________________________

Intended Use __________________________________________________________

Property No._______________________ TMK No.__________________________

Intended Use __________________________________________________________

Project Description:

Include a narrative and any supportive materials that provides information pertaining of the proposed development at the subject property. Attach additional pages to this application. See Applicant Qualification Criteria for list of requested information.
Financial Information

Note: Financial information submitted to DHHL shall be kept confidential and shall not be considered as a public record as defined in Chapter 92, Hawaii Revised Statutes. Financial information shall not be released without the express written consent of the applicant.

1. All Applicants shall include the following:

(a) If applicable a certified copy of the Articles of Incorporation.
(b) If applicable a certified copy of the By-Laws.
(c) If applicable, a certified copy of the Corporation Resolution.
(d) If applicable, a certified copy of the Partnership Certificate.
(e) If applicable, a certified copy of the Joint Venture Agreement.
(f) A current Certificate of Good Standing from the Department of Commerce and Consumer Affairs.
(g) A current Tax Clearance from the Department of Taxation and Internal Revenue Service.
(h) Applicant's proposed plan within 36 month construction period.
(i) Detailed budget / cost estimate showing the estimated cost of construction.
(j) If applicable, a description of any financial default, modification of terms, and conditions of financing to avoid default, or legal actions taken or pending against the applicant and borrowing and guaranteeing entities and their principals.

Please attach a description of the Applicant's company experience which supports the foregoing requirement and which includes the following information:
(a) A list of industrial / commercial projects developed;

(b) The role of the applicant in developing the listed industrial / commercial projects;

(c) A brief description of the industrial / commercial projects;

(d) If applicable, a description of all industrial / commercial projects or facilities owned and operated by the applicants;

(e) If applicable, a statement of the applicant's past or current involvement with the Department of Hawaiian Home Lands (DHHL).

(f) THE UNDERSIGNED APPLICANT, understands that DHHL is relying on the information provided herein to qualify the undersigned as an eligible Developer under the Hawaiian Homes Commission Act, 1920, as amended. The undersigned represents and warrants that the information provided is true and complete and that DHHL may consider the information as continuing to be true and correct until a written notice of a change is given to DHHL by the undersigned. The Undersigned agrees to provide and other information that DHHL deems necessary to determine the qualifications of the applicant.

---------------------------------------------
Name of Company

By: _______________________________________

Signature

---------------------------------------------
Title

---------------------------------------------
Date
V. CONDUCT OF DISPOSITION
For General Industrial-Use Development (ML-20)
Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii

The following procedures, terms and conditions are applicable to this disposition of general leases of Hawaiian home lands by public auction.

Any proposed disposition of a general lease may be cancelled, postponed or continued by order of the Chairman, Hawaiian Homes Commission.

A. PRE-SELECTION TO BID:

1. Prepare the Application for General Lease and submit to DHHL no later than 4:00 p.m., Friday, January 13 2012. Application should consist of:
   a. Application Form;
   b. Information Requested on the Applicant Qualification Criteria; and
   c. Proposal to lease Hawaiian home lands for the construction of an industrial development (Refer to Applicant Qualification Criteria).

2. An application may be rejected for any of the following reasons:
   a. If the Application is late, conditional, incomplete or does not adhere to the format and instructions;
   b. If it is shown that inaccurate statements were made in the completed application;
   c. If the applicant fails to meet any information as requested in the Applicant Qualification Criteria;
   d. If its proposal does not meet the objectives or is not in the best interest of the Department of Hawaiian Home Lands’ Trust and/or its beneficiaries.

3. By Friday February 3, 2012, DHHL will inform each prospective applicant, in writing, as to the applicant’s qualification or non-qualification to bid at the auction.

All qualified bidders or authorized corporate representative must be present in person at the auction. All qualified bidders must bring a picture identification card and funds pursuant to section “d” of the Public Auction Guidelines (refer to Applicant Qualification Criteria). Bidding shall commence at the upset minimum annual rental for the first ten (10) years as stated in the Legal Notice of Public Auction and the qualified bidder making the highest bid at the fall of the gavel shall be the successful bidder of the lease. The annual rent for the eleventh (11th) through fifteenth (15th) years shall be escalated by a factor rate of 1.218994% over the rent for the preceding ten (10)
year period. The annual rent for the sixteenth (16th) through (20th) years shall be escalated by a factor rate of 1.04081% over the rent for the preceding five (5) year period. Then the annual rent for the 20th (twentieth) through twenty-fifth (25th) years shall also be escalated by a factor rate of 1.04081% over the rent for the preceding five (5) year period.

Notwithstanding the above paragraph, DHHL may reject any or all bids and waive any defects when, in its opinion, such rejection or waiver will be for the best interest of its beneficiaries.

B. DUTIES OF SUCCESSFUL BIDDER:

Upon the fall of the hammer, the successful bidder must:

1. Execute a Memorandum of Lease.

2. Pay in cash, certified or cashier’s check, the required Advanced Rent Payment amount (refer to PUBLIC AUCTION GUIDELINES section “d”) which will be non-refundable and shall be applied to future rent due under the lease.

3. Within five (5) working days from the date that the applicant is notified that it is successful bidder, the bidder must execute an affidavit stating that they are not in arrears in the payment of taxes, rents or other obligations owing the State of Hawaii or any of its political subdivisions, and that they have not had any leases, licenses or permits that were issued by the State of Hawaii or its political subdivisions, rescinded, cancelled or terminated due to the bidder’s lack of performance within the last five (5) years.

4. Within five (5) working days from the date that the applicant is notified that they are the successful bidder, the bidder must pay the difference between the Advanced Rent Payment amount paid at the fall of the hammer and twenty-five percent (25%) of the annual rental bid, and the estimated charges in connection with this negotiated disposition, as required by law, including the cost of appraisal documentation, printing, advertising, conveyance tax, and all other incidental costs incurred by DHHL. If there is an excess of estimated charges, it will be returned to the successful bidder.

5. Upon signing of the lease, lessee will pay all outstanding legal and consultant charges associated with the disposition.
C. CANCELLATION

The Department of Hawaiian Home Lands (DHHL) requires that lease negotiations are concluded and a lease signed no later than ninety (90) days following the selection of the successful bidder provided that, for good cause shown, however, an extension of time to the negotiation period may be granted with approval of the Chairman, Hawaiian Homes Commission.

In the event the successful bidder fails to comply with the requirements as described above, DHHL may, at its option, cancel the award thereby terminating any and all rights pursuant to the disposition of the defaulting awardee and retain any amounts paid by the successful bidder as damages. The foregoing shall not exclude any other remedies available to DHHL.

Dated: November 9, 2011

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By: ______________
Albert “Alapaki” Nahale-a, Chairman
Hawaiian Homes Commission
VI. GENERAL PROPERTY INFORMATION
For Limited Industrial-Use Development (ML-20)
Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii

The parcels of land (the "Properties") being offered for separate general lease dispositions are located in the Kaei Hana I, Industrial Subdivision, Waiakea, South Hilo, Island of Hawaii. The Properties are currently identified on the tax maps of the State of Hawaii as Division 3, Zone 2, Section 2, Plat 060, Parcels 032 and Parcel 039. The Department of Hawaiian Home Lands (DHHL) has selected and designated the sites for Limited Industrial-Use development that is compatible with the character of the immediate surrounding area where industrial/commercial sites are in high demand.

PROPERTY DESCRIPTION & CONDITION

TMK: (3)2.2.060.032, Lot 43 (See Exhibit 1-A)

Land Area – 0.46 acres (20,250 square feet)

County Zoning – The subject site is zoned ML-20 (20,000 sq. ft. minimum lot size), Limited Industrial.

Size and Shape – The site is rectangular in shape and contains a gross land area of approximately 20,250 square feet. The site has approximately 90.00 feet of frontage along Makaala Street and a depth of 225.00 feet.

Ingress and Egress – Ingress and egress is provided by a driveway located along the Makaala Street frontage at the west property boundary. Makaala Street is an asphalt paved, two-way road servicing traffic in the Kaei Hana-I Subdivision. The Makaala Street frontage is improved with overhead light standards and conduits.

Topography and Soil Condition – The site features a relatively level topography at road grade. A detailed geotechnical study of soil and sub-soil located on the Property has not been done.

Hazardous Materials/Contaminants – An assessment or investigation for possible hazardous material or contamination has not been conducted for the Property.

FEMA Flood Hazard Designation - The subject site is located within an area designated Zone X which correspond to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas or 100-year stream flooding where the contributing drainage area is less than 1 square mile or areas protected from the 100-year flood by levees.
**Improvements** – The property is vacant of building improvements. County records indicate that improvements were demolished as of June 1993. The parcel is secured with a chain link fence. The majority portion of the parcel is asphalt concrete paved and appears to be in fair condition.

**Utilities** – Public utilities available to the subject site includes water, electricity, and telephone service. There are no sewer lines in the area.

Water service is provided by the County of Hawaii Department of Water Supply.

Electricity service is provided by Hawaii Electric Light Company, Inc.

Telephone service will be provided by Sandwich Isles Communications, Inc.

Wastewater in the Kaei Hana-I Subdivision is serviced by cesspool or private system.

**Easements and Restrictions** – Public records disclose no easements or restrictions.

**TMK: (3)2.2.060.039, Lots 50 & 51 (See Exhibit 1-B)**

**Land Area**  0.87 acres (37,713 square feet)

**County Zoning** – The subject site is zoned ML-20 (20,000 sq. ft. minimum lot size), Limited Industrial.

**Size and Shape** – The site is generally shaped as a trapezoid with an approximately 250.00 ft frontage along Makaala Street, side boundaries at a depth of of approximately 225.00 ft, and back boundary of 90.00 ft.

**Ingress and Egress** – Ingress and egress is provided by a driveway located along the Makaala Street frontage at the west property boundary. Makaala Street is an asphalt paved, two-way road servicing traffic in the Kaei Hana-I Subdivision. The Makaala Street frontage is improved with overhead light standards and conduits.

**Topography and Soil Condition** – The site features a relatively level topography at road grade. A detailed geotechnical study of soil and sub-soil located on the Property has not been done.

**Hazardous Materials/Contaminants** – A Phase I Environmental Site Assessment for possible hazardous material or contamination has been conducted for the Property. The Assessment as prepared by Yukie Ohashi Planning Consultant LLC in May 2010 concludes that hazardous and/or toxic conditions are NOT present on the property. The report is available upon request.
FEMA Flood Hazard Designation - The subject site is located within an area designated Zone X which correspond to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas or 100-year stream flooding where the contributing drainage area is less than 1 square mile or areas protected from the 100-year flood by levees.

Improvements – There are two warehouse structures on the property. The Main structure is a 60 ft. x 168 ft. steel frame building with a ceiling height of 15 feet. Offices are enclosed and occupy the front 1/3 of the building and an open warehouse occupies the back 2/3 of the building. A mezzanine is accessed from the 2nd story attached to the office section. A second 15-ft high warehouse structure approximately 40 ft x 124 ft of steel construction with a concrete block firewall along the 125 ft length is located along the north boundary of the property. This building is used for storage. Both buildings are old and suffer from rust damage and need restoration or repair should successful bidder desire to use them.

Utilities – Public utilities available to the subject site includes water, electricity, and telephone service. There are no sewer lines in the area.

Water service is provided by the County of Hawaii Department of Water Supply.

Electricity service is provided by Hawaii Electric Light Company, Inc.

Telephone service will be provided by Sandwich Isles Communications, Inc.

Wastewater in the Kaei Hana-I Subdivision is serviced by cesspool or private system.

Easements and Restrictions – Along the south boundary is a 3,888 sq. ft. Drainage Easement. There are no drainage improvements present (such as a channel or drainage pipe) within the easement. Surface flows from rainfall sheet-flows in an east-west direction towards Makaalaa Street along the north and south boundaries.

NOTE: Additional information and demographics are contained in the two (2) appraisal reports for each respective parcel and one (1) Environmental Site Assessment study conducted for the site identified by TMK No. (3)2.2060.039. Due to the limited number of copies of these reports, they may only be reviewed in a DHHL office. To make an appointment to review these reports, contact Peter “Kahana” Albinio, Jr. at 808.620.9454 or email peter.k.albinio.jr@hawaii.gov.
LOT 43

Being Lot 43 of Kaei Hana I Subdivision (Industrial Area)
Same being a portion of Hawaiian Home Lands of Panaewa, Tract I
At Waiakea, South Hilo, Hawaii

Beginning at the Southwest corner of this parcel of land, being also the Northwest corner of Lot 44 of Kaei Hana I Subdivision (Industrial Area), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 5,325.88 feet South and 9,971.00 feet East and thence running by azimuths measured clockwise from True South:
1. 180° 00' 90.00 feet along the East side of Makaala Street;
2. 270° 00' 225.00 feet along the South side of Lot 42 of Kaei Hana I Subdivision (Industrial Area);
3. 360° 00' 90.00 feet along the West side of Lot 36 of Kaei Hana I Subdivision (Industrial Area);
4. 90° 00' 225.00 feet along the North side of Lot 44 of Kaei Hana I Subdivision (Industrial Area) to the point of beginning and containing an area of 20,250 Square Feet.

Tax Map Key: 2-2-60: 32
Third Division

LOT 44

Being Lot 44 of Kaei Hana I Subdivision (Industrial Area)
Same being a portion of Hawaiian Home Lands of Panaewa, Tract I
At Waiakea, South Hilo, Hawaii

Beginning at the Northwest corner of this parcel of land, being also the Southwest corner of Lot 43 of Kaei Hana I Subdivision (Industrial Area), the
coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 5,325.88 feet South and 9,971.00 feet East and thence running by azimuths measured clockwise from True South:

1. 270° 00'  225.00 feet along the South side of Lot 43 of Kaei Hana I Subdivision (Industrial Area);

2. 360° 00'  90.00 feet along the West side of Lot 35 of Kaei Hana I Subdivision (Industrial Area);

3. 90° 00'  225.00 feet along the North side of Lot 45 of Kaei Hana I Subdivision (Industrial Area);

4. 180° 00'  90.00 feet along the East side of Makaala Street to the point of beginning and containing an area of 20,250 Square Feet.

Tax Map Key: 2-2-60; 33
Third Division

[Signature]

Arthur Y. Akinaka, Registered Professional Surveyor, Cert. No. 244

-2-
PORTION OF HAWAIIAN HOME LANDS OF PANAENA, TRACT 1
LOT 43 AND LOT 44

KAEL HANA 1
WAIAKEA, SOUTH HILO, HAWAII
Being Consolidation of Lot 50 and Lot 51
of Kaei Hana-I (Industrial Area)
Same being a portion of Hawaiian Home Lands
of Panaewa, Tract I
At Waiakea, South Hilo, Hawaii

Beginning at the Northwest corner of this parcel of land, being
also the Southwest corner of Lot 49 of Kaei Hana-I (Industrial Area) on the East
side of Makaala Street, the coordinates of said point of beginning referred to
Government Survey Triangulation Station "HALAI" being 5,925.88 feet South and
9,971.00 feet East and thence running by azimuths measured clockwise from True
South:

1. 270° 00'  225.00 feet along the South side of Lot 49 of Kaei Hana-I
   (Industrial Area);
2. 360° 00'  90.00 feet along the West side of Lot 29 of Kaei Hana-I
   (Industrial Area);
3. 40° 10'  182.35 feet along the Northwesterly side of Lot 52 of Kaei Hana-I
   (Industrial Area);
4. 130° 10'  61.37 feet along the Northeasterly side of Makaala Street;
   Thence on a curve to the right, with a radius of
   170.00 feet, the chord azimuth and distance being:
5. 155° 05'  143.24 feet;
6. 180° 00'  60.01 feet along the East side of Makaala Street to the point of
   beginning and containing an area of 37,713 Square
   Feet.

SUBJECT, HOWEVER, to a Drainage Easement and more
fully described as follows:
Beginning at the Southeast corner of this strip of land, being also the Southeast corner and the end of Course 2 of the above described parcel of land, and thence running by azimuths measured clockwise from True South:

1. 40° 10' 182.55 feet along the Northwesterly side of Lot 52 of Kaei Hana-I (Industrial Area);

2. 130° 10' 20.00 feet along the Northeasterly side of Makaala Street;

3. 220° 10' 206.25 feet along the remainder of Lots 50 and 51 of Kaei Hana-I (Industrial Area);

4. 360° 00' 31.01 feet along the West side of Lot 29 of Kaei Hana-I (Industrial Area) to the point of beginning and containing an area of 3,888 Square Feet.
CONSOLIDATION OF LOTS 50 AND 51
KAEI HANA-I (Industrial Area)
PORTION OF HAWAIIAN HOME LANDS OF PANAEWA, TRACT 1
WAIAKEA, SOUTH HILO, HAWAII

TAX MAP KEY: 2-2-60-39 & 40
Third Division

ARTHUR Y. AKINAKA, LTD.
CIVIL ENGINEERS & SURVEYORS
1339 NO. SCHOOL ST.
HONOLULU, HAWAII 96817

DATE: JULY 31, 1970
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _______

between

STATE OF HAWAII

and

__________________________

covering

HAWAIIAN HOME LANDS

situate at

Tax Map Key (3) 2-2-60: _______
Kaei Hana I Industrial Subdivision
South Hilo, Island of Hawaii
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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  

GENERAL LEASE NO. ________  

THIS INDENTURE OF LEASE (the “Lease”), is made as of the _____ day of ____________, 20____, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and______________________________________________, a ______________________ (sole proprietor or ________ corporation), whose business and mailing address is __________________________________________________________, hereinafter called “LESSEE.”

WITNESSETH:

ARTICLE ONE  
DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kaei Hana I, Waiakea, South Hilo, Island of Hawaii, County of Hawaii, and further identified as Lots __ and __, comprising ______ acre, more or less, of Hawaiian homelands, more particularly described in Exhibit “A”, and as shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on ________________ (which shall be the Effective Date of the Lease), and ending as of midnight on ________________ unless sooner terminated as hereinafter provided.

ARTICLE TWO  
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

   (a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmte, laterite,
gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.
5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:
Lease years 1 through 10: ____________________________ Dollars ($_______.00) per annum ($_______. per month);

Lease years 11 through 15: ____________________________ Dollars ($_______.00) per annum ($_______. per month);

Lease years 16 through 20: ____________________________ Dollars ($_______.00) per annum ($_______. per month); and

Lease years 21 through 25: ____________________________ Dollars ($_______.00) per annum ($_______. per month).

Lease years 26 through 55: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is ______________. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined with 5-year step-ups at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing fifteen-year period comprisinglease years 26-40 and shall again be reopened and re-determined with 5-year step-ups at the expiration of the fortieth (40th) lease year for the next ensuing fifteen year period comprising lease years 41-55, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser.
their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

ARTICLE FOUR

THE PARTIES HEREBIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by
LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. Improvements Required by Law. LESSEE shall, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE shall repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.
7. **Improvements.**

(a) **Initial Development.** Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.

(b) **Governmental Approvals and Permits.** Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) **Construction of Improvements.** LESSEE shall not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifteen Thousand Dollars ($15,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

(d) **Bonds and Security Deposit.** LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.
It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

(e) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183,12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. Seq., the Architectural Barriers Act of 1968, 42, U.S.C.4151 et. Seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C.790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) Responsibility for Compliance. Notwithstanding LESSOR’S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR’s investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.
9. Assignment.

(a) **No Assignment Without Consent.** LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

(b) **Assumption of Lease.** Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) **Compliance with Hawaii Revised Statutes §171-36(a)(5).** LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

(d) **No Change of Use.** No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

   (i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

   (ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

   (iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

   (iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten
percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE 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 LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit 5, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. **Liens.** LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. **Permitted Uses.** The Premises shall be used only for the following purposes:

In no event shall the Premises be used for the construction of any residential lots, units or project.
13. Indemnity.

(a) LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without
deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under the property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products -
Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) **Limits.** Limits for such coverage shall be determined.

(2) **Deductible.** Except with LESSOR’s prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(3) **Application of General Aggregate.** The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) **Umbrella Liability.** Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(d) **Builder’s and Installation Risk.** Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) **General Policy Terms.** All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR,
although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR's satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by
LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE shall, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefore have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

17. **Processing Fees/Documentation.** LESSEE agrees to pay to LESSOR, LESSOR’s standard fees for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

18. **Hazardous Materials.**

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous
Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for, and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.
20. **Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

**ARTICLE FIVE**

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Mortgage.** Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagor, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagor or holder shall be freely assignable. The term “holder” shall include the Mortgagor and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagor of this Lease (the “Mortgagor”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagor, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagor shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:
(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further if the default cannot practically be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by
LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee.
or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the
time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the
mortgage debt, including interest and penalties, and all reasonable expenses incurred by the
holder in connection with the foreclosure and preservation of its security interest, less
appropriate credits, including income received from the privilege, interest or estate subsequent to
the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR,
then terminate the outstanding privilege, interest or estate without prejudice to any other right or
remedy for arrearages of rent or for any preceding or other breach or default and use its best
efforts to redisseminate of the affected land to a qualified and responsible person free and clear of the
mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or
prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised
Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may
still otherwise hope to resolve the problems created by the breach or default involved. The
proceeds of any redissemination under subparagraph (b) above shall be applied as follows: first, to
reimburse LESSOR for costs and expenses in connection with the redissemination; second, to
discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in
connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the
value received by LESSOR upon redissemination which exceeds the fair market lease value of
the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the
privilege, interest, or estate.

4. **Condemnation.** If at any time, during the term of this Lease, all or any portion of
the Premises should be condemned; or required for public purposes by the State of Hawaii, or
any county or city and county, or any other governmental agency or subdivision, then and in any
such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just
compensation to the same extent and according to the same principles and rules of law as if the
Premises and all improvements thereon had been condemned by the State of Hawaii under its
power of eminent domain, the amount of such just compensation to be determined in the manner
set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing
LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s
personal property, or from claiming all or any portion of its award directly against the
condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to
which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that
the remainder of the Premises are rendered unusable as the result of any such condemnation
LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to
Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. **Right to Enter.** LESSOR and agents or representatives shall have the right to
enter and cross any portion of the Premises other than the building for the purpose of performing
any public or official duties; provided, however, in the exercise of these rights, LESSOR shall
not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. **Inspection by Prospective Bidders.** LESSOR shall have the right to authorize any
person or persons to enter upon and inspect the Premises at all reasonable times following a
published notice for its proposed disposition for purposes of informing and apprising that person
or persons of the condition of the Premises prior to the proposed disposition; provided, however,
that any entry and inspection shall be conducted during reasonable hours after notice to enter is
first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or
designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease.
12. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

If to LESSOR: Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attn: Land Management Division

And a copy to: Department of the Attorney General
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: AG - PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"): Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. ("RCRA")
Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESSOR" shall mean and include LESSOR herein, its successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ____________________________
Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission

LESOR

Deputy Attorney General
State of Hawaii

By ____________________________

LESSEE

26
B-129
EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES
EXHIBIT “B”

SUBDIVISION MAP
EXHIBIT “C”

SHORT FORM LEASE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is made and entered into as of __________ 20__, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and ____________, whose business and mailing address is ____________, hereinafter called “LESSEE.

1. TERM AND PREMISES. For a lease term commencing on ____________, and ending as of midnight on ____________, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE (“Lease”), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property (“Premises”) located at ____________, Island of ____________, Hawaii, comprising ____________ acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, together with all rights of ingress and egress and all other rights appurtenant to said Premises.

This document contains ___ pages
including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for ________________________________.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

    IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

    APPROVED BY THE HHC
    AT ITS MEETING HELD ON

    APPROVED AS TO FORM:

    Deputy Attorney General
    State of Hawaii

    State of Hawaii
    DEPARTMENT OF HAWAIIAN HOME LANDS

    By
    Albert “Alapaki” Nahale-a, Chairman
    Hawaiian Homes Commission

    LESSOR

    a __________________________ corporation

    By

    __________________________

    __________________________

    LESSEE
STATE OF ______________________  )
COUNTY OF ___________________  ) SS.

On this ___ day of ___________________, 20___, before me appeared ________________________, to me personally known, who, being by me duly sworn or affirmed did say that he/she is the ________________ for ________________________, a ________________ corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

______________________________

Print or Type Name _____________________________

Notary Public, State of Hawaii

My Commission expires: ______________________
Sublease Rent Participation Approved by the Hawaiian Homes Commission on April 24, 1987

"That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit 'C'.

2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.

3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.

4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy."

Extract from Exhibit 'C':

<table>
<thead>
<tr>
<th>Gross Annual Sublease Rent</th>
<th>Formula</th>
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<tr>
<td>LESS:</td>
<td>4% General Excise Tax (if paid by sublessor)</td>
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<tr>
<td>EQUALS:</td>
<td>Effective Annual Sublease Rent</td>
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<tr>
<td>LESS:</td>
<td>Allowances (costs and investment returns)</td>
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<td>EQUALS:</td>
<td>Income Attributable to Land</td>
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<tr>
<td>LESS:</td>
<td>Allocated Basic Lease Rent</td>
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<td>EQUALS:</td>
<td>Amount of Increase in Lease Rent Due to Subleasing (if any)</td>
</tr>
<tr>
<td>X 50% EQUALS:</td>
<td>Amount Due to DHHL</td>
</tr>
</tbody>
</table>

EXHIBIT 5
DEFINITION OF TERMS
Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/liability insurance policies.

Line 4e: SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.
Line 4f: RETURN OF INVESTMENT
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4g: RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: INDICATED ADDITIONAL RENT
Line 5 (Annual Income Attributable to Land) less Line 6 (Alotted Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: ADDITIONAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY
(No subleasing of building space)

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.
Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: ALLOCATED ANNUAL BASE LEASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 5: INDICATED ANNUAL ADDITIONAL RENT
Line 3 minus Line 4, but not less than zero.

Line 6: ADDITIONAL ANNUAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.
SUBLEASE RENT PARTICIPATION
WORKSHEET

I. SUBLEASING OF BUILDING SPACE:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (_______)
Line 3: EQUALS Effective Annual Sublease Rent ________
Line 4: Less Allowances:
   a. Management, Credit Loss $_______
   b. Repair and Maintenance ________
   c. Real Property Taxes ________
   d. Insurance Premiums ________
   e. Surety Bond Premium ________
   f. Return OF Investment ________
   g. Return ON Investment ________
Line 5: EQUALS Annual Income Attributable to Land ________
Line 6: Less Allocated Annual Base Lease Rent ________
Line 7: EQUALS Indicated Additional Annual Rent ________
       TIMES 50% X 0.50
Line 8: EQUALS Additional Annual Rent Payable to DHHL ________

II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (_______)
Line 3: EQUALS Effective Annual Sublease Rent ________
Line 4: Less Allocated Annual Base Lease Rent ________
Line 5: EQUALS Indicated Annual Additional Rent ________
       TIMES 50% X 0.50
Line 6: EQUALS Additional Annual Rent Payable to DHHL ________

Exhibit "C"
HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease: $8,000
Effective Annual Sublease Rent: $3,000
Total Land Area of Leasehold Premises: 24,000 sq. ft.
Subleased Land Area: 6,000 sq. ft.

\[
\text{RATIO: } \frac{6}{24} = 0.25 \times \$8,000 = \$2,000 \text{ Allocated Annual Base Lease Rent}
\]

Effective Annual Sublease Rent: $3,000
Allocated Annual Base Lease Rent: $2,000
Indicated Additional Rent: $1,000

Times 50% .50

SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL $ 500
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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  

GENERAL LEASE NO. ______

THIS INDENTURE OF LEASE (the “Lease”), is made as of the ______ day of________________, 20___, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and __________________________________________, a ______________________ (sole proprietor or _______ corporation), whose business and mailing address is ______________________________________, hereinafter called “LESSEE.”

WITNESSETH:

ARTICLE ONE

DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kaei Hana I, Waiakea, South Hilo, Island of Hawaii, County of Hawaii, and further identified as Lots ___ and ___, comprising ______ acre, more or less, of Hawaiian home lands, more particularly described in Exhibit “A”, and as shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on __________________ (which shall be the Effective Date of the Lease), and ending as of midnight on ________________ unless sooner terminated as hereinafter provided.

ARTICLE TWO

RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

   (a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral
substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. **Prehistoric and Historic Remains.** LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. **Right of Withdrawal.** The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4. **Reservation of Easements in Favor of LESSOR.** LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. **Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR.** In the event all or any portion of the Premises is taken or withdrawn, or
LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: ___________________________ Dollars ($______.00) per annum ($_____.__ per month);
Lease years 11 through 15: ________________________________ Dollars ($______.00) per annum ($_____.__ per month);

Lease years 16 through 20: ________________________________ Dollars ($______.00) per annum ($_____.__ per month); and

Lease years 21 through 25: ________________________________ Dollars ($______.00) per annum ($________.__ per month).

Lease years 26 through 40: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is ________________. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the thirty-fifth lease year for each of the next ensuing two ten-year periods comprising lease years 36-45, and 46-55, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a
party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinafter provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or
proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. **Utility Services.** LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. **Improvements Required by Law.** LESSEE shall, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. **Observance of Laws.** LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. **Inspection of Premises.** Upon reasonable notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE shall repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.
7. Improvements.

(a) Initial Development. Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.

(b) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) Construction of Improvements. LESSEE shall not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifteen Thousand Dollars ($15,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

(d) Bonds and Security Deposit. LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.
It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

(e) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183,12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. Seq., the Architectural Barriers Act of 1968, 42, U.S.C.4151 et. Seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C.790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) Responsibility for Compliance. Notwithstanding LESSOR’S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR’s investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.
9. Assignment.

(a) **No Assignment Without Consent.** LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

(b) **Assumption of Lease.** Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) **Compliance with Hawaii Revised Statutes §171-36(a)(5).** LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

(d) **No Change of Use.** No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten
percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE 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 LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit 5, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. **Liens.** LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. **Permitted Uses.** The Premises shall be used only for the following purposes: _________________________________. In no event shall the Premises be used for the construction of any residential lots, units or project.
13. **Indemnity.**

(a) LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance.**

(i) **Coverage.** A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without
deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii)  Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii)  Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b)  Liability Insurance.

(i)  Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products -
Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

1. Limits. Limits for such coverage shall be determined.

2. Deductible. Except with LESSOR’s prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

3. Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

   ii. Workers’ Compensation and Employers’ Liability Insurance. Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

      1. Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

      2. The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

   c. Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

   d. Builder’s and Installation Risk. Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

   e. General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR,
although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR’s satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by
LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE shall, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

17. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR’s standard fees for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.


LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials.
Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.
20. **Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

**ARTICLE FIVE**

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Mortgage.** Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:
(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSOR’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by
LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee.
or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. **Breach.** Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the
time period provided herein, or within such additional period as LESSOR may allow for good
cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and
subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other
rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-
enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in
and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension)
ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the
whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the
Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the
part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all
persons from the Premises using such force as may be necessary therefor, (ii) remove all
personal property therefrom, including, but not limited to, LESSEE’s property, and (iii)
force any rights LESSOR may have against said personal property, or store the same in any public or
private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or
owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned.
Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to
have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues
before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to
obtain possession of the Premises, except as LESSOR may otherwise expressly provide in
writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful
detainer and the surrender of possession pursuant to such notice shall not be deemed to be a
termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may
otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to
forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security
interest may, at its option, cure or remedy the default or breach, if the same can be cured or
remedied by the payment of money or, if such is not the case, by performing or undertaking in
writing to perform all of the terms, covenants and conditions contained in the Lease on
LESSEE’s part to be performed, capable of performance by the holder, as determined by
LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within
any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the
cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its
option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the
mortgage debt, together with interest and penalties, and secure an assignment of the debt and
mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in
the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the
conveyance of the privilege, interest or estate upon payment to the holder of the amount of the
mortgage debt, including interest and penalties, and all reasonable expenses incurred by the
holder in connection with the foreclosure and preservation of its security interest, less
appropriate credits, including income received from the privilege, interest or estate subsequent to
the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR,
then terminate the outstanding privilege, interest or estate without prejudice to any other right or
remedy for arrearages of rent or for any preceding or other breach or default and use its best
efforts to redispose of the affected land to a qualified and responsible person free and clear of the
mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or
prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised
Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may
still otherwise hope to resolve the problems created by the breach or default involved. The
proceeds of any redisposition under subparagraph (b) above shall be applied as follows: first, to
reimburse LESSOR for costs and expenses in connection with the redisposition; second, to
discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in
connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of
the value received by LESSOR upon redisposition which exceeds the fair market lease value of
the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the
privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of
the Premises should be condemned, or required for public purposes by the State of Hawaii, or
any county or city and county, or any other governmental agency or subdivision, then and in any
such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just
compensation to the same extent and according to the same principles and rules of law as if the
Premises and all improvements thereon had been condemned by the State of Hawaii under its
power of eminent domain, the amount of such just compensation to be determined in the manner
set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing
LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s
personal property, or from claiming all or any portion of its award directly against the
condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to
which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that
the remainder of the Premises are rendered unusable as the result of any such condemnation
LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to
Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to
enter and cross any portion of the Premises other than the building for the purpose of performing
any public or official duties; provided, however, in the exercise of these rights, LESSOR shall
not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any
person or persons to enter upon and inspect the Premises at all reasonable times following a
published notice for its proposed disposition for purposes of informing and apprising that person
or persons of the condition of the Premises prior to the proposed disposition; provided, however,
that any entry and inspection shall be conducted during reasonable hours after notice to enter is
first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or
designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease.
12. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE: _________________________________
_________________________________
_________________________________

If to LESSOR: Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attn: Land Management Division

And a copy to: Department of the Attorney General
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: AG - PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) “LESSOR” shall mean and include LESSOR herein, its successors or assigns.

(e) “LESSEE” shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The “Premises” shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESOR

By

LESSEE
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

THIS INDENTURE OF LEASE (the “Lease”), is made as of the _____ day of ____________________, 200___, but shall be effective on the date set forth below, by and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and ______________________________________, a ________ corporation, whose business and mailing address is _____________________________________________, hereinafter called “LESSEE.”

W I T N E S S E T H:

ARTICLE ONE
DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at __________________________________________________________, Island of ______, Hawaii, comprising ______ acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, and as shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on ____________________, 200____ (which shall be the Effective Date of the Lease), and ending as of midnight on ________ ______, unless sooner terminated as hereinafter provided.

3. Community Benefits. LESSEE agrees to cooperate with and support LESSOR’s Home Ownership Assistance Program (HOAP) to provide training and job opportunities to native Hawaiians in a manner consistent with applicable federal and state labor law. LESSEE also agrees to include in its community support program support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands on the island of ____________________.

ARTICLE TWO
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:
1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, or the protection or removal of such sites or remains.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across
and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in
advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. **Annual Base Rental.** Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

   - **Lease years 1 through 10:** $__________ Dollars ($________) per annum ($________ per month, from and after the Rent Commencement Date only);
   - **Lease years 11 through 15:** $__________ Dollars ($________) per annum ($________ per month);
   - **Lease years 16 through 20:** $__________ Dollars ($________) per annum ($________ per month); and
   - **Lease years 21 through 25:** $__________ Dollars ($________) per annum ($________ per month).

   Lease years 26 through 65: annual base rental shall be reopened as provided in Section 2 below.

   Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is that date which is the earlier of (a) ______ or (b) the date on which LESSEE opens the Premises for business. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

   LESSOR holds LESSEE’s bid deposit in the amount of $________. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

2. **Reopening of Annual Base Rental.** The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the 35th, 45th and 55th lease years for each of the next ensuing three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s
appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to
LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of
the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any
person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are
located for appointment of a second appraiser, and the two appraisers thus appointed in either
manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall
mutually agree) to resolve any disagreement on the fair market rental value determination and
settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree
upon the fair market rental value of the Premises within this 30-day period (as the same may be
extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser.
In case of their failure to do so within fifteen (15) days, either party may have the third appraiser
appointed by the judge and the fair market rental value of the Premises shall be determined by
arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether
appointed by a party to the Lease or by the Circuit Court, shall have the following minimum
qualifications: at least five (5) years experience in appraising commercial real property and hold
a current MAI or SREA designation. The decision of the appraisers or a majority of them shall
be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall
deliver their determination before the ninetieth (90th) day following appointment of the third
appraiser, and, in the event they shall fail to do so and the time for delivery of such determination
shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of
the appraisers shall immediately terminate and, except as may be approved by LESSOR and
LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers
shall not be entitled to any payment for services or reimbursement of expenses incurred because
of such appointment. In the event the employment of the appraisers shall be so terminated, new
appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its
own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be
borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all
appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing
period has not been determined prior to the expiration of the preceding rental period, LESSEE
shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within
thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus
interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment
of the additional rent.

ARTICLE FOUR

THE PARTIES HEREFIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the
manner and form provided in this Lease and at the place specified above, or at any other place
LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the
amount of all taxes, rates, assessments and other outgoings of every description as to which the
Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now
or may be assessed by governmental authorities during the term of this Lease; provided,
however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. Improvements Required by Law. LESSEE will, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE will at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and will defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable notice, LESSEE will permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE will repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day
period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE will pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements.

(a) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) Construction of Improvements. LESSEE will not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifty Thousand Dollars ($50,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except in accordance with plans and specifications, including a detailed plot plan, which shall be prepared by a licensed architect, first submitted by LESSEE and approved in writing by LESSOR. In connection with any request for approval of plans by LESSEE, LESSOR may, but shall not be obligated to, retain the services of an architect and/or engineer, and the reasonable fees of such architect and/or engineer to LESSOR shall be reimbursed to LESSOR by LESSEE. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications therefor are not acceptable to the architect or engineer (if any) retained by LESSOR to review the same. LESSOR’s approval of any plans or suggestions for the revision thereof shall not be construed to be an agreement or representation on LESSOR’s part of adequacy or suitability for their intended purpose, of the alterations, additions and improvements shown or their compliance with applicable building codes or other governmental requirements.

(c) Bond and Financial Information. LESSEE will before commencing construction of any improvements within the Premises in excess of FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) deposit with LESSOR either: (i) copies of a contractor’s performance bond and a labor and materials payment bond naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics’ and materialmen’s liens; or (ii) a written guaranty of
performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR’s reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic’s and materialmen’s liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

(d) Compliance with the Americans with Disabilities Act of 1990.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C., 2000a et seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42 U.S.C. 4151 et seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) Responsibility for Compliance. Notwithstanding LESSOR’s review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for the compliance of such drawings and specifications with all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR’s investigation and handling (including the defense) or LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10.0%) per annum.
8. **Repairs to Improvements.** LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. **Assignment.**

   (a) **No Assignment Without Consent.** LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

   (b) **Assumption of Lease.** Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

   (c) **Compliance with Hawaii Revised Statutes §171-36(a)(5).** LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

   (d) **No Change of Use.** No assignment will be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

   (e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

   (f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

      (i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

      (ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

      (iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;
10. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises.

11. **Liens.** LESSEE will not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. **Permitted Uses.** The Premises will be used only for the following purposes: _____________________________. In no event shall the Premises be used for the construction of any residential lots, units or project.
13. **Indemnity.**

(a) LESSEE will indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE will reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and will hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance.**

(i) **Coverage.** A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without
deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 17 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products -
Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit — $3,000,000 per occurrence, subject to $3,000,000 general aggregate per policy year; $3,000,000 Products and Completed Operations aggregate per policy year; Personal and Advertising Injury — $1,000,000 per person/organization per policy year, subject to $3,000,000 general aggregate per policy year; Fire Legal Liability — $250,000 per fire, subject to $3,000,000 general aggregate per policy year; and Medical Expense — $5,000 each injury.

(2) Deductible. Except with LESSOR’s prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers’ Compensation and Employers’ Liability Insurance. Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) Business Auto Policy. Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- $1,000,000 each person and $1,000,000 each accident; Property Damage -- $1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(d) Builder’s and Installation Risk. Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk...
Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the premises in the same or similar fashion as shown on LESSEE’s landscape plan dated ________________. LESSOR acknowledges and agrees that (a) LESSEE may change the landscaping from time to time without LESSOR’s consent and (b) comparability, not precise compliance, with the above-referenced landscape plan is all that is required.

17. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR’s satisfaction all damage caused by such removal; provided, further, that if
LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSOR will, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

18. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR’s standard fees for commercial tenants for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.
19. **Hazardous Materials.**

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or
current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

20. **Underground Storage Tank (UST).** A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

21. **Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, sold, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, sale, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

**ARTICLE FIVE**

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Mortgage.** Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR
pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) no mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.
Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:
(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall
use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. **Breach.** Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to
have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any redisposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon redisposition which exceeds the fair market lease value of the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the
Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. **Right to Enter.** LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. **Inspection by Prospective Bidders.** LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. **Payment or Acceptance of Rent Not a Waiver.** The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. **Extension of Time.** Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. **Quiet Enjoyment.** LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed,
LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. **Interest, Costs and Fees.** The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. **Hawaii Law/Filing.** This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in substantially the form of Exhibit “C” attached hereto.

12. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

If to LESSOR: Department of Hawaiian Homes Land
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attention: Land Management Division
or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

- Clean Air Act, 42 U.S.C. Sections 7401 et seq.
- Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
- Chapter 128D, Hawaii Revised Statutes
- Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphensils (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.
(d) “LESSOR” shall mean and include LESSOR herein, its successors or assigns.

(e) “LESSEE” shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The “Premises” shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

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

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ____________________________
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

________________________________________,
a ____________________ corporation

By ________________________________
__________________________________
__________________________________

LESSEE
EXHIBIT “A”

LEGAL DESCRIPTION OF PREMISES
EXHIBIT “B”

SUBDIVISION MAP
MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of _______, 200___, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and __________________________________________, a ______________________ corporation, whose business and mailing address is _____________________________, hereinafter called “LESSEE.

1. TERM AND PREMISES. For a lease term commencing on ____________, and ending as of midnight on ____________, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at _____________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________ Island of _______, Hawaii, comprising _______
acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for ________________.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

____________________________________, a ______________ corporation

APPROVED AS TO FORM:

____________________________________, a ______________ corporation

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ______________
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSEOR

____________________________________,

By ________________________________

LESSEOR
On this _____ day of ______________________, 200___, before me appeared __________________________________ , to me personally known, who, being by me duly sworn or affirmed did say that she is the _______________ for ___________________________________, a _______________ corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

________________________________________

Print or Type Name __________________________

Notary Public, State of Hawaii

My Commission expires: ______________________
Hawaiian Homes Commission Act, 1920

HHCA § 203: Certain public lands designated “available lands”
- All public lands of the description and acreage, as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to, as “available lands”:

HHCA § 204: Control by department of “available lands,” return to board of land and natural resources, when; other lands, use of.
- (a) Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:
  - (1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in section 73(d) of the Hawaiian Organic Act, the board of land and natural resources shall withdraw such lands from the operation of the lease whenever the department gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in section 73(d) of the Hawaiian Organic Act.
  - (2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department. Any Hawaiian home lands general lease issued by the department after June 30, 1985, shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.
    - In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands or any improvements thereon to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of Hawaiian home lands or any improvements thereon to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedures set forth in chapter 171, Hawaii Revised Statutes.
  - (3) The department, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value. All lands so acquired by the department shall assume the status of available lands as though the land were originally designated as available lands under section 203 of this Act, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged. The limitations imposed by section 73(1) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands “publicly owned” means land owned by a county or the State or the United States.
- (b) Unless expressly provided elsewhere in this Act, lands or an interest therein acquired by the department pursuant to section [213(e)], [221(c), or 225(b), or any other section of this Act authorizing the department to acquire lands or an interest therein, may be managed and disposed of in the same manner and for the same purposes as Hawaiian home lands.

HHCA § 205: Sale or lease, limitations on
- Available lands shall be sold or leased only:
- (1) In the manner and for the purposes set out in this title; or
- (2) As may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act;
- except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title.

HHCA § 206: Other officers not to control Hawaiian home lands; exception
- The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title.

HHCA § 212: Lands returned to control of board of land and natural resources
- The department may return any Hawaiian home lands not leased as authorized by the provisions of section 207 of this Act to the control of the board of land and natural resources. Any Hawaiian home lands so returned shall, until the department gives notice as hereinafter in this section provided, resume and maintain the status of public lands in accordance with the provisions of the [Hawaii Revised Statutes]; provided that such lands may not be sold, leased, set aside, used, transferred or otherwise disposed of except under a general lease only. Any lease by the board of land and natural resources hereafter entered into shall contain a withdrawal clause, and the lands so leased shall be withdrawn by the board, for the purpose of this Act, upon the department giving at its option, not less than one nor more than five years' notice of such withdrawal; provided, that the minimum withdrawal-notice period shall be specifically stated in such lease. Each such lease, whether or not stipulated therein, shall be deemed subject to the right and duty of the board of land and natural resources to terminate the lease and return the lands to the department whenever the department gives notice to the board that the department is of the opinion that the lands are required.
- Notwithstanding the provisions of section 171-95, Hawaii Revised Statutes, in the leasing of Hawaiian home lands by the board to a public utility or other governmental agency, where such use directly benefits the department of Hawaiian home lands or the homestead lessees, the rental may be nominal; in all other instances, the lease rental shall be no less than the value determined in accordance with section 171-17(b), Hawaii Revised Statutes.
- Any general lease of Hawaiian home lands hereafter entered into by the board shall be void unless prior to the disposition of such lease by public auction, direct negotiation or otherwise, approval shall be obtained from the department of Hawaiian home lands.

HHCA § 220.5: Development by contract; development by project developer agreement
- (a) Notwithstanding any law to the contrary, the department is authorized to enter into and carry out contracts to develop available lands for homestead, commercial, and multipurpose projects; provided that the department shall not be subject to the requirements of competitive bidding if no state funds are to be used in the development of the project.
- (b) Notwithstanding any law to the contrary, the department is authorized to enter into project developer agreements with qualified developers for, or in connection with, any homestead, commercial, or multipurpose project, or portion of any project; provided that prior to entering into a project developer agreement with a developer, the department shall:
  - (1) Set by appraisal the minimum rental of the lands to be disposed of on the basis of the fair market value of the lands;
  - (2) Give notice of the proposed disposition in accordance with applicable procedures and requirements of section 171-60(a)(3), Hawaii Revised Statutes;
  - (3) Establish reasonable criteria for the selection of the private developer; and
  - (4) Determine within forty-five days of the last day for filing applications the applicant or applicants who meet the criteria for selection, and notify all applicants of its determination within seven days of such determination. If only one applicant meets the criteria for selection as the developer, the department then may negotiate the details of the project developer agreement with the developer; provided that the terms of the project developer agreement shall not be less than those proposed by the developer in the application. If two or more applicants meet the criteria for selection, the department shall consider all of the relevant facts of the disposition or contract, the proposals submitted by each applicant, and the experience and financial capability of each applicant and, within forty-five days from the date of selection of the applicants that met the criteria, shall select the applicant who submitted the best proposal. The
department then may negotiate the details of the disposition with the developer, including providing benefits to promote native Hawaiian socio-economic advancement; provided that the terms of the project developer agreement shall not be less than those proposed by the developer in the application.

- (c) Any project developer agreement entered into pursuant to this section shall include the following terms and conditions, wherever appropriate:
  o (1) A requirement that the developer file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the project developer agreement;
  o (2) The use or uses to which the land will be put;
  o (3) The dates on which the developer must submit to the department for approval preliminary plans and final plans and specifications for the total development. No construction shall commence until the department has approved the final plans and specifications; provided that construction on an incremental basis may be permitted by the department;
  o (4) The date of completion of the total development, including the date of completion of any permitted incremental development;
  o (5) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The department may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development; and
  o (6) Any other terms and conditions deemed necessary by the department to protect the interests of the State and the department.

- (d) Any project developer agreement entered into pursuant to this section may provide for options for renewal of the term of the project developer agreement; provided that:
  o (1) The term of any one project developer agreement shall not exceed sixty-five years;
  o (2) Any lands disposed of under a project developer agreement shall be subject to withdrawal at any time during the term of the agreement, with reasonable notice; and
  o (3) The rental shall be reduced in proportion to the value of the portion withdrawn and the developer shall be entitled to receive from the department the proportionate value of the developer’s permanent improvements so taken in the proportion that they bear to the unexpired term of the agreement, with the value of the permanent improvements determined on the basis of fair market value or depreciated value, whichever is less; or the developer, in the alternative, may remove and relocate the developer’s improvements to the remainder of the lands occupied by the developer.

- (e) The project developer agreement may permit the developer, after the developer has completed construction of any required off-site improvement, to assign or sublease with the department’s approval portions of the leased lands in which the construction of any required off-site improvement has been completed to a purchaser or sublessee who shall assume the obligations of the developer relative to the parcel being assigned or subleased, including the construction of any on-site improvement. The department may permit a developer to share in the lease rent from the assigned lease for a fixed period in order to recover costs and profit.

- (f) Whenever the department enters into a project developer agreement to develop a homestead project, the department shall provide for the purchase of the completed project or that portion of a completed project developed for disposition to native Hawaiians, and shall dispose of the lands in accordance with this Act; provided that the project developer agreement shall not encumber any existing homestead lease in the project area.

- (g) As used in this section, the following words and terms shall have the following meanings unless the context indicates another or different meaning or intent:
  o “Commercial project” means a project or that portion of a multipurpose project, including single-family or multiple-family residential, agricultural, pastoral, aquacultural, industrial, business, hotel and resort, or other commercial uses designed and intended to generate revenues as authorized by this Act;
  o “Developer” means any person, partnership, cooperative, firm, nonprofit or for-profit corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personal, and tangible resources, required to carry out a project;
  o “Homestead project” means a project or that portion of a multipurpose project, including residential, agricultural, pastoral, or aquacultural uses designed and intended for disposition to native Hawaiians under this Act; provided that this term shall also include community facilities for homestead areas;
  o “Multipurpose project” means a combination of a commercial project and a homestead project;
“Project” means a specific undertaking to develop, construct, reconstruct, rehabilitate, renovate, or to otherwise improve or enhance land or real property;

“Project developer agreement” means any lease, sublease, conditional leasing agreement, disposition agreement, financing agreement, or other agreement or combination of agreement, entered into under this section by the department, for the purpose of developing one or more projects.

- (h) The department is authorized to adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement and carry out the purposes of this section.

**HHCA § 228: Commercial and multipurpose project leases; extension of term**

- (a) Notwithstanding any law to the contrary, the procedures under this section shall apply to commercial and multipurpose projects under section 204 or 220.5, and shall be in addition to any other procedures required by law.

- (b) Prior to the disposition of available land through a request for proposals for an initial lease for a commercial or multipurpose project, the department shall consult with beneficiaries of the trust in the master planning of the available lands. The process of beneficiary consultation shall be as established by the department and shall:
  - (1) Engage beneficiaries and beneficiary-serving organizations;
  - (2) Provide for the timely dissemination of information about the proposed project and the gathering of input; and
  - (3) Allow for a reasonable time and reasonable access to relevant information for evaluation and consideration.

- (c) Notwithstanding section 220.5(d)(1), the department may extend the term of a lease of Hawaiian home lands for commercial or multipurpose projects and with the approval by the department of a written agreement proposed by the lessee, or the lessee and developer, to:
  - (1) Make improvements to the leased property; or
  - (2) Obtain financing for the improvement of the leased lands.
  - The extension of the lease pursuant to this section shall be based upon the improvements made or to be made, shall be no longer than twenty years, and shall be granted only once.

- (d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:
  - (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
  - (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
  - (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the department, and percentage rent where gross receipts exceed a specified amount.
  - The commission shall adopt and publish a policy pursuant to chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

- (e) Upon the extension of a lease term pursuant to subsection (c), the department shall deposit fifteen per cent of all revenues generated from the lease from the time the lease extension is granted, into the native Hawaiian rehabilitation fund under section 213(i).

- (f) The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011, of all leases of available lands for commercial and multipurpose projects, including the following:
  - (1) The total number of leases;
  - (2) Acreage of each lease;
  - (3) Terms of each lease;
  - (4) Whether the lessee is a beneficiary or beneficiary controlled organization; and
  - (5) Whether the lease was for retained available lands not required for leasing under section 207(a), and was negotiated with a native Hawaiian, or organization or association owned or controlled by native Hawaiians, under section 204(a)(2).

- (g) As used in this section, “improvements” means any renovation, rehabilitation, reconstruction, or construction of the property, including minimum requirements for off-site and on-site improvements.
HRS § 171-12: Permanent register of applicants for public lands
- The board of land and natural resources shall establish and maintain in each land district a register in which all persons desiring to acquire public lands in the district may register. The board may require the persons to submit information in writing and under oath to determine the eligibility of any registrant to acquire such lands.

HRS § 171-13: Disposition of Public Lands
- Except as otherwise provided by law and subject to other provisions of this chapter, the board may:
  o (1) Dispose of public land in fee simple, by lease, lease with option to purchase, license, or permit; and
  o (2) Grant easement by direct negotiation or otherwise for particular purposes in perpetuity on such terms and conditions as may be set by the board, subject to reverter to the State upon termination or abandonment of the specific purpose for which it was granted, provided the sale price of such easement shall be determined pursuant to section 171-17(b).
- No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.

HRS § 171-14: Auction
- Except as otherwise specifically provided, all disposition of public lands shall be made at public auction after public notice as provided in section 171-16. All such auctions shall be held at the door of the office of the land agent or at such other place as is convenient in the district in which the land is located, and shall be conducted by the chairperson or the land agent or by any other authorized employee of the department of land and natural resources under the direction of the board of land and natural resources, all of whom shall perform this service without extra compensation.

HRS § 171-14.5: Auction pre-qualification; agricultural and pasture leases
- (a) Whenever used in this section, unless otherwise apparent from the context:
  - “Farm” also means “ranch” and “farmer” also means “rancher”.
  - “Individual” means a natural person who is not a part of a partnership, corporation, or joint venture which is a potential bidder under this section.
  - “Nonindividual concern” means a partnership, corporation, or joint venture properly formed under law and which is a potential bidder under this section.
- (b) Any other law to the contrary notwithstanding, to be eligible to bid in an auction for agricultural or pasture leases, a potential bidder shall be a bona fide individual farmer or a nonindividual farm concern:
  o (1) Who has spent not less than two years, full-time, in farming operations;
  o (2) Who is an owner-operator of an established farm conducting a substantial farming operation;
  o (3) Who for a substantial period of the individual's adult life resided on a farm and depended on farm income for a livelihood;
  o (4) Who is an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations;
  o (5) Is an individual with a college degree in agriculture;
  o (6) Is an individual who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm;
  o (7) Who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm;
  o (8) Who is an individual who is displaced from employment in an agricultural production enterprise;
  o (9) Who is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects;
  o (10) Who possesses the qualifications under the new farmer program pursuant to section 155-1; or
  o (11) Who possesses other qualifications as the board of land and natural resources may prescribe pursuant to section 171-6 and this section.
HRS § 171-15: Drawing
- Whenever public lands are to be sold or leased by drawing, the board of land and natural resources shall notify by publication of applications for the drawing as provided in section 171-16 with such details concerning the drawing as it shall deem necessary and desirable. Applications to participate in the drawing must be filed with the board within two weeks after the last publication date. Within forty-five days after the closing date for applications, the board shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection and conduct a drawing. The date of the drawing shall be published as set forth in section 171-16. The award shall be made within one week and all applicants shall be notified of the result of the drawing. The lease or patent shall be issued within ninety days after the drawing or when conditions of sale are fulfilled.

HRS § 171-16: Notices.
- (a) Auctions. Public notice of any proposed disposition by auction shall be given at least once statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following:
  o (1) Time and place of the auction;
  o (2) General description of the land, including the address and tax map key;
  o (3) Specific use for which the disposition is intended; and
  o (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board of land and natural resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.
- (b) Drawings. Whenever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once statewide and once in the county where the land being disposed of is located. The notice shall contain:
  o (1) The qualifications required of applicants;
  o (2) A general description of the land, including the address and tax map key;
  o (3) Specific use for which the disposition is intended; and
  o (4) Date by which all applications must be filed, which date shall be not less than fourteen days after the last notice.
  o Within forty-five days after the closing date for applications, the board shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing.
  o The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant, in fact, qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award shall be announced within one week, and the lease or patent issued within ninety days after the drawing or when the conditions of the sale are fulfilled.
- (c) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once statewide and once in the county where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general terms the size, location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.
- (d) Exchanges; quitclaim; submerged and reclaimed lands; reservations and easements. Whenever it is proposed to exchange public lands for private land pursuant to section 171-50, quitclaim public land or any interests of the State in private land pursuant to section 171-51, dispose of submerged or reclaimed public land pursuant to subsections (b) and (d) of section 171-53, dispose of a land license by negotiation pursuant to section 171-54, or dispose of reserved rights and easements pursuant to section 171-57, public notice of the disposition shall be given at least once statewide and once in the county where the land or other interests being disposed of are located. The notice shall state in general terms the size and location of the public lands proposed to be disposed.
- (e) In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner.

HRS § 171-17: Appraisals
- (a) The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not
more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested appraisal whenever prudent management so dictates. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value set by an employee of the board and the land may be sold or leased at that price. The board shall be reimbursed by the purchaser or lessee for the cost of any appraisal required to be made by a disinterested appraiser or appraisers contracted for by the board.

- (b) The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by:
  - (1) An employee of the board qualified to appraise lands; or
  - (2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and such appraisal, and any further appraisal with the approval of the board, shall be at the cost of the purchaser;
    - provided that the sale price or lease rental shall be determined by disinterested appraisal whenever prudent management so dictates; provided further that should the purchaser fail to agree upon the sale price or lease rental, the purchaser may appoint an appraiser who together with the board’s appraiser shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658A which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

- (c) In the repurchase of any land by the board, the board shall have the option to repurchase the land for the original sale price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be determined by a qualified appraiser whose services shall be contracted for by the board; provided should the owner fail to agree upon the value, the owner may appoint the owner’s own appraiser who together with the board’s appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 658A. The owner shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

- (d) In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:
  - (1) An employee of the department qualified to appraise lands; or
  - (2) A disinterested appraiser whose services shall be contracted for by the board;
    - and the lessee shall be promptly notified of the determination; provided that should the lessee fail to agree upon the fair market rental, the lessee may appoint the lessee’s own appraiser who together with the board’s appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 658A. The lessee shall pay for the lessee’s own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996.

- (e) Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public.

**HRS § 171-27: Taxes**

- Any provision to the contrary notwithstanding, leases and licenses issued by the board of land and natural resources and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee or the permittee and the lessee’s, licensee’s or permittee’s successor in interest.

- The board shall notify the lessee, licensee, or permittee and each holder of record having a security interest as provided in section 171-21 of any default in the payment of the taxes and upon failure to remedy the default within sixty days after receipt of notice of default, the board shall cancel and terminate the lease, license, or permit without prejudice to any other remedies the State may have against the lessee, licensee, or permittee.

**HRS § 171-29: Report to legislature on all dispositions**
- (a) The board of land and natural resources shall submit a written report annually to the legislature within ten days of the convening of each regular session, of all land dispositions made in the preceding year, including sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges, and setting aside of lands by executive orders, the persons to whom made, the size of each disposition, the purpose for which made, the land classification of each, the tax map key number, the per unit price paid or set, and whether the disposition was by auction, by drawing, or by negotiation. When land originally leased by the board is, in turn, subleased by the board’s lessee or sublessee, the report shall include, in addition to the foregoing information, the reason for approval of the sublease by the board and the estimated net economic result accruing to the State, lessee and sublessee.

- (b) Whenever in this chapter any sale, lease, easement, license, executive order, quitclaim, exchange, or other disposition is made subject to disapproval of the legislature, a written report thereof containing the information required in subsection (a) of this section shall be submitted to the legislature in the session next following the date of the disposition within ten days of the convening of the session.

HRS § 171-32: Policy
- Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 171-14 and 171-16.

HRS § 171-34: Planning; intensive agricultural and pasture uses
- In addition to the requirements set forth in section 171-33, if the intended disposition is for intensive agricultural or pasture uses, the board of land and natural resources shall:
  - (1) Make or cause to be made an on-the-ground inspection of the land;
  - (2) Secure data or information from the land study bureau relating to such parcel;
  - (3) Review any other pertinent information with respect to the land and the surrounding area; and
  - (4) Based upon information obtained, prepare a report on the land, which report shall include the following:
    - The class of the land within the specific use for which disposition is intended;
    - The condition of the land with respect to its state of development;
    - Existing improvements, if any;
    - Extent of uncontrolled erosion if any;
    - Nature of forage; and
    - Extent of infestation with noxious weeds.

HRS § 171-35: Lease provisions; generally
- Every lease issued by the board of land and natural resources shall contain:
  - (1) The specific use or uses to which the land is to be employed;
  - (2) The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;
  - (3) Restrictions against alienation as set forth in section 171-36;
  - (4) The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
  - (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
  - (6) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.

HRS § 171-36: Lease restrictions; generally
- (a) Except as otherwise provided, the following restrictions shall apply to all leases:
  - (1) Options for renewal of terms are prohibited;
  - (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
  - (3) No lease shall be made for any land under a lease which has more than two years to run;
(4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;

(5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

(6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee’s gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;

(7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;

(8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and

(9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public’s right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term “lease”, for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies.

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

(1) Modify or eliminate any of the restrictions specified in subsection (a);

(2) Extend or modify the fixed rental period of the lease; provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years; or

(3) Extend the term of the lease,

(4) To the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:

(1) The demised premises have been used substantially for the purpose for which they were originally leased;

(2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;

(3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;

(4) Any federal or private lending institution shall be qualified to do business in the State;

(5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;

(6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
(7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

- (c) The board at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:
  o (1) The application of the lessee;
  o (2) Consent of each holder of record having a security interest in the leasehold; and
  o (3) A finding by the board that the alternative use or uses are in the public interest.

- (d) The board, from time to time, during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the [restrictions] specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by:
  o (1) State disaster, pursuant to chapter 209, including seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or severe drought; or
  o (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

- (e) The approval of any extension granted pursuant to subsection (d) shall be subject to the following:
  o (1) The demised premises has been used substantially for the purposes for which they were originally leased;
  o (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
  o (3) The rental shall not be less than the rental for the preceding term;
  o (4) The rules of the board, setting forth any additional terms and conditions which shall ensure and promote the purposes of the demised lands; and
  o (5) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case exceed five years.

HRS § 171-36.1: Reservation of rights to prehistoric and historic remains on leased public lands
- The board of land and natural resources shall, in leases of public lands retain the rights to all prehistoric and historic remains found on such lands.

HRS § 171-36.2: Public lands for historic preservation and restoration
- (a) Any law to the contrary notwithstanding, the board may lease public lands in the State for use in historic preservation and restoration projects:
  o (1) Through negotiations; and
  o (2) For a price which shall be determined by the board.
- (b) The department shall adopt rules pursuant to chapter 91 to determine what constitutes historic preservation and restoration projects for the purposes of this section; provided that no definition or criteria established shall conflict with any federal, state, or county law.
- (c) All subleases of land disposed of pursuant to this section shall be subject to the approval of the board.

HRS § 171-37: Lease restrictions; intensive agricultural and pasture uses
- In addition to the restrictions provided in section 171-36, the following restrictions shall apply to all leases for intensive agricultural and pasture uses:
  o (1) The lease term shall be not less than fifteen years nor more than thirty-five years, except that if the type of disposition requires the lessee to occupy the premises as the lessee’s own personal residence, it may be longer than thirty-five years, but not in excess of seventy-five years, and except in the case of a tree-crop orchard lease the term of which shall not be in excess of forty-five years.
  o (2) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements,
as the result of which a longer term is necessary to amortize the lessee's investment, then the lease term may be longer than thirty-five years, but not in excess of fifty-five years.

(3) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board of land and natural resources at any time during the term of the lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal, or upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided further that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. In the case of tree crops, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also.

“Tree-crop”, as used in this section, shall be exclusive of papaya and banana.

**HRS § 171-39: Leases; forfeiture**

- Upon the violation of any condition or term of any lease to be observed or performed by the lessee or tenant, the board of land and natural resources shall, after the notice of default as provided in section 171-20, and subject to the rights of each holder of record having a security interest as provided in section 171-21, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.

**HRS § 171-40: Expired leases; holdover**

- Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board of land and natural resources may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term “cycle” as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

- Upon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe.

**HRS § 171-41: Commercial, industrial, and other business uses**

- (a) Leases for commercial, industrial, and other business uses shall be made only pursuant to a development plan which provides for careful placement of complementary enterprises consistent with county zoning requirements; except that development plans for leases of parcels in industrial parks developed under section 171-134(b) shall provide for careful placement of complementary enterprises consistent with the final plans and specifications under section 171-134(b). Where a disposition for any such use is made without advance parcelization, the board shall make adequate provisions for the compatibility of the proposed enterprises with any existing surrounding private developments. The board, wherever possible, shall control the landscaping and architecture of the enterprises and protect the public against the creation of nuisances of smoke, soot, irritating odors and gases, and harmful wastes.

- (b) The board may sell public land in fee simple for commercial, industrial, or other business uses with the prior approval of the governor and subject to disapproval by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition;
provided the above restrictions shall not apply to any sale of land initially acquired for highway purposes with participating federal funds and which land is later found to be in excess of the need for highway purposes.

HRS § 171-41.5: Amendment of commercial, hotel, or industrial lease
- (a) The board of land and natural resources, after notification and public hearing as provided in subsection (b), may amend the height, density, and other building restrictions or requirements and the specific use or uses contained in a lease for hotel, commercial, or industrial use of public land to another or an additional specific hotel, commercial, or industrial use or uses, or restriction; provided that the lease has been in effect twenty years or more, and upon:
  o (1) The application of the lessee;
  o (2) Consent of each holder of record having a security interest in any improvements made by the lessee to the leased public land;
  o (3) A finding by not less than two-thirds of the total membership of the board that the amended use or uses or restriction is in the public interest; and
  o (4) Agreement by the lessee that the lessee, commencing from the effective date of the amendment, shall pay a revised annual rent equal to the annual fair market rental value of the land based on the amendment. The annual fair market value of the land shall be determined and set by the board. Such amendments shall not be construed to permit the construction of improvements not otherwise permitted by county zoning regulations applicable to the public land.
- (b) Before any amendment to a state lease, the board of land and natural resources shall give no fewer than fourteen days’ public notice statewide and, in addition, in the county where the subject property is situated. A full hearing shall be given by the board of land and natural resources, to all who desire to be heard upon the subject matter of the notice. The hearing shall be public, on the island where the subject property is situated, and shall be conducted under rules that the board may adopt.

HRS § 171-42: Hotel and resort uses
- Public land may be leased for hotel or resort development, if the department of business, economic development, and tourism finds that the land possesses the amenities for a successful hotel and resort development and that the advantages of its placement for such use outweigh those inherent in free public use in its natural state. Where the land being disposed of for hotel or resort use is divisible into more than one economic unit, the division shall be made prior to disposition, provided that firm use controls shall be imposed to assure that the development of each unit is compatible with the others. Provisions for community operations of shopping areas, golf courses, and other similar facilities shall be encouraged, with special assessments for the maintenance of these community facilities. Where public land disposed of for hotel or resort use is adjacent to any beach, waterway, or historic monument or landmark, the disposition shall be subject to reservations of public right-of-way or public access at all times to such beach, waterway, historic monument, or landmark.
- The board of land and natural resources may, with the prior approval of the governor, and subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular session next following the date of disposition, sell in fee simple or lease with option to purchase, raw, unimproved public land for hotel and resort use; provided that:
  o (1) The board first finds that the land is suitable for resort development and that its use for resort purposes will promote the economic development of the State;
  o (2) The purchaser submits development plans for the area to be purchased which conform with applicable county or city and county zoning and subdivision requirements;
  o (3) The board finds upon independent study of these plans that the proposed development is compatible with the developments in the area in general and consistent with good sound planning;
  o (4) The purchaser agrees to construct, improve, and put in all off-site and on-site improvements as may be required by the board which may include any or all of the following—all major and minor auxiliary roads and highways as well as all local streets, all connecting water lines and mains to existing lines and mains, all necessary sewer lines, sewage treatment, or disposal plants, all pumping stations, all reservoirs, golf courses, recreational areas, shopping centers, and all other improvements necessary to develop the raw land into an economic resort enterprise;
  o (5) The purchaser agrees to complete all improvements within the time limitations set by the board;
  o (6) The title to the land shall remain in the State until the purchaser has made all payments required in the terms of the sale and has constructed the improvements as agreed; provided that where the purchaser finds it necessary to secure a loan to finance the construction of the improvements the board may issue a
patent or deed upon the execution in favor of the State of a performance and payment bond conditioned upon the payment of an amount equal to one hundred per cent of the improvement cost. The bond shall by its terms inure to the benefit of the State;

- (7) The board shall sell for resort uses only that portion of the public lands in the proposed resort area which it finds to be absolutely necessary to give the purchaser self-sustaining economic operations; provided that no public land shall be included in the sale for these purposes which will not actually be improved and used in the resort area for resort purposes;

- (8) The lessee with an option to purchase shall not be permitted to exercise the option until the lessee has complied with all the terms and conditions of the lease, including but not limited to the construction or erection of improvements as may be required by the board.

- In any disposition under this section the board shall give consideration to the needs of the public for beach area above the high water mark.

- Upon a finding by the board that the public interest demands it, the board may lease, lease with option to purchase, or sell in fee simple such public lands by negotiation; subject to the provisions contained in this section and to such other terms and conditions contained in this chapter.

HRS § 171-43: Lease of campsites or sites for youth athletic and/or educational activities

- The board of land and natural resources may directly lease without recourse to public auction to any eleemosynary or religious organization campsites or sites for youth athletic and/or educational activities in a state park area or on lands under the control of the department of land and natural resources at nominal consideration. Where the lease is for campsites, the lease shall provide that the lessee shall permit the public to use the campsites at the rates approved by the board in its rules and regulations. Except as provided herein, the terms and conditions of sections 171-33, 171-35 and 171-36 shall apply.

HRS § 171-43.1: Lease to eleemosynary organizations

- The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.

HRS § 171-44: Lease for recreation-residence use

- [(a)] Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, lands within a state park or forest reserve and other lands set aside under executive orders, for recreation-residence use for a period not to exceed twenty years on such terms and conditions as may be prescribed by the board.

- [(b)] The [board] of land and natural resources shall enforce all provisions of recreation-residential use lease agreements and shall establish a schedule of penalties and fines for any breach of the provisions of a recreation-residential use lease agreement unless penalties and fines are specified in the lease agreement.

HRS § 171-45: Residence lots; sale or leases

- The board may dispose of public land for personal residence purposes (1) by sale in fee simple or lease at public auction as provided in sections 171-14 and 171-16, or (2) by sale or lease of lots by drawing as provided in sections 171-15 and 171-16.

HRS § 171-47: Residence lots; improvement districts

- Notwithstanding any provision of law to the contrary, the board of land and natural resources is authorized, in like manner and subject to the same conditions, including the imposition of liens and the payment of costs, as any subdivision of private lands, to petition for the construction of necessary subdivision improvements pursuant to applicable improvement district statutes or ordinances of any county or city and county in subdividing public lands for residential purposes. The board shall dispose of the residential lots so improved subject to liens consisting of the improvement assessments. For the purpose of this section the board is authorized to encumber and impose liens on public lands.
HRS § 171-59: Disposition by Negotiation.
- (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).
- After a determination is made to negotiate the disposition of a lease, the board shall:
  o (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;
  o (2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;
  o (3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.
- If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.
- If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.
- (b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:
  o (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations;
  o (2) The disposition shall not exceed a maximum term of thirty-five years, except in the case of:
    ▪ (A) Maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
    ▪ (B) Aquaculture operations, which may provide for a maximum term of sixty-five years; provided that aquaculture operations in good standing may seek to renew a lease issued under this section and, during the lease term, may engage in supportive activities that are related to or integrated with aquaculture; and
- For the purposes of this subsection:
  o “Agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.
  o “Airport-related” means a purpose or activity that requires air transportation to achieve that purpose or activity; or an activity that generates revenue for the airport system as provided in section 261-7.
  o “Aquaculture” means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes, including aquaponics or any growing of plants or animals with aquaculture effluents.
  o “Maritime-related” means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry.

HRS § 170-60(a)(3): Development through private developer
- (a)(3) Give public notice of the proposed disposition or contract at least once in each of three successive weeks statewide and, in addition, in the appropriate county, if the land is situated in the first, second, and fourth districts. The notice shall invite interested persons to submit applications to be selected as the developer or developers for
the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location, and minimum rental of the area to be leased to the developer or developers, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which the lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last notice, and the times and places at which more detailed information with respect to the disposition or contract may be secured by interested persons. ¶ Each applicant shall include, together with the applicant’s sealed bid, a financial statement, and performance and experience records in real estate development; provided that the board, in its discretion, may require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant’s sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: the applicant’s proposal as to how and when the applicant intends to develop the land, including any permitted incremental development, the amount of money the applicant intends to commit to the total project, the method of recovery of the applicant’s costs and profits, the amount the applicant agrees to pay to lease or contract to develop the land, and the income the State will receive from leases;

HRS § 171-95: Disposition to governments, governmental agencies, public utilities, and renewable energy producers.
- (a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:
  o (1) Sell public lands at such price and on such other terms and conditions as the board may deem proper to governments, including the United States, city and county, counties, other governmental agencies authorized to hold lands in fee simple and public utilities;
  o (2) Lease to the governments, agencies, public utilities, and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;
  o (3) Grant licenses and easements to the governments, agencies, public utilities, and renewable energy producers on such terms and conditions as the board may determine for road, pipeline, utility, communication cable, and other rights-of-way;
  o (4) Exchange public lands with the governments and agencies;
  o (5) Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State; and
  o (6) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State.
- (b) In any disposition to public utilities under this section:
  o (1) The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b), provided that such sale price or lease rental may be on a nominal basis, if the board finds that such easement is required in connection with a government project;
  o (2) The board shall provide that in case the land ceases to be used at any future time for the use for which the disposition was made, the board shall have the right to repurchase the land at the original sale price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower;
  o (3) Disposition shall not be made to any public utility if the utility has suitable lands of its own;
  o (4) The disposition to public utilities shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of the disposition; and
  o (5) For the purposes of this section, the definition of “public utility” as defined in section 269-1 is hereby incorporated herein by reference.
- (c) For the purposes of this section, “renewable energy producer” means:
  o (1) Any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under
chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or
- (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes.

HRS § 171-95.3*: Renewable energy producers; lease of public lands without public auction
- (a) The board may lease or renew a lease of public lands to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process; provided that nothing in this section shall be construed to prevent the board from conducting direct negotiations; provided further that the renewable energy producer shall be required to submit as part of the proposal for the board’s evaluation, as assisted by the department of business, economic development, and tourism, the following:
  - (1) A timeline for completion of the project;
  - (2) A description of a financial plan for project financing;
  - (3) A description of the conceptual design of the project;
  - (4) A description of the business concept for the project; and
  - (5) A description of landscape and acreage requirements including public and private lands.
- (b) A lease to a renewable energy producer under this section shall not result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease.
- (c) To inform the public prior to the lease of public land or the renewal of a lease of public land for a proposed renewable energy project under this section, the department of land and natural resources shall conduct not less than two public hearings on the island where the public land to be leased for the proposed renewable energy project is located; provided that the notice of the hearing shall be published as provided in section 1-28.5. The board shall prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing.
- (d) Any action taken by the board upon a proposal subject to this section shall take place on the island where the public land to be leased for the proposed renewable energy project is located.
- (e) For any lease issued pursuant to this section, the renewable energy producer shall have the right of first refusal upon renewal of the lease.

*NOTE: Proposed Legislation for HRS § 171-95.3 – Requires BLNR to seek input from existing lessees as part of its evaluation to determine whether to award a lease to a renewable energy producer.


TITLE: RELATING TO PUBLIC LAND LEASEHOLDERS RIGHTS. VERSION: Introduced January 25, 2012

SUMMARY: Requires the board of land and natural resources to seek input from existing lessees as part of its evaluation to determine whether to award a lease to a renewable energy producer.

TEXT:

THE SENATE S.B. NO. 2670; TWENTY-SIXTH LEGISLATURE, 2012; STATE OF HAWAII; A BILL FOR AN ACT relating to public land leaseholders rights.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI‘I:

SECTION 1. Section 171-95.3, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§171-95.3[ ] Renewable energy producers; lease of public lands without public auction. (a) The board may lease or renew a lease of public lands to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process; provided that nothing in this section shall be construed to prevent the board from conducting direct negotiations; provided further that the renewable energy producer shall be required to submit
as part of the proposal for the board’s evaluation, as assisted by the department of business, economic development, and tourism, the following:

1. A timeline for completion of the project;
2. A description of a financial plan for project financing;
3. A description of the conceptual design of the project;
4. A description of the business concept for the project; and
5. A description of landscape and acreage requirements including public and private lands.

(b) **As part of the board’s evaluation, the terms and conditions of section 171-33 shall apply. If the public land is held by an existing lessee who is currently in compliance with the terms of the lease, the board shall seek input from that lessee regarding the renewable energy producer’s proposal.** Upon completion of the board’s evaluation and determination to award or not award a lease to a renewable energy producer, the board shall prepare a report outlining the reasons for the decision.

(1) A lease to a renewable energy producer under this section shall not result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease [ ]; **provided that the board shall seek input from the existing lessee as part of its evaluation and determination to award or not award a lease to a renewable energy producer.**

(2) To inform the public prior to the lease of public land or the renewal of a lease of public land for a proposed renewable energy project under this section, the department of land and natural resources shall conduct not less than two public hearings on the island where the public land to be leased for the proposed renewable energy project is located; provided that the notice of the hearing shall be published as provided in section 1-28.5. The board shall prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing.

(3) Any action taken by the board upon a proposal subject to this section shall take place on the island where the public land to be leased for the proposed renewable energy project is located.

(4) For any lease issued pursuant to this section, the renewable energy producer shall have the right of first refusal upon renewal of the lease."

**SECTION 2.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 3.** This Act shall take effect upon its approval.

**HRS § 171C-16: Transfer of public lands**

- **Notwithstanding chapter 171 or any provision of this chapter to the contrary, the department may transfer, subject to the approval of the board of land and natural resources, development rights for lands under its jurisdiction to the corporation for purposes of this chapter; provided that:**
  - (1) Development rights for all small boat harbors that have an existing contract in force and effect relating to a lease or development agreement, or a request for proposal that has been advertised or is under negotiation for capital improvements to harbor facilities as of July 1, 2011, shall be transferred to the corporation on July 1, 2011; provided that with regard to any:
    - (A) Request for proposal that has been issued for which a contract has not been executed; or
    - (B) Contract executed by the department that is in force and effect, on the effective date of this section that relates to the development or redevelopment of submerged or fast lands of a small boat harbor under the control of the department, if the public land corporation is not fully operational by July 1, 2011, the department shall continue to execute its responsibilities relating to negotiating or executing a contract for any such request for proposal or managing any existing contract until the corporation is able to assume the negotiating, oversight, and management responsibilities relating to the existing contract or request for proposal, as the case may be, or until June 30, 2013, whichever occurs first;
  - (2) If the property to be developed is two hundred acres or less and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation;
  - (3) If the property to be developed is greater than two hundred acres and the board of land and natural resources approves the transfer of development rights appurtenant to the property to be developed, the development rights shall be transferred to the corporation, subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both houses in any regular or special session next following the date of transfer; and
  - (4) The size of any property to be developed shall be deemed to be conclusively determined by the state surveyor, as established in section 26-6.
(b) If the corporation finds that state lands under the control and management of the department or other public agencies are suitable for its purposes under this chapter, the corporation may lease the lands from the agency having the control and management of those lands, upon such terms and conditions as may be agreed to by the parties.

(c) Notwithstanding subsection (b) to the contrary, no public lands shall be leased to the corporation if the lease would impair any covenant between the State or any county, or any department or board thereof, and the holders of bonds issued by the State or the county, or any department or board thereof.
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 258

between

STATE OF HAWAII

and

ALOHA MACHINE & WELDING LTD.
a Hawaii corporation

covering

HAWAIIAN HOME LANDS

situate at

Waiakea, Hawaii

Tax Map Key No. (3) 2-2-60:33 & 34
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 258

THIS INDENTURE OF LEASE, made this _____ day of _____, 2002, but effective June 1, 2002, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, Suite 2000, Honolulu, Hawaii 96813, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and ALOHA MACHINE & WELDING LTD., a Hawaii corporation, whose mailing address is 153 Makaala Street, Hilo, Hawaii 96720 (Federal Identification Number 99-0308004), hereinafter called "LESSEE."

WITNESSETH:

THAT, LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, the premises located at Waiakea, Island of Hawaii, Tax Map Key No. (3) 2-2-60:33 & 34, comprising of 40,250 square feet of Hawaiian Home Lands, more particularly described in Exhibit "A", and shown on the map marked Exhibit "B", together with the improvements thereon, as shown on Exhibit "C", all attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto LESSEE for the term of fifty-five (55) years, commencing on the 1st day of June, 2002 up to and including the 31st day of May, 2057, unless sooner terminated as hereinafter provided, LESSOR reserving and LESSEE yielding and paying to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, but not more than one (1) year in advance, without notice or demand, in equal quarterly installments due and payable on or before the first (1st) day of January, April, July and October of each and every year during the term as follows:

1. Annual Rental. For the first ten (10) years, the sum of twenty seven thousand nine hundred and no/100 ($27,900.00) per annum. For the eleventh (11th) through the fifteen (15th) years, the net annual rental shall be twenty nine thousand eight hundred fifty three and no/100 ($29,853.00). For the sixteenth (16th) through the twentieth (20th) years, the net annual rental shall be thirty one thousand nine hundred and forty three and no/100 ($31,943.00). For the twenty-first (21st) through the twenty-fifth (25th) years, the net annual rental shall be thirty four
thousand one hundred and seventy nine and no/100 ($34,179.00). The rental shall be due and payable in the manner and on the dates hereinabove stipulated; provided, however, that if the initial period for which the rental is due and payable is less than a full quarterly period, the rental shall be appropriately prorated to reflect the amount due and payable for such shorter initial period.

2. Reopening of base rent. The base rent hereinabove reserved shall be reopened and redetermined at the expiration of the twenty-five (25th) and the fortieth (40th) years of the lease term, rent to be stepped-up in five-(5)year intervals.

3. Determination of rent upon reopening of the base rent. The rental for each period to be reopened and redetermined shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by LESSOR; provided, that should LESSEE fail to agree upon the fair market rental as determined by LESSOR'S appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within ten (10) days after being advised of the fair market rental as determined by LESSOR'S appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have twenty-one (21) days to resolve any disagreement on the rental determination and settle the reopened rent for the ensuing period. Should both appraisers fail to settle a rental value within this 21-day period, they shall appoint a third appraiser. In case of their failure to do so within ten (10) days, either party may have the third appraiser appointed by the judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised Statutes. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the sixtieth (60th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. The LESSEE shall pay for its own
appraiser, LESSOR shall pay for its appraiser, and the cost of
the third appraiser shall be borne equally by LESSEE and LESSOR.
Upon completion of the arbitration procedure, all appraisal
reports shall become part of the public record of LESSOR. If the
rental for any ensuing period has not been determined prior to
the expiration of the preceding rental period, LESSEE shall
continue to pay the rent effective for the previous rental
period, but LESSEE shall, within thirty (30) days after the new
rental has been so determined, make up the deficiency, if any.

4. Waiver of Rental. LESSOR, in consideration of the
requirement that LESSEE place substantial improvements on the
demised premises as well as any off-site improvements required
under Article Two, Section 21, within the first thirty (30)
months from LESSOR’S approval of the plans referred to in Article
Two, Section 21, shall waive the rental in the amount equal to
one (1) year’s annual lease rental for the following calendar
year, after completion of the construction of improvements in
accordance with Article Two, Section 21. If, however, during the
period for the construction of improvements per Article Two,
Section 21, of this lease, LESSEE determines that because of a
change of conditions it is impossible or impractical to construct
such improvements, LESSEE may terminate this lease, provided,
however, that in the event LESSEE shall exercise this right to
terminate, the waiver provisions set forth above shall not apply
and LESSEE shall pay to LESSOR the full rent due and owing, plus
rental for an additional year, without reduction and deduction,
and without notice or demand, upon acceptance of such termination
by LESSOR, provided further, that LESSEE shall satisfy any and
all mortgages, liens, claims and demands and other encumbrances
existing on the off-site improvements, it being expressly
understood that this provision shall be a condition precedent to
LESSEE’S exercise of the right to terminate this lease.
Notwithstanding any other section of this lease, all improvements
constructed by LESSEE shall be and remain the property of LESSEE,
and shall be removed, or otherwise disposed of by LESSEE within a
reasonable time; provided that such removal be accomplished with
a minimum disturbance to the land, which shall be restored to its
original condition, or as close thereto as possible, within a
reasonable time after removal.

ARTICLE ONE

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

a. All minerals as hereinafter defined, in, on, or
under the premises, and the right, on its own behalf or through
persons authorized by it, to prospect for, mine and remove such
minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporite, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of LESSEE'S permitted activities on the demised premises and not for sale to others.

b. All surface waters, ground waters, and water systems, appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.

c. As a condition precedent to the exercise by LESSOR of any rights reserved in this paragraph 1, just compensation shall be paid to LESSEE for any of LESSEE'S improvements taken which amount is to be determined in the manner set forth in paragraph 3, and the rental will be reduced in proportion to the rental value of the premises of which LESSEE is deprived.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Withdrawal. The right to withdraw all or any portion of the premises for any public purpose (including but not limited to agricultural park development), and also reserves the right to withdraw any portion of the demised premises for other than a public use, which demised premises shall, at the time of withdrawal, constitute an economic unit, provided, that, the portion not withdrawn shall also be an economic unit. The right to withdraw reserved under this paragraph 3 shall be exercised only after a minimum one (1) years prior written notice is given to LESSEE. The LESSEE will be entitled to compensation for those improvements made by LESSEE which have been approved by LESSOR, on any portion of the premises withdrawn, in an amount equal to the proportionate value of LESSEE'S improvements so withdrawn in the proportion that it bears to the unexpired term of the lease; provided, that LESSEE may, in the alternative, remove or relocate its improvements to the remainder of the demised premises occupied by LESSEE. If only a portion of the demised premises is
withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the premises withdrawn.

ARTICLE TWO

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. (a) That LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the premises or any part, or any improvements, or LESSOR or LESSEE, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term. (b) That LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the premises.

3. Utility services. That LESSEE shall pay or caused to be paid all charges, duties, rates and, other outgoings of every description, including water, sewer, gas, refuse collection, relocation of utility poles and lines or any other charges, as to which the premises or any part, or any improvements, or LESSOR or LESSEE may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE.

4. Issuance and relocation of utility easements. (a) That LESSEE may request an easement for utility purposes or relocation of an existing utility easement and, if so approved by LESSOR, LESSEE shall pay all costs related to the issuance and installation of a new utility easement or relocation of an existing utility easement. (b) That LESSOR may issue utility easements or relocate existing utility easements without LESSEE'S approval provided the issuance or relocation thereof does not unreasonably interfere with LESSEE'S use of the premises. In such event, LESSOR shall pay for all costs related to the issuance and installation of a new utility easement or relocation of an existing easement, unless the issuance or relocation is
being done at the request of a utility company, in which case the utility company shall pay all the related costs.

5. Sanitation, etc. That LESSEE shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That LESSEE shall not strip or commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises, or any part thereof, nor, without the prior written consent of LESSOR, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. That LESSEE shall, if applicable, comply with the requirements of any municipal, state and federal authorities and observe any municipal ordinances and state and federal statutes, applicable to the premises, now in force or which may be in force.

8. Inspection of premises. That LESSEE will permit LESSOR and its agents, at all reasonable times as to cause as little interference with LESSEE'S use of the premises as is reasonably possible during the lease term, to enter into and upon the premises to inspect and examine the same and determine the state of repair and condition thereof, including without limitation the right to inspect LESSEE'S records regarding compliance with all applicable rules and regulations.

9. Lessor's approval of improvements. That LESSEE shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written consent of LESSOR and upon those conditions LESSOR may impose, unless otherwise provided in the lease. The LESSEE may make nonstructural alterations not exceeding Twenty-Five Thousand Dollars ($25,000.00) in cumulative costs per alteration during the term of this lease without LESSOR'S consent. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

10. Repairs to improvements. That LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.
11. Liens. That LESSEE will not commit or suffer any act or neglect which results in the premises, any improvement or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses, including reasonable attorney's fees.

12. Character of use. That LESSEE shall use the demised premises solely for Limited (General) Industrial purposes and such other purpose as is permitted under the current zoning regulations; provided, however, no construction of any residential structures shall be permitted.

13. Assignments, etc. That LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of LESSOR the assignment and transfer of this lease or any portion may be made if (a) LESSEE becomes mentally or physically disabled; (b) extreme economic hardship is demonstrated to the satisfaction of LESSOR; (c) it is to the corporate successor of LESSEE; (d) it contains the personal residence of LESSEE; (e) in the case of commercial, industrial, hotel, resort, apartment, and other business uses, LESSEE was required to put in substantial building improvements; provided, further, that prior to the approval of any assignment of lease, LESSOR shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by LESSEE of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee.

14. Subletting. That LESSEE shall not rent or sublet the whole or any part of the premises except to other non-profit organizations sharing common goals and serving similar functions as LESSEE and with the prior written approval of LESSOR; provided, however, that prior to the approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided, further, that LESSOR shall have the right to revise, if necessary, the lease rental of the premises based upon the rental rate charged to the proposed sublessee pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit "D", and provided further, that the
base rent may not revised downward. The term of any such
sublease shall not exceed the term of this LEASE.

If this paragraph is violated, LESSEE shall relinquish all
sublease rents collected from the premises, besides continuing to
pay the effective base lease rent to LESSOR, and including all
litigation expenses incurred in accordance with paragraph 17,
infra.

15. Mortgage. That, except as provided in this lease,
LESSEE shall not mortgage, hypothecate or pledge the premises or
any portion of this lease or any interest without the prior
written approval of LESSOR and any such mortgage, hypothecation
or pledge without such approval shall be null and void.

16. Indemnity. That LESSEE shall indemnify, defend and
hold LESSOR harmless (a) from and against any claims or demands
for loss, liability or damage, including claims for property
damage, bodily injury or wrongful death, arising out of or
resulting from any use, occupancy, maintenance, or enjoyment of
the premises, or adjacent sidewalks and roadways in LESSEE'S use
or control, including any accident, fire or nuisance, or growing
out of or caused by any failure on the part of LESSEE to maintain
the premises in a safe condition, or by any act or omission of
LESSEE; and (b) from and against all actions, suits, damages and
claims by whomsoever brought or made by reason of the non-
observance or non-performance of any of the terms, covenants and
conditions of this lease or the rules, regulations, ordinances
and laws of the federal, state, municipal or county governments.

17. Costs of litigation. That in case LESSOR shall,
without any fault on its part, be made a party to any litigation
commenced by or against LESSEE (other than condemnation
proceedings), LESSEE shall pay all costs, including reasonable
attorney's fees, and expenses incurred by or imposed on LESSOR;
furthermore, LESSEE shall pay all costs, including reasonable
attorney's fees, and expenses which may be incurred by or paid by
LESSOR in enforcing the covenants and agreements of this lease,
in recovering possession of the premises or in the collection of
delinquent rental, taxes and any and all other charges.

18. Insurance. That LESSEE shall procure and maintain, at
its own cost and expense and acceptable to LESSOR, in full force
and effect during the period of original construction on the
premises with responsible insurance carriers the following
insurance:

a. Builder's Risk Insurance. A blanket builder's risk
insurance policy on an "all risk" basis in a minimum
aggregate amount as required by the lender.
b. Worker's Compensation Insurance. As required by state laws, including and without limitation, employer's liability insurance for all employees of the general contractor performing any work on any improvements being constructed on the premises.

c. Comprehensive General Liability. Against claims for personal injury (including bodily injury and death and property damage). Such insurance shall provide coverage for blanket contractual, explosion, collapse and underground coverage, broad form property damage and personal injury insurance as required by the lender.

Immediately upon completion of construction of improvements, without any lapse in coverage, and at all time thereafter, LESSEE shall procure and maintain at no cost to LESSOR with responsible insurance carrier the following insurance:

a. Worker's Compensation Insurance. As required by state law, including and without limitation, employer's liability insurance for all employees of any general performing any work on any improvements being constructed on the premises.

b. Comprehensive General Liability Insurance. Against claims for personal injury (including bodily injury and death and property damage). Such insurance shall provide coverage for blanket contractual explosion, collapse and underground coverage, broad form property damage and personal injury insurance with a $10,000,000 minimum limit per occurrence for combined bodily injury and property damage and in the aggregate where applicable, so long as such insurance is available on reasonable commercial terms. Such insurance shall include to the extent coverage is available on reasonable commercial terms, claims resulting from alleged environmental damage to the soil, water (surface, ground and sea) and air.

c. Fire and Extended Coverage Insurance. The LESSEE shall, at its sole cost, maintain all-risk property insurance covering the building(s) on the Premises, including but not limited to, LESSEE'S leasehold improvements, alterations, additions, trade fixtures and personal property from time to time in, on or upon the Premises and upon every reconstruction, repair and replacement therefor in an amount not less than one hundred percent (100%) of their full replacement cost.
This requirement will include Builder's Risk Insurance during any period of construction.

d. Business Interruption Insurance. The LESSEE shall procure and maintain, at its own cost and expense, in full force and effect throughout the entire term of this lease, a business interruption insurance policy to assure rental payment for at least six (6) months in the event of a natural disaster or occurrence beyond the control of LESSEE. The policy shall name LESSOR as the beneficiary of the policy and a certificate so stating shall be forwarded to LESSOR upon each renewal of the policy.

All policies of insurance required to be maintained pursuant to this paragraph 18, "Insurance", covering loss or damage to any of LESSEE'S property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or ten (10) days in the case of nonpayment of premiums) prior written notice to cancellation or non-renewal of any policy. The LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policy shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, subtenants and mortgagees, as their interests may appear and shall contain a provision that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(s) for any loss occasioned to it, its servants, agents and employees by reasons of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain, renewal or additional policies in like manner and to like extent. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess off coverage which LESSOR may carry.

That LESSEE will, at its own expense, at all times during the term of this lease, keep insured all buildings and other improvements erected on the premises in the joint names of LESSOR, LESSEE and the Mortgagee, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in an insurance company or companies approved by LESSOR, and will pay the premiums at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to LESSOR, LESSEE and the Mortgagee, if any, as their interests may appear and shall be deposited with the Mortgagee; and that any proceeds
derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by LESSEE for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by LESSOR or its designated representative; provided, however, that with the approval of LESSOR, LESSEE may surrender this lease and pay the balance owing on any mortgage and LESSEE shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, LESSOR to retain the balance of the proceeds.

LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of LESSOR, the insurance provisions in this lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The LESSOR’S requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof, with LESSOR incorporating the changes within thirty (30) days of receipt of notice.

The procuring of the required policy(s) of insurance (i) shall not release or relieve LESSEE of its responsibility, nor be construed to release or relieve LESSEE of its responsibility, under this lease as set forth herein or limit the amount of its liability under this lease, and (ii) shall not be deemed or construed to fulfill the indemnification provisions and requirements of this lease.

19. Performance bond and security deposit. That LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond shall equal the annual rental under the lease, the initial amount to be established at the time of the auction of the lease, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rental date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like
amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit (payable on demand or after such period as LESSOR may stipulate) bonds, stocks or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by LESSOR under the foregoing proviso shall be determined by LESSOR, and that LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money shall be at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rental determined at each lease rental reopening date. The deposit will be refunded without interest to LESSEE at the expiration of the lease or assignment of the lease. In the event of non-performance and upon termination of the lease, LESSOR shall have the option to declare the deposit forfeited as liquidated damages or apply it as an offset to amounts owed by LESSEE.

20. Lessor's lien. That LESSOR shall have a lien on all the buildings and other improvements placed on the premises by LESSEE, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all LESSOR'S costs, attorneys' fees, rent reserved, for all taxes and assessments paid by LESSOR on behalf of LESSEE, and for the payment of all money provided in this lease to be paid by LESSEE, and such lien shall continue until the amounts due are paid.

21. Improvements. Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development program shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. The LESSEE shall have thirty (30) months from the date of LESSOR'S approval of the plans to complete any necessary construction in order to implement the plans. All construction will be done with new materials and in full compliance with all laws, ordinances, rules and regulations of the federal, state and county governments. The total cost of the building and other improvements shall not be less than $200,000.00.
22. **Landscaping.** The primary landscaping material used should be of quality that will serve in enhancing the environment and also serve as a functional part of the improvement. Trees should not only provide shade when mature, but also have character and interesting color as they grow. Shrubs and ground covers should also provide visual effects in color and texture while providing screening in needed area and also highlighting the architecture of improvement. The landscaping and planting area should be reasonably dispersed throughout the premises. Irrigation should be supplied to assure the livability of the plant material and ease in the maintenance of the site. It is recommended that total landscaping expenditure for the premises should be a minimum of 5% of the total improvement cost.

23. **Bond and financial information.** That LESSEE will before commencing construction of any improvements on the premises deposit with LESSOR a bond or certificate, in an amount equal to the construction cost of the improvements and in form and with surety satisfactory to LESSOR, guaranteeing the completion of the construction of improvements free and clear of all mechanics' and materialmen's liens, together with such information and evidence as LESSOR may reasonably require to assure that LESSEE is able to and will make all payments required by contract to be made as and when LESSEE is required to do so.

24. **Termination.** That at the end of or earlier termination of this lease, LESSEE shall, peaceably deliver unto LESSOR possession of the premises, together with all buildings and other improvements of whatever nature or name, now or hereafter erected or placed upon same, in good order and condition, reasonable wear and tear excepted. Furthermore, upon the expiration, termination, and/or revocation of this lease, should LESSEE fail to remove any and all of LESSEE'S personal property from the premises, after notice thereof, LESSOR may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of LESSEE, and LESSEE does agree to pay all costs and expenses for disposal, removal, or storage of the personal property.

25. **Non-warranty.** That LESSOR does not warrant the conditions of the premises, as the same is being leased as is.

26. **Abandonment by Lessee.** That LESSEE agrees that should LESSEE breach this lease and abandon the premises, this lease shall continue in effect so long as LESSOR does not terminate the lease or LESSEE'S right to possession; and LESSOR may enforce all of its rights and remedies under this lease, including the right to recover the rent as it becomes due under this lease; and further, that LESSOR need not mitigate its damages in the event
LESSEE abandons the premises and LESSEE hereby expressly agrees to make LESSOR whole in accordance with the terms of this lease.

27. Fees, processing/documentation. That LESSEE agrees to pay to LESSOR, a reasonable fee for LESSOR'S processing of consents and assignments and providing documents required or authorized by the terms, covenants and conditions of this lease. The amount of the processing fee and documentation fee shall be determined by LESSOR, provided the fee be not less than seventy-five dollars ($75.00) nor more than one hundred fifty dollars ($150.00).

ARTICLE THREE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. That upon due application and with the written consent of LESSOR, LESSEE may mortgage this lease, or any interest, or create a security interest in the leasehold land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of LESSEE'S interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

2. Breach. That time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the premises, or if this lease and the premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE'S property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the terms, covenants and conditions contained in this lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or
certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LESSOR may allow for good cause, LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises or any part, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrearages of rent and interest at the legal rate pursuant to Section 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of termination, all buildings and improvements shall remain and become the property of LESSOR; furthermore, LESSOR shall retain all rent paid in advance as damages.

3. Rights of holder of record of a security interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants and conditions contained in the lease on LESSEE'S part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within the additional period as LESSOR may allow for good cause and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest or estate without prejudice to
any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to red cleanup the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these right or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. Section 171-19, Hawaii Revised Statutes to the contrary notwithstanding, the proceeds of any redemptor under the terms of this provision and Section 171-21, Hawaii Revised Statutes, shall be applied; first, to reimburse LESSOR for costs and expenses in connection with the redemptor; second, to discharge in full any unpaid purchase price or other indebtedness owing LESSOR in connection with the privilege, interest or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redemptor which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. That, if at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The LESSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LESSEE is not permitted to harvest and (b) the proportionate value of LESSEE'S permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the demised premises occupied by LESSEE. The LESSEE shall not by reason of the condemnation be entitled to any claim against LESSOR for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of LESSOR. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, LESSEE shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that LESSEE may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by LESSOR.
5. **Right to enter.** That LESSOR and agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE'S use and enjoyment of the premises.

6. **Inspection by prospective bidders.** That LESSOR shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two years before the expiration or termination of this lease.

7. **Acceptance of rent not a waiver.** That the acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant or condition of this lease, nor of LESSOR'S right to re-entry for breach of covenant, nor of LESSOR'S right to declare and enforce a forfeiture for any such breach, and the failure of LESSOR to insist upon strict performance of any such term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

8. **Extension of time.** That notwithstanding any provision contained in this lease when applicable, LESSOR may for good cause shown, allow additional time beyond the time or times specified in the lease for LESSEE to comply, observe and perform any of the lease terms, covenants and conditions.

9. **Justification of sureties.** Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with LESSOR security in certified checks, certificates of deposit (payable on demand or after such period as LESSOR may stipulate), bonds, stocks or other negotiable securities properly endorsed, or
execute and deliver to LESSOR a deed or deeds of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by LESSOR under the foregoing proviso shall be determined by LESSOR, and that LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities if in the judgment of LESSOR the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by LESSEE, but only upon the written consent of LESSOR and that until such consent be granted, which shall be discretionary with LESSOR, no surety shall be released or relieved from any obligation.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by LESSEE of the terms, covenants and conditions herein contained on its part to be observed or performed, LESSOR at its discretion may waive or suspend the performance bond and/or improvement bond requirements or may modify the same by reducing the amount; provided, however, that LESSOR reserves the right to reactivate or reimpose the bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

11. Quiet enjoyment. That LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the premises for the term of the lease, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through or under it.

12. Interest, costs and fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.
13. Hazardous materials. LESSEE shall not cause or permit the escape, disposal or release of any hazardous material. LESSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought into the premises any such materials except to use in the ordinary course of LESSEE'S business, and then only after written notice is given to LESSOR of the identity of such materials and upon LESSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LESSEE, then LESSEE shall be responsible for the reasonable costs thereof. In addition, LESSEE shall execute affidavits, representations and the like from time to time at LESSOR'S request concerning LESSEE'S best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by LESSEE.

LESSEE agrees to indemnify, defend, and hold LESSOR harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while LESSEE is in possession or elsewhere if caused by LESSEE or persons acting under LESSEE. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them:

Clean Air Act, 42 U.S.C. Sections 7401 et seg.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seg.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,
and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

14. **Underground Storage Tank (UST).** An UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical.

Prior special approval from LESSOR is required for the installation of such facility. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the lease by LESSEE. Two (2) years prior to expiration of lease term, LESSEE shall initiate testing of the surrounding ground for possible contamination and conduct clean up procedure, if necessary, in accordance with the State of Hawaii, Department of Health regulations.

15. **Hawaii Law.** This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

16. **Exhibits - Incorporation in lease.** All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

17. **Partial invalidity.** If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

18. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.
(c) "LESSEE" shall mean and include LESSEE herein, its heirs, executors, administrators, successors or permitted assigns.

(d) "Premises" shall mean the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(f) "Economic unit" shall mean the prevailing minimum lot size required under the County Zoning or Land Use Code.

(g) The paragraph headings throughout this lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC AT ITS MEETING HELD ON April 24, 2001

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Raynard C. Soon, Chairman
Hawaiian Homes Commission

LESSOR

ALOHA MACHINE & WELDING, LTD.
a Hawaii Corporation

By
DENNIS MATSUI
Its President

By
MODESTO REVILLA
Its Vice President

By
ROBERT ACASIO
Its Treasurer/Secretary

LESSEE

22
B-251
STATE OF HAWAI'I  
COUNTY OF HAWAI'I  

On this 24th day of May, 2002, before me personally appeared DENNIS MATSUI, MODESTO REVILLA and ROBERT ACASIO, to me personally known, who, being by me duly sworn, did say that they are the President, Vice President and Treasurer/Secretary, respectively, of ALOHA MACHINE & WELDING, LTD., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said DENNIS MATSUI, MODESTO REVILLA and ROBERT ACASIO, severally acknowledged said instrument to be the free act and deed of said corporation.

Lynne K. Kushi  
Notary Public, Third Judicial Circuit,  
State of Hawai'i  

My Commission expires:  March 24, 2006
KAEI HANA-I SUBDIVISION
(Industrial Area)
LOT 44

Waiakea, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Waiakea
set-aside as the Hawaiian Home Lands of Panaewa by Section 203 of
the Hawaiian Homes Commission Act, 1920 and adopted as Tract 1
of the Hawaiian Home of Panaewa by Hawaiian Homes Commission
Resolution No. 2 dated June 19, 1924.

Beginning at the southwest corner of this parcel of land, at the
northwest corner of Lot 45 of Kaei Hana-I Subdivision (Industrial Area) and on the east
side of Makaala Street, the coordinates of said point of beginning referred to Government
Survey Triangulation Station "HALAI" being 5415.88 feet South and 9971.00 feet East,

thence running by azimuths measured clockwise from True South:-

1. 180° 00' 90.00 feet along the east side of Makaala Street;

2. 270° 00' 225.00 feet along Lot 43 of Kaei Hana-I Subdivision
(Industrial Area);
3. 360° 00' 90.00 feet along Lot 92 of Kaei Hana-I Subdivision (Industrial Area);
4. 90° 00' 225.00 feet along Lot 45 of Kaei Hana-I Subdivision (Industrial Area) to the point of beginning and containing an AREA OF 20,250 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By:
Stanley T. Hasegawa
Licensed Land Surveyor No. 3632
gm

Reviewed and Approved by:
Randall M. Hashimoto
State Land Surveyor

Compiled from Govt.
Survey Records.

EXHIBIT "A"
B-254
KAEI HANA-I SUBDIVISION
(Industrial Area)

LOT 45

Waiakea, South Hilo, Island of Hawaii, Hawaii


Beginning at the northwest corner of this parcel of land, at the southwest corner of Lot 44 of Kaei Hana-I Subdivision (Industrial Area) and on the east side of Makaala Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 5415.88 feet South and 9971.00 feet East, thence running by azimuths measured clockwise from True South:

1. 270° 00' 225.00 feet along Lot 44 of Kaei Hana-I Subdivision (Industrial Area);

2. 360° 00' 90.00 feet along Lot 92 of Kaei Hana-I Subdivision (Industrial Area);
May 30, 2002

3. 90° 00'

225.00 feet along Lot 91 of Kaei Hana-I Subdivision (Industrial Area);

4. 180° 00'

90.00 feet along the east side of Makaala Street to the point of beginning and containing an AREA OF 20,250 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Stanley T. Hasegawa
Licensed Land Surveyor No. 3632

Reviewed and Approved by:

Randall M. Hashimoto
State Land Surveyor

Compiled from Govt. Survey Records.
**KAEI HANA-I SUBDIVISION**  
**INDUSTRIAL AREA**  
LOTS 44 AND 45  
Waiakea, South Hilo, Island of Hawaii, Hawaii

Scale: 1 inch = 100 feet

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### Diagram

- **TRUE NORTH**
  - Scale: 1 inch = 100 feet

- **HOLOMUA STREET**

- **MAKAALA STREET**

---

### Table

<table>
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<th>KAEI</th>
<th>HANA-I SUBDIVISION</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>INDUSTRIAL AREA</strong></td>
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</tbody>
</table>

### Survey Data

**LOT 44**
- 20,250 SQ. FT.
- 540.00 - 180.00

**LOT 45**
- 20,250 SQ. FT.
- 180.00 - 180.00

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**Notes**

- **Survey Division**
- **Department of Accounting and General Services**
- **State of Hawaii**

---

**Job**
- W-105/02
- C. BK

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**Exhibit "B"**
GENERAL LEASE NO. 258
Aloha Machine & Welding, Ltd.

Existing Improvements -- Currently, Parcels 33 and 34 are improved with a steel-framed warehouse structure containing approximately 5,200 square feet of warehouse space originally constructed in 1974. An approximate 2,480 square foot section of the warehouse has been enclosed into office space. Additionally, there is a 560 square foot storage mezzanine space, and a 1,968 square foot awning situated along the side of the building. The structure contains two bathrooms, containing a basin and a water closet each. The building has a combination steel and masonry frame. The foundation is a reinforced concrete slab, with portions finished with ceramic tile. Exterior walls are of steel frame or concrete hollow tiles. The roof structure is of steel covered with metal roofing material. The office is framed in with redwood paneling.

IMPROVEMENT SKETCH

Property Address: Off Makaala Street
City: Hilo
State: Hawaii
Zip: 96720

Borrower: State Of Hawaii DHHL
Lender/Client: State of Hawaii

Appraiser Name: David Matsunami
Appr Address: Ewa Beach, Hawaii 96706

Scale: 1 = 22
That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit "C".

2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.

3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.

4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy.

Extract from Exhibit "C":

Gross Annual Sublease Rent
LESS: 4% General Excise Tax (if paid by sublessor)
EQUALS: Effective Annual Sublease Rent
LESS: Allowances (costs and investment returns)
EQUALS: Income Attributable to Land
LESS: Allocated Basic Lease Rent
EQUALS: Amount of Increase in Lease Rent Due to Subleasing (if any)
X 50% EQUALS: Amount Due to DHHL
DEFINITION OF TERMS
Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/liability insurance policies.

Line 4e: SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.
Line 4f: RETURN OF INVESTMENT
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4g: RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: INDICATED ADDITIONAL RENT
Line 5 (Annual Income Attributable to Land) less
Line 6 (Allocated Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: ADDITIONAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY
(No subleasing of building space)

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.
Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: ALLOCATED ANNUAL BASE LEASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 5: INDICATED ANNUAL ADDITIONAL RENT
Line 3 minus Line 4, but not less than zero.

Line 6: ADDITIONAL ANNUAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.
## SUBLEASE RENT PARTICIPATION WORKSHEET

### I. SUBLEASING OF BUILDING SPACE:

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<th>Line</th>
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<tr>
<td>1</td>
<td>Gross Annual Sublease Rent</td>
<td>$_______</td>
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<tr>
<td>2</td>
<td>Less 4% General Excise Tax</td>
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<td>3</td>
<td>EQUALS Effective Annual Sublease Rent</td>
<td>_______</td>
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<td>4</td>
<td>Less Allowances:</td>
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<tr>
<td></td>
<td>a. Management, Credit Loss</td>
<td>$_______</td>
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<td>b. Repair and Maintenance</td>
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<td>c. Real Property Taxes</td>
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<td></td>
<td>d. Insurance Premiums</td>
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<td></td>
<td>e. Surety Bond Premium</td>
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<td>f. Return OF Investment</td>
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<td>g. Return ON Investment</td>
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<td>5</td>
<td>EQUALS Annual Income Attributable to Land</td>
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<td>6</td>
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<tr>
<td>7</td>
<td>EQUALS Indicated Additional Annual Rent</td>
<td>_______</td>
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<td>TIMES 50%</td>
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<td>8</td>
<td>EQUALS Additional Annual Rent Payable to DHHL</td>
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### II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

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<td>Less Allocated Annual Base Lease Rent</td>
<td>_______</td>
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<tr>
<td>5</td>
<td>EQUALS Indicated Annual Additional Rent</td>
<td>_______</td>
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<tr>
<td></td>
<td>TIMES 50%</td>
<td>_______</td>
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<tr>
<td>6</td>
<td>EQUALS Additional Annual Rent Payable to DHHL</td>
<td>_______</td>
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## HYPOTHETICAL SUBLEASE OF VACANT LAND

<table>
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<tr>
<th>Description</th>
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<tr>
<td>Annual Base Lease Rent of General Lease</td>
<td>$8,000</td>
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<tr>
<td>Effective Annual Sublease Rent</td>
<td>$3,000</td>
</tr>
<tr>
<td>Total Land Area of Leasehold Premises</td>
<td>24,000 sq. ft.</td>
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<tr>
<td>Subleased Land Area</td>
<td>6,000 sq. ft.</td>
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<tr>
<td>[ \text{RATIO:} \frac{6}{24} = .25 \times $8,000 = $2,000 ]</td>
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<tr>
<td>Effective Annual Sublease Rent</td>
<td>$3,000</td>
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<tr>
<td>Allocated Annual Base Lease Rent</td>
<td>$2,000</td>
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<tr>
<td>Indicated Additional Rent</td>
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<tr>
<td>Times 50%</td>
<td>.50</td>
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<tr>
<td><strong>SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL</strong></td>
<td>$500</td>
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 260

between

STATE OF HAWAII

and

HOME DEPOT U.S.A., INC.

covering

HAWAIIAN HOME LANDS

situate at

corner of Makaala Street
and Railroad Avenue, at Waiakea, South Hilo
Island of Hawaii, Hawaii

ORIGINAL
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
GENERAL LEASE NO. 260

THIS INDENTURE OF LEASE (the “Lease”), is made as of the ____ day of ____________, 2004, but shall be effective on the date set forth below, by
and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME
LANDS, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and HOME DEPOT U.S.A., INC., a Delaware corporation, whose mailing address is 2727 Paces Ferry Road, Atlanta, Georgia 30339, Attention: Legal Department (with a copy to 3800 West Chapman Avenue, Orange, California 92868, Attention: Real Estate Department and Legal Department), hereinafter called “LESSEE.”

WITNESSETH:

ARTICLE ONE
DEMISe

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at the corner of Makaala Street and Railroad Avenue, at Waiakea, South Hilo, Island of Hawaii, Hawaii, comprising 10.687 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, and shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on ____________, 2004 (which shall be the Effective Date of the Lease) (subject to the conditions subsequent set forth in Section 20 Article Four), and ending as of midnight on March 31, 2069, unless sooner terminated as hereinafter provided.

ARTICLE TWO
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal monthly installments, as follows:
1. **Annual Base Rental.** Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:

   Lease years 1 through 10: Four Hundred Thousand Dollars ($400,000.00) per annum ($33,333.33 per month from and after the Rent Commencement Date only);

   Lease years 11 through 15: Four Hundred Sixty Thousand Dollars ($460,000.00) per annum ($38,333.33 per month);

   Lease years 16 through 20: Four Hundred Ninety-Five Thousand Five Hundred Dollars ($495,500.00) per annum ($41,291.67 per month); and

   Lease years 21 through 25: Five Hundred Thirty-One Thousand Five Hundred Eighty-Seven Dollars ($531,587.00) per annum ($44,298.92 per month).

   Lease years 26 through 65: annual base rental shall be reopened as provided in Section 2 below.

Annual base rental shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is that date which is the earlier of (a) April 1, 2005 or (b) the date on which LESSEE opens the Premises for business. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

LESSOR holds LESSEE’s bid deposit in the amount of $59,250.00. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

2. **Reopening of Annual Base Rental.** The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the 35th, 45th and 55th lease years for each of the next ensuing three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE, provided, however, that for each of the three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, the increase in such annual base rental shall not be more than 20% above the annual base rental payable during the immediately preceding ten year period under this Lease. No such cap shall apply to the reopening and redetermination of rent at the expiration of the 25th lease year of the term. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be
contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum. Notwithstanding anything else contained in this Lease to the contrary, LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 20 of Article Four below upon the delivery of written notice to LESSOR within three (3) months after each reopening and re-determination of the Annual Base Rental hereunder so long as LESSEE then reimburses LESSOR for 100% of the cost of LESSOR’s appraiser and 50% of any cost of a third appraiser incurred by LESSOR in connection with the reopening.

ARTICLE THREE
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:
1. **Minerals and Waters.**

   (a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

   (b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. **Prehistoric and Historic Remains.** LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, and subject to LESSEE’s rights under Section 20 of Article Four below, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Three. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, protection or removal of such sites or remains.

3. **Right of Withdrawal.** The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Three shall be exercised only after not less than five (5) years prior written notice to LESSEE. As a condition precedent to the exercise by LESSOR of any rights reserved in this Section 3 of Article Three, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Three, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Three.

4. **Reservation of Easements in Favor of LESSOR.** LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground
utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. **Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR.** In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain, provided, however, that in no event shall the compensation payable to LESSEE be less than the portion of the value of LESSEE’S improvements so taken in the proportion that the unexpired term of the Lease bears to the entire term of the Lease. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease pursuant to Section 19 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.
ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS follows:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided LESSEE takes all steps necessary to prevent a sale of the Premises. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE. LESSOR agrees to submit to LESSEE all real property tax or assessment invoices which are sent to LESSOR for taxes at least sixty (60) days prior to the last date that the same may be paid without penalty or interest.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE.

4. Issuance and Relocation of Utility Easements. LESSEE shall have the right and LESSOR shall fully cooperate with LESSEE to provide any reasonably necessary easements for utility purposes to service any portion of the Premises. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

5. Sanitation. LESSEE shall keep the Premises and improvements in a reasonably sanitary and clean condition.

6. Waste and Unlawful, Improper or Offensive Use of Premises. LESSEE shall not commit, suffer or permit to be committed any material waste, nuisance, or unlawful use of the Premises, or any part thereof.
7. **Compliance with Laws.** LESSEE shall comply with the applicable requirements of any municipal, state and federal authorities and observe any municipal ordinances and state and federal statutes, applicable to the Premises or improvements situated thereon, now in force or which may hereafter be in force. LESSEE will at all times during the term of the Lease, and at its own expense, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required under any applicable law to be made, built, maintained or repaired upon the Premises.

8. **Inspection of Premises.** LESSEE will permit LESSOR and its agents, at all reasonable times so as to cause as little interference with LESSEE’s use of the Premises as is reasonably possible during the Lease term, to enter into and upon the Premises to inspect and examine the same and determine the state of repair and condition thereof.

9. **Improvements.**

   (a) LESSOR has approved LESSEE’s plan to construct improvements on the Premises including, without limitation, a home improvement store, an outdoor garden center, a sidewalk area in front of the building, signs, truck loading docks, truck wells, a truck staging area servicing the building, and a fully striped and lighted parking lot to service the building, all as detailed in LESSEE’s “permit set” plans and specifications prepared by Greenberg Farrow and dated March 4, 2004, as amended by amendment dated March 15, 2004, and as further modified in LESSEE’s conceptual plan dated April 12, 2004 (“Conceptual Plan”), a “permit set” for which LESSEE agrees to deliver to LESSOR by not later than May 31, 2004, which “permit set” LESSOR agrees to approve so long as it is substantially in conformance with the Conceptual Plan. LESSOR may, during the term construct, place, maintain and install on the Premises additional buildings and structures with the LESSOR’s prior written approval of the final plans and specifications for such buildings or structures; LESSEE shall have the right to make interior, structural and non-structural repairs and improvements, including the right to relocate all exterior customer and loading doors and entryways in the building without LESSOR’s consent. LESSOR agrees to execute any and all instruments necessary to obtain licenses and permits from the applicable governmental authorities in order to make such repairs or alterations. LESSEE shall own these improvements until the expiration or termination of the Lease, at which time the ownership shall automatically be vested in LESSOR.

   LESSOR hereby grants to LESSEE a temporary license for access and passage over and across the property referred to as the “Outparcel” (the “Outparcel”) in that certain Easement Agreement and Restrictive Covenant (the “REA”) executed on or about the date hereof, between LESSOR and LESSEE, to the extent reasonably necessary for LESSEE to construct the Permanent Service Drive (as defined in the REA) located on the Outparcel, until the Permanent Service Drive is completed but no longer than one year after the commencement of the work. LESSEE shall secure all permits and approvals and promptly pay all costs and expenses associated with such work, and shall promptly clean and restore the affected portion of the Outparcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work.
(b) **Bond and Financial Information.** LESSEE will before commencing construction of any improvements within the Premises in excess of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00) deposit with LESSOR either: (i) copies of the contractor’s performance bond (HS/AIA Document A311 or its equivalent), and a labor and materials payment bond (HS/AIA Document A311 or its equivalent), naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics’ and materialmen’s liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR’s reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic’s and materialmen’s liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so. Notwithstanding the foregoing, in the event that LESSEE (and any tenant of LESSEE) (x) provides evidence to LESSOR that such entity has a net worth of at least $100,000,000.00, and (y) commits to LESSOR to complete the improvements free and clear of all mechanics’ and materialmen’s liens, LESSEE (or such tenant) shall not be required to deposit any such security in connection with the construction of improvements by such entity.

(c) **Compliance with the Americans with Disabilities Act of 1990.**

(i) **Applicable Laws.** LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42, U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) **Responsibility for Compliance.** Notwithstanding LESSOR’s review of such drawings and specifications, and whether or not LESSOR approves or
disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR’s investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10.0%) per annum.

10. Repairs to Improvements. LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. Each party will not commit or suffer any act or neglect which results in the Premises, any improvement or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Lease, and each shall indemnify, defend, and hold harmless the other from and against all attachments, liens, charges, and encumbrances and all resulting expenses, including reasonable attorney’s fees. Each shall have the right to contest any such attachment, lien, charge or encumbrance, provided that the interest of the other shall not thereby be subject to sale.

12. Zoning/Permitted Uses. The Premises may be used for a home improvement store or any other uses permitted by the applicable County zoning. Immediately upon execution hereof LESSOR, pursuant to authority reserved to it by December 27, 2002, Memorandum of Agreement entered into between LESSOR and the County of Hawaii, shall designate to the County of Hawaii that the Premises be zoned as ML-20 (Limited Industrial).

13. Assignment. LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, transfer, assign, or permit any other person to occupy or use the Premises or any portion thereof (other than employees, agents, contractors, and other similar parties not having a possessory interest in the Premises), or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law. This Section 13 of Article Four shall not be construed or deemed to restrict or limit in any manner LESSEE’s right, without the consent of LESSOR, to sublet space within any of the buildings constructed on the Premises.

14. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises except that LESSEE may, without the consent of LESSOR, sublet space within any of the buildings constructed on the Premises.
15. **Indemnity.** LESSEE shall indemnify, defend and hold LESSOR harmless (a) from and against any third-party claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from LESSEE’s use, occupancy, maintenance, or enjoyment of the Premises after the Effective Date, including any accident, fire or nuisance, or growing out of or caused by any failure on the part of LESSEE to maintain the Premises in a safe condition, or by any act or omission of LESSEE; and (b) from and against all third-party actions, suits, damages and claims by whomsoever brought or made by reason of the LESSEE’s non-observance or non-performance of any of the terms, covenants and conditions of this Lease or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments applicable to LESSEE. LESSOR shall indemnify, defend and hold LESSEE harmless (i) from and against any third-party claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from any use, occupancy, maintenance, or enjoyment of the Premises resulting from circumstances prior to the Effective Date, including any accident, fire or nuisance, or growing out of or caused by any failure on the part of LESSOR to maintain the Premises in a safe condition, or by any act or omission of LESSOR; and (ii) from and against all third-party actions, suits, damages and claims by whomsoever brought or made by reason of LESSOR’s non-observance or non-performance of any of the terms, covenants and conditions of this Lease or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments applicable to LESSOR. The duty to defend shall be conditioned on the indemnitee adequately notifying the indemnitor of the circumstances entitling indemnitee to defense and indemnity so as to permit indemnitor to defend. Indemnitor shall not be obligated to defend or indemnify if and to the extent that the loss is caused, in whole or in part, by indemnitee’s act, omission or negligence.

16. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

17. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance.** A policy or policies of Commercial Property Insurance covering all buildings, structures and other improvements, including without limitation all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or another’s expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane, tsunami, perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which
a prudent business person would insure against. The policy(ies) required under this Lease shall provide Replacement Cost Coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent which shall not be unreasonably withheld or unless LESSEE self insures as permitted below, the policy shall not have a deductible amount in excess of $100,000 for any one occurrence.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. A policy or policies of commercial general liability insurance or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of LESSEE including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Employees Named as Additional Insureds; and Medical Expense. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence and not less than TWO MILLION DOLLARS ($2,000,000.00) in the aggregate.

(2) Deductible. Except with LESSOR’s prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $100,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers’ Compensation and Employers’ Liability Insurance. Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) Business Auto Policy. Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following:
Bodily Injury -- $1,000,000 each person and $1,000,000 each accident; Property Damage -- $1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) **Umbrella Liability.** Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Liquor Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $100,000.

(d) **Builder's and Installation Risk.** Builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder's Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) **General Policy Terms.** All policies of insurance required to be maintained pursuant to this Section 17 of Article Four, covering loss or damage to any of LESSEE's property shall provide that the insurer is required to provide LESSEE with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSEE current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSEE, LESSEE, and LESSEE's mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSEE, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSEE were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain, renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSEE may carry; provided, however, that with respect to the commercial general liability coverages required under the provisions of this Lease LESSEE may satisfy those requirements with a combination of primary insurance coverage with minimum limits of $1.0 million, and the balance of the coverage by an excess or umbrella policy.

(f) **Periodic Review of Insurance Coverages.** LESSEE shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSEE, the insurance provisions in this Lease do not provide adequate protection for LESSEE in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSEE may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSEE's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSEE shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or
certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

Notwithstanding anything else contained in this Lease to the contrary, LESSEE shall have the right to self-insure for all insurance requirements hereunder, provided LESSEE’s net worth during said period of self-insurance shall not be less than One Hundred Million Dollars ($100,000,000.00).

18. Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the premises in the same or similar fashion as shown on LESSEE’s Greenberg Farrow Landscape Plan dated March 15, 2004. LESSOR acknowledges and agrees that (a) LESSEE may change the landscaping from time to time without LESSOR’s consent and (b) comparability, not precise compliance, with the above-referenced landscape plan is all that is required.

19. Termination. At the end of or earlier termination of this Lease, LESSEE shall, peaceably deliver unto LESSOR possession of the Premises, together with all buildings, in good order and condition, reasonable wear and tear excepted. All inventory, trade fixtures, furniture, machinery and equipment that LESSEE uses or installs on the Premises and any other personal property, shall remain LESSEE’s property and may be removed by LESSEE. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should LESSEE fail to remove any and all of LESSEE’s personal property from the Premises, after notice thereof, LESSOR may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of LESSEE, and LESSEE does agree to pay all costs and expenses for disposal, removal, or storage of the personal property.

20. Conditions Subsequent. This Lease and LESSEE’s obligations hereunder are subject to the satisfaction or waiver of the following conditions subsequent for LESSEE’s benefit within one (1) year of the date hereof:

(a) Entitlements. All appropriate governmental agencies and authorities shall have taken all appropriate ministerial and discretionary actions such that all applicable laws, including zoning, use and building ordinances, permit (A) the construction of a building and parking lot in accordance with the “Home Depot (National Edition) Design Criteria Manual”, dated February 21, 2002, as supplemented or amended from time to time, (B) LESSEE’s use of a building on the Premises as a home improvement center selling the types of items currently being sold by Home Depot home improvement centers in the United States, and (C) LESSEE’s right to use the Premises in accordance with a zoning designation which allows (i) staging and temporary storage of merchandise around the perimeter of LESSEE’s proposed building, (ii) unloading merchandise off of flatbed trucks, (iii) unlimited delivery rights, (iv) the sale of seasonal items in the parking lot in front of the building, including the sale of Christmas trees in November and December, (v) unlimited sales from an outdoor enclosed garden center, (vi) unlimited sales from the front perimeter sidewalk, and (vii) the sale of food from outdoor and indoor snack bars accompanied by tables and seating purposes (but no larger than 2,000 square feet). The uses described in (A), (B) and (C) above shall be referred to collectively as the
“Entitlements”. The date that such Entitlements shall be deemed to have been obtained is the date that all appropriate discretionary actions with respect to the Entitlements have become effective and all applicable judicial and non-judicial appeal periods with respect thereto shall have expired, with no pending or contesting actions. If despite LESSEE’s efforts as supported by LESSOR, LESSEE is unable to obtain the Entitlements needed to commence and construct to completion LESSEE’s contemplated improvements because of any claims that state land use laws or County zoning, planning or subdivision laws apply to the demised Premises or because of any claims relating to the presence of archaeological sites or prehistoric or historic remains on the Premises, then LESSEE shall have the option to terminate this Lease and obtain a refund of LESSEE’s lease performance deposit.

(b) **Title Insurance.** LESSEE shall have obtained an ALTA/ACSM Land Title Survey of the Premises and a leasehold title policy from First American Title Insurance Company insuring LESSEE’s leasehold interest in an amount to be determined by LESSEE on an ALTA form and as otherwise acceptable to LESSEE and reflecting only the encumbrances identified on Exhibit “C” (other than that certain License Agreement No. 365 dated March 15, 1995 between LESSOR as “Licensor” and Panaewa Hawaiian Home Lands Community Association and Haola, Inc. as “Licensees” which LESSOR covenants shall, within three (3) months of the Effective Date, be released and reconveyed to the extent necessary so that same thereafter does not encumber the Premises) (“Permitted Exceptions”). LESSOR shall have complied with all requirements reasonably requested by First American Title Insurance Company in connection with the issuance of such policy.

(c) **Inspection.** LESSEE’s receipt of satisfactory evidence (i) of the absence of any toxic or hazardous materials having been or currently being stored on the Premises or having adversely affected the soil conditions thereof; (ii) that soil conditions are satisfactorily for LESSEE’s contemplated improvements; (iii) that the Office of Environmental Quality Control has published notice of a final Environmental Assessment for the Premises and a Finding of No Significant Impact and all legal challenge periods have expired with no legal challenges having been filed; (iv) that the Premises have been legally subdivided as contemplated hereby; and (v) that there are no sites of archaeological significance and no prehistoric remains on the Premises that would prevent, diminish or delay LESSEE’s intended use of any part of the Premises.

In the event any one or more of the conditions set forth above is not satisfied or waived by LESSEE within one (1) year of the date hereof, LESSEE shall have the option to terminate this Lease, provided, however, that LESSEE must notify LESSOR in writing within thirty (30) days of said first year anniversary date that LESSEE has elected to exercise the option, failing which LESSEE shall be deemed to have waived the option. LESSEE agrees that should LESSEE elect to terminate this Lease, LESSEE shall not be entitled to any compensation for improvements made to the Premises prior to LESSEE’s election or for any rent, bid deposit, or costs or expenses incurred in connection with leasing the Premises up to the date of LESSEE’s election. The election granted LESSEE to terminate the Lease shall not relieve LESSEE from performing all of LESSEE’s obligations under the Lease prior to termination.

21. **Processing Fees/Documentation.** LESSEE agrees to pay to LESSOR a reasonable fee for LESSOR’s processing of consents and assignments and providing documents required or
authorized by the terms, covenants, and conditions of this Lease. The amount of the processing fee and documentation fee shall be determined by LESSOR, provided the fee shall not be less than seventy-five dollars ($75.00) nor more than one hundred fifty dollars ($150.00).

22. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

23. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein, or create a security interest in the leasehold or interest. Any mortgage consented to by LESSOR pursuant to this paragraph shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease and the holder of such mortgage shall be deemed an “Approved Mortgagee”. If the mortgage or security interest is to an institution legally permitted to make mortgage loans in the State of Hawaii the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including Mortgagee, without regard to whether or not the purchaser is qualified to lease the Premises. The interest of Mortgagee or holder shall be freely assignable. The term “holder” shall include Mortgagee and an insurer or guarantor of the obligation or condition of mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii,
or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease ("Mortgagee") shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") in form proper for recording together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that Mortgage has been satisfied:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter in this Section 1 of Article Five collectively being referred to as "notices", and each of them as a "notice") which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be "Mortgagee" under this Section 1. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their members to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days' additional written notice LESSEE's failure to cure the default, and shall allow Mortgagee such additional
sixty (60) days within which to cure the default, provided, however, that if the default can be cured by the payment of money, the additional time for Mortgagee to cure, shall be limited to thirty (30) days.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section 1 or Article Five, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In case of a default by LESSEE in the performance or observance of any term, covenant, condition or agreement on LESSEE’s part to be performed under the Lease, other than a term, covenant, condition or agreement requiring the payment of a sum of money, and notwithstanding Section 1(d) above, and provided LESSOR shall not be subjected to any criminal liability, LESSOR shall not serve a notice of election to terminate the Lease, or otherwise terminate the leasehold estate of LESSEE hereunder by reason of such default, if and so long as:

(i) In the case of a default which cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (through the appointment of a receiver of otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default; and

(ii) in the case of default which cannot practicably be cured by Mortgagee, Mortgagee shall promptly institute and diligently prosecute to completion foreclosure proceedings, unless, in the meantime, Mortgagee shall acquire LESSEE’s estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure.

Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to Clause (i) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (ii) above, if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections hereinabove provided for.
(g) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code or any other law having similar effect, shall not effect a termination of the Lease or affect or impair Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of Mortgagee delivered to LESSOR within thirty (30) days following Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of Mortgagee, execute and deliver to Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of Mortgagee or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) Mortgagee shall pay or cause to be paid to LESSOR at the time of execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by Mortgagee or such other person or entity. Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR;

(iii) Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and Improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use its best efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the demised Premises, which mortgage, lien, charge or encumbrance was junior to the Lease; and

(iv) Each sublessee of a portion of the Premises whose sublease was in force and effect immediately prior to the delivery of said Confirmation of Lease shall attorn to LESSEE under the Confirmation of Lease, unless said LESSEE shall, at its option, elect to dispossess said sublessee or otherwise terminate the sublease held by said sublessee. Each
sublessee who hereafter subleases a portion of the Premises shall be deemed to have agreed to the provisions of this subparagraph (iv).

(h) In the event that Hawaii Revised Statutes, § 171-21 gives Mortgagee any longer period to cure any default by LESSEE or take any other action with respect to such default, then Mortgagee shall be entitled to the longer period.

2. **Breach.** Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period shall be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than ten (10) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LESSOR may allow for good cause, LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Three above, at once re-enter the Premises or any part, and upon or without such entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrears of rent and interest at the legal rate pursuant to Section 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of termination, all buildings and improvements shall remain and become the property of LESSOR; furthermore, LESSOR shall retain all rent paid in advance as payment toward LESSOR’s damages.

3. **Rights of Holder of Record of a Security Interest.** In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants and conditions contained in the Lease on LESSEE’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder
by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of
the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt,
including interest and penalties, and all reasonable expenses incurred by the holder in connection
with the foreclosure and preservation of its security interest, less appropriate credits, including
income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the
property cannot be reasonably reassigned without loss to LESSOR, then terminate the
outstanding privilege, interest or estate without prejudice to any other right or remedy for
arrearages of rent or for any preceding or other breach or default and use its best efforts to
redispose of the affected land to a qualified and responsible person free and clear of the mortgage
and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting
its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes
shall not operate as a waiver of these rights or to deprive it of the remedy when it may still
otherwise hope to resolve the problems created by the breach or default involved. The proceeds
of any redisposition under subparagraph (b) above shall be applied as follows: first, to reimburse
LESSOR for costs and expenses in connection with the redisposition; second, to discharge in full
any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the
privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by
LESSOR upon redisposition which exceeds the fair market lease value of the land as previously
determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. **Condemnation.** If at any time, during the term of this Lease, all or any portion of
the Premises should be condemned, or required for public purposes by the State of Hawaii, or
any county or city and county, or any other governmental agency or subdivision, then and in any
such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just
compensation to the same extent and according to the same principles and rules of law as if the
Premises and all improvements thereon had been condemned by the State of Hawaii under its
power of eminent domain, the amount of such just compensation to be determined in the manner
set forth in Section 5 of Article Three. Nothing herein contained shall be construed as
preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of
LESSEE’s personal property, or from claiming all or any portion of its award directly against the
condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to
which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that
the remainder of the Premises are rendered unusable as the result of any such condemnation
LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to
Section 19 of Article Four upon the delivery of written notice to LESSOR.

5. **Right to Enter.** LESSOR and agents or representatives shall have the right to
enter and cross any portion of the Premises other than the building for the purpose of performing
any public or official duties; provided, however, in the exercise of these rights, LESSOR shall
not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. **Inspection by Prospective Bidders.** LESSOR shall have the right to authorize any
person or persons to enter upon and inspect the Premises at all reasonable times following a
published notice for its proposed disposition for purposes of informing and apprising that person
or persons of the condition of the Premises prior to the proposed disposition; provided, however,;
that any entry and inspection shall be conducted during reasonable hours after notice to enter is

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first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or
designated agents of LESSEE; provided, further, that no such authorization shall be given more
than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent
shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or
condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the
right to declare and enforce a forfeiture for any such breach, and the failure of LESSOR or
LESSEE to insist upon strict performance of any such term, covenant or condition, or to exercise
any option conferred, in any one or more instances, shall not be construed as a waiver or
relinquishment of any term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this
Lease, other than the payment of money, by a certain time, said time shall be deemed extended
so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following
events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act
of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot;
mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment,
facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts;
condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other
cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon
payment of the rent at the times and in the manner provided and the observance and performance
of these terms, covenants and conditions on the part of LESSEE to be observed and performed,
LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease,
without hindrance or interruption by LESSOR or any other person or persons by, through or
under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same
by LESSEE against the claims of all persons, except those claiming by or through LESSEE.
LESSOR’s covenant of quiet enjoyment, however, shall not in any way obligate LESSOR to
defend or protect the Premises from political protests by Department of Hawaiian Home Lands
beneficiaries or others. Notwithstanding the foregoing, LESSOR covenants that it has entered
into this Lease in good faith and will not support or advance any activities directed at hindering
or interrupting this Lease.

Without limiting the foregoing, in the event ownership of the Premises is transferred from
LESSOR to another governmental or quasi-governmental agency, including, but not limited to
any sovereign government or entity having as its citizens or beneficiaries Native Hawaiians who
are beneficiaries under the Hawaiian Homes Commission Act, the transferee will assume, all
rights, duties and obligations of LESSOR under this Lease and will agree to not interfere with
LESSEE’s quiet enjoyment of the Premises provided LESSEE agrees to attorn to the transferee.

If LESSOR becomes aware that a transfer of the Premises will occur, LESSOR will
promptly notify LESSEE and will take diligent action to insure that the transferee will not
interfere with LESSEE’s use of the Premises as set out in this Lease. LESSOR will not
voluntarily transfer its rights to such transferee without written assurance from such transferee that such transferee will not interfere with LESSEE’s rights under this Lease.

10. **Interest, Costs and Fees.** The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. **Hazardous Materials.** LESSEE shall not allow the storage or use of hazardous materials in any manner not sanctioned by law, nor allow to be brought into the Premises any such materials except in the ordinary course of LESSEE’s business. Notwithstanding the above, LESSEE may store and utilize at the Premises standard materials, products and equipment including, without limitation, petroleum products, pesticides, paints, and other products sold by LESSEE at its home improvement stores nationally.

Either party shall immediately advise the other party in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as “Hazardous Materials Claims”), (iii) the discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

If any Hazardous Materials on or released from the Premises shall be discovered during the construction of LESSEE’s store, LESSEE may, at its option, either terminate this Lease by notice to LESSOR, or elect to remove such materials and clean and remediate the Premises and offset the costs of such removal, cleaning and remediation against Base Rent, provided that such offset may not exceed Two Hundred Thousand Dollars ($200,000). Thereafter LESSEE shall cause any Hazardous Materials on the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents) to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of
any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials Claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elect, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

LESSEE agrees to indemnify, defend, and hold LESSOR harmless, from any damages and claims resulting from the release of hazardous materials on the Premises occurring while LESSEE is in possession or elsewhere if caused by LESSEE or persons acting under LESSEE. This paragraph shall not apply to hazardous materials present on, under or about the Premises on the Effective Date or released after such date by LESSOR or its agents. These covenants shall survive the expiration or earlier termination of the Lease.

LESSOR agrees to indemnify, defend, and hold LESSEE harmless, from any damages and claims resulting from the release of hazardous materials on the Premises prior to the execution of this Lease or released after such date by LESSOR or its agents so long as evidence of same exists. If LESSOR is unwilling to remove any such existing Hazardous Materials then LESSEE may elect to (a) terminate this Lease or (b) expend such sums as are reasonably necessary to correct the condition and to offset same against rent hereunder. These covenants shall survive the expiration or earlier termination of the Lease.

The covenants of this Section 11 of Article Five, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

12. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in
substantially the form of Exhibit "D" attached hereto. LESSOR warrants that it has made a
good faith effort to determine whether native Hawaiian traditional and customary rights have
been exercised on the property and has found no evidence of such exercise.

13. Recitals and Exhibits – Incorporation in Lease. All recitals first above set forth
and exhibits attached to this Lease are hereby are deemed incorporated by reference.

14. Partial Invalidity. If any term, provision, covenant or condition of this Lease
should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in
full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes,
any notice, request, offer, approval, consent or other communication required or permitted to be
given by or on behalf of either party to the other shall be given or communicated in writing by
personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e.,
Federal Express), or United States certified mail (return receipt requested with postage fully
prepaid) or express mail service addressed to the other Party as follows:

If to LESSEE:  Home Depot U.S.A., Inc.
2727 Paces Ferry Road
Atlanta, Georgia 30339
Attention: Legal Department

Copy to:  Home Depot U.S.A., Inc.
3800 West Chapman Avenue
Orange, California 92868
Attention: Real Estate Department
and Legal Department

Copy to:  Kent S. Beyer, Esq.
2029 Century Park East
21st Floor
Los Angeles, California 90067

If to LESSOR:  Department of Hawaiian Homes Land
1099 Alakea Street, 20th Floor
Honolulu, Hawaii 96813
Attention: Mr. Manny K. Nova
Fax: (808) 586-3923

And a copy to:  Attorney General’s Office
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: George K. K. Kaeo, Jr., Esq.
Fax: (808) 587-2938
or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

16. **Use Restrictions.** As material consideration to LESSEE to enter into this Lease LESSOR covenants, warrants and represents to LESSEE that LESSOR will not hereafter lease any land or space within one and one half (1.5) miles of the Premises to, or allow the use of any such leased space by, any tenant or user whose principal business is a home improvement center, lumber yard or hardware store.

17. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

- Clean Air Act, 42 U.S.C. Sections 7401 et seq.
- Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
- Chapter 128D, Hawaii Revised Statutes
- Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.
(d) "LESSOR" shall mean and include LESSOR herein, its affiliates, successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its heirs, executors, administrators, successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

18. Consents. In any case where the consent or approval of a party is required hereunder, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

19. Limitation on Obligation to Indemnify. The terms of this Lease to the contrary notwithstanding, each of the parties hereto shall be responsible for damage or personal injury resulting from acts or omissions of such party's employees and agents while acting within the scope of their employment only to the extent that such party's liability for such damage or injury has been determined by a court or otherwise agreed to by such party. LESSOR shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose, and the funds have been allocated by the executive budget process.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

 APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

Home Depot U.S.A., Inc., a Delaware corporation

By
Ann K. Jerhoff, Director - Legal

LESSEE
EXHIBIT “A”

All of that certain parcel of land, being a portion of Hawaiian Home Lands at Panaewa, situated between Makaala Street and Puainako Street and between Ohuohu Street and Railroad Avenue, at Waiakea, South Hilo, Island and County of Hawaii, State of Hawaii, described as follows:

Beginning at the Northwesterly corner of this parcel of land, on the South side of Makaala Street the coordinates of said point of beginning referred to Government Survey Triangulation Station “HALAI”, being 6,356.77 feet South and 12,385.67 feet East and running by azimuths measured clockwise from True South:

1. $270^\circ 00'\ 148.31$ feet along South side of Makaala Street;

   thence along the South side of Makaala Street, on a curve to the left with a radius of 1,730.00 feet, the chord azimuth and distance being:

2. $260^\circ 30'\ 571.06$ feet, thence;

3. $251^\circ 00'\ 0.49$ feet along the South side of Makaala Street;

   thence along the South corner of the intersection of Makaala Street and Railroad Avenue, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

4. $296^\circ 00'\ 42.43$ feet;

5. $341^\circ 00'\ 680.92$ feet along the Westerly side of Railroad Avenue;

6. $90^\circ 00'\ 805.32$ feet along the remainder of Lot 3-B;

7. $180^\circ 00'\ 318.00$ feet along the remainder of Hawaiian Home Lands, along Lot 3-A;

8. $90^\circ 00'\ 166.50$ feet along the remainder of Hawaiian Home Lands, along Lot 3-A;

9. $180^\circ 00'\ 250.00$ feet along the remainder of Lot 3-B to the point of beginning and containing an area of 10.687 Acres, as per survey of George S. Yoshimura, Registered Professional Land Surveyor, Certificate No. 2927.
EXHIBIT "B"

SUBDIVISION MAP
EXHIBIT “C”

PERMITTED EXCEPTIONS

1. Tax Assessment and Installment figures not currently available.


4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of ______, 2004, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and HOME DEPOT U.S.A., INC., a Delaware corporation, whose mailing address is 2727 Paces Ferry Road, Atlanta, Georgia 30339, Attention: Legal Department (with a copy to 3800 West Chapman Avenue, Orange, California 92868, Attention: Real Estate Department and Legal Department), hereinafter called "LESSEE.

1. TERM AND PREMISES. For a lease term commencing on ______, and ending as of midnight on March 31, 2069, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at the corner of Makaala Street and Railroad Avenue, at Waiakea, South Hilo, Island of Hawaii, Hawaii, comprising 10.687 acres, more or less, of Hawaiian Home
Lands, more particularly described in Exhibit “A”, together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. USE. LESSEE is granted the right to use the Premises for a home improvement store and any other uses permitted by the applicable County zoning.

3. PURPOSE OF MEMORANDUM OF LEASE. This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. FOR THE BENEFIT OF THE PREMISES. LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ________________________________
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

Home Depot U.S.A., Inc., a Delaware corporation

By ________________________________

LESSEE
EXHIBIT “A”

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Beginning at the Northwesterly corner of this parcel of land, on the South side of Makaala Street the coordinates of said point of beginning referred to Government Survey Triangulation Station “HALAI”, being 6,356.77 feet South and 12,385.67 feet East and running by azimuths measured clockwise from True South:

1. \(270^\circ\ 00'\) 148.31 feet along South side of Makaala Street;

hence along the South side of Makaala Street, on a curve to the left with a radius of 1,730.00 feet, the chord azimuth and distance being:

2. \(260^\circ\ 30'\) 571.06 feet, thence;

3. \(251^\circ\ 00'\) 0.49 feet along the South side of Makaala Street;

hence along the South corner of the intersection of Makaala Street and Railroad Avenue, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

4. \(296^\circ\ 00'\) 42.43 feet;

5. \(341^\circ\ 00'\) 680.92 feet along the Westerly side of Railroad Avenue;

6. \(90^\circ\ 00'\) 805.32 feet along the remainder of Lot 3-B;

7. \(180^\circ\ 00'\) 318.00 feet along the remainder of Hawaiian Home Lands, along Lot 3-A;

8. \(90^\circ\ 00'\) 166.50 feet along the remainder of Hawaiian Home Lands, along Lot 3-A;

9. \(180^\circ\ 00'\) 250.00 feet along the remainder of Lot 3-B to the point of beginning and containing an area of 10.687 Acres, as per survey of George S. Yoshimura, Registered Professional Land Surveyor, Certificate No. 2927.
On this ___ day of __________, 2004, before me appeared ________________, to me personally known, who, being by me duly sworn or affirmed did say that she is the _______________ for HOME DEPOT U.S.A., INC., a Delaware corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

________________________________________

Print or Type Name __________________________________________

Notary Public, State of Hawaii

My Commission expires: ________________________
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 262

between

STATE OF HAWAII

and

D. OTANI PRODUCE, INC.

covering

HAWAIIAN HOME LANDS

situate at

1301 and 1321 Hart Street
Kapalama, Honolulu, Oahu, Hawaii
Tax Map Key No. (1) 1-5-33:09,16 and 19
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 262

THIS INDENTURE OF LEASE (the “Lease”), is made as of the 15th day of May, 2005, but shall be effective on the date set forth below, by and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and D. OTANI PRODUCE, INC., a Hawaii corporation, whose mailing address is 320 Waiakamilo Road, Honolulu, Hawaii 96817, hereinafter called “LESSEE.”

WITNESSETH:

ARTICLE ONE
DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at 1301 and 1321 Hart Street, Kapalama, Honolulu, Island of Oahu, Hawaii, comprising 1.573 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, and shown on the map marked Exhibit “B”, both attached hereto and made a part hereof (“Land”).

2. Term. The Land is demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, and improvements, (collectively, the “Improvements”) and all tenements, rights, easements, privileges appurtenant thereto, as described in Exhibit “A” (the “Appurtenant Rights”), but subject to the terms and conditions of this Lease, for a term of sixty-five (65) years, commencing on May 1, 2005 (which shall be the “Effective Date” of the Lease) and ending as of midnight on the day before the sixty-sixth (66th) anniversary of the Effective Date, unless sooner terminated as hereinafter provided. The Land, Improvements and Appurtenant Rights are collectively referred herein as the “Premises”

ARTICLE TWO
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in United States dollars, as follows:
(a) For lease years 1 through 25:

Lease year 1: One Hundred Forty-Seven Thousand Dollars ($147,000.00) per annum ($12,250 per month from and after the Rent Commencement Date only);

Lease years 2 through 10: Two Hundred Fifty-Five Thousand Dollars ($255,000.00) per annum ($21,250.00 per month);

Lease years 11 through 15: Two Hundred Ninety-Two Thousand Five Hundred Fifty-Nine Dollars ($292,559.00) per annum ($24,319.92 per month);

Lease years 16 through 20: Three Hundred Twenty-Five Thousand Dollars ($325,000.00) per annum ($27,083.33 per month); and

Lease years 21 through 25: Three Hundred Sixty-Seven Thousand Dollars ($367,000.00) per annum ($30,583.33 per month)

(b) For lease years 26 through 65:

The annual base rental hereinabove reserved shall be reopened and redetermined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the 35th, 45th and 55th lease years for each of the next ensuing three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses described in Section 12 of Article Four, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE, provided, however, that for each of the four (4) ten-year periods comprising lease years 26-35, 36-45, 46-55 and 56-65, the annual base rental shall not be less than the annual base rental payable during the immediately preceding ten year period under this Lease. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises. LESSOR shall notify LESSEE of such determination in writing and LESSEE shall notify LESSOR within fifteen (15) days thereafter, as to whether LESSEE agrees or disagrees with the fair market rental value of the Premises as determined by LESSOR’s appraiser. If LESSEE agrees upon such fair market rental value determination by LESSOR’s appraiser or if LESSEE fails to notify LESSOR in writing within said fifteen days that it disagrees with such determination, the fair market rental of the Premises as determined by LESSOR’s appraiser shall be deemed approved by LESSEE. If LESSEE notifies LESSOR in writing within said fifteen days that it disagrees with said determination, LESSOR shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after notifying LESSOR that LESSEE disagrees with the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the
judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes.

Each appraiser, whether appointed by a party to this Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the annual base rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new annual base rent has been so determined, make up the deficiency, if any, plus interest thereon at the rate of ten percent (10.0%) per annum.

Annual base rental shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” shall be the Effective Date. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

LESSOR holds LESSEE’s bid deposit in the amount of $49,000.00. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

ARTICLE THREE
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.
(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspose, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE's permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR's ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, and subject to LESSEE's rights under Section 21 of Article Four below, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Three. Except as provided in this Lease, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, protection or removal of such sites or remains. LESSEE shall, at all times, comply fully with all applicable laws and regulations with respect to all prehistoric or historic remains or sites of archaeological significance present or discovered at the Premises.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the "Act"), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Three shall be exercised only after not less than five (5) years prior written notice to LESSEE. As a condition precedent to the exercise by LESSOR of any rights reserved in this Section 3 of Article Three, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE's improvements so withdrawn or rendered unsuitable for LESSEE's intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Three, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Three.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity, cable television,
communications, and other utilities under, across and through the Premises, provided that (a) such easements do not cross under, across or through any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause as minimal disruption as reasonably possible with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any such underground utility and/or services.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. If at any time during the term, all or a portion, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in such event, LESSEE shall be entitled to receive from LESSOR the then book value of the portion of the permanent improvements constructed by LESSEE situated on the portion of the Land so taken, withdrawn, or of which LESSEE is denied use, which LESSOR and LESSEE hereby agree constitutes just compensation therefor. If LESSOR and LESSEE acting reasonably mutually agree that the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable, LESSEE shall have the option to surrender this Lease pursuant to Section 20 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denial and the fair market value of the Premises remaining after such taking, withdrawal, or use denial.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent and all other amounts due and payable hereunder to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements on the Premises, or LESSOR or LESSEE, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, within ten (10) days after receipt of an invoice and/or reasonable supporting documentation for any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided that such contest shall
not result in a sale of, or a lien to attach to, the Premises. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE. LESSOR agrees to submit to LESSEE all real property tax or assessment invoices which are sent to LESSOR for taxes at least sixty (60) days prior to the last date that the same may be paid without penalty or interest.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, telephone, cable television, communications, refuse collection, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE (in connection with the Premises) may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. Throughout the term of this Lease, LESSEE shall purchase all telecommunication services for the Premises from Sandwich Isles Communication ("SIC"), or its successors.

4. Issuance and Relocation of Utility Easements. LESSEE shall have the right to request that LESSOR grant to LESSEE, and LESSOR shall fully cooperate with LESSEE to the extent it is able to grant to LESSEE, any easements for utility purposes reasonably necessary to service LESSEE's use of the Premises. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

5. Sanitation. LESSEE shall keep the Premises and improvements in a reasonably sanitary and clean condition.

6. Waste and Unlawful, Improper or Offensive Use of Premises. LESSEE shall not commit, suffer or permit to be committed any material waste, nuisance, or unlawful use of the Premises, or any part thereof.

7. Compliance with Laws. LESSEE shall comply with the applicable requirements of all municipal, state and federal authorities and shall observe all municipal ordinances and state and federal statutes, applicable to the Premises or improvements situated thereon, in force at or after the Effective Date, or which may hereafter be in force. LESSOR will at all times during the term of the Lease, and at its own expense, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required under any applicable law to be made, built, maintained or repaired upon the Premises.

8. Inspection of Premises. LESSEE will permit LESSOR and its agents, at all reasonable times so as to in a manner that will cause as little interference with LESSEE's use of the Premises as is reasonably possible during the Lease term, to enter into and upon the Premises to inspect and examine the same and determine the state of repair and condition thereof.


(a) LESSOR understands that LESSEE plans to construct improvements on the Premises consisting of the uses described in Section 12 of this Article Four, all as set forth in the preliminary plans and specifications prepared at LESSEE's sole cost and expense by an
architect duly licensed in Hawaii (the "Preliminary Plans"), which plans shall be provided to LESSOR. Prior to commencing any demolition and/or construction of any improvements on the Premises, LESSEE shall obtain LESSOR's approval (which approval shall not be unreasonably withheld, conditioned or delayed) of such Preliminary Plans and the "permit set" plans and specifications for such demolition and/or construction that are based upon the Preliminary Plans approved by LESSOR. LESSEE may, during the term of this Lease, construct, place, maintain, install, or alter on the Premises additional buildings and structures with the LESSOR's prior written approval of the final "permit set" plans and specifications for such buildings or structures; provided that LESSEE shall have the right to make interior, non-structural repairs and improvements, without LESSOR's consent. LESSOR agrees to execute any and all instruments reasonably necessary to obtain licenses and permits from the applicable governmental authorities in order to make such repairs and/or alterations, provided LESSOR has approved the "permit set" plans for such repairs or alterations. LESSEE shall own these improvements until the expiration or termination of the Lease, at which time the ownership shall automatically be vested in LESSOR. Within thirty (30) days after the issuance of a certificate of occupancy for each construction, demolition, or alteration, or if no certificate of occupancy for such construction, demolition, or alteration, within thirty (30) days after a notice of substantial completion or LESSOR's delivery of a written request, whichever is earlier, LESSEE shall deliver to LESSOR two copies of the "as built" plans and specifications for such construction, demolition, or alteration.

(b) **Bond and Financial Information.** LESSEE will before commencing demolition or construction of any improvements within the Premises in excess of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00) deposit with LESSOR either: (i) copies of the contractor's performance bond (HS/AIA Document A311 or its equivalent), and a labor and materials payment bond (HS/AIA Document A311 or its equivalent), naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated demolition or construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the demolition or construction of such improvement on the Premises, and the completion of such demolition or construction work, free and clear of all mechanics' and materialmen's liens; or (ii) a written guaranty of performance and payment of the demolition contract(s) or the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR's reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the demolition contract(s) or the construction contract(s) and completion of such work free and clear of all mechanic's and materialmen's liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any demolition or construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the demolition contract(s) or the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so. Notwithstanding the foregoing, in the event that LESSEE (and any tenant of LESSEE) (x) provides evidence to LESSOR that such entity has a net worth of at least $100,000,000.00, and
(y) commits to LESSOR to complete the improvements free and clear of all mechanics' and materialmen's liens, LESSEE (or such tenant) shall not be required to deposit any such security in connection with the construction of improvements by such entity.

(c) **Compliance with the Americans with Disabilities Act of 1990.**

(i) **Applicable Laws.** LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, demolition, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42, U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) **Responsibility for Compliance.** Notwithstanding LESSOR’s review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR’s investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10.0%) per annum within thirty (30) days after demand, accompanied by reasonable substantiating documentation.

10. **Repairs to Improvements.** LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in strictly good order, condition and repair, reasonable wear and tear excepted.

11. **Liens.** LESSEE will not commit or suffer any act or neglect which results in the Premises, any improvement, the fee interest of LESSOR in the Premises or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Lease, and LESSEE shall indemnify, defend, and hold harmless LESSOR from and against all attachments, liens, charges, and encumbrances and all resulting expenses,
including reasonable attorney’s fees. LESSEE shall have the right to contest any such attachment, lien, charge or encumbrance, provided that the interest of LESSOR shall not thereby be subject to sale.

12. **Zoning/Permitted Uses.** The Premises may be used to construct an on grade climate controlled warehouse in which to operate a produce distribution center with a business office, large refrigerator units, ripening rooms and general areas for receiving bulk merchandise and processing orders, appropriate entrances and driveways, a parking lot or facility (as required by the then existing zoning and building codes and regulations); provided, however, that said construction shall be in full compliance with all governmental and legal requirements. The Premises may not be used by LESSEE for any other purpose; provided, however that the LESSOR understands that LESSEE may construct separate rentable spaces for warehouse, office, service, and/or retail use, on the Premises, which spaces may be sublet to third parties, subject to the then existing zoning laws and regulations, consent provisions contained in Paragraph 14 below, and the Sublease Rent Participation provisions contained in Exhibit "C" attached hereto. If allowed by the then existing zoning laws and regulations, the general uses for this sublet space shall also be consistent with those uses which may be found within the general area of the Premises. Without limiting the LESSOR’S right to consent to any use or sublease of any space constructed on the Premises, LESSOR understands that uses which are prohibited include those which are a public or private nuisance, any use which creates an unreasonable risk of fire, explosion or hazard, any use that is primarily a dumping, disposal or refuse facility, or any use which is not consistent with the overall purpose objectives and theme of the Department of Hawaiian Home Lands.

Consequently, the Premises may be used by LESSEE only for the foregoing uses, but for no other use or purpose, except for such other uses permitted in writing by LESSOR in its sole discretion. However, nothing contained herein shall affect Lessor’s right to designate the Land, in addition to the uses described above, for any uses, including the uses permitted in the zoning district set forth in the LUO applicable to the Premises.

13. **Assignment.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, transfer, assign, or permit any other person to occupy or use the Premises or any portion thereof (other than employees, agents, contractors, and other similar parties not having a possessory interest in the Premises), or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law. Any such transfer, assignment or permission without the prior written consent of LESSOR shall be null and void. Any change of stock ownership or control of LESSEE or any sharing or transferring of use or occupancy of the Premises to any of the following entities: (a) any entity resulting from a merger or consolidation of LESSEE with any organization; (b) any entity purchasing substantially all of the stock or assets of LESSEE; (c) any entity succeeding to the business and assets of LESSEE; and (d) any entity which controls, or is controlled by, is under common control with LESSEE, shall constitute an assignment hereunder requiring the prior written consent of LESSOR.

14. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises. Any such sublease without the prior written consent of LESSOR, sublet
space within any of the buildings constructed on the Premises shall be null and void. In the event that LESSEE subleases the Premises, or any portion thereof, LESSEE shall observe and perform all terms and obligations, including without limitation, the payment of all amounts, described in the Sublease Rent Participation Approved by the Hawaiian Homes Commission on April 24, 1987, attached hereto as Exhibit “C” and made a part hereof.

15. **Indemnity.** LESSEE shall indemnify, defend and hold LESSOR harmless (a) from and against any third-party claims or demands for loss, liability or damage, including claims for property damage, bodily injury or wrongful death, arising out of or resulting from LESSEE’s use, occupancy, maintenance, or enjoyment of the Premises after the Effective Date, including any accident, fire or nuisance, or growing out of or caused by any failure on the part of LESSEE to maintain the Premises in a safe condition, or by any act or omission of LESSEE; and (b) from and against all third-party actions, suits, damages and claims by whomsoever brought or made by reason of the LESSEE’s non-observance or non-performance of any of the terms, covenants and conditions of this Lease or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments applicable to LESSEE.

16. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses, through all appeals, incurred by or imposed on the prevailing party as determined by the applicable court.

17. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, from insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance.** A policy or policies of Commercial Property Insurance covering all buildings, structures and other improvements, including without limitation all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or another’s expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane, tsunami, perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide Replacement Cost Coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent which shall not be unreasonably withheld or unless LESSEE self insures as permitted below, the policy shall not have a deductible amount in excess of $100,000 for any one occurrence.
(b) Liability Insurance.

(i) Commercial General Liability Insurance. A policy or policies of commercial general liability insurance or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of LESSEE including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Employees Named as Additional Insureds; and Medical Expense. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence and not less than TWO MILLION DOLLARS ($2,000,000.00) in the aggregate.

(2) Deductible. Except with LESSOR’s prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $100,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers’ Compensation and Employers’ Liability Insurance. Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) Business Auto Policy. Automobile Liability Insurance covering owned, non-owned, and hired vehicles including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- $1,000,000 each person and $1,000,000 each accident; Property Damage -- $1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Liquor Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $100,000.
(d) **Builder’s and Installation Risk.** Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) **General Policy Terms.** All policies of insurance required to be maintained pursuant to this Section 17 of Article Four, covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSOR will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE's mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain, renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry; provided, however, that with respect to the commercial general liability coverages required under the provisions of this Lease LESSEE may satisfy those requirements with a combination of primary insurance coverage with minimum limits of $1.0 million, and the balance of the coverage by an excess or umbrella policy.

(f) **Periodic Review of Insurance Coverages.** LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies, or certificates evidencing coverage thereof, with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

Notwithstanding anything else contained in this Lease to the contrary, LESSEE shall have the right to self-insure for all insurance requirements hereunder, provided LESSEE’s net
worth during said period of self-insurance shall not be less than One Hundred Million Dollars ($100,000,000.00).

18. **Lessor’s Lien.** Lessor shall have a lien on all the buildings and other improvements placed on the Premises by Lessee and on the rents of all improvements and buildings located on the Premises for all Lessor’s costs, attorneys’ fees, rent reserved, for all taxes and assessments paid by Lessor on behalf of Lessee, and for the payment of all money provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts due are paid, which lien shall at all times be subordinate to any mortgages or security interests granted by Lessee or any sublessee. Except as provided above Lessor waives any lien it may have for rent against any and all of the property of Lessee, its parent, subsidiaries or affiliates, to the fullest extent allowed by law.

19. **Landscaping.** Lessee shall, at all times during the term of the Lease, landscape the open areas of the premises in the same or similar fashion as shown on plans the Preliminary Plan which have been first approved by Lessor. Lessor acknowledges and agrees that (a) Lessee may change the landscaping from time to time without Lessor’s consent and (b) comparability, not precise compliance, with the above-referenced landscape plan is all that is required.

20. **Termination.** At the end of or earlier termination of this Lease, Lessee shall, peaceably deliver unto Lessor possession of the Premises, together with all buildings, in good order and condition, reasonable wear and tear excepted, and free and clear of all liens and encumbrances other than those listed in Exhibit “A” attached hereto. All inventory, trade fixtures, furniture, machinery and equipment that Lessee uses or installs on the Premises and any other personal property, shall remain Lessee’s property and may be removed by Lessee. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should Lessee fail to remove any and all of Lessee’s personal property from the Premises, after notice thereof, Lessor may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property.

21. **Processing Fees/Documentation.** Lessee agrees to pay to Lessor a reasonable fee, plus reasonable attorneys’ fees and costs, for Lessor’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease. The amount of the processing fee and documentation fee shall be determined by Lessor, provided the fee shall not be less than seventy-five dollars ($75.00) nor more than one hundred fifty dollars ($150.00), plus reasonable attorney’s fees and costs.

22. **Underground Storage Tank (UST).** A UST is any tank, including underground piping connected to the tank that has at least ten percent (10%) of its volume underground and is used for the storage of Hazardous Materials or other regulated substances like petroleum or certain hazardous chemicals. Prior consent and approval from Lessor is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by Lessee. If Lessee has installed a UST, then and in
such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii evidencing the removal of the UST in compliance with law. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST, then and in such event, LESSEE shall arrange to have all such work done necessary to obtain from the State of Hawaii, Department of Health, a “no further action” letter for all Hazardous Materials with respect to Premises, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, and otherwise in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

23. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and LESSEE expressly acknowledges and agrees that the Premises are being leased to LESSEE "AS IS", WHERE IS AND WITH ALL FAULTS," and LESSOR has not made and does not make any other warranties or representations of any kind, expressed or implied, as to the conditions, merchantability or state of repair of said Premises or the fitness of said Premises for any particular purpose, as to the soil condition (including, without limitation, suitability, stability, composition and drainage), the likelihood of appreciation in value of said Premises, the existence of gaps, gores or encroachments, or violations or easements, building setbacks or building restrictions, or as to the compliance of said Premises with any applicable county, state or federal statute, ordinance, rule or regulation or as to any other matter whatsoever pertaining to said Premises. LESSEE ACCEPTS ALL RISKS OF ANY DEFECTS OR DEFICIENCIES IN SAID PREMISES, WHETHER KNOWN OR UNKNOWN, AND LESSEE ACKNOWLEDGES THAT LESSOR MAKES NO EXPRESS WARRANTIES OF ANY KIND AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF ANY NATURE WHATSOEVER PERTAINING TO SAID PREMISES. LESSEE further acknowledges and agrees that LESSOR is not responsible for any latent defects, hidden defects or defects which time may reveal with respect to said Premises. Any provisions of this Lease, which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein, or create a security interest in the leasehold or interest. Any mortgage consented to by LESSOR pursuant to this paragraph shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease and the holder of such Approved Mortgage shall be deemed an "Approved Mortgagee". If the mortgage or security interest is to an institution legally permitted to make mortgage loans in the State of Hawaii the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser,
including the Approved Mortgagee, without regard to whether or not the purchaser is qualified to lease the Premises. The interest of Approved Mortgagee or holder in the Approved Mortgage shall be freely assignable. The term “holder” shall include Approved Mortgagee and an insurer or guarantor of the obligation or condition of the Approved Mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii, or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease shall deliver to LESSOR an executed counterpart of the Approved Mortgage in form proper for recording together with a written notice setting forth the name and address of the Approved Mortgagee, then, until the time, if any, that the Approved Mortgage shall be satisfied or the Approved Mortgagee shall give to LESSOR written notice that Approved Mortgage has been satisfied:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon the Approved Mortgagee or affect the lien of the Approved Mortgage, without the prior written consent of the Approved Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter in this Section 1 of Article Five collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect the Approved Mortgagee, unless a copy of said notice shall be given to the Approved Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Approved Mortgage or change in address of the Approved Mortgagee, the assignee thereof or the Approved Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Approved Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be the “Approved Mortgagee” under this Paragraph 1 of Article Five. If the Approved Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to the Approved Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Approved Mortgage shall designate in writing one of their members to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to the Approved Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) The Approved Mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by the Approved Mortgagee with the same force and
effect as if furnished by LESSEE; provided, however, that the Approved Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to the Approved Mortgagee not less than sixty (60) days’ additional written notice LESSEE’s failure to cure the default, and shall allow the Approved Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that if the default can be cured by the payment of money, the additional time for the Approved Mortgagee to cure, shall be limited to thirty (30) days.

(c) LESSEE may delegate irrevocably to the Approved Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or the Approved Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Approved Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Approved Mortgage in accordance with this Section 1 of Article Five, together with a written notice specifying the provisions therein which delegate such authority to the Approved Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to the Approved Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which the Approved Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Approved Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Approved Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Approved Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSER’s bankruptcy trustee, and upon written request of the Approved Mortgagee delivered to LESSOR within thirty (30) days following the Approved Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Approved Mortgagee, execute and deliver to the Approved Mortgagee or its designee an instrument (in form acceptable to the Approved Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Approved Mortgagee or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Approved Mortgage and any lien or encumbrance prior to the lien of the Approved Mortgage, upon and subject to the following terms and conditions:
(i) The Approved Mortgagee shall pay or cause to be paid to LESSOR at the time of execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Approved Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease. The Approved Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Approved Mortgage without further consent of LESSOR and the Approved Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Approved Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR;

(iii) The Approved Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and Improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use its best efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the demised Premises, which mortgage, lien, charge or encumbrance was junior to the Lease; and

(iv) Each sublessee of a portion of the Premises whose sublease was in force and effect immediately prior to the delivery of said Confirmation of Lease shall attorn to LESSEE under the Confirmation of Lease, unless said LESSEE shall, at its option, elect to dispossess said sublessee or otherwise terminate the sublease held by said sublessee. Each sublessee who hereafter subleases a portion of the Premises shall be deemed to have agreed to the provisions of this subparagraph (iv).

(g) In the event that Hawaii Revised Statutes, § 171-21 gives the Approved Mortgagee any longer period to cure any default by LESSEE or take any other action with respect to such default, then the Approved Mortgagee shall be entitled to the longer period.

2. Breach. Time is of the essence of this Lease and if (a) LESSEE shall become bankrupt, or (b) LESSEE shall abandon the Premises, or (c) this Lease and the Premises shall be attached or taken by operation of law, or (d) any assignment is made of LESSEE’s property for the benefit of creditors, or (e) LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, then LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the
written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than ten (10) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LESSOR may allow for good cause, LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Five above, at once re-enter the Premises or any part, and upon or without such entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrearages of rent and interest at the legal rate pursuant to Chapter 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of termination, all buildings and improvements shall remain and become the property of LESSOR; furthermore, LESSOR shall retain all rent paid in advance as payment toward LESSOR’s damages.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all the terms, covenants and conditions contained in the Lease on LESSEE’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redisseminate of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any redissemination under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the redissemination; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon redissemination which exceeds the fair market lease value of the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any
such event, all proceeds from such condemnation shall belong to, and be the property of LESSOR, and LESSEE shall be entitled the rights and amounts determined in the manner set forth in Section 5 of Article Three. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights shall not be exclusive of any other award to which LESSOR and LESSEE may be entitled by law. In the event that LESSOR and LESSEE, acting reasonably, mutually agree that the remainder of the Premises are rendered unusable as the result of any such condemnation, LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 20 of Article Four upon the delivery of written notice to LESSOR.

5. **Right to Enter.** LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, that in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. **Inspection by Prospective Bidders.** LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. **Payment or Acceptance of Rent Not a Waiver.** The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any such breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any such term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

8. **Quiet Enjoyment.** LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE. LESSOR’s covenant of quiet enjoyment, however, shall not in any way obligate LESSOR to defend or protect the Premises from political protests by Department of Hawaiian Home Lands beneficiaries or others.

Without limiting the foregoing, in the event ownership of the Premises is transferred from LESSOR to another governmental or quasi-governmental agency, including, but not limited to
any sovereign government or entity having as its citizens or beneficiaries Native Hawaiians who are beneficiaries under the Hawaiian Homes Commission Act, the transferee will assume, all rights, duties and obligations of LESSOR under this Lease and will agree to not interfere with LESSEE’s quiet enjoyment of the Premises provided LESSEE agrees to attorn to the transferee.

If LESSOR becomes aware that a transfer of the Premises will occur, LESSOR will promptly notify LESSEE and will take diligent action to insure that the transferee will not interfere with LESSEE’s use of the Premises as set out in this Lease. LESSOR will not voluntarily transfer its rights to such transferee without written assurance from such transferee that such transferee will not interfere with LESSEE’s rights under this Lease.

9. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at ten percent (10%) per annum, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

10. Hazardous Materials. LESSEE shall not allow the storage or use of hazardous materials in any manner not sanctioned by law, nor allow to be brought into the Premises any such materials except in the ordinary course of LESSEE’s business, but only to the extent in compliance with all Hazardous Materials Laws.

Either party shall immediately advise the other party in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as “Hazardous Materials Claims”), (iii) the discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

If any Hazardous Materials on or released from the Premises shall be discovered during the construction of LESSEE’s improvements, LESSEE may, at its option, either terminate this Lease by notice to LESSOR, or elect to remove such materials and clean and remediate the Premises at LESSEE’s cost and expense. Thereafter, LESSEE shall cause all Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting

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the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials Claims without first notifying LESSOR of LESSEE’s intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elect, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, including without limitation, those resulting from the removal or construction of structures or improvements on, under or about the Premises, including (A) the reasonable costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

LESSEE agrees to indemnify, defend, and hold LESSOR harmless, from any damages and claims resulting from the release of Hazardous Materials on the Premises occurring while LESSEE is in possession or elsewhere if caused by LESSEE or persons acting under LESSEE. These covenants shall survive the expiration or earlier termination of the Lease.

The covenants of this Section 10 of Article Five, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in substantially the form of Exhibit “D” attached hereto. LESSOR warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.

12. Recitals and Exhibits – Incorporation in Lease. All recitals first above set forth and exhibits attached to this Lease are hereby are deemed incorporated by reference.
13. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

14. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

If to LESSEE:
D. Otani Produce, Inc.
320-D Waiakamilo Road
Honolulu, Hawaii 96817
Attention: Mr. Dwight Otani
Fax: (808) 848-2811

Copy to:

If to LESSOR:
Department of Hawaiian Home Lands
1099 Alakea Street, 20th Floor
Honolulu, Hawaii 96813
Attention: Mr. Manny K. Nova
Fax: (808) 586-3923

And a copy to:
Attorney General's Office
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: George K. K. Kaeo, Jr., Esq.
Fax: (808) 587-2938

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

15. **Definitions.** As used herein, unless clearly repugnant to the context:
(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"): Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. ("RCRA") Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 et seq. Clean Air Act, 42 U.S.C. Sections 7401 et seq. Clean Water Act of 1977, 33 U.S.C. 1251 et seq. Pesticide Act of 1978, 7 U.S.C. 13 et seq. Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq. Safe Drinking Water Act, 42 U.S.C. 300(f) et seq. Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq. Chapter 128D, Hawaii Revised Statutes Chapters 342B through 342N, Hawaii Revised Statutes, and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESSOR" shall mean and include LESSOR herein, its affiliates, successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its heirs, executors, administrators, successors or permitted assigns.

(f) The "Premises" shall mean the Land leased hereunder together with the Improvements and Appurtenant Rights, and described in Exhibit "A" attached hereto and made a part hereof.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.
(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

16. Consents. In any case where the consent or approval of a party is required hereunder, except as otherwise provided herein, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

D. Otani Produce, Inc., a Hawaii corporation

By
Dwight Otani
Its President

LESSEE
EXHIBIT “A”

PORTION OF
ROYAL PATENT 7834, LAND COMMISSION AWARD 7714-B
APANA 7 TO MOSES KEKUAIWA

Kapalama, Honolulu, Oahu, Hawaii

Comprised of the following:

1. Portion of Royal Patent 7834, Land Commission Award 7714-B, Apana 7 to Moses Kekuaiwa conveyed to the Territory of Hawaii by Hawaiian Fertilizer Company, Limited by deed dated September 15, 1908 and recorded in Liber 310, Pages 100-103 (Land Office Deed 1174).

2. Portion of Royal Patent 7834, Land Commission Award 7714-B, Apana 7 to Moses Kekuaiwa (former Kapalama Fishery) conveyed to the Territory of Hawaii by the Trustees under the Will and Estate of Bernice Pauahi Bishop, Deceased by deed dated July 31, 1925 and recorded in Liber 925, Page 25 (Land Office Deed 3346).

Beginning at the north corner of this parcel of land, at the east corner of Kalihi Kai Fire Station, Governor’s Executive Order 1376 and on the southwest side of Hart Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station “MOKAUEA” being 6891.32 feet South and 4072.44 feet West, thence running by azimuths measured clockwise from True South:

1. 317° 26’ 325.12 feet along the southwest side of Hart Street;

2. 317° 26’ 115.40 feet along the southwest side of the Proposed Hart Street Extension;

3. Thence along the remainder of R.P. 7834, L.C.Aw. 7714-B, Apana 7 to Moses Kekuaiwa (former Kapalama Fishery) on a curve to the left with a radius of 530.73 feet, the chord azimuth and distance being: 115° 46’ 40” 61.72 feet;

4. 45° 40’ 31” 101.91 feet along the remainder of R.P. 7834, L.C.Aw. 7714-B, Apana 7 to Moses Kekuaiwa (former Kapalama Fishery);
5. 120° 40’ 146.20 feet along the northeast side of Nimitz Highway, Federal Aid Project SN-AF 44(4);

6. Thence along the northeast side of Nimitz Highway, Federal Aid Project No. SN-AF 44(4) on a curve to the right with a radius of 1085.92 feet, the chord azimuth and distance being:
   127° 16’ 56.5” 250.22 feet;

7. 227° 26’ 210.91 feet along Kalihi Kai Fire Station, Governor’s Executive Orders 2173 and 1376 to the point of beginning and containing an AREA OF 1.573 ACRES.

Subject, however, to a portion of Easement A, a Perpetual Non-Exclusive Electric Transmission Line Easement covered by Grant of Easement: State of Hawaii to Hawaiian Electric Co., Inc., dated September 5, 1985 and recorded in Liber 18957, Page 535 (Land Office Deed S-27536) as shown on plan attached hereto and made part hereof and more particularly described as follows:

Beginning at the east corner of this easement and on the southwest side of the Proposed Hart Street Extension, the true azimuth and distance from the end of Course 2 of the above-described parcel of land being 137° 26’ 55.25 feet, thence running by azimuths measured clockwise from True South:

1. 30° 53’ 30” 14.45 feet;
2. 300° 53’ 30” 2.50 feet;
3. 30° 53’ 30” 5.26 feet;
4. Thence along the remainder of R.P. 7834, L.C.Aw. 7714-B, Apana 7 to Moses Kekuaiwa (former Kapalama Fishery) on a curve to the left with a radius of 530.73 feet, the chord azimuth and distance being:
   113° 05’ 58” 10.10 feet;

5. 210° 53’ 30” 6.63 feet;
6. 300° 53’ 30” 2.50 feet;
7. 210° 53’ 30” 15.94 feet;

EXHIBIT “A”
Page 2 of 3
8. 317° 26' 5.22 feet along the southwest side of the Proposed Hart Street Extension to the point of beginning and containing an AREA OF 135 SQUARE FEET.

Vehicle access shall not be permitted into and from Nimitz Highway, Federal Aid Project SN-AF 44(4), over and across Courses 5 and 6 of the above-described parcel of land, pursuant to that certain survey dated July 30, 1998, prepared by Stanley T. Hasegawa, Licensed Land Surveyor No. 3632, Survey Division, Department of Accounting and General Services, State of Hawaii, reviewed and approved by Randall M. Hashimoto, State Land Surveyor.
Sublease Rent Participation Approved by the Hawaiian Homes Commission on April 24, 1987

"That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit "C".

2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.

3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.

4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy."

Extract from Exhibit "C":

<table>
<thead>
<tr>
<th>Gross Annual Sublease Rent</th>
<th>LESS: 4% General Excise Tax (if paid by sublessor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EQUALS: Effective Annual Sublease Rent</td>
<td>LESS: Allowances (costs and investment returns)</td>
</tr>
<tr>
<td>EQUALS: Income Attributable to Land</td>
<td>LESS: Allocated Basic Lease Rent</td>
</tr>
<tr>
<td>EQUALS: Amount of Increase in Lease Rent Due to Subleasing (if any)</td>
<td></td>
</tr>
<tr>
<td>X 50% EQUALS: Amount Due to DHHL</td>
<td></td>
</tr>
</tbody>
</table>

EXHIBIT "C"
(PAGE 1 OF 6)
B-331
DEFINITION OF TERMS
Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/ liability insurance policies.

Line 4e: SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.

EXHIBIT "C"
(PAGE 2 OF 6)
B-332
Line 4f: RETURN OF INVESTMENT
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4g: RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: INDICATED ADDITIONAL RENT
Line 5 (Annual Income Attributable to Land) less Line 6 (Allocated Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: ADDITIONAL RENT PAYABLE TO DHEC
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY
(No subleasing of building space)

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

EXHIBIT "C"
(PAGE 3 OF 6)
B-333
Line 2: **LESS 4% GENERAL EXCISE TAX**  
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: **EFFECTIVE ANNUAL SUBLEASE RENT**  
Gross annual sublease rent less State G.E. Tax.

Line 4: **ALLOCATED ANNUAL BASE LEASE RENT**  
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 5: **INDICATED ANNUAL ADDITIONAL RENT**  
Line 3 minus Line 4, but not less than zero.

Line 6: **ADDITIONAL ANNUAL RENT PAYABLE TO DHHL**  
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.
# Sublease Rent Participation

**Worksheet**

## I. Subleasing of Building Space:

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gross Annual Sublease Rent</td>
<td>$_________</td>
</tr>
<tr>
<td>2</td>
<td>Less 4% General Excise Tax</td>
<td>(________)</td>
</tr>
<tr>
<td>3</td>
<td>Equals Effective Annual Sublease Rent</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Less Allowances:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. Management, Credit Loss</td>
<td>$_________</td>
</tr>
<tr>
<td></td>
<td>b. Repair and Maintenance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Real Property Taxes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d. Insurance Premiums</td>
<td></td>
</tr>
<tr>
<td></td>
<td>e. Surety Bond Premium</td>
<td></td>
</tr>
<tr>
<td></td>
<td>f. Return of Investment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>g. Return on Investment</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equals Annual Income Attributable to Land</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Less Allocated Annual Base Lease Rent</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Equals Indicated Additional Annual Rent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Times 50% X</td>
<td>0.50</td>
</tr>
<tr>
<td>8</td>
<td>Equals Additional Annual Rent Payable to DHHL</td>
<td></td>
</tr>
</tbody>
</table>

## II. Subleasing of Vacant ("raw") Land Only:

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gross Annual Sublease Rent</td>
<td>$_________</td>
</tr>
<tr>
<td>2</td>
<td>Less 4% General Excise Tax</td>
<td>(________)</td>
</tr>
<tr>
<td>3</td>
<td>Equals Effective Annual Sublease Rent</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Less Allocated Annual Base Lease Rent</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equals Indicated Annual Additional Rent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Times 50% X</td>
<td>0.50</td>
</tr>
<tr>
<td>6</td>
<td>Equals Additional Annual Rent Payable to DHHL</td>
<td></td>
</tr>
</tbody>
</table>
HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease: $8,000

Effective Annual Sublease Rent: $3,000

Total Land Area of Leasehold Premises: 24,000 sq. ft.

Subleased Land Area: 6,000 sq. ft.

RATIO: \( \frac{6}{24} = .25 \times \$8,000 = \$2,000 \) Allocated Annual Base Lease Rent

Effective Annual Sublease Rent: $3,000

Allocated Annual Base Lease Rent: $2,000

Indicated Additional Rent: $1,000

Times 50% \( .50 \)

SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHIIL $500
EXHIBIT D

MEMORANDUM OF LEASE

LAND COURT REGULAR SYSTEM
RETURN BY (X) MAIL ( ) PICK-UP

TMK No.: (1) 1-5-33:09,16 and 19
This document contains ___ pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of ____________, 2005, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and D. OTANI PRODUCE, INC., a Hawaii corporation, whose mailing address is 320-D Waiakamilo Road, Honolulu, Hawaii 96817, hereinafter called "LESSEE.

1. TERM AND PREMISES. For a lease term of sixty-five (65) years commencing ____________, 2005 and upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at 1301 and 1321 Hart Street, Honolulu, Island of Oahu, Hawaii, comprising 1.573 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without
limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

3. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ________________
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

D. OTANI PRODUCE, INC., a Hawaii corporation

By ________________
Dwight Otani
Its President

LESSEE

EXHIBIT “D”
Page 2 of 4

B-338
On this ___ day of ____________, 2005, before me appeared MICAH A. KANE, to me personally known, who being by me duly sworn, did say that he is the Chairman for STATE OF HAWAII DEPARTMENT OF HAWAIIAN HOME LANDS, and such person executed the foregoing instrument on behalf of said Department as the free act and deed in the capacities shown having been authorized to execute such instrument in such capacity.

__________________________________________
Print or Type Name _____________________________

Notary Public, State of Hawaii

My Commission expires: _________________________
STATE OF _________________ )
COUNTY OF _________________ ) SS.

On this _____ day of ____________, 2005, before me appeared _________________, to me personally known, who, being by me duly sworn or affirmed did say that he/she is the _________________ for D. OTANI PRODUCE, INC., a Hawaii corporation, and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

______________________________
Print or Type Name

Notary Public, State of Hawaii

My Commission expires: __________________________
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 284

Among

STATE OF HAWAII

And

TARGET CORPORATION AND
SAFEWAY INC
AS TENANTS-IN-COMMON

covering

HAWAIIAN HOME LANDS

situate at

Tax Map Key No. (3) 2-2-47:72
Panaewa, Tract I Area
South Hilo, Island of Hawaii
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<td>DEMISE, TERM AND EARLY TERMINATION</td>
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</tr>
<tr>
<td>1. Lease</td>
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</tr>
<tr>
<td>2. Term</td>
<td>2</td>
</tr>
<tr>
<td>(a) Rent Commencement Date</td>
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</tr>
<tr>
<td>(b) Termination Rights</td>
<td>2</td>
</tr>
<tr>
<td>3. Due Diligence/Termination Right/Approvals</td>
<td>3</td>
</tr>
<tr>
<td>4. Relocation of Akana Petroleum, Inc</td>
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<td>5. Initial Environmental Remediation of Premises</td>
<td>6</td>
</tr>
<tr>
<td>6. Right of Entry</td>
<td>8</td>
</tr>
<tr>
<td><strong>ARTICLE TWO</strong></td>
<td></td>
</tr>
<tr>
<td>RESERVATIONS AND RIGHT OF WITHDRAWAL</td>
<td>8</td>
</tr>
<tr>
<td>1. Minerals and Waters</td>
<td>8</td>
</tr>
<tr>
<td>2. Prehistoric and Historic Remains</td>
<td>8</td>
</tr>
<tr>
<td>3. Right of Withdrawal</td>
<td>9</td>
</tr>
<tr>
<td>4. Reservation of Easements in Favor of LESSOR</td>
<td>9</td>
</tr>
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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 284

THIS INDENTURE OF (Ground) LEASE (the “Lease”), is made as of the 18th day of June, 2009 (the “Effective Date”), by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and TARGET CORPORATION, a Minnesota corporation (“Target”) and SAFEWAY INC., a Delaware corporation (“Safeway”), each as a tenant-in-common (each of Target and Safeway being individually hereinafter called “LESSEE” and collectively hereinafter called “LESSEES”) and each with joint and several liability for all rights and obligations of the tenant under this Lease (i.e. the LESSEES). Target’s principal place of business and mailing address is 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Safeway’s principal place of business and mailing address is 5918 Stoneridge Mall Road, Pleasanton, CA 94588-3229. Target and Safeway have, as of the date hereof, entered into a Tenancy-in-Common Agreement (the “TIC Agreement”) that, among other things, establishes the Target Tract and Safeway Tract defined below and provides that Target holds an undivided sixty-seven and twenty-five hundredths percent (67.25%) interest in the Lease and the Premises and Safeway holds an undivided thirty-two and seventy-five hundredths percent (32.75%) interest therein.

WITNESSETH:

ARTICLE ONE
DEMISE, TERM AND EARLY TERMINATION

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of both LESSEES to be kept, observed and performed, does lease to LESSEES, and LESSEES do lease from LESSOR, those certain premises (“Premises”) located at Panaewa, Tract I Area, Waiakea, South Hilo, Island of Hawaii, County of Hawaii identified as Lot 5-A-1, comprising 15.574 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, and shown on the site plan marked Exhibit “B” (“Site Plan”), both attached hereto and made a part hereof.

The parties recognize that, pursuant to the TIC Agreement, the two LESSEES have agreed as between themselves that Target is to be primarily responsible for, and have the primary right to use, that portion of the Premises (the “Target Tract”) identified as “Target Tract” on Exhibit “B” and Safeway is to be primarily responsible for, and have the primary right to use, that portion of the Premises (the “Safeway Tract”) identified as “Safeway Tract” on Exhibit “B”, which individual tracts are sometimes individually referred to as a “Tract” and collectively referred to herein as “Tracts”. However, notwithstanding the division of rights and
responsibilities between Target and Safeway pursuant to the TIC Agreement and pursuant to the Operation and Easement Agreement ("OEA") that will address operation, construction, easement and maintenance issues for the Premises as between the LESSEES, as far as this Lease is concerned each LESSEE shall have equal right to the use and possession of the Premises and shall each have joint and several liability for all payment and performance obligations of the LESSEES of either LESSEE under this Lease, nor shall such TIC Agreement and its division of rights and responsibilities between Target and Safeway have any affect on, nor impose any limitation on, the rights of the LESSOR herein.

2. **Term.** The Premises are demised unto LESSEES TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements and privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a "Term" commencing on the Effective Date and expiring as of the first to occur of (i) midnight on the last day of the calendar month of the expiration of the sixth (60th) anniversary of the Rent Commencement Date, or (ii) the date the Lease is sooner terminated pursuant to Lease provisions set forth below. LESSOR shall deliver possession of the Premises to LESSEE on the Effective Date, free and clear of any other possessory interests other than the tenant referenced in Article One, Section 4. In no event shall the term of the Lease exceed the maximum sixty-five (65) year term permitted by Hawaii Revised Statutes §171-36(a)(2).

(a) **Rent Commencement Date.** Notwithstanding the commencement of the Term of this Lease on the Effective Date, subject to the extension set forth in Article One, Section 4, the "Rent Commencement Date" hereunder shall be the earlier to occur of: (i) the date the first of the Target and Safeway retail stores to be constructed on the Premises first opens for business to the general public or (ii) April 1, 2011; provided, however that between the date that the first of Target or Safeway opens for business to the general public and the first to occur of (x) the date both have opened for business to the general public or (y) April 1, 2011, the monthly rental payable pursuant to Article Three below for such period shall only be an amount equal to such party’s percentage of the interest in the tenancy-in-common as set forth above (i.e. 67.5% of the applicable monthly rent for such period if it is Target who has opened for business or 32.75% of the applicable monthly rent for such period if it is Safeway who has opened for business). The Rent Commencement Date is subject to extension as provided in Article One, Section 4 below. Upon the establishment of the Rent Commencement Date, LESSOR and LESSEES shall enter into an agreement confirming (a) the Rent Commencement Date, (b) the commencement of the first Lease Year (which shall be the Rent Commencement Date), and (c) the expiration date of the Term of this Lease. For purposes of this Lease, the term “Lease Year” shall mean the one year period commencing on the Rent Commencement Date and the one year periods commencing on each anniversary of the first day of the next calendar month following the Rent Commencement Date thereafter until the expiration of this Lease.

(b) **Termination Rights.** The LESSEES may elect to terminate this Lease pursuant to this Section effective upon the expiration of each of the 25th Lease Year, the 35th Lease Year, the 45th Lease Year, or the 55th Lease Year, as applicable, by delivering to LESSOR written notice of such election to terminate the Lease (the “Lease Year Termination Notice”) by no later than the commencement of the twelfth (12th) month prior to the expiration of the
applicable Lease Year (for example 12 months before the end of the 25th Lease Year, or 12 months before the end of the 35th Lease Year, and so on). No election to terminate the Lease effective on the expiration of the 25th or 35th Lease Year shall be effective unless, in connection therewith, LESSEES provide LESSOR with reasonable proof that LESSEES have fully performed their obligations under Sections 4, 5 and 9 of Article Four of this Lease to maintain the Premises and the improvements thereon in good and safe condition, reasonable wear and tear excepted, and in compliance with applicable law. In connection with any election to terminate the Lease effective on the expiration of the 45th or 55th Lease Year, and notwithstanding any other provision of this Lease to the contrary, LESSOR may at its option require LESSEES to remove any vertical improvements constructed by LESSEES on the Premises, leaving the Premises in a clean, safe and sanitary condition, free of all debris, and free also of any and all liens or encumbrances created or suffered by LESSEES or either of them. The Lease Year Termination Notice shall specify whether one or both LESSEES are exercising the termination right specified in the Lease Year Termination Notice. If such Lease Year Termination Notice specifies that both LESSEES are exercising the right to terminate pursuant to this Section, then this Lease shall expire on the expiration of the applicable Lease Year to which such Lease Year Termination Notice applied (i.e. the 25th Lease Year, the 35th Lease Year, and so on, as applicable), and upon expiration of the Lease Year to which such Lease Year Termination Notice applies, this Lease shall be of no further force and effect, and neither LESSOR nor the LESSEES shall have any further rights and obligations under this Lease after the expiration of the applicable Lease Year, except for those obligations which may have accrued prior to the termination of this Lease.

However, if the Lease Termination Notice specifies that only one LESSEE (the "TERMINATING LESSEE") is exercising its termination right under this Section, then only the TERMINATING LESSEE’s leasehold interest under this Lease shall terminate on the expiration of the applicable Lease Year to which such Lease Year Termination Notice applies, but the other LESSEE’s ("CONTINUING LESSEE") leasehold interest shall not terminate and the CONTINUING LESSEE shall thereafter automatically continue to be the surviving LESSEE under this Lease, and shall be solely responsible for full performance of all obligations imposed on the LESSEE hereunder and shall have the full and sole benefit of all rights granted to the LESSEE of this Lease pursuant to the terms and conditions of this Lease. In such event, such TERMINATING LESSEE shall thereby relinquish to the CONTINUING LESSEE any and all possession and ownership it has to any portion of the Premises, including all improvements thereon. Upon the effective date of termination and delivery of possession to the CONTINUING LESSEE, the TERMINATING LESSEE shall have no further rights and obligations under this Lease to either LESSOR or the CONTINUING LESSEE, except for those obligations which may have accrued prior to the termination of this Lease and delivery of possession. The CONTINUING LESSEE shall continue to have the right to terminate this Lease pursuant to the terms and conditions of this Lease, including, but not limited to, those in this Section.

3. Due Diligence/Termination Right/Approvals. It is understood among the parties that each LESSEE intends to develop and erect a retail store in and upon a portion of the Premises, and shall require a period of time within which to investigate the Premises and to develop plans and secure development approvals therefore. It is therefore agreed between the
parties that at any time between the Effective Date and October 31, 2010 (the “Due Diligence Period”), subject to extension as provided in Article One, Section 4 below, each LESSEE shall have the right to terminate this Lease or its leasehold interest under this Lease, as the case may be, for any reason, by delivering written notice of such termination to LESSOR at the address herein provided (the “Due Diligence Termination Notice”).

In order to exercise the right to terminate during the Due Diligence Period, the LESSEES shall deliver to LESSOR the Due Diligence Termination Notice by no later than the 5:00 PM local time in Honolulu, Hawaii of the last day of the Due Diligence Period. The Due Diligence Termination Notice shall specify whether one or both LESSEES are exercising the right to terminate during the Due Diligence Period. If such Due Diligence Termination Notice specifies that both LESSEES are exercising the right to terminate pursuant to this Section, then this Lease shall terminate as of the date specified in the Due Diligence Termination Notice, which shall be not less than thirty (30) days after and not more than sixty (60) day after issuance of the Due Diligence Termination Notice pursuant to Article Five, Section 13 hereof. Upon such termination, this Lease shall be of no further force and effect, and neither LESSOR nor the LESSEES shall have any further rights and obligations under this Lease effective after the termination date specified in the Due Diligence Termination Notice, except for those obligations which may have accrued prior to the termination of this Lease.

However, if the Due Diligence Termination Notice specifies that only one LESSEE (the “TERMINATING LESSEE”) is exercising its termination right under this Section, then only the TERMINATING LESSEE’s leasehold interest under this Lease shall terminate as provided therein, and the other LESSEE’s (“CONTINUING LESSEE”) leasehold interest shall not terminate and the CONTINUING LESSEE shall thereafter automatically continue to be the surviving LESSEE under this Lease, and shall be solely responsible for full performance of all obligations imposed on the LESSEE hereunder and shall have the full and sole benefit of all rights granted to the LESSEE of this Lease pursuant to the terms and conditions of this Lease. In such event, such TERMINATING LESSEE shall thereby relinquish to the CONTINUING LESSEE any and all possession and ownership it has to any portion of the Premises, including all improvements thereon. Upon the effective date of termination and delivery of possession to the CONTINUING LESSEE, the TERMINATING LESSEE shall have no further rights and obligations under this Lease to either LESSOR or the CONTINUING LESSEE, except for those obligations which may have accrued prior to the expiration of this Lease and delivery of possession. The CONTINUING LESSEE shall continue to have the right to terminate this Lease pursuant to the terms and conditions of this Lease, including, but not limited to, the right to terminate this Lease during the Due Diligence Period.

The parties contemplate that during the Due Diligence Period:

(a) LESSEES will conduct and complete such due diligence as necessary to determine that no sites of archeological significance or prehistoric or historic remains are present so as to make the Premises, or any material portion thereof, unsuitable for development, in the sole opinion of the LESSEES or either of them. (See, also, Article Two, Section 2.).
(b) LESSEES will conduct and complete such due diligence as necessary to determine whether the cost of remediating Hazardous Materials situated on the Premises renders proceeding with development economically unfeasible in the sole opinion of the LESSEES or either of them.

(c) LESSOR will successfully complete the relocation from the Premises of Akana Petroleum, Inc., the current tenant. (See, also, Article One, Section 4.)

(d) LESSEE will successfully obtain any and all governmental entitlements (in form and substance acceptable to LESSEE) necessary to develop the Premises as a retail development in a manner consistent with the Site Plan (such entitlements shall include any and all necessary approvals or acceptances under Chapter 343, Hawaii Revised Statutes, which approvals or acceptances are not challenged or appealed or conditioned in a manner not reasonably satisfactory to LESSEE), and

(e) LESSEES will successfully obtain any and all construction permits necessary to construct the retail stores and common area improvements (e.g. driveways, parking areas, freestanding signs and landscaping), contemplated by the Site Plan.

If both LESSEES terminate this Lease pursuant to this Article One, Section 3 at any time prior to the end of the Due Diligence Period, LESSOR shall promptly (i) return and refund LESSEES’ ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FIFTEEN AND NO/100 DOLLARS ($142,115.00) earnest money payment made in connection with LESSEE’s bid to obtain a leasehold interest on the Premises, provided, however, that if the Termination Notice is given after December 31, 2009, LESSEES shall be entitled to a refund of their earnest money payment only if LESSEES elect to terminate this Lease because LESSOR or LESSEES have been unable to successfully complete one or more of the due diligence tasks described in subparagraphs (c), (d) or (e) above within the Due Diligence Period, plus (ii) reimburse LESSEES for any amounts LESSEES have paid for the relocation of Akana pursuant to Article One Section 4 below, and (iii) reimburse LESSEES for Investigation and Remediation Costs incurred by LESSEES pursuant to Article One Section 5 below.

4. Relocation of Akana Petroleum, Inc. LESSOR agrees that it shall use commercially reasonable efforts and all due diligence to relocate the current tenant possessing a portion of the Premises, Akana Petroleum, Inc. (“Akana”), by October 31, 2010 (the “Relocation Deadline Date”) according to the steps and scope of work detailed in Exhibit “C” attached hereto and made a part hereof. LESSEES together shall pay the reasonable costs incurred by LESSOR in connection with such relocation up to a maximum aggregate of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00). LESSOR and Akana will be responsible for and shall undertake any environmental remediation work which may be needed in order to make the relocation site suitable for use and possession by Akana. LESSOR shall obtain all necessary permits and perform or cause to be performed all design, planning, construction, installation and logistical work necessary to prepare a relocation site and relocate the offices of Akana. LESSEES agree to cooperate with LESSOR in accomplishing the relocation, with the understanding that Akana is to be relocated to that site described in Exhibit
“C” attached hereto and made a part hereof rather than to the relocation site contemplated by the June 13, 2008 RFP/Information Packet. LESSOR shall be responsible for any costs hereunder in excess of $500,000.00 and to the extent any such costs are paid by LESSEES, such excess costs shall be reimbursed by LESSOR to LESSEES in the form of credits toward payment of Rent hereunder (the “Special Condition Rent Credit”). It is understood that the Special Condition Rent Credit is intended to be taken as soon as possible, and shall be applied to Rent payable hereunder by means of equal monthly rent credits during the first two (2) years of the Term of the Lease after the Rent Commencement Date, after the Remediation Costs Credit referred to in Article One, Section 5 below has been taken for the corresponding month. At all times prior to relocation, Akana shall remain LESSOR’s tenant and LESSEES shall not charge Akana any rent or other fee in connection with its continued occupancy of a portion of the Premises after the Effective Date. It is understood, however, that Akana, not LESSEES, will be responsible for Akana’s utilities, taxes, insurance, and other operating expenses.

If Akana has not surrendered its possession of the Premises by the Relocation Deadline Date, then the LESSEES may (i) terminate this Lease by delivering written notice of such termination to LESSOR at the address herein provided, or (ii) elect to have the Due Diligence Period referred to in Article One, Section 3 and the Rent Commencement Date referred to in Article One, Section 2 extended on a month to month basis up to a maximum of six (6) months for each month after the Relocation Deadline Date that LESSOR is delayed in completing the relocation. If, after having elected (ii) of the preceding sentence, LESSOR is still unable to complete the relocation within the additional six (6) months, despite commercially reasonable efforts to do so, then the LESSEES may elect to terminate the Lease. If the Lease terminates because Akana cannot be timely relocated, and/or fails to surrender possession of the Premises, LESSOR shall reimburse LESSEES for (a) any costs of relocation paid by LESSEES up to the date of termination, and (b) any Investigation and Remediation Costs incurred by LESSEES pursuant to Article One, Section 5 below, and (c) LESSEES’ ($142,115.00) earnest money bid deposit (collectively the “Akana Termination Reimbursement”). The Akana Termination Reimbursement shall be divided between LESSEES in accordance with their tenant-in-common interest as set forth in the TIC Agreement and such payment shall be made within thirty (30) days after this Lease is terminated.

If a termination notice under this Section 4 (the “Akana Termination Notice”) is executed by only one of the LESSEES, then: (i) this Lease shall terminate only as to that LESSEE, with such LESSEE having no further rights and obligations under this Lease, (ii) the non terminating LESSEE shall thereafter be the sole tenant under this Lease, with the full and sole benefit of all rights granted to the LESSEES of this Lease pursuant to the terms and conditions of this Lease, and (iii) LESSOR shall have no obligation to pay the Akana Termination Reimbursement unless and until the non terminating LESSEE thereafter timely elects to terminate this Lease pursuant to this Section 4 (or pursuant to another provision of this Lease which permits the termination of this Lease during the Due Diligence Period).

5. **Initial Environmental Remediation of Premises.** LESSEES agree to expend up to a total of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($1,500,000.00) for the two LESSEES combined in investigating and remediating any Hazardous
Materials contamination of the Premises that existed prior to the date of this Lease (the “Investigation and Remediation Costs”) provided, however, that up to an aggregate of $1,500,000.00 of such costs will be reimbursed by LESSOR to LESSEES by means of equal monthly rent credits during the first eight (8) years of the Term of the Lease after the Rent Commencement Date (the “Remediation Costs Credit”). LESSEES agree to perform all such work in accordance with all requirements of the State of Hawaii Department of Health (“DOH”). In the event it becomes apparent at any time prior to commencement of the remediation work that the reasonably estimated cost of the investigation and remediation will exceed $1,500,000.00, LESSEES may elect to terminate the Lease (and its/their obligation to complete the clean-up), provided, however, that LESSEES’ election to terminate pursuant to this Section 5 of Article One may be exercised only prior to commencement of the remediation and in no event after the expiration of the Due Diligence Period. In the event that it becomes apparent that the cost of investigation and remediation may or will exceed $1,500,000.00, but LESSEES nevertheless elect to commence the clean-up, then LESSEES will be responsible for any investigation and clean-up cost in excess of $1,500,000.00. LESSEES agree to consult with LESSOR regarding their selection of a contractor(s) to perform the clean-up work and regarding the terms and conditions of the contract including the cost (for which LESSOR is responsible) and scope of work. In the event that LESSEES elect to terminate the Lease because the cost of remediation is estimated to exceed $1,500,000.00, LESSEE will turn over to LESSOR, without charge, copies of the Phase I and Phase II reports of the environmental studies and all environmental tests, studies and reports conducted or prepared by LESSEES’ third-party environmental consultants.

If LESSEES elect to terminate the Lease pursuant to the election granted above, LESSOR shall reimburse LESSEES for the reasonable Investigation and Remediation Costs incurred by LESSEES up to the date of LESSEE’s election and shall refund LESSEES’ ($142,115.00) earnest money bid deposit (collectively the “Remediation Termination Reimbursement”). Such payment shall be divided between LESSEES in accordance with their tenant-in-common interest as set forth in the TIC Agreement and such payments shall be made within thirty (30) days after this Lease is terminated.

If a termination notice under this Section 4 (the “Remediation Termination Notice”) is executed by only one of the LESSEES, then: (i) this Lease shall terminate only as to that LESSEE, with such LESSEE having no further rights and obligations under this Lease, (ii) the non terminating LESSEE shall thereafter be the sole tenant under this Lease, with the full and sole benefit of all rights granted to the LESSEES of this Lease pursuant to the terms and conditions of this Lease, and (iii) LESSOR shall have no obligation to pay the Remediation Termination Reimbursement unless and until the non terminating LESSEE thereafter timely elects to terminate this Lease pursuant to this Section 5 (or pursuant to another provision of this Lease which permits the termination of this Lease during the Due Diligence Period), as the same may be extended pursuant to Article One, Section 4 hereof. Notwithstanding the above, this Lease shall not terminate pursuant to this Section if LESSOR agrees by written notice to the LESSEES to promptly reimburse LESSEES for any Investigation and Remediation Costs in excess of $1,500,000.00 in a manner and by a date certain acceptable to LESSEES.
If, after LESSEES have commenced actual remediation work pursuant to this Article One, Section 5, LESSEES elect to terminate this Lease pursuant to its rights under either Article One, Section 3 above or Article One, Section 4 above, then, unless LESSOR shall agree to the contrary with LESSEES in writing, LESSEES shall continue with such remediation to completion and upon completion of such remediation LESSOR shall reimburse LESSEES for the full amount of the Investigation and Remediation Costs incurred by LESSEES up to, but not in excess of, $1,500,000.00, with such reimbursement to be paid to LESSEES at the earliest practicable date after completion of the remediation (as evidenced by receipt of a Non Action Letter or similar acknowledgment of satisfaction that no other remediation is required from the State of Hawaii Department of Health) and LESSEES delivery to LESSOR of reasonable evidence of the Investigation and Remediation Costs incurred by LESSEES.

6. **Right of Entry.** At all times between the date this Lease is executed and the Effective Date, LESSEE shall have the right to enter upon Lot 5-A-1 for the purpose of conducting the “due diligence” described in Article One, Section 3 above, all on the terms and conditions set forth in the Right-of-Entry Agreement attached hereto as Exhibit “D”.

**ARTICLE TWO**

**RESERVATIONS AND RIGHT OF WITHDRAWAL**

RESERVING UNTO LESSOR THE FOLLOWING:

1. **Minerals and Waters.**

   (a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine, remove or otherwise utilize such minerals shall be suspended during the Term of this Lease. **“Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspora, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEES’ permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

   (b) All surface waters, ground waters, and water systems appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. **Prehistoric and Historic Remains.** LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If,
however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEES with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. **Right of Withdrawal.** The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEES. As a condition precedent to the exercise by LESSOR of any rights reserved in this Article Two, Section 3, just compensation shall be paid to LESSEES for any of the Premises and/or LESSEES’ improvements so withdrawn or rendered unsuitable for LESSEES’ intended use, which amount is to be determined and paid in the manner and at the time set forth in Article Two, Section 5, and the base rental under this Lease will also be proportionately reduced also as provided in Article Two, Section 5; provided, however, that, if in the commercially reasonable opinion of the LESSEES the remainder of the Premises after such withdrawal is rendered unsuitable for one or both of such LESSEE’s intended use of the Premises, or such LESSEE’s portion/Tract of the Premises, then such withdrawal shall be treated as a Taking as provided in Article Two, Section 5 and in Article Five, Section 4 and such LESSEE (or both of them) may elect to terminate this Lease as provided therein.

4. **Reservation of Easements in Favor of LESSOR.** LESSOR hereby reserves the right and option, at LESSOR’s cost, but after obtaining the prior written consent of LESSEES, which consent shall not be unreasonably withheld, to create, designate, grant and relocate, at its sole cost and expense, any and all necessary easements (each individually a “Utility Easement”) for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) unless LESSEES should agree to the contrary, such Utility Easements do not cross over, on, through, under, or within sixty (60) feet of, any permanent structures constructed, or planned by LESSEES to be constructed, on the Premises, and (b) the work to construct and install any such Utility Easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with either LESSEES’s operations or use of the Premises (other than temporary de minimis disruption during construction that does not adversely affect access to the Property by customers, delivery trucks or other business invitees of LESSEES). LESSOR agrees to give LESSEES at least sixty (60) days prior written notice of its desire to create, designate, grant and relocate any such Utility Easement, together with a reasonable written description of the proposed Utility Easement (or relocation thereof) and the work to be done regarding such Utility Easement, and the need for such easement/work, a site plan showing the proposed location thereof, and the anticipated commencement and completion dates for the work. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility. As soon as is reasonably possible after installation of the equipment that is the subject of the easement within the easement area, LESSOR shall provide to LESSEES a copy of an as-built survey showing the location of any such utility line. Once constructed, the utility line(s) shall be maintained in a safe, clean and good state of repair and condition, and in compliance with all
applicable governmental requirements, and any construction, repair, replacement or relocation of any utility line hereunder shall be conducted in a good and workmanlike manner, as quickly as practicable and after LESSEES' normal business hours whenever possible.

Unless the LESSEES agree to the contrary, each such easement area shall be no wider than what is necessary to reasonably satisfy the requirements of the utility or service, and shall be described as a reasonably necessary number of feet on either side of a described center line (blanket easements shall not be permitted). Any such easement shall contain a provision whereby all or a part of the easement may be relocated from time to time upon the written request of a LESSEE and at LESSEE's sole cost to the extent reasonably necessary to permit further development by such LESSEE of its Tract. Each such Utility Easement shall contain provisions whereby the grantee of such easement agrees to (a) defend, protect, indemnify and hold harmless LESSEES from and against all claims or demands, including any action or proceeding brought therefore, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain, repair, replace, remove, relocate and operate the utility easements, provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the LESSEES, (b) obtain all necessary governmental permits and approvals for the construction, use, operation and maintenance of such Utility Easement, and (c) pay all costs and expenses with respect to the construction, installation, use, operation and maintenance of any such utility line hereunder, and shall not allow any mechanics liens to be placed on any portion of the Premises in connection with such construction, installation, use, operation and maintenance.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or either or both LESSEES are/is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease so as to constitute a taking under Hawaii condemnation law ("Taking"), then and in any such event, either or both LESSEES and/or those claiming by, through or under LESSEES will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain; provided, however, that in no event shall the compensation payable to LESSEES be less than the portion of the value of LESSEE's improvements so taken in the proportion that the unexpired Term of the Lease bears to the entire Term of the Lease. If at any time during the Term, a portion, but not all, of the Premises should be taken or withdrawn, or either or both LESSEES is denied the practical and economic use of such portion, then and in any such event, the base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such Taking, to the fair market value of the Premises remaining after such Taking. In such event, LESSEES shall also be entitled to receive from LESSOR a portion of the value of LESSEES' permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired Term of the Lease bears to the entire Term of the Lease, provided, that a LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE and shall be entitled to a portion of the condemnation award to cover such costs. Where the portion taken,
withdrawn, or use denied renders the remainder of the Premises unusable in the commercially reasonable determination of LESSEES, either or both LESSEES shall have the option to terminate this Lease and surrender the portion of the Premises so affected pursuant to Article Four, Section 17 below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefore. In the event neither LESSEE shall exercise such option to terminate and surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the base rental for the balance of the Term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE exercises its option to terminate its interest and surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected under this Article Two, Section 5 by reason of a partial Taking, the terminating LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

No rent shall be due or payable for the period between the Effective Date and the Rent Commencement Date.

Commencing on the Rent Commencement Date, LESSEES shall pay to LESSOR a net annual rental in the total amount for the applicable period as provided hereinbelow, payable in equal monthly installments in advance on the Rent Commencement Date and on the first day of each and every calendar month thereafter during the Lease Term, without notice or demand, and without any set-off or deduction (except in connection with any rent credits or offsets expressly provided for in this Lease), to LESSOR at LESSOR’s principal place of business described in the first sentence of this Lease, in United States dollars, as follows:

Lease years 1 through 10: the aggregate of Five Hundred Sixty-Eight Thousand Four Hundred Sixty-One and No/100 Dollars ($568,461.00) per annum, payable in equal monthly amounts during such period of $47,371.75 per month, which annual and monthly rental shall commence on the Rent Commencement Date;

Lease years 11 through 15: the aggregate of Seven Hundred Twenty-Seven Thousand Six Hundred Eighty-Seven and No/100 Dollars ($727,687.00) per annum, payable in equal monthly amounts during such period of $60,640.58 per month;

Lease years 16 through 20: the aggregate of Eight Hundred Twenty-Three
Lease years 21 through 25: the aggregate of Nine Hundred Thirty-One Thousand Four Hundred Eighty-Seven and No/100 Dollars ($931,487.00) per annum, payable in equal monthly amounts during such period of $77,623.67 per month;

Lease years 26 through 35: the aggregate of One Million Twenty-Four Thousand Six Hundred Thirty-Six and No/100 Dollars ($1,024,636.00) per annum, payable in equal monthly amounts during such period of $85,386.33 per month;

Lease years 36 through 45: the aggregate of One Million Four Hundred Thousand Forty-Five Thousand Three Hundred Fifty and 27/100 Dollars ($1,445,350.27) per annum, payable in equal monthly amounts during such period of $120,445.86 per month;

Lease years 46 through 55: the aggregate of Two Million Thirty-Eight Thousand Eight Hundred Nine and 30/100 Dollars ($2,038,809.30) per annum, payable in equal monthly amounts during such period of $169,900.78 per month;

Lease years 56 through 60: the aggregate of Two Million Eight Hundred Seventy-Five Thousand Nine Hundred Forty-One and 87/100 Dollars ($2,875,941.87) per annum, payable in equal monthly amounts during such period of $239,661.82 per month; and

Proration: The monthly rent shall be prorated for any fractional month during the applicable Lease Year (for example, if the Rent Commencement Date is during a calendar month, rather than on the first day of such calendar month, then (i) the monthly rent payable for the month in which the Rent Commencement Date occurs shall be prorated, (ii) the monthly rent for the calendar month in which the end of the 10th Lease year occurs, which calendar month also contains the commencement of the 11th Lease year, shall be prorated so that part of the month’s rent will be prorated based on the monthly rent payable during the first 10 Lease Years and the balance of the month’s
rent be will be prorated based on the monthly rent payable during the second 10 Lease Years, and (iii) so on thereafter for any month's rent which is payable for the calendar month which is the end of one rental rate and the commencement of the next rental rate as above.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEES shall pay the rent to LESSOR, without any set off or deduction except as expressly permitted under this Lease, at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America. LESSOR acknowledges that it is the LESSEES' intent that each LESSEE shall pay monthly to LESSOR its tenancy-in-common share of the applicable monthly rent (i.e. Target will pay LESSOR 67.25% and Safeway shall pay LESSOR 32.75% of such applicable monthly rent) and LESSOR agrees to accept such monthly rent payments from each LESSEE. However, it is agreed that, consistent with the joint and several liability of each LESSEE, the payment of a portion of the monthly rent by one LESSEE shall not relieve it of responsibility for payment of the balance of the applicable monthly rent if the other LESSEE should fail to pay its share of the monthly rent.

2. Taxes and Assessments. The parties agree as follows:

(a) LESSEES shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements on the Premises, or LESSOR or LESSEES in respect thereof, are now or may be assessed by governmental authorities during the Term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEES shall be required to pay only those installments, together with interest, which become due and payable during the Term;

(b) LESSOR shall reimburse to LESSOR within thirty (30) days after receipt of written demand for such reimbursement, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which either or both LESSEES is a party, creating or transferring an interest or an estate in the Premises;

(c) LESSEES, individually or jointly, shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEES only after payment, by LESSEES, individually or jointly, as hereinabove provided, of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be
brought by either or both LESSEES, LESSEES shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEES in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEES;

(d) Tax refunds obtained pursuant to any contest conducted by one or both LESSEES shall be payable to LESSEES, and LESSEES are jointly and severally authorized to collect the same. LESSOR shall be entitled to collect, and LESSEES shall pay to LESSOR, if LESSEES collects the same, net of LESSEES' expenses of obtaining such refunds, or portions thereof, any refunds, or portions thereof, attributable to taxes or assessments previously paid by LESSOR and not reimbursed by LESSEES; and

(e) If LESSOR contests the validity or amount of any taxes and/or assessments covering the Premises, LESSEES shall be entitled to collect, and LESSOR shall pay to LESSEES, if LESSOR collects the same, net of LESSOR's expenses of obtaining such refunds, or portions thereof, any refunds, or portions thereof, attributable to Taxes previously paid by LESSEES. LESSEES may allocate as between them any tax refunds pursuant to this Section pursuant to the TIC Agreement, and LESSOR shall have no liability to either LESSEE regarding the fairness of such allocation.

3. **Utility Services.** LESSEES shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, electrical, gas, cable, refuse collection, recycling, relocation of utility poles and lines or any other charges, imposed upon the Premises or any part, or any improvements thereon, or imposed upon LESSOR or either or both LESSEES in respect thereof, during the Term, whether assessed to or payable by LESSOR or either or both LESSEES. LESSEES, at their sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for their contemplated improvements. LESSOR shall join in the execution of any applications or easements required by the provider of such utility service if necessary to do so in order for such service to be extended or offered to the Premises.

4. **Improvements Required by Law.** LESSEES shall, at each LESSEE's own expense during the whole of the Term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or in connection with or for the use of the Premises or any part thereof.

5. **Obedience of Laws.** LESSEES shall at all times during the Term of this Lease:
   (a) keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or unlawful use; (b) observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, including, but not limited to, any applicable county or state zoning or land use ordinance or law, any applicable county subdivision ordinance, and all
applicable building codes; and (c) defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEES of said laws, ordinances, rules and regulations or of this covenant. LESSOR acknowledges that LESSEES are relying upon the MCX zoning district classification in entering into this Lease. However, at anytime during the Term of this Lease the LESSEES may, at their sole option and expense, seek to have the Premises rezoned to accommodate LESSEE’s proposed use and development, or redevelopment, of the Premises in a manner consistent with the permitted uses contained herein; provided that: (i) LESSEES must first obtain LESSOR’s prior written consent to LESSEES seeking such rezoning, such consent shall not be unreasonably withheld, conditioned or delayed (LESSOR may withhold consent unless LESSEES propose to rezone the Premises to a higher and better use); (ii) such rezoning will be obtained at no expense to LESSOR; and (iii) LESSEES shall have no right to delay the Rent Commencement Date due to such rezoning. In the event the LESSEES desire such rezoning, LESSOR agrees to reasonably cooperate, at LESSEES’ expense, with LESSEES in such rezoning efforts.

6. Inspection of Premises. Upon reasonable prior notice, LESSEES will permit LESSOR and its agents, at all reasonable times during the Term of this Lease, to enter the Premises to assess the state of repair and condition of the Premises, provided that if LESSOR wishes to inspect the interior of any buildings on the Premises, LESSOR shall provide the LESSEE who owns or operates such building at least one (1) business day’s prior written notice of the intent to inspect the interior of the building (except that in the case of emergency such notice may be by telephone, email, or personal delivery and shall be given as reasonably in advance as such emergency dictates) and LESSOR shall be accompanied by a representative of such LESSEE in such inspection. LESSEES will repair and make good, at LESSEES’ own expense, all defects required by the provisions of this Lease to be repaired by LESSEES of which written notice has been given by LESSOR or its agents to LESSEES, and each LESSEE as to any repairs required on its Tract of the Premises shall complete such repair within thirty (30) days after the receipt of such written notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, then the applicable LESSEE shall undertake to repair such defect within said thirty (30) day period and shall thereafter diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason a LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, declare the LESSEES to be in default hereunder and make or cause to be made such repairs, and LESSOR shall not be responsible to LESSEES or anyone claiming by, through or under LESSEES, for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the negligence or willful misconduct of LESSOR or LESSOR’s agents, contractors or employees in effecting any such repairs), and LESSEES will pay to LESSOR, within thirty (30) days following written demand by LESSOR, and as additional rent, all reasonable costs and expenses paid or incurred by LESSOR in connection with such repairs. Notwithstanding anything contained herein to the contrary, nothing contained in this Article Two, Section 6 shall make a LESSEE responsible to make repairs required hereunder to the property of the other LESSEE, provided each shall be jointly and severally responsible for any
obligation under this Section to reimburse LESSOR for the reasonable cost incurred by LESSOR for any repairs made by LESSOR pursuant to this Section 6.

7. Improvements.

(a) Scheduled Program of Initial Development. LESSSEES may implement a scheduled program of initial development of the Premises. Prior to proceeding with the development of the Premises, plans and specifications (the “Plans”) for the proposed development of the Premises shall be submitted to LESSOR for approval, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be promptly granted if the proposed development of the Premises is materially consistent with the site plans and building design drawings attached hereto as Exhibit “E”. Delivery of the Plans to LESSOR shall not be considered as a commitment by LESSSEES to develop the Premises. LESSSEES may modify such Plans at their option and expense at any time following LESSOR’s approval of the Plans, provided that any material modification of the Plans shall require the approval of LESSOR, such approval not to be unreasonably withheld, conditioned, or delayed.

As far as the terms of this Lease are concerned, the LESSEES are jointly and severally responsible for any development of the Premises that may be undertaken. However, it is acknowledged that if the LESSEES proceed with construction of improvements on the Premises, it is their intent per the TIC Agreement and the OEA that each LESSEE construct, at its own expense, the building(s) on its Tract and to jointly construct all other on and off-site improvements. LESSOR acknowledges that the LESSEES may enter into the OEA which establishes as between LESSEES certain operation, use, and design requirements for the Premises and the LESSEES and other occupants thereof, which shall include requirements as to construction activities on the Premises. A short form of the OEA may be recorded, after a short form or memorandum of this Lease has previously been recorded, which short form of the OEA clearly specifies that (i) any requirements or restrictions in the OEA affect LESSEES’ leasehold interest in the Premises only and not LESSOR’s fee simple interest, and (ii) the OEA will terminate and be of no further force or effect on expiration or sooner termination of this Lease. Such OEA shall not affect, as to LESSOR, the joint and several liability of the LESSEES under this Lease.

(b) Governmental Approvals and Permits. Before commencing any construction of buildings or other improvements on the Premises, LESSEES shall seek and secure all necessary and appropriate approvals and permits that may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding environment (HRS Chapter 343), land, air and water use or emissions and noise emissions and Hazardous Materials. LESSSEES shall bear all costs and expenses of obtaining the necessary approvals and permits. If requested by a LESSEE, LESSOR shall join in the application for all permits, variances, re-zoning, special uses, licenses or authorizations deemed necessary or desirable by a LESSEE in connection with the construction of Improvements and/or use of the Premises if necessary in order to prosecute such applications properly.
(c) **Construction of Improvements After Initial Development.** After the initial construction of site improvements and construction of the building improvements on the Premises, LESSEES may (i) make any interior or exterior alterations or improvements, (ii) construct or place on the Premises any additional building or other new improvement(s), including fences and walls, and (iii) make any additions or alterations, structural or otherwise, affecting the exterior of any building on the Premises, provided, however, that if any such exterior building alterations, improvements or additions shall cost more than One Million Dollars ($1,000,000.00), then the prior written consent of LESSOR shall be needed, which consent shall not be unreasonably withheld, conditioned or delayed. The dollar limit set forth in the preceding sentence shall be increased on the commencement of the sixth (6th) Lease Year and at five (5) year intervals thereafter by the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, as of the date of adjustment over such index as of the first day of the preceding five (5)-year period.

Notwithstanding anything contained herein to the contrary, in no event shall a LESSEE be required to obtain LESSOR approval for any interior or non-structural renovation or remodeling, or for any maintenance, repair, replacement or re-construction as a result of either ordinary wear and tear or a casualty.

(d) **Ownership.** LESSEES shall own all building and other improvements located on the Premises until the expiration of the Term or sooner termination of the Lease, at which time ownership shall automatically be vested in LESSOR.

(e) **Bond and Financial Information.** Subject to exemption set forth below, each LESSEE will before commencing construction of any improvements within the Premises in excess of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000) deposit with LESSOR as “Construction Security” either: (i) copies of the contractor’s performance bond (HS/AIA Document A311 or its equivalent), and a labor and materials payment bond (HS/AIA Document A311 or its equivalent), naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics’ and materialmen’s liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR’s reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic’s and materialmen’s liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. Each LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE
is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

Notwithstanding the foregoing paragraph, in the event that LESSEE (or any tenant of LESSEE) (x) is Target or Safeway, or a wholly-owned subsidiary of Target or of Safeway, or is a tenant who has a net worth of at least ONE HUNDRED MILLION AND NO/100 DOLLARS ($100,000,000) and LESSEES have provided LESSOR with reasonable evidence of such net worth, and (y) LESSEES (or such tenant) commits to LESSOR to complete the improvements free and clear of all mechanics’ and materialmen’s liens, then LESSEE (or such tenant) shall not be required to deposit any such Construction Security in connection with the construction of improvements by such entity. Target and Safeway hereby each acknowledges its commitment to complete their respective improvements free and clear of all mechanics’ and materialmen’s liens.

(f) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEES shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 2000a et. seq., the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) Responsibility for Compliance. Notwithstanding LESSOR’s review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEES and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEES shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) a LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR’s reasonable costs of investigation and handling (including the defense) of LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s reasonable costs of enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable
within thirty (30) days after LESSEES’ receipt of written demand therefore, with interest at the rate of ten percent (10.0%) per annum.

8. Signage. So long as LESSEE complies with any and all regulations imposed by municipal or other governmental agencies (other than LESSOR) having jurisdiction over the signage that may be placed on the exterior of the buildings on the Premises or within exterior common areas of the Premises, LESSOR’s approval shall not be required for any exterior signs, including, but not limited to any pylons or monuments in the parking areas, which comply with the “Sign Criteria” for the Premises attached hereto as Exhibit “F”, or such different sign criteria that may be approved by the parties in writing. LESSOR’s approval shall otherwise be required but shall not be unreasonably withheld, conditioned or delayed. LESSOR shall respond to any request for approval of additional signage within twenty (20) days of receipt of a request therefore.

9. Repairs to Improvements. At no cost to LESSOR, LESSEES will keep, repair and maintain all buildings and other improvements hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

10. Assignment.

(a) Written Consent. Except as is otherwise provided in this Lease, neither LESSEE shall, without the prior written consent of LESSOR (which consent shall not be unreasonably withheld, conditioned, or delayed) transfer or assign either such LESSEE’s individual tenant-in-common interest in this Lease or the entire LESSEES’ interest in this Lease, either voluntarily or by operation of law. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it, not to exceed an additional thirty (30) days, and of which it shall notify LESSEES within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period, as such period may be extended above, LESSOR’s approval shall be conclusively presumed. Neither LESSEE shall be required to pay any premium, additional rent or other consideration or to agree to any other amendments to this Lease to obtain LESSOR’s consent to assignment or transfer of this Lease.

(b) Assumption of Lease. Any assignment of this Lease, or the LESSEE’s tenant-in-common interest herein, shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) “Assignment” Defined. The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if a LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;
(ii) if a LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of the LESSEE or a change of control of any general partner of the LESSEE;

(iii) if a LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of the LESSEE or a change of control of any managing member of the LESSEE;

(iv) if a LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof.

shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly an interest, legal or equitable, in the LESSEE as of the Effective Date or as of the date of the LESSEE’s subsequent acquisition of such LESSEE’s interest in this Lease by assignment, with the ownership of such interests in the LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to be an assignment and shall require LESSOR’s consent unless the successor or acquiring corporation has a net worth equal to or greater than $50,000,000.00; and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

(d) Exceptions to the need for LESSOR consent. Notwithstanding the foregoing, each LESSEE may assign its individual tenant-in-common interest as LESSEE under this Lease, and/or both LESSEES may assign their collective interest in this Lease, as may be applicable, without LESSOR’s prior written consent: (i) to the other LESSEE; (ii) to any related entity or affiliate of the assigning LESSEE, or the other LESSEE, or to any corporation that controls, is controlled by, or is under common control with either LESSEE (collectively as to each LESSEE, an “Affiliate”), or (iii) to a person or entity acquiring all or substantially all of the corporate or real estate interests of the assigning LESSEE, or any corporation resulting from the merger of or consolidation with either LESSEE, provided that in any such case in this clause (iii) the resulting person, entity or corporation has a tangible net worth of not less than $100,000,000.00; provided, however, that in any such case, such assigning LESSEE shall not be released from liability under this Lease unless such release of liability is expressly consented to by LESSOR.

11. Subletting. Except as otherwise indicated below, LESSEES shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed,
have the right to sublease all or any portion of, or any pad situated on, the Premises. LESSOR has been informed that (i) Safeway currently plans to possibly construct shop buildings on portions of the Premises controlled by it pursuant to the TIC Agreement and OEA, and thereafter sublet such shop building(s), or portions thereof, to one or more third parties, (ii) each LESSEE may also construct shop spaces within the major building on the portion of the Premises controlled by it and sublet such shop spaces, or portions thereof, to third parties, and (iii) during the Term of this Lease, either LESSEE may decide to sublet to third parties all or portions of the major building on the portion of the Premises controlled by such LESSEE. Each of the subleases described in (i), (ii) and (iii) above shall not require LESSOR’s prior written consent, provided Target or Safeway, as the case may be (or their respective permitted assigns), remains the “anchor” tenant on their respective Tracts, and provided that a copy of each sublease is promptly provided to LESSOR. The term of any sublease shall not exceed the Term of this Lease. Notwithstanding anything contained herein to the contrary, a licensed department within a LESSEE’s business operation shall not be deemed a sublease arrangement under this Lease.

If any portion of the Premises is sublet, LESSOR shall have the right to receive a possible additional rent as a result of such sublease pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit “G” hereof, based upon the rental rate charged to the proposed subtenant in excess of various expenses noted in Exhibit “G”. Any such additional rent shall be payable by the Subletting LESSEE, but with the understanding that, in view of the joint and several liability of the LESSEES, if the Subletting LESSEE fails to pay the required additional rent the other LESSEE shall be equally liable to LESSOR for such additional rental (and shall have a claim against the Subletting LESSEE pursuant to the TIC for the additional rental which such LESSEE pays to LESSOR for the Subletting LESSEE). In calculating the possible additional rent the parties agree that the Annual Base Rent to be used in line 6 of Section I of the Exhibit “G” worksheet or in line 4 of Section II of such Exhibit “G” worksheet, as applicable, shall be prorated based on the Subletting LESSEE’s tenant-in-common percentage interest under this Lease as set forth in the TIC for the applicable year being calculated.

12. **Liens.** Except as otherwise permitted in Article Five of this Lease, LESSEES will not commit or suffer any act or neglect by which the Premises or the respective estates of either LESSEE or of LESSOR therein shall at any time during the Term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and each LESSEE will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who (other than LESSOR) contracted therefore is filed against the Premises, LESSEES shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEES may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof.
until final determination of such contest. Each LESSEE’s obligations under this Section 12 shall survive the termination of this Lease.

13. Permitted Uses. The Premises will be used only for any lawful purpose permitted by the zoning then applicable to the Premises or portion thereof in which the use is to take place. The Premises are currently within the MCX zoning district and the parties acknowledge that the MCX zoning district permits the development and operation of the Premises for retail purposes as contemplated by LESSEES. Notwithstanding the foregoing, LESSEES shall have no obligation to construct any improvements on or to use or operate any portion of the Premises. In no event shall the Premises be used for the construction of any residential lots, units or project. In no event shall either LESSEE’s use of the Premises violate the existing restrictive covenant encumbering the Premises for the benefit of Home Depot, a copy of which is attached hereto as Exhibit “H”, except that this restriction shall cease to be in effect upon the first to occur of (i) termination of the current lease to Home Depot upon which the restrictions in Exhibit “H” are based, or (ii) the termination of the restrictions in Exhibit “H” by the terms themselves of such Exhibit “H”.


(a) Each LESSEE shall indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, or third parties, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition; provided, however, that in no event shall LESSEES be responsible for any liens, claims and demands of any kind for loss or damage, including property damage, personal injury and wrongful death, caused by or resulting from (x) Hazardous Materials existing on the Premises prior to the date of this Lease, (y) or in connection with sites of archaeological significance or prehistoric or historic remains, or (z) or in connection with the gross negligence of LESSOR or the negligent act or misconduct of any agent or contractor of LESSOR, where neither of LESSEES was not also negligent. Subject to the above, LESSEES shall reimburse LESSOR for all of LESSOR’s reasonable costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. Subject to the above, each LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEES’ obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.
(b) As soon as is reasonably possible upon discovery thereof, LESSEES shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

15. Costs of Litigation. In case any party hereto (i.e. the LESSOR or the a LESSEE) shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party (or parties, as applicable) shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

16. Insurance. Subject to the self-insurance exemption set forth below, at all times during the Term of this Lease, LESSEES shall purchase and maintain, at no expense to LESSOR, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR (but it being agreed that this obligation can be satisfied by each LESSEE insuring, and providing the certificate(s) of insurance for, and/or self insuring, separate from the other LESSEE, (i) the property insurance for the buildings, structures and other improvements on the portion of the Premises (i.e., its Tract) for which it is responsible per the TIC and (ii) the Liability Insurance or self insurance for the portion of the Premises for which it is responsible under the TIC, and such will satisfy the obligations of the LESSEES hereunder).

(a) Commercial Property Insurance. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, whether made or acquired at LESSEES’ expense, or at another’s expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by (i) fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), (ii) perils normally insured under a policy of boiler and machinery insurance, and (iii) such other hazards or risks which a prudent business person would insure against at that time, under similar circumstances and at commercially reasonable cost, in a reasonably similar retail shopping center development in the State of Hawaii. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, delayed or denied or unless LESSEE self insures as permitted below, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence, except that in the event a LESSEE is either Target or Safeway, or any Affiliate of either, such LESSEE may have deductibles of up to $3,000,000 with the understanding that such LESSEE shall be responsible for any amounts covered by such deductibles.
(i) **Use of Proceeds.** In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by each LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged, but subject to such alterations, improvements and/or additions thereto as may be made by the LESSEE, with or without the LESSOR’s approval, as applicable, pursuant to Article Four, Section 7 hereof. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvements on the Premises shall be destroyed at any time after the twenty-fifth (25th) Lease Year, then LESSEES shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Article Four, Section 17 and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) **Liability Insurance.**

(i) **Commercial General Liability Insurance.** A policy or policies of commercial general liability insurance or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of LESSEE including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Employees Named as Additional Insureds; and Medical Expense. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) **Limits.** Limits for such coverage shall be not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and not less than FIVE MILLION DOLLARS ($5,000,000) in the aggregate.

(2) **Deductible.** Except with LESSOR’s prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $100,000 for any one occurrence, except that in the event a LESSEE is either Target or Safeway, or any Affiliate of either, such LESSEE may have deductibles of up to $3,000,000 with the understanding that such LESSEE shall be responsible for any amounts covered by such deductibles.

(3) **Application of General Aggregate.** The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the particular LESSEE’s portion of the Premises and the operations conducted thereon.

(ii) **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386
and regulations thereunder, as the same may be amended from time to time, for all employees of such LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability and Employer’s Liability. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $100,000 except as larger deductibles are otherwise permitted hereunder.

(d) Builder’s and Installation Risk. Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this Section 16 of Article Four, covering loss or damage to any of a LESSEE’s property shall provide that the insurer is required to provide LESSOR and other LESSEE with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. Each LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or memoranda or certificates thereof or otherwise provide web-based evidence of coverages required herein. All public liability and property damage policies shall include the other parties as Additional Insureds shall be for the mutual and joint benefit and protection of LESSOR, each LESSEE, and each LESSEE’s mortgagee(s), if any, as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of a LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, each LESSEE shall procure and maintain, renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry; provided, however, that with respect to the commercial general liability coverages required under the provisions of this Lease, each LESSEE may satisfy those requirements with a combination of primary insurance coverage with minimum limits of $1.0 million, and the balance of the coverage by an excess or umbrella policy.
(f) **Periodic Review of Insurance Coverages.** LESSOR shall retain the right at any time, but not more frequently than once every five (5) years, to review the coverage and amount of the insurance required by this Lease. If, in the commercially reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar retail shopping center developments in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage and amount to provide such additional protection provide such insurance is available at commercially reasonable cost. LESSOR’S requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEES in writing of changes in the insurance requirements and each LESSEE shall deposit copies of acceptable insurance policies, or memoranda or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

(g) **Right to Self-Insure and Blanket Insurance.** Notwithstanding anything else contained in this Lease to the contrary, each LESSEE shall have the right to self-insure for any insurance requirement hereunder, provided such LESSEE’S net worth during said period of self-insurance shall not be less than One Hundred Million Dollars ($100,000,000). Each LESSEE may also provide any coverage required by this Lease through blanket policies of such LESSEE that include other liabilities, properties or on locations of such LESSEE so long as the coverage as to the Premises is not reduced or adversely affected.

17. **Surrender.** At the end of the Term or other sooner termination of all or any portion of this Lease, LESSEES shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and damage due to casualty (in which event proceeds from property damage insurance attributable thereto shall be delivered to, and be the property of, LESSOR), and in strictly clean, safe and sanitary condition, free of all debris; provided, however, that LESSEES may remove any trade fixtures installed by it on the Premises but, unless the building is to be demolished, LESSEES shall repair promptly to LESSOR’S satisfaction all damage caused by such removal. LESSOR shall not be required to reimburse LESSEES for the residual value, if any, of LESSEES’ improvements.

Each LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this Article Four, Section 17. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of such LESSEES’ obligations hereunder. Nothing herein shall be deemed to relieve either LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

At the expiration or earlier termination of this Lease, all inventory, trade fixtures, furniture, machinery and equipment that LESSEE uses or installs on the Premises and any other personal property, shall remain LESSEE’S property and may be removed by LESSEE.
Furthermore, upon the expiration, termination, and/or revocation of this Lease, should a LESSEE fail to remove any and all of LESSEE’s personal property from the Premises, after notice thereof, LESSOR may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of the LESSEE, and such LESSEE does agree to pay all costs and expenses for disposal, removal, or storage of the personal property.

At the expiration or earlier termination of this Lease, LESSEES shall cooperate with LESSOR in recording a termination of any short form of lease or OEA then of record in the Bureau of Conveyances of the State of Hawaii.

18. Processing Fees/Documentation. After completion of the initial development of the Premises, LESSEES agree to pay to LESSOR, LESSOR’s reasonable fees for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.


This Section 19 is subject to, and shall not amend, the provisions of Article One, Section 5 above. LESSEES shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

As soon as reasonably possible, each LESSEE shall advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises of which it becomes aware, (ii) all claims made or threatened by any third party against such LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) such LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject the LESSEES, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEES shall cause any Hazardous Materials released on or below the surface of the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by, and in accordance with, applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEES shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR’s written consent thereto which consent shall not be unreasonable withheld, conditioned or delayed. LESSOR agrees to expedite
the review of any such submissions, time being of the essence so as to reduce any damages to LESSEES’ business operations on the Premises or to mitigate any potential increases in the costs of construction or operation on the Premises.

Each LESSEE agrees not to enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR and the other LESSEE of such LESSEE’s intention to do so and affording LESSOR and the other LESSEE the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, each LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR’s employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to such LESSEE’s use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (a) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (b) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys’ fees.

Within thirty (30) days of receipt thereof, each LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding such LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in such LESSEE’s possession or control.

The covenants of this Article Four, Section 19, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of a LESSEE’s interest in the Premises.

20. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, which has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs installed by LESSEES are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEES. If a LESSEE, or an assignee or sublessee thereof, has installed a UST, then and in such event, such LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the Term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease Term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, such LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to
LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

21. **LESSOR’s Representations.** Except as otherwise specifically provided herein, LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEES acknowledge that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others.

Any provisions of this Lease that permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

22. **Subdivision.** At any time after the expiration of the 5th Lease Year, LESSEES may advise LESSOR in writing (the “Desire to Subdivide Notice”) that they desire to subdivide the Premises (consistent with the Target Tract and the Safeway Tract) and divide this Lease into 2 separate leases such that Target (or its then successor in interest to its tenant-in-common interest in this Lease) will lease on its own the separate legal parcel or parcels which constitute its Tract (the “Target Lease”) and Safeway (or its then successor in interest to its tenant-in-common interest in this Lease) will lease on its own the separate legal parcel or parcels which constitute its Tract (the “Safeway Lease”), each on the same terms and conditions of this Lease, including, but not limited to, length of term and rent, but with such rent prorated based on each LESSEES then tenant-in-common interest in this Lease (for example, Target having 67.25% and Safeway having 32.75% of the rental obligation) with the total of the rent payable under the Target Lease and the rent payable under the Safeway Lease equaling the rent payable under this Lease, and the combination of the leased premises under the Target Lease and the leased premises under the Safeway Lease equaling the then total Premises under this Lease. If, at the time of LESSEES’ delivery of such Desire to Subdivide Notice, LESSOR has the legal right under the then existing laws pertaining to LESSOR, to so divide this Lease into the two leases without having to resubmit either new lease to a new public offering, then LESSOR hereby agrees to cooperate with the LESSEES in seeking subdivision of the Premises and so dividing this Lease into two (2) separate leases (the Target Lease and the Safeway Lease). LESSOR and LESSEES contemplate that the Premises demised by the two (2) separate leases will remain encumbered by the OEA, or some modified version of it as may be mutually agreed to between LESSEES and approved in writing by LESSOR.

23. **Bonds and Security Deposit.** LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each

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stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and delivered to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the securities with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

The requirement for a bond, deposit, or other security required by this Section 23 shall be deemed independently satisfied at such time as LESSEES complete construction of their respective stores or open for business. Furthermore, notwithstanding the foregoing, in the event that LESSEE(S) is Target and/or Safeway, or a wholly-owned subsidiary of Target or of Safeway, or an assignee who has a net worth of at least ONE HUNDRED MILLION AND NO/100 DOLLARS ($100,000,000) and LESSOR has been provided reasonable evidence of such net worth, then LESSEES shall not be required to deposit any bond, deposit, or other security required by this Section 23.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application, with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, and with the mortgagor-LESSSEE’s joint and several co-tenant liability hereunder, either LESSEE may mortgage its interest in this Lease, and both LESSEES acting together may mortgage the entire leasehold Premises. LESSOR covenants and agrees to promptly review any request by a LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of such

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LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to a LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to such LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEES.
(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by the mortgagor-LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by such LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to a LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of such mortgagor-LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEES during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) A LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of such LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR, or the other LESSEE unless and until either such mortgagor-LESSEE or Mortgagee shall deliver to LESSOR and the other LESSEE a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR and the mortgagor-LESSEE notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of a LESSEE hereunder on condition that such LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from such LESSEE, to exercise such right without regard to whether or not such LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against a mortgagor-LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under
Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the mortgagor-LESSEE’s interest in the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by the mortgagor-LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the mortgagor-LESSEE’s interest in the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against a LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagor and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgagor, that the actual or deemed rejection of the mortgagor-LESSEE’s interest in the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagor’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon a LESSEE or a LESSEE’s bankruptcy trustee, and upon written request of the Mortgagor delivered to LESSOR within thirty (30) days following the Mortgagor’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagor, execute and deliver to the Mortgagor or its designee an instrument (in form acceptable to Mortgagor or its designee) recognizing, confirming and giving legal effect to the continued existence of the debtor-LESSEE’s interest in the Lease, with its original validity and priority, in favor of the Mortgagor or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagor shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Leasehold Interest, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Leasehold Interest;

(ii) The Mortgagor or its designee shall undertake, by accepting the Confirmation of Leasehold Interest, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagor or such other person or entity. The Mortgagor or its designee, as the case may be, may assign its tenant-in-common interest in the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagor or its designee shall thereupon be released from all liability for the performance or
observance of the covenants and conditions in such Lease contained and on its mortgagor-
LESSEE's part thereunder to be performed and observed from and after the date of such
assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy
of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to
and shall have the same right, title and interest in and to the Premises and the buildings and
improvements thereon as its mortgagor-LESSEE had under the Lease prior to its rejection and
LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in
interest such that any Confirmation of Leasehold Interest made pursuant to this Agreement shall
be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which
mortgage, lien, charge or encumbrance was junior to the Lease.

(g) In the event an individual LESSEE is permitted, pursuant to this Section 1,
Article Five, to have a Mortgage, and the other LESSEE continues to hold an interest in this
Lease, then the terms, covenants and conditions of this Section 1, Article Five shall pertain only
to such mortgagor-LESSEE and the other LESSEE shall have no obligations to LESSOR under
this Section 1, Article Five, except that the other LESSEE shall be included in all notices
required under this Section 1, Article Five and, in addition, in no event shall the interests of such
other LESSEE be adversely affected by the existence of such permitted Mortgage, a default
thereunder, which is not also a default by the mortgagor-LESSEE in paying or performing its
obligations under this Lease, or a foreclosure thereof.

2. Breach. Time is of the essence of this agreement and if any LESSEE shall
become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be
attached or taken by operation of law, or if any assignment is made of any LESSEE's property
for the benefit of creditors, or if any LESSEE shall fail to observe and perform any of the
material terms, covenants and conditions contained in this Lease and on its part to be observed
and performed, LESSOR shall deliver a written notice of the breach or default by service, as
provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or
certified mail to both LESSEES at its mailing address set forth in the first sentence of this Lease,
or if such mailing address has been changed, then at its last known mailing address, and to each
mortgagee or holder of record having a security interest in the Premises, making demand upon
such LESSEES to cure or remedy the breach or default within sixty (60) days after the date of
receipt of the notice [if such default is, by its nature, not reasonably susceptible of being cured
within such 60 day period, such 60 day period shall be extended as necessary to provide
LESSEES the opportunity to cure the default, provided either or both LESSEES within said
period commences and thereafter diligently proceeds to cure such default without interruption
until such cure is completed]; provided that where the breach involves a failure to make timely
rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEES
to cure the breach within ten (10) business days after receipt of the notice.

Upon failure of LESSEES to cure or remedy any material breach or default within the
time period provided herein, or within such additional period as LESSOR may allow for good
cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Article Five, Sections 1(d) and 1(f) above, LESSOR, LESSOR shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEES covenant and agree that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEES hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease because of an event of default by one of the LESSEES, the other LESSEE and each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on the defaulting LESSEE’s part to be performed, capable of performance by the holder within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Article Five, Sections 1 above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the other LESSEE or the holder to exercise its option, LESSOR may:

(a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and
mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in
the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the
conveyance of the privilege, interest or estate upon payment to the holder of the amount of the
mortgage debt, including interest and penalties, and all reasonable expenses incurred by the
holder in connection with the foreclosure and preservation of its security interest, less
appropriate credits, including income received from the privilege, interest or estate subsequent to
the foreclosure; or

(b) if the property cannot be reasonably reassigned without loss to LESSOR,
then terminate the outstanding privilege, interest or estate without prejudice to any other right or
remedy for arrearages of rent or for any preceding or other breach or default and use its best
efforts to redissepose of the affected land to a qualified and responsible person free and clear of the
mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or
prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised
Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may
still otherwise hope to resolve the problems created by the breach or default involved.

The proceeds of any redisposition under subparagraph (b) above shall be applied as
follows: first, to reimburse LESSOR for costs and expenses in connection with the redisposition;
second, to discharge in full any unpaid indebtedness or monetary damages owing LESSOR in
connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent
of the value received by LESSOR upon redisposition which exceeds the fair market lease value of
the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the
privilege, interest, or estate.

4. Condemnation. If at any time, during the Term of this Lease, all or any portion of
the Premises should be condemned, or required for public purposes by the State of Hawaii, or
any county or city and county, or any other governmental agency or subdivision, then and in any
such event, LESSEES and/or those claiming by, through or under LESSEES will be entitled to
just compensation to the same extent and according to the same principles and rules of law as if
the Premises and all improvements thereon had been condemned by the State of Hawaii under its
power of eminent domain, the amount of such just compensation to be determined in the manner
set forth in Article Two, Section 5. Nothing herein contained shall be construed as preventing a
LESSEE from being entitled to any separate award made to such LESSEE for the taking of such
LESSEE’s personal property (including its building improvements), or from claiming all or any
portion of its award directly against the condemning authority. The foregoing rights of each
LESSEE shall not be exclusive of any other to which such LESSEE may be entitled by law. In
the event that either or both LESSEES reasonably determine that the remainder of the Premises
are rendered unusable as the result of any such condemnation, such LESSEE(S) shall have the
right to surrender the Premises and terminate this Lease pursuant to Article Four, Section 17, or
to partially surrender this Lease as to the portion of the Premises so affected, and be discharged
and relieved from any further liability therefore; provided that LESSEE may remove the
permanent improvements constructed, erected and placed by it within a reasonable period
allowed by LESSOR. In the event LESSEES only have the option to partially surrender this
Lease as to the portion of the Premises so affected, or if a portion of the Premises shall be taken
or condemned under circumstances whereby LESSEE does not have such option, then the base rental for the balance of the Term of this Lease shall be abated and adjusted in an equitable manner. In the event that (i) a portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision as above, (ii) the LESSEES, or one of the LESSEES, elects to surrender such portion of the Premises and thereby partially terminate this Lease as to such portion, and (iii) all or a portion of the Premises so surrendered constitutes all of the Tract of one of the LESSEES as described in the TIC, then such LESSEE shall be released from this Lease and shall have no further rights and obligations under this Lease, except for any obligations of such LESSEE which may have been accrued prior to the date of such partial termination of this Lease.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than a building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with the LESSEE or each LESSEE's use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection of a building on the Premises shall be conducted during reasonable hours and only after written notice to enter is first given to the LESSEE who owns or otherwise controls such building, and shall, if such LESSEE so requires, be made in the company of such LESSEE or designated agents of such LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEES of any term, covenant or condition of this Lease, nor of LESSOR's right to re-entry for a Monetary Default, nor of the right to declare and enforce a forfeiture for any Monetary Default, and the failure of LESSOR or LESSEES to insist upon strict performance of any such term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; act of terrorism; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval
authorities; hurricane or other weather-related reason, or any other cause, whether similar or
dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEES that upon
payment of the rent at the times and in the manner provided and the observance and performance
of these terms, covenants and conditions on the part of LESSEES to be observed and performed,
LESSEES shall and may have, hold, possess and enjoy the Premises for the Term of the Lease,
without hindrance or interruption by LESSOR or any other person or persons by, through or
under LESSOR. LESSOR shall defend the title to the Premises and the use and occupancy of
the same by LESSEES against the claims of all persons, except those claiming by or through
LESSEES. Nothing contained herein shall diminish or affect the right of withdrawal as
otherwise provided in Section 3 of Article Two.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent
rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100
DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by a party hereunder in the performance of the terms, covenants
and conditions herein contained, such defaulting party shall pay to LESSOR any and all
reasonable costs incurred in connection with the default, including reasonable attorneys’ fees. In
the event that any indebtedness arising hereunder is placed in the hands of a collector or an
attorney for collection, or suit is instituted for collection, the defaulting party shall pay, in
addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by
the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to
duly execute and file with the Bureau of Conveyances a memorandum of this Lease in
substantially the form of Exhibit “I” attached hereto.

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease
should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in
full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. In addition to as otherwise required by Chapter 171, Hawaii Revised
Statutes, any notice, request, offer, approval, consent or other communication required or
permitted to be given by or on behalf of either party to the other shall be given or communicated
in writing by personal delivery, by reputable overnight courier service which keeps receipts of
deliveries (i.e., Federal Express), or by United States certified mail (return receipt requested with
postage fully prepaid) addressed to the other party as follows:

If to LESSEES:

TARGET CORPORATION
Property Development – TPN-12th Floor

If to LESSOR:

Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Attn: Real Estate – Existing Stores/ Ground Lease/Hilo, Hawaii
1000 Nicollet Mall
Minneapolis, MN 55403

With a copy to:

Target Corporation Law Department
Attn: Senior Group Counsel – Real Estate/Hilo, HI (JLN)
TPS-3155
1000 Nicollet Mall
Minneapolis, MN 55403

And to:

Safeway Inc.
Real Estate Law Division
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Manager, Real Estate Law
(For Store #2893)

With a copy to:

Safeway Inc.
Nor Cal Division Real Estate Department
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Vice President, Real Estate
(For Store #2893)

or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date delivered by reputable overnight courier service as evidenced by its receipt of delivery, or the date marked on the return receipt if sent by certified mail, unless delivery by certified mail is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.
(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) “LESSOR” shall mean and include LESSOR herein, successors or assigns.

(e) “LESSEES” shall mean and include each LESSEE herein, their respective successors and/or permitted assigns.

(f) The “premises” shall mean the land leased hereunder.

15. Consents. In any case where the consent or approval of a party is required hereunder, such consent or approval shall not be unreasonably withheld, delayed, denied or conditioned.


(a) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.
(b) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

(c) This Lease and the exhibits hereto contain the entire agreement between the parties relating to the leasing of the Premises and supersede any prior negotiations, correspondence, memoranda or agreements in total hereto. This Lease shall be binding upon, inure to the benefit of, and be enforceable by LESSOR and LESSEE, and their respective successors and permitted assigns. This Lease creates no third party beneficiary rights.

(d) This Lease shall be governed by and construed in accordance with the laws of the State of Hawaii.

(e) LESSOR or LESSEE shall at any time and from time to time within thirty (30) days after receipt of written request therefore from the other party execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the requested party’s knowledge, any uncured defaults on the part of the requesting party hereunder, or specifying such defaults if any are claimed. Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against any bona fide prospective purchaser, subtenant, assignee, or encumbrancer of all or any portion of the Premises or the real property of which the Premises are a part to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser, subtenant, assignee, or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by the other party for which approval by the issuer of the estoppel certificate was required but not sought or obtained.

(f) This Lease may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[The remainder of this page is blank. A signature page follows.]
SIGNATURE PAGE
GENERAL LEASE NO. 284
STATE OF HAWAII, AS LESSOR
AND
TARGET CORPORATION AND SAFEWAY INC., AS TENANTS-IN-COMMON
COVERING HAWAIIAN HOME LANDS
SITUATE AT
TAX MAP KEY NO. (3) 2-2-47:72
PANAWEA, TRACT I AREA
SOUTH HILO, ISLAND OF HAWAII

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

APPROVED BY THE HHC
AT ITS MEETING HELD ON
December 21, 2005

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

ATTEST:

Assistant Secretary
(Corporate Seal)

TARGET CORPORATION, a Minnesota corporation

By 

LESSEE

SAFeway INC., a Delaware corporation

By 

Assistant Vice President

Form Approved

LESSEE

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Mican A. Kane, Chairman
Hawaiian Homes Commission

LESSEe

42

B-386
SIGNATURE PAGE
GENERAL LEASE NO. 284
STATE OF HAWAII, AS LESSOR
AND
TARGET CORPORATION AND SAFEWAY INC., AS TENANTS-IN-COMMON
COVERING HAWAIIAN HOME LANDS
SITUATE AT
TAX MAP KEY NO. (3) 2-2-47:72
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SOUTH HILO, ISLAND OF HAWAII

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December 21, 2005

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

ATTEST:

Assistant Secretary
(Corporate Seal)

ATTEST:

Assistant Secretary
(Corporate Seal)

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By ________________________________
Micah A. Kane, Chairman
Hawaiian Homes Commission
LESSOR

TARGET CORPORATION, a Minnesota corporation

By ________________________________

LESSEE

SAFEWAY INC., a Delaware corporation

By ________________________________
Assistant Vice President
Form Approved

LESSEE
SIGNATURE PAGE
GENERAL LEASE NO. 284
STATE OF HAWAII, AS LESSOR
AND
TARGET CORPORATION AND SAFEWAY INC., AS TENANTS-IN-COMMON
COVERING HAWAIIAN HOME LANDS
SITUATE AT
TAX MAP KEY NO. (3) 2-2-47:72
PANAEWA, TRACT I AREA
SOUTH HILO, ISLAND OF HAWAII

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

APPROVED BY THE HIC
AT ITS MEETING HELD ON
December 21, 2005

APPROVED AS TO FORM:
Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME
LANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

TARGET CORPORATION, a Minnesota
corporation

By
Scott Nelson
Assistant Vice President

SAFEWAY INC., a Delaware corporation

By

Assistant Secretary
(Corporate Seal)

Assistant Secretary
(Corporate Seal)

Form Approved

LESSEE

LESSEE
EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

All that certain parcel of land (being a portion of The Hawaiian Home Land of Panaewa, Tract 1), situate at Waiakea, District of South Hilo, Island and County of Hawaii, being LOT 5-A-1, containing an area of 15.574 acres, more or less, being the consolidation of Lots 1, 2, 3, 5-A and D-2-A, and resubdivision of said consolidation, more commonly designated as Tax Map Key No. (3) 2-2-047-072.
EXHIBIT “C”

RELOCATION OF AKANA PETROLEUM, INC./ STEPS AND SCOPE OF WORK

The land to be ground leased to LESSEES by the Department of Hawaiian Home Lands (DHHL) pursuant to this Ground Lease is referred to herein as Parcel 72. Currently DHHL leases a portion of Parcel 72 to Akana Petroleum (Akana). As a prerequisite to this Ground Lease, DHHL has agreed to relocate Akana from Parcel 72 to adjacent property referred to herein as Parcel 59.

Background

Akana Petroleum has been sold to Big Island Energy (BIE). Akana/BIE currently leases adjacent property (Parcel 59) under a separate lease from DHHL and is operating a business thereon. BIE will relocate the current Akana operation on Parcel 72 to the adjoining Parcel 59 and consolidate their current operations on Parcel 59 with the Akana business being relocated from Parcel 72. DHHL is currently negotiating and documenting the transfer of Akana’s ground lease interest in its portion of Parcel 72, and in Parcel 59, to BIE, the termination of Akana’s/ BIE’s ground lease of Parcel 72, and the relocation to Parcel 59, with the understanding that BIE will, at their own cost, obtain all necessary permits for the relocation to the new Parcel 59 site, relocate selected improvements from Parcel 72 to the new Parcel 59 site, vacate Parcel 72, and deliver up its/Akana’s possession of any and all portions of Parcel 72 to LESSEES, with all of such to be completed by no later than December 31, 2009.

Scope of Work

BIE has represented they will move their existing office building and an existing storage shed from Parcel 72 to a specified location on Parcel 59. (See the site plan attached to this Exhibit C) In addition, existing petroleum storage tanks and equipment currently on Parcel 72 will also be relocated to Parcel 59 by December 31, 2009. DHHL also intends to make available to BIE an adjoining Parcel of 35,000 sf (Parcel 60) for future expansion, however BIE has represented that such Parcel 60 is not necessary to the relocation from Parcel 72 to Parcel 59 and the vacation of all of Parcel 72 by December 31, 2009.

Relocation Process

BIE/Akana has retained an architect and engineer to process the necessary permits for the relocation of the improvements and expects to receive permit approval in October 2009, and otherwise as soon as possible thereafter, and in any event in time to complete the vacation by the required deadline. BIE (and/or Akana) will contract and bear the cost for the relocation of Akana’s/BIE’s office building and storage shed now located on Parcel 72, which BIE and DHHL represents will be completed by December 31, 2009. DHHL agrees with LESSEES that all existing improvements on (or below the surface of) the portion of Parcel leased to or used by Akana/BIE on Parcel 72, including, but not limited to, the office building, trailer, petroleum or other fuel tanks, etc., will be removed from Parcel 72 by December 31, 2009.

EXHIBIT “C”
Page 1 of 3
Responsibilities

DHHL will enable and insure that Akana/BIE complies with vacating Parcel 72 by the end of this year. DHHL will also coordinate with BIE to allow LESSEES access to Parcel 72 for the purpose of continued environmental investigation and testing whenever requested by LESSEES to the extent LESSEES do not interfere with the BIE’s operations.

LESSEES’ sole responsibility regarding such relocation from Parcel 72 to Parcel 59, and vacation of Parcel 72, is limited to reimbursing DHHL for the cost of such relocation and vacation up to the limit set forth in this Lease. These costs shall include, without limitation, the cost of environmental risk assessment undertaken by or on behalf of DHHL and/or Akana/BIE, the cost of certain site utilities if necessary, the cost of removal of improvements and equipment from Parcel 72 as above (including the cost of any relocation thereof), and the cost of any other agreed upon improvements necessary to the Akana/BIE’s relocation.
EXHIBIT "D"

RIGHT-OF-ENTRY NO. 09:0046

STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 879
HONOLULU, HAWAII 96819

LIMITED RIGHT OF ENTRY PERMIT

The DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL), STATE OF HAWAI'I, by its Hawaiian Homes Commission, as PERMITTOR, hereby grants a limited right of entry permit to:

Permittee Names:
TARGET CORPORATION (herein after referred to as "Target"), SAFeway, INC. (herein after referred to as "Safeway") and TETRA TECH EM, INC. (herein after referred to as "Environmental Consultant")

Project Name:
HILo TARGET/SAFeway PROJECT

Contacts:
Target: Attn: Mr. Ryan Zick, Sr.
Safeway: Attn: Mr. Gerry Wolfe
Environmental Consultant: Project Contact: Mr. Scott Tracy

Phone: 612.643.2220
Fax: 612.643.2201

Permittee Addresses:
Target: 33 South Sixth Street, CC-1735, Minneapolis, MN 55402
Safeway: 5918 Stoneridge Mall Road, Pleasanton, CA 94588
Environmental Consultant: 2001 Killebrew Dr., Ste. 141, Bloomington, MN 55420

To engage in the following activity:

"Phase II" environmental site assessment of the subject property that may include (but not be limited to) the following:

1) Field survey of the Property using an EM-61 magnetometer;
2) Excavation of test pits in accessible, exterior areas of the site using a rubber tire backhoe;
3) Collection of soil samples using a direct-push drill in accessible, interior areas of the subject property, as well as near areas where the structural integrity of adjacent property features (e.g., buildings, utilities) may be compromised through the excavation of test pits;
4) Installation of 2-inch diameter monitoring wells in accordance with State of Hawaii monitoring well requirements using a solid stem auger

DHHL Federal ID #99-0266483

LRGZ PERMIT NO. 09:0046

B-394

EXHIBIT "D"
(currently proposed well locations are near the northwest, central, southwest and southeast portions of the subject property); and

5) Survey of asbestos and other regulated materials in existing structures on the subject property.

The following test pits and soil borings are currently anticipated:

1) Four test pits and two soil borings at the bulk fuel storage area in the subject property;
2) Two test pits and one soil boring at the former RAK repair facility area;
3) Two test pits and one soil boring at the American Standard base yard area;
4) Three test pits and two soil borings at the former wood cutting mill area;
5) One test pit and two soil borings at the General Li Service area;
6) Three test trenches along the property boundary shared with Hilo Wood Treating facility (additional soil borings may be completed in this area);
7) One test pit along the property boundary shared with the Akana Petroleum fueling station;
8) One test pit at the Hawaii Forklift service and wash area;
9) One test pit at the former cesspool area;
10) Collection of sediment samples from five dry wells identified on the subject property, and one test boring may be advanced adjacent to one of the dry wells.

On the following date(s), time(s) and location(s):

Date: December 29, 2008 - January 28, 2009 - Thirty (30) days
Time: Activities will occur during daylight hours between 8:00 A.M. - 5:00 P.M. Monday - Friday, including one (1) weekend of the period being Saturday, January 10 & Sunday, January 11. Holidays excluded.
Location(s): Waiakea, South Hilo, Island of Hawaii
Tax Map Key: (3) 2-2-47;72
Fee: $0.00

Special Conditions:

1) PERMITTEES shall be permitted to go on Hawaiian home lands as identified above;

2) The permission granted only limits the entry to PERMITTEES and its sub-consultants for the purpose as stated above and for no other purposes;

DHHL Federal ID #99-0266483

B-395
13.) This permit is NOT TRANSFERABLE

TARGET CORPORATION

By: [Signature]

Environmental Representative

[Signature]

Date: Dec. 24, 2008

SAFENW, INC.

By: [Signature]

Assistant Vice President

By: [Signature]

Assistant Secretary

Date: Dec. 24, 2008

TETRA TECH EM, INC

By: [Signature]

Senior Project Manager

Date

DHHL Federal ID #99-0265483

LROE PERMIT NO. 09:0046

Approved by:

By: [Signature]

For Nahah A. Kane, Chairman

Hawaiian Homes Commission

Date: 1/24/08
3.) The PERMITTEE(S) agree to save, defend, and hold harmless, the State of Hawaii, Department of Hawaiian Home Lands, its agents and employees, against any claim or demand for loss or damage, including claims of personal injury or death to persons, if any, arising out of any accident on the premises covered by this Permit and walkways and roadways adjacent thereto occasioned by any act or omission of the Permittee(s);

4.) The PERMITTEE(S) hereby assume the risk for any injuries that may be sustained in the pursuit of the activity while on the premises and does hereby release, and forever discharge the State of Hawaii, its Department of Hawaiian Home Lands, its agents, officers, and employees, from any and all actions, suits, damages, claims or judgments, that may result from any personal injury the Permittee(s) may sustain while on the premises of the Department of Hawaiian Home Lands while engaged in the activities specified above;

5.) PERMITTEE(S) shall provide PERMITTOR with a Certificate of Insurance naming PERMITTOR as additional insured;

6.) PERMITTEE(S) shall keep the premises neat and clean and shall remove all equipment and litter brought onto the property in conjunction with its activities;

7.) PERMITTEE(S) shall restore, at its own cost and risk, the premises to a condition similar to that which existed prior to the effective date of this permit. In the event PERMITTEE fails to effectuate such restoration of the premises, PERMITTOR reserves the right to accomplish the same by its own employees or by an independent contractor and to assess PERMITTEE the total costs thereof;

8.) PERMITTEE(S) shall not do or commit or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the premises permitted to use under this Permit;

9.) Enforcement of these conditions shall be done by DLNR Enforcement and Conservation Officers and/or Hawaii County Police Department;

10.) PERMITTEE(S) shall exercise due care in dust and noise control;

11.) PERMITTEE(S) shall not interfere with or disrupt the business operations of current general lessee Akana Petroleum, Inc.;

12.) This Permit Agreement and any amendments thereto, may be executed in several counterparts, each of which shall be deemed an original. The signatures may be executed on separate pages, and when attached to each other shall constitute one (1) complete document. Signatures delivered by electronic means (e.g., facsimile and e-mail) shall be considered original signatures for all purposes. The signatures may be executed on separate pages, and when attached to each other shall constitute one (1) complete document; and

DHHL Federal ID #99-0266483

LAGE PERMIT NO. 09:0046

B-397
I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax, deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/liability insurance policies.
SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.

RETURN OF INVESTMENT
Return of general LESSEE’s cost of improvements over the Term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

INDICATED ADDITIONAL RENT
Line 5 (Annual income attributable to land) less Line 6 (Allocated Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

ADDITIONAL RENT PAYABLE TO DHBL
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

SUBLEASING OF VACANT (“RAW”) LAND ONLY
(No subleasing of building space)

CROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

EXHIBIT “G”
Page 2 of 5
Line 2: LESS 4% GENERAL EXCISE TAX
       State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
       Gross annual sublease rent less State G.E. Tax.

Line 4: ALLOCATED ANNUAL BASE LEASE RENT
       The ratio of the subleased area to the total area of the leasehold
       premises multiplied by the base lease rent of the general lease to
       indicate the rent paid by a general lessee for the subleased area.

Line 5: INDICATED ANNUAL ADDITIONAL RENT
       Line 3 minus Line 4, but not less than zero.

Line 6: ADDITIONAL ANNUAL RENT PAYABLE TO DHHL
       Fifty percent (50%) of Line 5 equals Sublease Rent Participation
       Amount.

EXHIBIT “G”
Page 3 of 5
B-409
SUBLEASE RENT PARTICIPATION

WORKSHEET

I. SUBLEASING OF BUILDING SPACE:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (________)
Line 3: EQUALS Effective Annual Sublease Rent $_______
Line 4: Less Allowances:
   a. Management, Credit Loss $_______
   b. Repair and Maintenance $_______
   c. Real Property Taxes $_______
   d. Insurance Premiums $_______
   e. Surety Bond Premium $_______
   f. Return OF Investment $_______
   g. Return – Investment $_______
Line 5: EQUALS Annual Income Attributable to Land $_______
Line 6: Less Allocated Annual Base Lease Rent $_______
Line 7: EQUALS Indicated Additional Annual Rent $_______
   TIMES 50% X 0.50
Line 8: EQUALS Additional Annual Rent Payable to DHHL $_______

II. SUBLEASING OF VACANT (“RAW”) LAND ONLY:

Line 1: Gross Annual Sublease Rent $_______
Line 2: Less 4% General Excise Tax (________)
Line 3: EQUALS Effective Annual Sublease Rent $_______

EXHIBIT “G”
Page 4 of 5

B-410
HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease: $8,000

Effective Annual Sublease Rent: $3,000

Total Land Area of Leasehold Premises: 24,000 sq. ft.

Subleased Land Area: 6,000 sq. ft.

RATIO: \[ \frac{6}{24} = 0.25 \times \$8,000 = \$2,000 \] Allocated Annual Base Lease Rent

Effective Annual Sublease Rent: $3,000

Allocated Annual Base Lease Rent: $2,000

Indicated Additional Rent: $1,000

Times 50% \[ \times 0.50 \]

SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL $500
EXHIBIT "H"

EXCLUSIVE USE PROVISIONS

or at such other address as may be specified from time to time in writing by either party. All
such notices hereunder shall be deemed to have been given on the date personally delivered or
the date marked on the return receipt, unless delivery is refused or cannot be made, in which case
the date of postmark shall be deemed the date notice has been given.

16. **Use Restrictions.** As material consideration to LESSEE to enter into this Lease
LESSOR covenants, warrants and represents to LESSEE that LESSOR will not hereafter lease
any land or space within one and one half (1.5) miles of the Premises to, or allow the use of any
such leased space by, any tenant or user whose principal business is a home improvement center,
lumber yard or hardware store.

17. **Definitions.** As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes
Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her
successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used
herein shall include any substance, waste or material designated as hazardous or toxic or
radioactive or other similar term by any present or future federal, state or local statute, regulation
or ordinance, as amended from time to time, including but not limited to the following statutes
and regulations promulgated pursuant to them ("Hazardous Materials Laws"):

  ("RCRA")
- Comprehensive Environmental Response, Compensation, and Liability Act of
  1980 ("CERCLA") amended by Superfund Amendments and Reauthorization Act
  of 1986 ("SARA"), 42 U.S.C. 9601 et seq.
- Clean Air Act, 42 U.S.C. Sections 7401 et seq.
- Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
- Chapter 128D, Hawaii Revised Statutes
- Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos,
 polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance
designated by federal, state or local regulation, now or in the future, as presenting a risk to
human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or
possessor of a security interest in the Premises and who has filed with the Department of
Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this
interest.
EXHIBIT “I”

SHORT FORM LEASE

LAND COURT          REGULAR SYSTEM

RETURN BY ( ) MAIL ( ) PICK-UP
Ashford & Wriston
Cuyler Shaw
P. O. Box 131
Honolulu, Hawaii 96810
539-0400

TMK No.: (3) 2-2-47: 72
This document contains ___ pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of ___ ___ ___ ___ 2009 by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and TARGET CORPORATION, a Minnesota corporation, ("Target") and SAFEWAY INC., a Delaware corporation ("Safeway"), each as a tenant-in-common (each of Target and Safeway being individually hereinafter called “LESSEE.” And collectively hereinafter called “LESSEES”. Target’s principal place of business and mailing address is 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Safeway’s principal place of business and mailing address is 5918 Stoneridge Mall Road, Pleasanton, CA 94588-3229. Target and Safeway have, as of the date hereof, entered into a Tenancy-in-Common Agreement (the “TIC Agreement”) that, among other things, establishes the Target Tract and Safeway Tract
defined below and provides that Target holds an undivided sixty-seven and twenty-five hundredths percent (67.25%) interest in the Lease and the Premises and Safeway holds an undivided thirty-two and seventy-five hundredths percent (32.75%) interest therein.

1. **TERM AND PREMISES.** For a lease term commencing on _____________, and ending as of midnight on _____________, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEES as tenants-in-common ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at Panaewa, Tract I Area, Waiakea, South Hilo, Island of Hawaii, Hawaii, comprising 15.574 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for any lawful purposes permitted by the zoning then applicable to the Premises or portion thereof in which the use is to take place.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

[The remainder of this page is blank. A signature page follows.]
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

ATTEST:

Assistant Secretary
(Corporate Seal)

State of Hawaii
DEPARTMENT OF HAWAIIAN HOMELANDS

By
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

TARGET CORPORATION, a Minnesota corporation

By

LESSEE

SAFEWAY INC., a Delaware corporation

By
Assistant Vice President

Form Approved

LESSEE

EXHIBIT "I"
Page 3 of 7

B-415
EXHIBIT “A”

All that certain parcel of land (being a portion of The Hawaiian Home Land of Panaewa, Tract 1), situate at Waiakea, District of South Hilo, Island and County of Hawaii, being LOT 5-A-1, containing an area of 15.574 acres, more or less, being the consolidation of Lots 1, 2, 3, 5-A and D-2-A, and resubdivision of said consolidation, more commonly designated as Tax Map Key No. (3) 2-2-047-072.
On this ____ day of ____________________, 2009, before me appeared MICAH A. KANE, to me personally known, who, being by me duly sworn or affirmed did say that did say that such person is the Chairman for the State of Hawaii, by and through its Department of Hawaiian Home Lands, and such person executed the foregoing instrument on behalf of said Department as the free act and deed of such person and in the capacity shown having been authorized to execute such instrument in such capacity.

________________________________________
Print or Type Name __________________________

Notary Public, State of Hawaii

My Commission expires: ______________________

EXHIBIT “I”
Page 5 of 7
STATE OF ________________________

COUNTY OF ________________________

On this ____ day of ________________________, 2009, before me appeared ________________________, to me personally known, who, being by me duly sworn or affirmed did say that did say that such person is the ____________ for TARGET CORPORATION, a Minnesota corporation, and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacity shown having been authorized to execute such instrument in such capacity.

________________________________________
Print or Type Name ____________________________

Notary Public, State of Hawaii

My Commission expires: __________________________

EXHIBIT "I"
STATE OF _____________________ )
COUNTY OF __________________ ) SS.

On this ___ day of _____________, 2009, before me appeared ____________________________, to me personally known, who, being by me duly sworn or affirmed did say that such person is the _______________________ for SAFEWAY, INC., a Delaware corporation, and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacity shown having been authorized to execute such instrument in such capacity.

______________________________
Print or Type Name _______________________

Notary Public, State of Hawaii

My Commission expires: ______________________

EXHIBIT “I”
THIS INDENTURE OF LEASE (the “Lease”), is made and effective as of the 1st day of October, 2011, but shall be effective on the date set forth below, by and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and KALAELOA HOME LANDS SOLAR, LLC, a Delaware limited liability company, whose business and mailing address is 4301 N. Fairfax Drive, Suite 320, Arlington, VA 22203, hereinafter called “LESSEE.”

WITNESSETH:

WHEREAS, LESSOR, pursuant to the authority granted to it by Section 204 (a) (2) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), is authorized to grant leases for the use of Hawaiian home lands for public purposes;

WHEREAS, LESSOR, pursuant to Chapter 171-95 of the Hawaii Revised Statutes, is authorized to dispose of its lands to renewable energy producers without public auction through direct negotiation;

WHEREAS, on January 27, 2009, the Hawaiian Homes Commission approved LESSOR’s Energy Policy, entitled Ho’omaluhia, to enable native Hawaiians and the broader community working together to lead Hawaii’s effort to achieve energy self-sufficiency and sustainability;

WHEREAS, the Hawaiian Homes Commission at its meeting of June 22, 2010 also approved the issuance of a General Lease to Kalaeloa Home Lands Solar, LLC for the development, operation, management and maintenance of a solar power production facility to produce energy to be sold to Hawaiian Electric Company (HECO);

WHEREAS, the premises, is a 29.853 acre unencumbered parcel; and

WHEREAS, LESSOR has determined that the lease established herein is essential for the development, operation, management and maintenance of a renewable energy production facility.

NOW, THEREFORE, LESSOR, in consideration of the rent to be paid and the terms, covenants and conditions herein contained to be kept, observed and performed on the part of LESSEE, its successors and approved assigns, hereby grants and conveys unto LESSEE:
ARTICLE ONE
DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kalaeloa, Island of Oahu, Hawaii, comprising 29.853 acres, more or less, of Hawaiian Home Lands, referred to as Lot 13069-A, more particularly identified as Tax Map Key No. 1) 9-1-13:29, and described in Exhibit “A” and as shown on the map marked Exhibit “B”, attached hereto and made a part hereof ("Premises").

2. Processing and Documentation. LESSEE shall pay a non-refundable processing and documentation fee totaling $275.00 prior to issuance of the Lease.

3. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on the Effective Date, and ending as of midnight on September 30, 2033, unless sooner terminated as hereinafter provided.

4. Community Benefits. LESSEE agrees to invest in LESSOR’s future housing program fund as set forth and described in Special Condition A of Exhibit “D”, attached hereto and incorporated herein by reference.

5. Purpose of Lease. This Lease is for the following purposes (collectively, “Development Activities”):

(a) Determining the feasibility of solar energy conversion on the Premises, including, without limitation, studies of the Premises;

(b) Converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted;

(c) Constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing and operating, the following: (i) solar panels, solar energy conversion systems and solar generation facilities, as well as power generation facilities to be operated in conjunction with solar energy installations, in each case of any type or technology (collectively, “Generating Units”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution and collector lines, wires and cables, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, substations, interconnection and/or switching facilities, circuit breakers and transformers, and energy storage facilities, whether for the benefit of one or more Projects (as that term is defined below) or for the benefit of electrical generating projects on other lands (collectively, “Transmission Facilities”); (iii) overhead and underground control, communications and radio relay systems and telecommunications equipment, whether for the benefit of one or more Projects or for the benefit of electrical generating projects on other lands.
(collectively, “Communications Facilities”); (iv) roads and erosion control facilities; (v) water wells, pipelines and pumping facilities; (vi) control, maintenance and administration buildings, including, without limitation, buildings that benefit electrical generating projects on other lands; (vii) utility installations; (viii) safety protection facilities; (viii) laydown areas and maintenance yards; (ix) signs; (x) fences and other safety facilities; and (xi) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing (all of the foregoing, including the Generating Units, Transmission Facilities, and Communications Facilities, collectively, “Solar Facilities”);

(d) Ingress and egress to and from Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) on, over and across the Premises by means of roads and lanes thereon if existing, or otherwise by such route or routes as LESSEE or anyone else may construct from time to time, whether for the benefit of one or more Projects or for the benefit of electrical generating projects on other lands (collectively, “Access Rights”);

(e) Drilling, redrilling, maintaining, repairing, using, operating, improving, replacing, relocating, plugging and abandoning water wells, pipelines and pumps, and pumping and using water as needed in connection with Development Activities; and

(f) Undertaking any other activities that LESSEE or a Transferee (as defined below) determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes. Without limiting the generality of the foregoing, LESSOR and LESSEE (together, the “Parties” and each a “Party”) recognize that power generation technologies are improving at a rapid rate and that LESSEE or a Transferee may (but shall not be required to) from time to time replace existing Generating Units on the Premises with newer model (and potentially larger) Generating Units.

ARTICLE TWO
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This
provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, or the protection or removal of such sites or remains.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or
matters reserved to LESSOR under this Lease, then and in any such event, LESSOR and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE’s permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE’s reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

Commencing on the earlier of April 1, 2013 or the date LESSEE begins construction of its Solar Facilities (unless LESSEE elects to terminate prior to such date by notice to LESSOR due to the failure to execute and receive necessary approvals for a power purchase agreement) (“Rent Commencement Date”), LESSOR shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided herein below, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. **Annual Base Rental.** Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date, which is defined in Special Condition D of Exhibit “D”, attached hereto and incorporated herein by reference, by LESSEE to LESSOR at LESSOR’s principal place of business first described above, in legal tender of the United States of America, as follows:
Lease years 1 through 10: THREE HUNDRED and TWO THOUSAND SEVEN HUNDRED and SIXTY DOLLARS ($302,760) per annum ($25,230) per month, from and after the Rent Commencement Date only;

Lease years 11 through 15: THREE HUNDRED and SEVENTY-EIGHT THOUSAND FOUR HUNDRED and FIFTY DOLLARS ($378,450) per annum ($31,538 per month);

Lease years 16 through 20: FOUR HUNDRED and TWENTY-FIVE THOUSAND SEVEN HUNDRED and FIFTY-SIX DOLLARS ($425,756) per annum ($35,480 per month); and

The Chairman of the Hawaiian Homes Commission (Chairman) shall be authorized to extend the term of the Lease for an additional (5) five year term for good cause to be shown by LESSEE or as agreed to through negotiations with LESSEE.

LESSOR holds LESSEE’s good faith deposit in the amount of SEVENTY-FIVE THOUSAND DOLLARS ($75,000). This amount will be applied to pay the first rents coming due from LESSEE under the Lease. LESSEE will forfeit the deposit to LESSOR if it terminates the Lease before the Rent Commencement Date.

ARTICLE FOUR

THE PARTIES HEREin COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or
proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. **Utility Services.** LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements. Sandwich Isles Communications, Inc. shall provide telephone and broadband service to the Premises if such services are required or requested by LESSEE.

4. **Improvements Required by Law.** LESSEE will, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. **Observance of Laws.** LESSEE will at all times during the term of this Lease keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and will defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. **Inspection of Premises.** Upon reasonable notice, LESSEE will permit LESSOR and its agents or employees at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE will repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents or employees within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE will pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.
7. Improvements.

(a) Governmental Approvals and Permits. Before commencing any construction of buildings, Solar Facilities or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) Construction of Improvements. LESSEE will not construct or place on the Premises any buildings, Solar Facilities or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifty Thousand Dollars ($50,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except in accordance with plans and specifications, including a detailed plot plan, which shall be prepared by a licensed architect and/or engineer as appropriate for the type of improvement placed or constructed on the Premises, first submitted by LESSEE and approved in writing by LESSOR. In connection with any request for approval of plans by LESSEE, LESSOR may, but shall not be obligated to, within 45 days of the date of the initial submission of the LESSEE’s plans to LESSOR, retain the services of an architect and/or engineer, and the reasonable fees of such architect and/or engineer shall be the responsibility of LESSOR. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications therefor are not acceptable to the architect or engineer (if any) retained by LESSOR to review the same. LESSOR’s approval of any plans or suggestions for the revision thereof shall not be construed to be an agreement or representation on LESSOR’s part of adequacy or suitability for their intended purpose, of the alterations, additions and improvements shown or their compliance with applicable building codes or other governmental requirements.

(c) Bond and Financial Information. LESSEE will before commencing construction of any Solar Facilities or other improvements within the Premises in excess of FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) deposit with LESSOR either: (i) copies of a contractor’s performance bond and a labor and materials payment bond naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics’ and materialmen’s liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR’s reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanics’ and materialmen’s liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall
also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

(d) Compliance with the Americans with Disabilities Act of 1990.

(i) Applicable Laws. LESSOR shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42 U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called “Public Accommodations Laws”).

(ii) Responsibility for Compliance. Notwithstanding LESSOR’s review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSOR and not LESSOR shall be responsible for the compliance of such drawings and specifications with all Public Accommodations Laws. LESSOR shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSOR’s alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR’s investigation and handling (including the defense) or LESSEE’s failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’s ownership of the Premises; and (D) LESSOR’s enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall at its own expense, keep, repair and maintain all buildings, Solar Facilities and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.
9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold, provided that LESSEE may, without LESSOR’s consent, assign this Lease to an affiliate, a wholly-owned subsidiary or a successor of LESSEE. Any assignment, other than to an affiliate, subsidiary or successor, without LESSOR’s prior express written consent, shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of LESSOR’s lands.

(d) No Change of Use. No assignment will be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(c) LESSOR’s Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) “Assignment” Defined. The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;
(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof;

shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to be an assignment and shall require LESSOR’s consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises.

11. Liens. LESSOR will not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises will be used only for the following purposes: The development, operation, management and maintenance of a solar power production facility. Specifically, to construct solar thermal panels (collectors), a thermal storage system and a “power block” that generates alternating electrical current to be fed into the Hawaiian Electric
Company (HECO) grid, as well as other facilities to be used in conjunction therewith. In no event shall the Premises be used for the construction of any residential lots, units or project.

13. **Indemnity.**

(a) LESSEE will indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE will reimburse LESSOR for all of LESSOR’s costs and expenses, including reasonable attorneys’ fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and will hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys’ fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE’s obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. **Costs of Litigation.** In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. **Insurance.** At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Liability Insurance.**

(i) **Commercial General Liability Insurance.** Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an
“occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of LESSEE including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) **Limits.** Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit — $1,000,000 per occurrence, subject to $2,000,000 general aggregate per policy year; and Medical Expense — $5,000 each injury.

(2) **Deductible.** Except with LESSOR’s prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation and Employers’ Liability insurance as required by Hawaii Revised Statutes Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) **Business Auto Policy.** Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- $1,000,000 each person and $1,000,000 each accident; Property Damage -- $1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(b) **Umbrella Liability.** Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $2,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(c) **General Policy Terms.** LESSEE shall provide LESSOR at least thirty (30) days written notice on any changes, cancellations or non-renewal of all policies of insurance required to be maintained pursuant to this section. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.
(d) **Periodic Review of Insurance Coverage.** LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. **Landscaping.** LESSEE shall, at all times during the term of this Lease, landscape the open areas of the premises and shall keep and maintain the premises and any and all improvements, including all portions thereof, and any and all equipment and personal properties of LESSEE upon the premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the premises. All shrubbery and overgrowth within the Premises shall be kept neatly trimmed.

17. **Surrender.** At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR’s satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by
LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE will, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2x) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE’s obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination of this Lease.

18. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR’s standard fees for commercial tenants for LESSOR’s processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

19. Hazardous Materials. LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. However, this Section 19 of Article Four does not require the LESSEE to conduct any environmental investigation or to account for any unknown and undiscovered Hazardous Materials that are present on, about or under the Premises prior to the commencement of this Lease or any pre-existing and unknown condition not caused by the LESSEE or the Development Activities.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE’s discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws. In the event that Hazardous Materials, not caused by the LESSEE, are encountered or discovered on, about or under the Premises during LESSOR’s Development Activities that affects the ownership, occupancy, transferability or use of the Premises, LESSOR has the option of terminating this Lease upon thirty (30) days notice to the LESSOR or may elect to remediate or remove the Hazardous Materials as hereinafter provided. In the event LESSEE elects to remediate or remove the Hazardous Materials, LESSOR shall
provide LESSEE with an equitable adjustment of the rental payable hereunder commensurate with the LESSEE's costs in remediating or removing the Hazardous Materials.

LESSEE shall cause any Hazardous Materials for which it is responsible hereunder on, about or under the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE's past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE's possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE's interest in the Premises.

20. Underground Storage Tank (UST). LESSOR shall not, without LESSOR's prior written consent, install on, upon or under the Premises any UST, which is defined as any tank, including underground piping connected to the tank that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical.
21. **Non-warranty.** LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, sold, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, sale, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

**ARTICLE FIVE**

**IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

1. **Mortgage.** Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in this Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:
(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under this Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under this Lease; and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE: provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate this Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise); and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by
LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and or trustee in bankruptcy to obtain:

(i) An extension of the period during which this Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of this Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

(g) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in this Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of this Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of this Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSER’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of this Lease, with its original validity and priority, in favor of the
Mortgagee or its designee (hereinafter called the “Confirmation of Lease’”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under this Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of this Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of this Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign this Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under this Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under this Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Lease shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to this Lease.

2. Breach. Time is of the essence of this Lease and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to this Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the
time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in this Lease on LESSEE’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the
mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redisse...the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any redisposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon redisposition which exceeds the fair market lease value of the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSOR from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. The event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSOR shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and its agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises. LESSOR, for its agents and representative exercising this right of entry to the Premises, understands and agrees that it shall comply with all safety and health standards imposed by LESSEE for such access.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person
or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. **Payment or Acceptance of Rent Not a Waiver.** The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. **Extension of Time.** Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. **Quiet Enjoyment.** LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of this Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. **Interest, Costs and Fees.** The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. **Hawaii Law/Filing.** This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in
substantially the form of Exhibit “C” attached hereto. Each party shall have the right to enforce the terms and conditions of this Lease in a Court in the State of Hawaii with jurisdiction to hear and resolve the dispute between the parties arising from this Lease.

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

Kalaeloa Home Lands Solar, LLC
c/o AES Solar Energy Ltd.
4301 N. Fairfax Drive, Suite 320
Arlington, Virginia 22203
Attention: Ms. Patty Rollin

And a copy to:

AES Solar Energy LLC
1005D Kailua Road
Kailua, Hawaii 96734
Attention: Ms. Jody Allione

If to LESSOR:

Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attention: Land Management Division

And a copy to:

Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Attention: AG PSHH

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.
(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) “LESSOR” shall mean and include LESSOR herein, its successors or assigns.

(e) “LESSEE” shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The “Premises” shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
15. **Special Conditions.** The Special Conditions of this Lease (the “Special Conditions”) are described in Exhibit "D" attached hereto and shall be considered an integral part of this Lease. References in the Special Conditions to sections of this Lease and other Exhibits are for convenience and designate some of the Exhibits and other sections where Special Conditions are discussed. Each reference in this Lease to any of the Special Conditions shall be construed to incorporate all the terms under each such Special Condition. In the event of a conflict between any Special Condition and the balance of this Lease, the Special Condition shall control. Where possible, however, the provisions of this Lease shall be interpreted with the purpose of effectuating all provisions of both the Special Conditions and the remaining sections of this Lease.

16. ** Entire Agreement; Amendments.** This Lease, including the Special Conditions set out in Exhibit "D" and the other Exhibits attached hereto, contains the entire agreement between the LESSOR and LESSEE in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. This Lease shall not be modified or amended except in a writing signed by both the LESSOR and the LESSEE, and no purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication. shall be binding on either party. The parties shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes and intent of this Lease.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
June 22, 2010

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Albert T. Nahale-a
Chairman
Hawaiian Homes Commission
LESSEE

KALAELOA HOME LANDS SOLAR, LLC,
a Delaware limited liability company

By
Patricia L. Roelin
Vice President
LESSEE
EXHIBIT "A"
INTENTIONALLY LEFT BLANK
TO BE REPLACED BY
LEGAL DESCRIPTION OF PREMISES
EXHIBIT “B”

INTENTIONALLY LEFT BLANK

TO BE REPLACED BY

SURVEY MAP
EXHIBIT “C”

MEMORANDUM OF LEASE

LAND COURT
REGULAR SYSTEM
RETURN BY (X) MAIL ( ) PICK-UP

TMK No.: (1) 9-1-13:29

This document contains ___ pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is made and entered into as of October 1, 2011, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and KALAELOA HOME LANDS SOLAR, LLC, a Delaware limited liability company, whose business and mailing address is 4301 N. Fairfax Drive, Suite 320, Arlington, VA 22203, hereinafter called “LESSEE.

1. TERM AND PREMISES. For a lease term commencing on October 1, 2011, and ending as of midnight on September 30, 2033, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE (“Lease”), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property (“Premises”) located at Kalaeloa, Island of Oahu, Hawaii, Tax Map Key No. (1) 9-1-13:29, comprising approximately 29.853 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit “A”, together with all rights of ingress and egress and all
other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for the development, operation, management and maintenance of a solar power production facility.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
June 22, 2010

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By [Signature]
Albert “Alapaki” Nahale-a, Chairman
Hawaiian Homes Commission

LESSOR

KALAELOA HOME LANDS SOLAR, LLC,
a Delaware limited liability company

By [Signature]
its Vice President,
Patricia L. Rollin

LESSEE
STATE OF VIRGINIA  
COUNTY OF ARLINGTON  

On this 21st day of OCTOBER, 2011, before me appeared PATRICIA LYNN MULLIN, to me personally known, who, being by me duly sworn or affirmed did say that he/she is the Vice President for KALAELOA網路 CARDS SOLUTIONS, a LLC company and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

Print or Type Name: PATRICIA LYNN MULLIN
Notary Public, State of VIRGINIA
My Commission expires: 08.31.2014

NOTARY CERTIFICATION STATEMENT
Document Identification or Description: # OLIVES LICENSE  
# T65988368

Doc. Date: X or Undated at time of notarization.
No. of Pages: 35
Jurisdiction: Circuit
(in which notarial act is performed)

ANDREA C RETAMOSO  10.21.2011
Signature of Notary  Date of Notarization and Certification Statement

Printed Name of Notary

ANDREA C. RETAMOSO

B-452
General Lease No. 294
SPECIAL CONDITIONS

SPECIAL CONDITIONS OF THIS LEASE. The following Special Conditions of this Lease (the "Special Conditions") are an integral part of this Lease. References in the Special Conditions to Exhibits and other sections are for convenience and designate some of the Exhibits and other sections where Special Conditions are discussed. Each reference in this Lease to any of the Special Conditions shall be construed to incorporate all the terms under each such Special Condition. In the event of a conflict between any Special Condition and the balance of this Lease, the Special Condition shall control. Where possible, however, the provisions of this Lease shall be interpreted with the purpose of effectuating all provisions of both the Special Conditions and the remaining terms of conditions of this Lease.

A. LESSEE SUPPORT OF FUTURE DHHL HOUSING PROGRAM. Consistent with the provisions of Section 4 of Article One of this Lease, LESSEE agrees to invest 1% of its gross annual revenue to fund LESSOR’s future housing program.

B. ENVIRONMENTAL ASSESSMENT, HRS CHAPTER 343. LESSEE agrees that the Development Activities conducted on the Premises and described in Section 4 of Article One of this Lease shall comply and be subject to Chapter 343, Hawaii Revised Statutes (HRS), however, it is not expected to cause major impacts on the environment or surrounding community and therefore a Finding of No Significant Impact (FONSI) is anticipated subject to the review and acceptance of the Hawaiian Homes Commission.

C. KALAELOA EASEMENT NO. 6780. Consistent with the Purposes of Lease described in Section 5 of Article One of this Lease, LESSOR agrees that certain Easement “6780”, affecting Lot 13069-A (the Premises), under Land Court Document No. 2557263 for avigation purposes, which is depicted on Map 968 of the area within which the Premises are located, will not constrain or limit the Development Activities undertaken by LESSEE as determined by the Federal Aviation Administration in Aeronautical Study No. 2011-AWP-814-OE, dated March 8, 2011.

D. RENT COMMENCEMENT DATE. The Rent Commencement Date is defined in Article Three of this Lease.
STATE OF HAWAII  
)  
CITY & COUNTY OF HONOLULU  
)

On this 11th day of October, 2011, before me appeared ALBERT "ALAPAKI" NAHALE-A, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

ABIGAIL L. TUBERA
Printed Name: ABIGAIL L. TUBERA
My commission expires: 11/1/2012

NOTARY CERTIFICATION STATEMENT
Document Identification or Description: Exhibit "C": Memorandum of lease between Ohite & Kailua Home Lands, LLC
Doc. Date: 10/1/11 or □ Undated at time of notarization.
No. of Pages: 6
Jurisdiction: 1st Circuit (in which notarial act is performed)

Signature of Notary
Date of Notarization and Certification Statement

ABIGAIL L. TUBERA
Printed Name of Notary
The original of this document was recorded as follows:

**DOCUMENT NO.** 2879817

**DATE** JAN 19 2008 ME. 8:02

New CT: 633,738

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By Mail (X) Pick Up ( )

TO: General Services Administration
   Property Disposal Division (9PR)
   Attn: Alfonso C. Mendez
   450 Golden Gate Avenue 4East
   San Francisco, CA 94102-3434

Department of Hawaiian Home Lands
State of Hawaii
Attn: Mr. Raynard C. Soon
Chairman, Hawaiian Homes Commission
P.O. Box 1879
Honolulu, HI 96805

Tax Map Key No: 9-1-13:27, 29, 40, 48, 61, and portion of 9
Total Pages: 17

QUITCLAIM DEED
QUITCLAIM DEED
Barbers Point

THIS INDENTURE, made this 30th day of December, 2002, by and between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior (hereinafter referred to as "GRANTOR"); under and pursuant to the powers and authority contained in the provisions of the Hawaiian Home Lands Recovery Act, Public Law 104-42 (1995), and the DEPARTMENT of HAWAIIAN HOME LANDS of the STATE of HAWAII (hereinafter referred to as "GRANTEE").

WITNESSETH, that the said GRANTOR, for valuable consideration, the receipt of which is hereby acknowledged, by these presents does remise, release and quitclaim unto the said GRANTEE, its successors and assigns all of its right, title, and interest in that certain real property and improvements located thereon, situated at Barbers Point, City and County of Honolulu, State of Hawaii, as more particularly described on the attached Exhibits "A", "A-1", "A-2", and "A-3" (the "Property").

THE CONVEYANCE IS SUBJECT TO THE FOLLOWING:

ALL covenants, reservations, easements, restrictions, and rights, recorded or unrecorded, for public roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and other rights-of-way, including but not limited to the specific easements, reservations, rights and covenants described herein, and to any facts which a physical inspection or accurate survey of the property may disclose.

EXCEPTING AND RESERVING, HOWEVER, unto the GRANTOR, all of the following utility facilities, easements, rights-of-way and other rights and entitlements.

1. Those certain existing water transmission facilities located above and below the Property, that are utilized to provide water service for lots other than the Property, the location of said existing water transmission facilities being within the following easements:

   a. Easement 7095, as shown on Map 1027, as set forth in Land Court Order No. 139073, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.

   b. Easements 7489 and 7490, as shown on Map 1073, as set forth in Land Court Order No. 142228, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.

   c. Easements 7427, 7429, 7430, 7436, and 7443, as shown on Map 1069, as set forth in Land Court Order No. 142224, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.
Together with perpetual easements and rights of way over, across, under, and through said Easements 7489, 7490, 7095, 7427, 7429, 7430, 7436, and 7443 for the operation, maintenance, repair, replacement, upgrade and removal of all water transmission facilities not conveyed hereunder (hereinafter referred to collectively as the "existing water facilities"); and further reserving to the GRANTOR the right to transfer such easements upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following conditions:

Such transfer documents for the conveyance of existing water transmission facilities shall include the following terms and conditions:

In the event the easement areas shall be abandoned or shall remain unused for the construction, excavation, repair, maintenance, alteration, operation or use of the water transmission facilities for a continuous period of one year, the easement rights shall terminate, and the easement holder shall remove any existing water meters, fire hydrants, and all other above ground structures and appurtenances that were installed within the easement area and restore the easement area as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, provided however, nothing herein contained shall require the easement holder to remove any underground pipeline and appurtenances located within the easement area, provided further that the easement holder caps any cut piping ends with concrete; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted in the easement document constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent and if the easement holder does not respond within 45 calendar days of fee owner's notification of proposed relocation, consent to the relocation shall be deemed to have been given by the easement holder. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area including costs to mitigate negative impacts to the utility and its customers.

2. Those certain existing wastewater transmission and control facilities located within the Property, that are utilized to provide wastewater service for lots other than the Property, the location of said existing wastewater facilities being within Easements 7095 and 7108, as shown on Map 1027, as set forth in Land Court Order No. 139073, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; together with perpetual easements and rights of way over, across, under, and through said Easements 7095 and 7109 for the operation, maintenance, repair, replacement, upgrade and removal of all wastewater facilities herein reserved (hereinafter referred to collectively as the "existing wastewater facilities"); and further reserving to the GRANTOR the right to transfer such easements upon notice to, but without requirement for
joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following conditions:

Such transfer documents for the conveyance of wastewater transmission and control facilities shall include the following terms and conditions:

In the event the easement holder shall at any time completely remove its sewer pipe line or pipe lines or related appurtenances from any parcel or parcels of land comprising the easement area and shall, for a period of two (2) or more consecutive years, fail to reinstall any sewer pipe line or appurtenances over, across, under and through such parcel or parcels, then the rights granted in the easement document and the obligations therein imposed shall terminate as to such parcel or parcels of land without any actions on the part of the easement holder or the fee owner of the easement area, save and except that nothing contained in the easement document shall be deemed to be an abandonment of the rights and obligations insofar as they affect other parcels of land within the easement area which have not been abandoned; provided, however, that upon such abandonment, nothing contained in the easement document shall require the easement holder to remove there from any structure or equipment constructed or placed within the easement area, provided further that the easement holder caps, grouts or otherwise makes safe any underground pipeline and appurtenances not removed; and

If the fee owner of the easement area determines that the continued exercise of the easement rights constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the fee owner of the easement area to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as contained in the easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area. Relocation costs to be borne by the fee owner include, but are not limited to, engineering studies, design, construction, inspection, administration and management of the project and contracts, costs of clean-up and plugging of relocated utilities, costs associated with preserving line capacity and service to utility customers, and costs to mitigate negative impacts to the utility and its customers. Plans for relocation shall be submitted to the owner of the utility for review and consent. The utility owner's consent shall be obtained prior to the start of relocation work, or termination of existing easements.

3. Those certain electrical transformers (excluding transformer pads, buildings and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and such other appliances and equipment located within the Property, providing service to the GRANTEE, which extend from the boundaries of the Property up to the appropriate electrical metering point of each building located on the Property, as said "metering point" is defined in the Hawaiian Electric Company, Inc. ("HECO") "Electric Service Installation Manual" effective on the date of this conveyance and regardless of whether or not those meters have actually been installed; together with perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair,
replacement, upgrade and/or removal of such electric utility facilities. GRANTOR reserves the right to transfer said perpetual easements and rights-of-way to HECO or any other entity, upon notice to but without requirement for joinder or consent of GRANTEE, provided that the following provisions are included in the transfer document:

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as those contained in the transfer of easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee holder of the easement area, including costs to mitigate negative impacts to the utility and its customers; and

Upon subdivision or development of the land over which the granted easement crosses, to the extent that said easement only serves Grantee's property, Grantee reserves the right to require the easement holder to remove its electrical transformers (excluding transformer pads, buildings and fencing) and its overhead lines and surface appliances and equipment and restore the Property as nearly as is reasonably possible to the condition existing immediately prior to the removal of said equipment, the Grantee hereby consenting to such removal and agreeing that the easement holder's underground lines, appliances and equipment may be abandoned in place. In the event of such removal and abandonment of said easement, or any portion thereof, the easement holder will at its own expense prepare, execute and record an appropriate instrument evidencing such abandonment.

4. Those certain existing electrical transformers (excluding transformer pads, buildings and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and other appliances and equipment located within the Property that are utilized to provide electrical service for lots other than the Property, (hereinafter referred to collectively as "existing electric utility facilities"), the locations of which are approximately shown on HECO Drawing No. C4631, dated July 7, 1999, entitled "Barbers Point NAS Electrical Easements, Quads 1 through 11, 46KV, 12KV & 4KV Lines", and HECO Drawing Nos. C4630 (Rev. 1), C4633 (Rev. 1), C4636 (Rev. 1), and C4637 (Rev. 2), dated June 25, 2002, entitled "Barbers Point NAS Electrical Easements Quads 1 through 11, 46KV, 12KV & 4KV Lines", all on file at HECO's office at 900 Richards Street, Honolulu, Hawaii 96813, and identified as "Easements for Existing Electrical Facilities" on said HECO drawings; together with perpetual easements and rights of way over, across, under, and through the Property, for the operation, maintenance, repair, replacement, upgrade and/or removal of said existing electric utility facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, including HECO, the right to survey the Property areas beneath said existing electric utility facilities as may be considered by GRANTOR to be necessary for the transmission and distribution of electricity for light, power and/or communications and control circuits for the use of occupants of the Property or other lots. GRANTOR's right to survey said Property areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to
designate said easements on Land Court Map(s) over, across, under and through the Property for electric utility purposes, upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to the HECO or any other entity, upon notice to but without requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the Property, GRANTEE and each person holding under or through GRANTEE agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights of way and said new specifically delineated easements:

In the event that the easement area shall be abandoned, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as those contained in the transfer of easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee holder of the easement area, including costs to mitigate negative impacts to the utility and its customers.

5. Those certain existing telecommunication facilities located within the Property, the location of said existing telecommunication facilities being approximately shown on NCTAMS PAC BCO BPT-001 Drawing entitled "Communications Infrastructure", dated June 11, 1999, which is on file at the Naval Computer and Telecommunications Area Master Station, Pacific, Base Communications Office, P.O. Box 450, Pearl Harbor, Hawaii 96860-5450 (hereinafter collectively referred to as the "existing telecommunication facilities"); together
with perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair, replacement, and/or removal of the existing telecommunication facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, the right to survey the Property areas beneath said existing telecommunication facilities as may be considered by GRANTOR to be necessary for the provision of communication service to users. GRANTOR's right to survey said Property areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court Map(s) over, across, under and through the Property for telecommunication purposes, upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to any other entity, through the execution of a grant of easement document, upon notice to, but without requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the Property, GRANTEE and each person holding under or through GRANTEE, agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights of way and said new specifically delineated easements:

In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions contained in the easement document and provided that the easement holder consents to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area, including costs to mitigate negative impacts to
Those certain regional groundwater monitoring wells, as approximately shown on the attached Exhibit "B", TOGETHER with a perpetual easement over the Property for the operation, maintenance, repair, and replacement of said groundwater-monitoring wells. Said easement and all rights appertaining thereto shall continue until said wells are closed by the GRANTOR. GRANTOR shall close said wells by cutting well casings flush with ground level and filling said wells with cement. Upon such closure, the GRANTEE agrees that said groundwater-monitoring wells will be left in place by the GRANTOR and that GRANTEE shall thereafte own said groundwater-monitoring wells. GRANTOR shall provide to GRANTEE a 60-day advance written notice of its intent to close any groundwater monitoring well located on GRANTEE’S Property.

FURTHER EXPRESSLY RESERVING AND EXCEPTING, HOWEVER, all right, title, and interest in and to the following items:

a. Easement "3697", affecting Lot 2488-A-2, as shown on Map 632 of Land Court Application No. 1069, and as set forth by Land Court Order No. 110870, filed March 9, 1993, designated for the purpose of a runway safety clear zone, and granted to the United States of America, acting through the Department of the Navy, as set forth in that certain Grant dated April 30, 1993, filed as Land Court Document No. 2020854, and noted on Certificate of Title No. 504038.

b. Easement "1360", affecting Lots 425-C-1, 2488-A, 2489-A, 2529, and 3168, as shown on Map 373 of Land Court Application No. 1069, and as set forth by Land Court Order No. 72368, filed January 11, 1985, designated for the purpose of flight clearance glide plane, and as set forth in that certain Declaration of Taking, dated August 23, 1979, filed as Land Court Document No. 1270954 and noted on Certificate of Title No. 504038.

c. Easement "540", affecting Lot 1136-D-1 and Lot 1909, and Easement "541", affecting Lots 1136-D-1, 247, 1170, 1172, and Lot 1909, as shown on Map 185 of Land Court Application No. 1069, and as set forth by Land Court Order No. 27855, filed December 6, 1967, designated for the purpose of aircraft flight clearance purposes, and granted to the United States of America, as set forth in that certain Grant dated May 7, 1968, filed as Land Court Document No. 449065 and noted on Certificate of Title No. 85671.

d. Easement "2263", affecting Lots 1909-B and 3805-A, as shown on Map 487 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95131, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685726 and noted on Certificate of Title No. 85671.

e. Easement "2277", affecting Lots 220-A, 221, and 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685727, and noted on Certificate of Title No. 15790.

f. Easement "2280", affecting Lot 298, as shown on Map 496, and Easement "2281", affecting Lots 178, 316, 317, 318, and 319, as shown on Map 496, of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and
granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685728, and noted on Certificate of Title No. 15790.

g. Easement "2279", affecting Lot 298, as shown on Map 496 of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685737, and noted on Certificate of Title No. 15790.

h. Easement "2262", affecting Lots 237-A and 2695, as shown on Map 486 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95159, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685738, and noted on Certificate of Title No. 15790.

i. Easement "2278", affecting Lot 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685739, and noted on Certificate of Title No. 15790.

j. Perpetual flight clearance easement, in, over, and above Lot 204-A-2-A-2, as shown on Map 217 of Land Court Application 1069, as set forth by Land Court Order No. 35554, filed July 19, 1972, and Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.

k. Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along the existing road in Lot 208, as shown on Map 34 of Land Court Application No. 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, together with the right to control public and private vehicular traffic on said road during these aircraft transport operations, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.

l. Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along Easement "1095", affecting Lot 204-A-2-A-2, as shown on Map 295 of Land Court Application No. 1069, as set forth by Land Court Order No. 51328, filed September 22, 1978, and noted on Certificate of Title No. 170393, together with the right to control public and private vehicular traffic on said easement during these aircraft transport operations, granted to the United States of America in that certain Grant and Relinquishment of Easements dated April 20, 1979, filed as Land Court Document No. 946598, and noted on Certificate of Title No. 170393.

SUBJECT, HOWEVER, to the following:

1. Easements "6780" and "6781", as shown on said Map 968, affecting said Lots 13069-A and 13069-C, respectively, as set forth in Land Court Order No. 135090, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Certificate of Title No. 529664, granted to the State of Hawaii, Department of Transportation by Quitclaim Deed dated June 30, 1999, Land
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Court Document No. 2557263 for navigation purposes.

2. Easement "3698", as shown on said Map 632, affecting said Lot 2488-B-1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Certificate Title No. 266962, granted to Moon & Hart by Grant of Easement dated April 30, 1993, Land Court Document No. 2020855, for drainage purposes and by Grant of Easement dated April 30, 1993, Land Court Document No. 2020856, for building setback and emergency vehicle access purposes.

3. Declaration of Taking filed in Land Court as Document No. 1270954 affecting Lot 2488-B-1.

4. Reservation as contained in Declaration of Taking filed as Land Court Document No. 87883.

5. All licenses and easements, whether recorded or unrecorded, across, over, along or under the Land.

COVENANTS

HISTORIC PRESERVATION COVENANT. GRANTEE hereby covenants on behalf of itself, its successors or assigns to protect and maintain the historic properties listed in the attached Exhibit "C" and located on the Land as approximately shown on the attached Exhibit "C-1", in a manner that preserves the attributes that contribute to the eligibility of said historic properties for the National Register of Historic Places. Such attributes include information potential, construction type, interior and exterior features, design, setting, materials, workmanship, feeling, association, and views from, to, and across the Property.

1. Disturbance of the ground surface shall be undertaken or permitted to be undertaken on and in the immediate vicinity of the sites listed in Exhibit "C" which would affect the physical integrity of the archaeological sites only after consultation with the Hawaii State Historic Preservation Officer (SHPO) as provided by Hawaii Revised Statutes Chapter 6E(§ 6E-8). Actions that would affect views that contribute to the historical character of the site, including adding new structure site elements such as towers, fences, and obtrusive signs would also be considered to materially affect the property. Plans that are submitted in accordance with this provision shall be prepared to conform with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and such standards and guidelines as the Hawaii SHPO may recommend, including but not limited to, standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native Hawaiian organizations, and re-interment of human remains.

2. The GRANTEE or its successors or assigns shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the archaeological sites listed on Exhibit "C" and shall promptly report any such disturbance to the Hawaii SHPO.

3. The GRANTEE or its successors or assigns shall allow the Hawaii SHPO at all reasonable times and upon reasonable advance notice to GRANTEE or its successors or assigns, to inspect the said historic properties in order to ascertain whether the GRANTEE or its successor or assigns is complying with the conditions of this preservation covenant.
4. The GRANTEE or its successors or assigns shall provide the Hawaii SHPO with a written summary of actions taken to implement the provisions of this preservation covenant within one (1) year after recordation date of this deed.

5. Failure of the GRANTOR to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the GRANTOR of any other right or remedy or the invocation of such right or remedy at any other time.

6. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the GRANTOR may, following reasonable notice to the GRANTEE or its successors or assigns institute any action to enjoin said violation or to require the restoration of the historic properties.

7. This covenant is binding on the GRANTEE, its successors or assigns, in perpetuity. The restrictions, stipulations and covenants contained herein shall be inserted by GRANTEE, its successors or assigns, verbatim or by express reference in any deed or other legal instrument by which it conveys a fee simple title or any lesser estate in said historic properties or any part thereof.

HAZARDOUS SUBSTANCE ACTIVITY COVENANT

(A) Notice. Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(ii)), and based upon a complete search of agency files, the Department of the Navy (the "Navy") gives notice that the attached Exhibit "D" provides an index of environmental documents prepared by the Navy to document the existing environmental conditions and investigative and cleanup actions taken with respect to the Property and that the attached Exhibit "E" contains a table with (to the extent such information is available): (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; (2) the time such storage, release or disposal took place; and (3) a description of the remedial action taken, if any.

(B) CERCLA Covenant. In accordance with section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. 9620(h), the GRANTOR hereby warrants to the GRANTEE that:

(1) All remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the Land, as of the date hereof, has been taken prior to the date of this conveyance; and

(2) Any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Land as of the date of this conveyance shall be conducted by the GRANTOR.

The foregoing covenants shall not apply to any response action required on the Property as a result of an act or omission of the GRANTEE

(C) Description of Remedial Action Taken. In accordance with CERCLA, the GRANTOR has taken the cleanup actions reflected in the documents listed in Exhibit "D" and summarized in the attached Exhibit "F".
(D) Access. GRANTOR reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to GRANTOR. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

NOTICE OF THE PRESENCE OF ASBESTOS. (a) GRANTEE, its successors and assigns, are warned that the property contains asbestos-containing materials. That asbestos exists in floor tiles, roofing material, and interior paneling of the improvements; (b) GRANTEE, its successors and assigns, shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property, including any asbestos hazards or concerns; (c) No warranties, either express or implied, are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of GRANTEE, its successors and assigns to inspect or to be fully informed as to the condition of all or any portion of the property shall not constitute grounds for any claim or demand against GRANTOR; (d) The legal description of the property set forth, and any other information provided herein with respect to said property was based on the best information available to DOI and is believed to be correct, but any error or omission, including, but not limited to, the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for any claim by the GRANTEE, its successors and assigns against the GRANTOR, including, without limitation, any claim for allowance, refund, or deduction from the purchase price; (e) The GRANTOR assumes no liability for damages for personal injury, illness, disability or death to the GRANTEE or to the GRANTEE’s successors, assigns, employees, invitees, or any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property, whether the GRANTEE, its successors or assigns has properly warned or failed to properly warn the individual(s) injured; (f) The GRANTEE further agrees by acceptance of this instrument of conveyance for itself, its successors and assigns, and each successor in interest to the property, or any portion thereof, that in its use and occupancy of the property, it will comply with all Federal, state, and local laws relating to asbestos.

NOTICE OF THE PRESENCE OF LEAD-BASED PAINT. (a) GRANTEE hereby acknowledges the presence of lead-based paint and/or lead-based paint hazards in improvements on the Property constructed prior to 1978; (b) GRANTEE covenants and agrees, for itself and its assigns, that in any improvements on the property, lead-based paint hazards will be abated before use and occupancy of such improvements as residential dwellings; (c) GRANTEE covenants and agrees that in its use and occupancy of the property it will comply with all applicable Federal, State and local laws relating to lead-based paint; and that GRANTOR assumes no liability for damages for personal injury, illness, disability, or death, to
GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the property described in this deed, whether GRANTEE, and its successors or assigns, have properly warned or failed properly to warn the individual(s) injured; (d) GRANTEE covenants and agrees that it will comply with all Federal, state, local, and any other applicable law(s) regarding the lead-based paint hazards with respect to the property.

RADON. GRANTEE is notified that radon is present in Building 278 on Lot 13069-C, as approximately shown on the attached Exhibit "G" and may be present in other buildings located on the Property. GRANTEE acknowledges that (a) radon, a naturally-occurring, radioactive inert gas formed by the radioactive decay of radium atoms in soil and rock, is or may be present on the Property, (b) radon can enter a building through cracks and openings in the ground and accumulate and distribute unevenly within a building until it reaches concentrations dangerous to the health of living organisms, and (c) radon is odorless, tasteless and colorless and can only be detected by proper instrumentation. GRANTEE further acknowledges that short-term and long-term exposure to radon and/or its decay products presents a significant health risk to living organisms, including but not limited to humans, which health risk may include but not be limited to lung damage and cancer.

GROUNDWATER. GRANTEE covenants and agrees that it will not extract groundwater from the Property for any purpose until regional groundwater monitoring activities are completed by the GRANTOR, unless GRANTEE notifies the GRANTOR before installing any well and performs sampling required under all applicable laws, regulations and standards, including the Safe Drinking Water Act, and the results show that chemical concentrations meet regulatory criteria.

UNDERGROUND INJECTION CONTROL PERMITS. GRANTEE covenants and agrees to apply with the State of Hawaii-Department of Health (State DOH), within ninety (90) days of the conveyance of the Property to the GRANTEE, for an Underground Injection Control (UIC) permit(s) for the existing dry wells located on the Property. After the conveyance of the Property, the GRANTOR shall no longer be the owner or actual operator of the drywells. In light of this, the GRANTOR reserves the right to terminate the GRANTOR'S UIC permit(s) with the State DOH if the GRANTEE does not submit an application to the State DOH within ninety (90) days. GRANTEE shall comply with all requirements of the UIC permits held by the GRANTOR until GRANTEE receives a new UIC permit(s) in its own name. GRANTEE acknowledges that it has received from GRANTOR copies of the UIC permits held by the GRANTOR. GRANTOR reserves a right of access to said dry wells for monitoring and inspection purposes until such time as new UIC permits are obtained by the GRANTEE. In the event that any sediment is removed from said dry wells, GRANTEE shall dispose of such sediment offsite in an appropriate facility in accordance with applicable laws and regulations.

FAA COVENANT. The GRANTEE covenants for itself, its successors and assigns and every successor in interest to the property herein described, or any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14 Code of Federal Regulations, Part 77, entitled "Objects Affecting Navigable Airspace", or under the authority of the Federal Aviation Act of 1958, as amended.
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COVENANTS RUN WITH THE LAND. The covenants, conditions and restrictions contained herein shall run with the land and shall bind and inure to the benefit of GRANTOR and its successors and assigns.

SAID PROPERTY was transferred hereby in accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100-526, as amended, and was assigned to the Secretary of the Interior for disposal pursuant to the Hawaiian Home Lands Recovery Act, Public Law 104-42 (1995), and applicable regulations, rules and orders promulgated thereunder.

IN WITNESS WHEREOF, the GRANTOR and GRANTEE have caused these presents to be executed and effective as of the 30th day of December, 2002.

UNITED STATES OF AMERICA
Acting by and through the
SECRETARY OF THE INTERIOR

By: Lynn Scarlett
 Its: Assistant Secretary for Policy Management and Budget
 1849 C Street NW
 Washington DC 20240
QUITCLAIM DEED – Page 15 of 17

On this 30th day of December, 2002, before me, Lynne Scarlett, the undersigned Notary Public, personally appeared Lynne Scarlett, personally known to me to be the person whose name is subscribed to the within instrument, and that the foregoing instrument was signed on behalf of the UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior and said ________ acknowledged said instrument to be the free act and deed of the UNITED STATES OF AMERICA.

Witness my hand and official seal.

Name: 
Notary Public, State of Washington D.C.
My Commission expires May 31, 2004

RAMONA D. TURNER
Notary Public District of Columbia
My Commission Expires May 31, 2014

Grantee’s Address is: 1099 Alakea St, Suite 2000
Honolulu, HI 96813

Mailing Address: P.O. Box 1879
Honolulu, HI 96805
ACCEPTANCE

The DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, hereby accepts this Quitclaim Deed and Easements and hereby accepts and agrees to all the terms, easements, covenants, conditions, reservations, and restrictions contained therein.

STATE OF HAWAII
Acting by and through the
DEPARTMENT OF HAWAIIAN HOME LANDS

By: RAYNARD C. SOON
Hawaiian Homes Commission
Its: Chairman

10/23/2002

B-470
LISTING OF EXHIBITS

Exhibit "A"-Legal Description of Property
Exhibit "A-1"-Drawing Showing Waterlines to be Transferred with Lot 13067
Exhibit "A-2"-Drawing Showing Wastewater Lines to be Transferred with Lot 13061-E
Exhibit "A-3"-Drawing Showing Wastewater Lines to be Transferred with Lot 13067
Exhibit "B"-Drawing Showing Location of Navy Monitoring Wells
Exhibit "C"-Listing of Historic Properties
Exhibit "C-1"-Map Showing Approximate Locations of Archaeological Sites
Exhibit "D"-Listing of Environmental Documents
Exhibit "E"-Hazardous Substance Notification
Exhibit "F"-Description of Remedial Action Taken
Exhibit "G"-Map Showing Location of Building 278
EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

A. PROPERTY DESCRIPTION

a. That certain real property lying and being in the State of Hawaii, formerly known as the former Naval Air Station, Barbers Point, consisting of:

(i) Lot 2488-B-1, consisting of 1.081 acres, more or less, as shown on Map 974, as set forth in Land Court Order No. 135472, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 266962 issued to the GRANTOR;

(ii) Lot 13058-E, consisting of 49.1777 acres, more or less, as shown on Map 962, as set forth in Land Court Order No. 135066, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR;

(iii) Lot 13061-E, consisting of 9.722 acres, more or less, as shown on Map 965, as set forth in Land Court Order No. 135081, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR;

(iv) Lot 13067, consisting of 28.724 acres, more or less, as shown on Map 957, as set forth in Land Court Order No. 134783, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR; and

(v) Lots 13069-A and 13069-C, consisting of 29.853 acres and 139.297 acres respectively, more or less, as shown on Map 968, as set forth in Land Court Order No. 135091, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR.

The abovementioned lots are hereinafter referred to as the "Land" for the uses stated herein.

B. Those certain facilities and rights consisting of:

(i) All improvements located on the Land, except for the improvements that are specifically excepted and reserved in the deed to which this Exhibit "A" is attached.

(ii) Those certain water facilities, approximately shown on the attached Exhibit "A-1" and identified as "Transferred", located within a lot adjacent to the Land, identified as Lot 13077-A, as shown on Map 1049, as set forth in Land Court Order No. 140019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; TOGETHER WITH rights in, over, under, and across said Lot to operate, maintain, repair, replace, and remove said water facilities.

(iii) Those certain wastewater facilities, approximately shown on the attached Exhibit "A-2" and identified as "Transferred", located within a lot adjacent to the Land, identified as Lot 13080-B, as shown on said Map 1049; TOGETHER WITH rights in, over,
under, and across said Lot to operate, maintain, repair, replace, and remove said wastewater facilities.

(iv) Those certain wastewater facilities, approximately shown on the attached Exhibit "A-3" and identified as "Transferred", located within lots adjacent to and in the vicinity of the Land, identified as Lots 13050 and 13066, as shown on said Map 957, and Lot 13077-A, as shown on said Map 1049; TOGETHER WITH rights in, over, under, and across said Lot to operate, maintain, repair, replace, and remove said wastewater facilities.

C. All personal property located on the Land.
WATERLINES TO BE TRANSFERRED WITH LOT 13067

LOT 13068

LOT 13067

LOT 13050

LOT 13066

LOT 13072-A

LOT 13077-A

LOT 13078

Dashes indicate transferred waterlines.
EXHIBIT "A-2"

WASTEWATER LINES TO BE TRANSFERRED WITH LOT 13061-E
EXHIBIT "A-3"

WASTEWATER LINES TO BE TRANSFERRED WITH LOT 13067

LOT 13049

LOT 13051

LOT 13078

LOT 13050

LOT 13066

LOT 13068

LOT 13072-A

LOT 13077-A

LOT 13074

LOT 13064-A

EXHIBIT "A-3"
**EXHIBIT "C"**

**LISTING OF HISTORIC PROPERTIES**

<table>
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<th>Lot 13067</th>
<th>Site/Building No.</th>
<th># of Features</th>
<th>Description</th>
<th>National Register Eligibility Criteria</th>
<th>Report Reference</th>
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<td>Hawaiian Agricultural Feature</td>
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4 Burgett, B. and P.H. Rosendahl  

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<tr>
<th>Lot 13069-C</th>
<th>Site/Building No.</th>
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<th>Description</th>
<th>National Register Eligibility Criteria</th>
<th>Report Reference</th>
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<td>5124 (por.)</td>
<td>3+</td>
<td>WWII Anti-aircraft battery, machine gun positions</td>
<td>A, D</td>
<td>1, 5</td>
<td></td>
</tr>
</tbody>
</table>

1 Tuggle, H. David and M.J. Tomonari-Tuggle  
1997 A Cultural Resource Inventory of Naval Air Station Barbers Point, Oahu: Part I, Phase I Survey and Inventory Summary. Prepared by International Archaeological Research Institute, Inc., Honolulu.

5 Wickler, S.K. and H.D. Tuggle  
1997 A Cultural Resource Inventory of Naval Air Station, Barbers Point, Oahu, Part II: Phase II Inventory Survey of Selected Sites. Prepared by International Archaeological Research Institute, Inc., Honolulu.

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<th>Site/Building No.</th>
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<td>WWII Training Area</td>
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</table>

1 Tuggle, H. David and M.J. Tomonari-Tuggle  
1997 A Cultural Resource Inventory of Naval Air Station Barbers Point, Oahu: Part I, Phase I Survey and Inventory Summary. Prepared by International Archaeological Research Institute, Inc., Honolulu.

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EXHIBIT "D"

LISTING OF ENVIRONMENTAL DOCUMENTS


16. “Remedial Investigation Report for BRAC-Related Activities, NEX Service Station
17. "Remedial Investigation Report for BRAC-Related Activities, Regional
Groundwater System, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. April
1999.

18. "Dry Well Network Investigation Report for BRAC-Related Activities, Naval Air
Station, Barbers Point, Oahu, Hawaii." Ogden. April 1999.

19. "Remediation Verification Report, Transformer Sites, Naval Air Station, Barbers
Point, Oahu, Hawaii." OHM. April 1999.

20. "Record of Decision, Sixteen Transformer Substations, Naval Air Station, Barbers

21. "Survey and Sampling of Miscellaneous Units Report, Naval Air Station, Barbers

22. "Record of Decision Amendment for Coral Pit 3 and the NEX Service Station –
Building 129 AST, Former Naval Air Station, Barbers Point, Oahu, Hawaii." Navy.
August 1999.

23. "Finding of Suitability to Transfer, Property to be Transferred to the Department of
the Interior for Conveyance to the Department of Hawaiian Home Lands, Naval Air
Station, Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech. August 1999.

24. UST Verification Study for Various Locations, NAS Barbers Point, Hawaii, July
1994.

25. "Dry Well Sediment Removal Report, Well No. H13-03 (NW-0143-B), UIC Permit No. UO-
1995, Permit Well No. 138, Removal of Sediment/Soil/Silt from Dry Wells at Naval Air
Station, Barbers Point, Oahu, Hawaii. OHM. September 1998."

Permit Well No. 154, Removal of Sediment/Soil/Silt from Dry Wells at Naval Air Station,
Barbers Point, Oahu, Hawaii. OHM. October 1998."
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Table 2: Hazardous Substances Notification (cont'd)
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<th>Compartment</th>
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<td>None</td>
<td>None</td>
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<td>None</td>
<td>Building 12, AFT, 3</td>
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</table>

Table 12: Hazardous Substances Notification (continued)
Transformer substations S1681 and S1684 located within said Lot 13069-C were determined to contain polychlorinated biphenyls (PCBs) in the concrete pads and surrounding soil. The concrete pads were cleaned using solvent extraction until concentrations of PCBs were below cleanup objectives for non restricted reuse defined by the Toxic Substances Control Act (TSCA) Spill Cleanup Policy (40 CFR 761 Subpart G (Parts 120-139)). PCB contaminated soil with concentrations above the State of Hawaii Department of Health Tier 1 Soil Action Levels for unrestricted reuse was removed from the Property. All response actions necessary to protect human health and the environment have been completed at substations S1681 and S1684. Cleanup activities were documented in the Remediation Verification Report dated April 1999. The CERCLA Record of Decision (ROD) for Sixteen Transformer sites (which includes substations 1681 and S1684) was signed in May 1999.
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 295

between

STATE OF HAWAII

and

A & S DELIVERY II, INC.
a Washington corporation

covering

HAWAIIAN HOME LANDS

situated at

Tax Map Key (3) 2-2-060:039
Kaei Hana I Industrial Subdivision,
Waiakea, S. Hilo, Island of Hawaii
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STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  

GENERAL LEASE NO. 295  

THIS INDENTURE OF LEASE (the “Lease”), is made as of the day of, 20, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called “LESSOR,” and A & S DELIVERY II, INC., a Washington corporation, whose business and mailing address is 2215 N. 30th Street, #102, Tacoma, Washington 98403, hereinafter called “LESSEE.”  

WITNESSETH:  

ARTICLE ONE  
DEMISE  

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kaei Hana I, Waiakea, S. Hilo, Island of Hawaii, County of Hawaii, and further identified as Tax Map Key No. (3) 2-2-060.039, comprising 0.87 acre (37,713 sf), more or less, of Hawaiian home lands, more particularly described in Exhibit “A”, and as shown on the tax map marked Exhibit “B”, both attached hereto and made a part hereof (“Premises”).  

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on March 1, 2012 (which shall be the Effective Date of the Lease), and ending as of midnight on February 28, 2067 unless sooner terminated as hereinafter provided.  

ARTICLE TWO  
RESERVATIONS AND RIGHT OF WITHDRAWAL  

RESERVING UNTO LESSOR THE FOLLOWING:  

1. Minerals and Waters.  

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. “Minerals,” as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspor, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of

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LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements
thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE's permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE's reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE
RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Kapolei, Oahu, State of Hawaii, a net annual rental as provided herein below, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR's principal place of business first described above, in United States dollars, as follows:

   Lease years 1 through 10: THIRTY-FIVE THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS ($35,800.00) per annum ($2,983.34/ per month);
   Lease years 11 through 15: FORTY-THREE THOUSAND SIX HUNDRED FORTY AND NO DOLLARS ($43,640.00) per annum ($3,636.67/ per month);
   Lease years 16 through 20: FORTY-EIGHT THOUSAND ONE HUNDRED EIGHTY-TWO AND 10/100 DOLLARS ($48,182.10) per annum ($4,015.18/ per month); and
Lease years 21 through 25: FIFTY-THREE THOUSAND ONE HUNDRED NINETY-SIX AND 92/100 DOLLARS ($53,196.92) per annum ($4,433.08 per month).

Lease years 26 through 55: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The “Rent Commencement Date” is _________. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the ensuing fifteen-year period, with five (5)-year step-ups, comprising lease years 26-40 and shall be reopened and re-determined again at the expiration of the fortieth lease year for ensuing final fifteen-year period, with five (5)-year step-ups, comprising lease years 41-55, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the “fair market rental value” of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR’s appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR’s appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual
agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and
expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. **Improvements Required by Law.** LESSEE shall, at LESSEE’s own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. **Observance of Laws.** LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. **Inspection of Premises.** Upon reasonable notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE shall repair and make good at LESSEE’s own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR’s agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. **Improvements.**

(a) **Initial Development.** Because time is of the essence, LESSEE shall implement a scheduled program of development. Plans for the scheduled development project shall be submitted to LESSOR for approval within six (6) months from the commencement date of the lease. LESSEE shall have thirty-six (36) months from the commencement date of the lease to complete the development project.

(b) **Governmental Approvals and Permits.** Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having
jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(c) **Construction of Improvements.** LESSEE shall not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifteen Thousand Dollars ($15,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose. LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically be vested in LESSOR.

(d) **Bonds and Security Deposit.** LESSEE shall, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

(e) **Compliance with Americans with Disabilities Act.**

(i) **Applicable Laws.** LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. 12181-12183, 12186(b)-12189,

(ii) Responsibility for Compliance. Notwithstanding LESSOR’S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney’s fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE’S alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR’S investigation and handling (including the defense) of LESSEE’S failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR’S ownership of the Premises; and (D) LESSOR’S enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’S prior express written consent shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.
(d) **No Change of Use.** No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) **LESSOR’s Response.** LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) **“Assignment” Defined.** The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof, shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE 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 LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.
10. **Subletting.** LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit “C”, and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. **Liens.** LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics’ and materialmen’s liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys’ fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefore is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE’s obligations under this Section 11 shall survive the termination of this Lease.

12. **Permitted Uses.** The Premises shall be used only for the following purposes: Limited Industrial Use (ML-20 District) Development. In no event shall the Premises be used for the construction of any residential lots, units or project.

13. **Indemnity.**

(a) LESSEE shall defend, hold harmless and indemnify LESSOR, its employees, officers, and agents, from and against all liens, claims, losses, suits, damages, liability and expenses, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, its employees, officers and/or agents, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises, and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR's costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such liens, claims, losses, suits, damages, liability and expenses. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligations to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such
liens, claims, losses, suits, damages, liability and expenses, including reasonable attorneys' fees and investigation costs, from the first notice thereof. LESSEE shall satisfy LESSOR of its ability to defend, hold harmless and indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of LESSEE's insurance bonds, security deposits, sinking funds, or such other means as may be approved in writing by LESSOR. LESSEE's obligations under this section shall survive the termination or other determination of this Lease and shall continue in full force and effect thereafter for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning thePremises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. **Costs of Litigation**. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney’s fees and expenses incurred by or imposed on the party joined without fault on its part.

15. **Insurance**. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE’s sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) **Commercial Property Insurance**.

(i) **Coverage**. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE’s business, whether made or acquired at LESSEE’s, LESSOR’s or at another’s expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. (“ISO”) Commercial Property Policy - “Special Form” Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR’s prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(ii) **Trust**. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by
LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension thereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an “occurrence” form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be determined.

(2) Deductible. Except with LESSOR’s prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of $10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers’ Compensation and Employers’ Liability Insurance. Workers’ Compensation and Employers’ Liability insurance as required by HRS Chapter 386
and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers’ Compensation and the following for Employers’ Liability: $1,000,000 Each Accident; $1,000,000 Disease - Policy Limit; and $1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer’s Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than $5,000,000 per policy year and a self-insured retention and/or deductible no greater than $10,000.

(d) Builder’s and Installation Risk. Builder’s and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder’s Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE’s property shall provide that the insurer is required to provide LESSEE with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSEE current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSEE, LESSEE, and LESSEE’s mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSEE, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSEE were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSEE may carry.

(f) Periodic Review of Insurance Coverages. LESSEE shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSEE, the insurance provisions in this Lease do not provide adequate protection for LESSEE in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSEE may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSEE’s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSEE shall notify LESSEE in writing of changes in...
the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or
certificates thereof with LESSOR incorporating the reasonably required changes within sixty
(60) days of receipt of such notice from LESSOR.

16. **Surrender.** At the end of the term or other sooner determination of all or a portion
of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby
demised, including all buildings and other improvements upon or belonging to the same, by
whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and
in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default
hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair
promptly to LESSOR’s satisfaction all damage caused by such removal; provided, further, that if
LESSOR, in its sole discretion, shall determine that such improvements or portions thereof
should be removed and shall give LESSEE written notice of such determination within thirty
(30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the
Premises as is reasonably possible, shall remove promptly said improvements or portions thereof
in accordance with applicable law and shall leave the Premises in clean and orderly condition
free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE’s cost and
expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully
complied with all applicable law or orders by any governmental authority having jurisdiction
therefor, including, without limitation, full compliance with any closure plan filed or required to
be filed with any such governmental authority and removal from the Premises of all Hazardous
Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease,
such evidence shall not have been provided LESSOR, or if LESSOR shall have requested
removal of improvements and LESSEE shall not have removed said improvements, LESSOR
may effect such full compliance or removal on behalf of LESSEE. All costs incurred by
LESSOR in effecting such compliance or removal shall be at LESSEE’s expense and LESSEE
shall, within thirty (30) days from LESSEE’s receipt of demand by LESSOR, reimburse
LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this
Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and
all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together
with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even
though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual
rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the
total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated
for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is
completed in accordance with the provisions of this section. Final inspection and release of the
Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition
precedent to completion of surrender and termination of LESSEE’s obligations hereunder.
Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to
indemnify LESSOR, which by its specific terms survives termination.
17. **Processing Fees/Documentation.** LESSEE agrees to pay to LESSOR, LESSOR's standard fees for LESSOR's processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

18. **Hazardous Materials.**

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.
Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE’s past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE’s possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE’s interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE’s sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

20. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased “AS IS”. LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR’s surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of the LESSOR’s surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent
loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an “Approved Mortgage” for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE’s interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term “holder” shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the “Mortgagee”) shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the “Mortgage”) with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as “notices”, and each of them as a “notice”) which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be “Mortgagee” for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.
(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days’ additional written notice of LESSEE’s failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE’s rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee’s right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:
(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee’s lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE’s bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee’s receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the “Confirmation of Lease”), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys’ fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE’s part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that
any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE’s property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to this Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided hereinafter, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE’s property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE’s liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to
obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, conditions contained in the Lease on LESSOR’s part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redisseminate the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any redissemination under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the redissemination; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon redissemination which exceeds the fair market lease value of the land as previously determined by LESSOR’s appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing
LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE’s personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE’s use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR’s right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of “Force Majeure.” “Force Majeure” is any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party’s control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.
10. **Interest, Costs and Fees.** The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys’ fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector’s and/or attorneys’ fees, together with all costs.

11. **Hawaii Law/Filing.** This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease.

12. **Partial Invalidity.** If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Notice.** Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

**If to LESSEE:**

A&S Delivery II, Inc.
c/o Mr. Ronald Kurutani, Jr., President
2215 N. 30th Street, #102
Tacoma, Washington 98403

**If to LESSOR:**

Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attn: Land Management Division

**And a copy to:**

Department of the Attorney General
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: AG - PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. **Definitions.** As used herein, unless clearly repugnant to the context:
For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"):

Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

"Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

"LESSOR" shall mean and include LESSOR herein, its successors or assigns.

"LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

The "Premises" shall mean the land leased hereunder.

The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
October 19, 2010

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Jobie M.K. Masagatani, Chairman Designate
Hawaiian Homes Commission
LESSOR

A & S DELIVERY II, INC.,
a Washington corporation

By
Ronald Kurutani, Jr.
Its: President

LESSEE
STATE OF WASHINGTON
COUNTY OF Pierce

On this 11th day of May, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

Ronald Kuritani

and

President, respectively, of

A & S Deliveries, Inc., the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that Ronald Kuritani authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and seal the day and year first above written.

Notary Public residing at

Printed Name: Jun S. Chea


B-516
STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU

On this 9th day of July, 2012, before me appeared JOBIE M.K. MASAGATANI, to me personally known, who, being by me duly sworn, did say that she is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily for the use and purposes therein set forth.

ABIGAIL L. TUBERA

Notary/Public, State of Hawaii

My commission expires: 11/1/2012

ABIGAIL L. TUBERA

Print Name of Notary Public

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: 61 295

Doc. Date: 5/11/12 or □ Undated at time of notarization.

No. of Pages: 36

Jurisdiction: 1st Circuit

(in which notarial act is performed)

Signature of Notary

Date of Notarization and Certification Statement

ABIGAIL L. TUBERA

Printed Name of Notary

B-517
Being Consolidation of Lot 50 and Lot 51
of Kaei Hana-I (Industrial Area)
Same being a portion of Hawaiian Home Lands
of Panaewa, Tract I
At Waikae, South Hilo, Hawaii

Beginning at the Northwest corner of this parcel of land, being
also the Southwest corner of Lot 49 of Kaei Hana-I (Industrial Area) on the East
side of Makaala Street, the coordinates of said point of beginning referred to
Government Survey Triangulation Station "MALAI" being 5,925.88 feet South and
9,971.00 feet East and thence running by azimuths measured clockwise from True
South:

1. 270° 00' 225.00 feet along the South side of Lot 49 of Kaei Hana-I
   (Industrial Area);
2. 360° 00' 90.00 feet along the West side of Lot 29 of Kaei Hana-I
   (Industrial Area);
3. 40° 10' 182.55 feet along the Northwesterly side of Lot 52 of Kaei Hana-I
   (Industrial Area);
4. 130° 10' 61.37 feet along the Northwesterly side of Makaala Street;
   Thence on a curve to the right, with a radius of
   170.00 feet, the chord azimuth and distance being:
5. 155° 05' 143.24 feet;
6. 180° 00' 60.01 feet along the East side of Makaala Street to the point of
   beginning and containing an area of 37,713 Square
   Feet.

SUBJECT, HOWEVER, to a Drainage Easement and more
fully described as follows:
Beginning at the Southeast corner of this strip of land, being also the Southeast corner and the end of Course 2 of the above described parcel of land, and thence running by azimuths measured clockwise from True South:

1. 40° 10' 182.55 feet along the Northwesterly side of Lot 52 of Kaei Hana-I (Industrial Area);
2. 130° 10' 20.00 feet along the Northeasterly side of Makaala Street;
3. 220° 10' 206.25 feet along the remainder of Lots 50 and 51 of Kaei Hana-I (Industrial Area);
4. 360° 00' 31.01 feet along the West side of Lot 29 of Kaei Hana-I (Industrial Area) to the point of beginning and containing an area of 3,888 Square Feet.

Arthur Y. Akinaka, Registered Professional Surveyor, Cert. No. 244
CONSOLIDATION OF LOTS 50 AND 51
KAEI HANA-I (Industrial Area)
PORTION OF HAWAIIAN HOME LANDS OF PANAEWA, TRACT 1
WAIAKEA, SOUTH HILO, HAWAII

TAX MAP NOV. 2-2-20 39 & 40
ARThUR Y. AKINAKA, LTD.
CIVIL ENGINEERS & SURVEYORS
1339 NO. SCHOOL ST.
HONOLULU, HAWAII 96817

DATE: JUly 31, 1970
EXHIBIT "B"
"That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit "C".

2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.

3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.

4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy."

Extract from Exhibit "C":

Gross Annual Sublease Rent
LESS: 4% General Excise Tax (if paid by sublessor)
EQUALS: Effective Annual Sublease Rent
LESS: Allowances (costs and investment returns)
EQUALS: Income Attributable to Land
LESS: Allocated Basic Lease Rent
EQUALS: Amount of Increase in Lease Rent Due to Subleasing (if any)
X 50% EQUALS: Amount Due to DHHL

EXHIBIT "C"
DEFINITION OF TERMS
Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: LESS ALLOWANCES
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.

Line 4a: MANAGEMENT, CREDIT LOSS
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.

Line 4b: REPAIR and MAINTENANCE
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.

Line 4c: REAL PROPERTY TAXES
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.

Line 4d: INSURANCE PREMIUMS
Premiums paid for fire/liability insurance policies.

Line 4e: SURETY BOND PREMIUM
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of $20 per $1,000 of the surety amount unless detailed expenses are provided by the general lessee.

B-522
Line 4f: RETURN OF INVESTMENT
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4g: RETURN ON INVESTMENT
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: INCOME ATTRIBUTABLE TO LAND
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: ALLOCATED BASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: INDICATED ADDITIONAL RENT
Line 5 (Annual Income Attributable to Land) less
Line 6 (Allocated Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: ADDITIONAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY
(No subleasing of building space)

Line 1: GROSS ANNUAL SUBLEASE RENT
The total sublease rent amount collected by a general lessee without any deductions.
Line 2: LESS 4% GENERAL EXCISE TAX
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.

Line 3: EFFECTIVE ANNUAL SUBLEASE RENT
Gross annual sublease rent less State G.E. Tax.

Line 4: AlLOCATED ANNUAL BASE LEASE RENT
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 5: INDICATED ANNUAL ADDITIONAL RENT
Line 3 minus Line 4, but not less than zero.

Line 6: ADDITIONAL ANNUAL RENT PAYABLE TO DHHL
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.
### SUBLEASE RENT PARTICIPATION WORKSHEET

#### I. SUBLEASING OF BUILDING SPACE:

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Gross Annual Sublease Rent</td>
<td>$_______</td>
</tr>
<tr>
<td>2</td>
<td>Less 4% General Excise Tax</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>EQUALS Effective Annual Sublease Rent</td>
<td></td>
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<tr>
<td>4</td>
<td>Less Allowances:</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Management, Credit Loss</td>
<td>$_______</td>
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<tr>
<td>b.</td>
<td>Repair and Maintenance</td>
<td></td>
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<tr>
<td>c.</td>
<td>Real Property Taxes</td>
<td></td>
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<tr>
<td>d.</td>
<td>Insurance Premium</td>
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<tr>
<td>e.</td>
<td>Surety Bond Premium</td>
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<tr>
<td>f.</td>
<td>Return OF Investment</td>
<td></td>
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<tr>
<td>g.</td>
<td>Return ON Investment</td>
<td></td>
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<tr>
<td>5</td>
<td>EQUALS Annual Income Attributable to Land</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Less Allocated Annual Base Lease Rent</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>EQUALS Indicated Additional Annual Rent</td>
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<tr>
<td></td>
<td><strong>TINES 50%</strong></td>
<td><strong>0.50</strong></td>
</tr>
<tr>
<td>8</td>
<td>EQUALS Additional Annual Rent Payable to DHHL</td>
<td></td>
</tr>
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#### II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

<table>
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<tr>
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<td>Gross Annual Sublease Rent</td>
<td>$_______</td>
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<tr>
<td>2</td>
<td>Less 4% General Excise Tax</td>
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</tr>
<tr>
<td>3</td>
<td>EQUALS Effective Annual Sublease Rent</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Less Allocated Annual Base Lease Rent</td>
<td></td>
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<tr>
<td>5</td>
<td>EQUALS Indicated Annual Additional Rent</td>
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<tr>
<td></td>
<td><strong>TINES 50%</strong></td>
<td><strong>0.50</strong></td>
</tr>
<tr>
<td>6</td>
<td>EQUALS Additional Annual Rent Payable to DHHL</td>
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</table>

Exhibit "C"
HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease: $8,000
Effective Annual Sublease Rent: $3,000
Total Land Area of Leasehold Premises: 24,000 sq. ft.
Subleased Land Area: 6,000 sq. ft.

RATIO: \( \frac{\frac{6}{24}}{.25} \times \$8,000 = \$2,000 \) Allocated Annual Base Lease Rent

Effective Annual Sublease Rent: $3,000
Allocated Annual Base Lease Rent: $2,000
Indicated Additional Rent: $1,000

Times 50% \( .50 \)

SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL $500
STATE OF HAWAII

DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S - 

between

STATE OF HAWAII

and

covering Lot No. 

PORTION OF _________ AGRICULTURAL PARK

SITUATED AT ______, _________

ISLAND OF _____, HAWAII
# TABLE OF CONTENTS

## TERMS OF LEASE:

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<thead>
<tr>
<th></th>
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<tr>
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<td>2</td>
<td>Additional rental</td>
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<tr>
<td>3</td>
<td>Reopening of annual rental</td>
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<tr>
<td>4</td>
<td>Determination of annual rental upon reopening</td>
<td>3</td>
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<tr>
<td>5</td>
<td>Facilities capital recovery fee</td>
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<td>6</td>
<td>Interest on delinquent rental</td>
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## RESERVATIONS:

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<tr>
<td>1</td>
<td>Minerals and water rights</td>
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<tr>
<td>2</td>
<td>Prehistoric and historic remains</td>
<td>6</td>
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<tr>
<td>3</td>
<td>Ownership of fixed improvements</td>
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<tr>
<td>4</td>
<td>Withdrawal</td>
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## AGREEMENTS AND COVENANTS BETWEEN PARTIES:

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<tbody>
<tr>
<td>1</td>
<td>Payment of rent</td>
<td>7</td>
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<tr>
<td>2</td>
<td>Taxes, assessments, etc.</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>Utility services</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>Irrigation costs</td>
<td>8</td>
</tr>
<tr>
<td>5</td>
<td>Character of use</td>
<td>9</td>
</tr>
<tr>
<td>6</td>
<td>Utilization and development of the land</td>
<td>10</td>
</tr>
<tr>
<td>7</td>
<td>Good husbandry and conservation practices</td>
<td>10</td>
</tr>
<tr>
<td>8</td>
<td>Major portion of income</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Sanitation</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Waste and unlawful, improper, or offensive use of the premises</td>
<td>11</td>
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STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
GENERAL LEASE NO. S-______

THIS INDENTURE OF LEASE, made and entered into this ______ day of _______________, 20___, by and between the STATE OF HAWAI'I, hereinafter referred to as the "Lessor", by its Board of Agriculture, hereinafter referred to as the "Board", whose business address is 1428 South King Street, Honolulu, Hawaii 96814, and ___________________________, whose residence and post office address is __________________________, hereinafter referred to as the "Lessee";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants, and conditions contained herein, all on the part of the Lessee to be kept, observed, and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises identified as Lot No. ______, TMK ________: _____ containing approximately _____ gross acres, ______________________ arable acres, ___ non-arable acres) of land at ______ Agricultural Park, ______, __ __ ____, ________, ________, more particularly described in Exhibit A, and outlined in red on Exhibit B, which are attached hereto and made a part hereon.
TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of thirty-five (35) years, commencing on the ___ day of ____, 20__, and ending on the ___ day of __________, 20__, unless sooner terminated as provided herein, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a net annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments on ________ and ________ of each and every year during the term, unless otherwise provided, as follows:

1. Base annual rental. For the first ten (10) years, the base annual rental shall be the sum of __________________________ DOLLARS ($__), computed at __________________ AND XX/100 DOLLARS ($0.00) per acre per annum for arable land, and ___ AND NO/100 DOLLAR ($0.00) per acre per annum for non-arable land, provided that if any non-arable land is converted to arable land, the base annual rental for such land will be computed at ______ ________________ AND XX/100 DOLLARS ($0.00) per acre per annum, commencing on the date of final execution of this lease, or the date of such conversion, whichever is later, and such base annual rental shall be prorated ratably for the period; except, the Board may permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than two years of base annual rental, the evidence of which shall be submitted to and approved by the Lessor within the first year of the lease term.
2. Additional rental. Each year on or before the 31st day of March, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the report, the Lessee shall pay to the Lessor any additional rental due, which amount shall be determined in the manner described below:

From the report, determine a value representing ___ percent (X%) of the gross proceeds, which includes revenues from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.

3. Reopening of annual rental. The base annual rental and additional rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years of the term, provided however, in no event shall the base annual rental be revised downward.

4. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within
fourteen days after written notice of the fair market rental, to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment.
Alternatively, the Board may treat the failure as a breach of the lease and terminate this lease.

5. **Facilities capital recovery fee.** The Lessee shall pay a facilities capital recovery ("FCR") fee commencing on the date the Lessor installs improvements in support of the Lessee's operations or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is based on one-tenth of one per cent of the Lessor's expenditures and will be added to the base annual rental each year.

6. **Interest on delinquent rental.** Interest at the rate of one per cent (1%) per month shall be charged on delinquent rentals.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. **Minerals and water rights.** (a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. "Minerals", as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the premises, fast or
submerged; provided that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others.

(b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right, shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the premises shall be reserved to the Lessor.

3. Ownership of fixed improvements. The ownership of all improvements, including but not limited to fences and stockwater systems located on the demised land prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.

4. Withdrawal. The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements
of all kinds, and the premises shall be subject to the right of
the Lessor to remove soil, rock, or gravel as may be necessary for
the construction of roads and rights-of-way within or without the
demised premises; provided that upon the withdrawal or taking
which causes any portion of the land originally demised to become
unusable for the specific use or uses for which it was demised,
the base annual rental shall be reduced in proportion to the value
of the premises withdrawn or made unusable. If any permanent
improvement constructed upon the land by the Lessee is destroyed
or made unusable in the process of the withdrawal or taking, the
proportionate value thereof shall be paid based upon the unexpired
term of this lease; provided that no withdrawal or taking shall be
had as to those portions of the land which are then under
cultivation with crops until the crops are harvested, unless the
Lessor pays to the Lessee the value of the crops; and
provided further that upon withdrawal the Lessee shall be
compensated for the present value of all permanent improvements in
place at the time of withdrawal that were legally constructed upon
the premises by the Lessee of the leased land being withdrawn. In
the case of tree crops, the Lessor shall pay to the Lessee the
residual value of the trees taken and, if there are unharvested
crops, the value of the crops also.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:
1. Payment of rent. The Lessee shall pay the required rent
in legal tender of the United States of America to the Lessor at
the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor.

2. **Taxes, assessments, etc.** The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.

3. **Utility services.** The Lessee shall pay when due all charges, duties, and rates of every description, including, but not limited to, water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the term, whether assessed to or payable by the Lessor or the Lessee.

4. **Irrigation costs.** Without limiting the provisions of the preceding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system, if any, which provides irrigation water to Agricultural Park including the demised premises. The Lessee agrees not to oppose the establishment of an irrigation project
under Chapter 167, Hawaii Revised Statutes, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set, and the Lessee agrees to abide by and to pay when due all assessments, tolls, fees, and charges set by such project.

5. **Character of use.** (a) The Lessee shall use the premises hereby demised solely for **diversified agriculture** purposes, subject to the covenants, conditions, and restrictions of any and all encumbrances on the premises existing as of the date of this lease. No other use shall be permitted except as provided in section 4-153-33, Hawaii Administrative Rules.

(b) No livestock production operations shall be conducted on the premises without the prior approval of the Department of Health.

(c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the Department of Health.

(d) No cesspools shall be constructed on the premises. However, upon approval from the Department of Health, the Lessee may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health.

(f) Unless otherwise provided, the covenants, conditions, and restrictions contained in this section shall run with the land until the time that the premises is reclassified to a land use
district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.

6. Utilization and development of the land. The development of the premises shall be completed within three (3) years from the commencement date of this lease, with not less than fifty percent (50%) developed within the first two (2) years of the term. Utilization and development of the premises shall be in accordance with a plan of utilization and development which shall be prepared by the Lessee and approved by the Lessor before execution of this lease. Any modification or deviation from the plan without the prior written approval of the Lessor may constitute a breach of this lease and cause for the termination thereof.

7. Good husbandry and conservation practices. The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a conservation plan developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the conservation plan, the Lessor shall notify the Lessee of the discrepancy, and the Lessee shall be required, within sixty days of the notice, to cure the
discrepancy and to submit proof thereof satisfactory to the Lessor.

8. **Major portion of income.** Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty per cent (50%) of the Lessee's total annual income; except, that this restriction shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and verification by the Lessor who may impose additional requirements to carry out the requirements of this section.

9. **Sanitation.** The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.

10. **Waste and unlawful, improper, or offensive use of the premises.** The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, nor cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.
11. **Inspection of premises.** The Lessee shall permit the Lessor and its agents, at all reasonable times during the term, to enter the premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.

12. **Improvements.** At any time during the term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, signs, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.

13. **Repairs to improvements.** The Lessee shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted. Said buildings, structures, and improvements shall include, without limitation, roadways, drainage facilities, ditches, drains, culverts, reservoirs, flumes, pipelines, water courses, fences, gates, bridges, sidewalks, curbs, sewers, parking areas, fillings, pumps, wells, boundary markers and monuments, and other works and structures.
14. **Dwelling restrictions.** The Board may permit farm dwellings on the premises if the need is clearly demonstrated. The farm dwellings shall be used in direct connection with agricultural activities on the premises and shall not be used for rental or any other purposes. The dwellings shall be subject to such additional terms and conditions as the Board may require including, but not limited to, an adjustment of the lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations, and rules, including, but not limited to, laws regarding environmental quality control.

15. **Insurance.** At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good
and substantial manner according to the plans and specifications
approved in writing by the Board; except, that with the approval
of the Lessor, the Lessee may surrender this lease and pay the
balance owing on any mortgage, and the Lessee shall receive that
portion of the proceeds which the unexpired term of this lease at
the time of the loss or damage bears to the whole of the term, the
Lessor to retain the balance of the proceeds.

16. Right of first refusal. An agricultural park lease or
any interest therein, including stock of a corporation holding the
lease or an interest in a partnership or association holding the
lease, shall not be transferred or assigned unless the lease and
improvements, or any interest therein, are first surrendered to
the Board, as follows:

(1) The Board shall have the option to re-purchase the lease
for the price paid by the current lessee, including
closing costs, or the fair market value, less appreciated
value, at the time of re-purchase, as determined in
paragraph (3), whichever is the lower but not less than
zero. For the purposes of this section, "price paid by
the current lessee" means the consideration paid for the
lease exclusive of improvements, and "appreciated value"
means the replacement cost for developing the demised
premises.

(2) Any improvements affixed to the realty, including trade
fixtures and growing crops, shall be re-purchased at
their fair market value.
(3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who, together with the Lessor's appraiser, shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In this event, the Lessee shall pay for the Lessee's appraiser, the Lessor shall pay for the Lessor's appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

(4) The Board may re-purchase the lease and improvements with funds from the agricultural park special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-153-19 and 4-153-22, Hawaii Administrative Rules.

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all
encumbrances that have been approved by the Lessor at the time of the re-purchase.

(6) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35, Hawaii Administrative Rules.

17. Assignments of lease, lease interest, etc. (a) Any transferee, assignee, or sublessee of an agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender this lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

(1) The lease contains the principal residence of the Lessee;

(2) The Lessee becomes mentally or physically disabled;
(3) Extreme economic hardship is demonstrated to the satisfaction of the Board; or

(4) The assignment is to the corporate successor of the Lessee; provided that with the prior written approval of the Board, the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on March 6, 1992; as amended, a copy of which is attached hereto as Exhibit “C.” The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual and
percentage (additional) rental pursuant to section 4-153-18, Hawaii Administrative Rules.

18. **Subletting.** The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the base annual rental and percentage (additional) rental of the demised premises based upon the rental rate charged to the sublessee; and provided further that the base annual rental and percentage (additional) rental may not be revised downward.

19. **Mortgage.** Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest therein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without approval shall be void.

Upon application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the leasehold of the demised premises. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the
foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the premises or any interest therein.

20. **Breach.** Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the premises covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of a holder of a security interest. Without limiting the foregoing, the Board, after due notice of default, shall terminate this lease or tenancy and take possession of the leased premises together with all improvements placed thereon without demand or previous entry and without legal process and shall retain all rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.
21. **Rights of holder of record of security interest.** (a) Whenever any notice of breach or default is given to any party under section 4-153-34, Hawaii Administrative Rules, or under the terms of this lease, a copy of the notice shall be delivered by the Lessor to all holders of record having a security interest in any premises or interest covered by this lease or other instrument whose security interest has been recorded with the Department of Agriculture and the Bureau of Conveyances. In the event the Board seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may cure or remedy the default or breach of rent payment within thirty days, or any other default or breach within sixty days, from the date of receipt of the notice set forth herein, or within such additional period as the Board may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Board may:

(1) Pay to the holder from any moneys at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder; or if ownership of the interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Board shall be entitled to the conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection
with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

(2) If the property cannot be reasonably reassigned without loss to the Lessor, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Board in instituting or prosecuting any right or remedy it may have shall not operate as a waiver of the right or to deprive it of the remedy when the delay serves to assist the Board in resolving the problems created by the breach or default involved.

(b) The proceeds of any redisposition effected shall be applied: first, to reimburse the Lessor for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid lease rental or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated, and any balance to the owner of the privilege, interest, or estate.

22. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the
Lessee of any term, covenant, or condition of this lease, of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

23. **Liability insurance.** The Lessee shall procure and maintain during the entire period of this lease a policy or policies of commercial general liability insurance as will protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The minimum limit of said policy or policies shall not be less than the single limit of $1,000,000.00, approved by the Board and subject to periodic review and adjustment every two (2) year(s), insuring the Lessor and the Lessee against all claims for personal injury, death, and property damage. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to
the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.

24. **Performance bond.** The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a performance bond in an amount equal to two times the annual base rental as a surety for the satisfactory compliance of lease terms, conditions, and covenants. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the bond requirement at any time throughout the term of this lease.

25. **Justification of sureties.** The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by
it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.

26. **Indemnity.** The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the demised premises or on sidewalks, parking areas, and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

27. **Costs of litigation.** If the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), without any fault on the Lessor's part, the Lessee shall pay all costs and expenses incurred by or imposed on the Lessor including, but not limited to, attorney's fees; furthermore, the Lessee shall pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants.
and agreements of this lease, in recovering possession of the demised premises, or in the collection of delinquent rental, taxes, and any and all other charges.

28. **Liens.** The Lessee will not commit or suffer any act or neglect whereby the premises, any improvement, or the estate of the Lessee in the same shall become subject to any attachment, lien, charge, or encumbrance, except as provided herein, and shall indemnify, defend, and hold harmless the Lessor from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.

29. **Lessor's lien.** The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.

30. **Condemnation.** If any portion of the demised premises shall be condemned for public purposes by the Lessor, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority: (a) The value of growing crops which it is not permitted to harvest; and (b) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it
bears to the unexpired term of this lease; provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the premises were demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.

31. Right to enter. The Lessor, the City and County of Honolulu, or their representatives shall have the right at all reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.

32. Extension of time. Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown,
may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.

33. **Quiet enjoyment.** The Lessor covenants and agrees with the Lessee that upon payment of rent at the times and in the manner specified and the observance and performance of the covenants, terms, and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall have, hold, possess, and enjoy the demised premises for the term demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

34. **Surrender.** At the end of the term or other sooner termination of this lease, the Lessee shall peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise in this lease. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of the Lessee's personal property from the premises, the Lessor may remove or dispose of any and all personal property from the premises and either deem the property abandoned and dispose of the property or place such property in storage at the cost and expense of the Lessee, and the Lessee shall pay all costs and expenses for removal, disposal, transporting, and storage of the personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.
35. Non-warranty. The Lessor does not warrant the conditions of the demised premises, as the same is being leased "as is."

36. Hazardous materials. (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge,
disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

37. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or physical handicap.

38. Hunting. No hunting shall be allowed on the demised premises during the term of this lease.

39. Boundary stakeout. The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises. The Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

40. Fences. The Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of
the demised premises if such fencing shall be required by the
Lessor or should be so required by any law now in force or that
may hereafter be enacted and shall and will maintain in good order
and condition throughout the period of this lease the fences so
constructed and those now existing on the demised premises.

41. **Setback requirements.** Building setback lines shall be in
accordance with applicable city and county ordinances and rules.

42. **Drainage easements.** The demised premises shall be
subject to drainage and flowage easements as applicable. The
easeent area shall not be altered or used for any purposes which
may obstruct flow or reduce the effectiveness of the drainageway.
The Lessee shall accept the storm runoff draining into and through
the easement area and shall be responsible for the maintenance and
protection of the drainage easements against deterioration or loss
of functional effectiveness.

43. **Roadway and utility easements.** The demised premises
shall be subject to roadway and utility easements as applicable,
which easements shall be in favor of property owners served by the
easements; provided that the Lessee may cross the easements at any
point; provided further that the Lessee shall be responsible for
maintenance of the easements.

44. **Compliance with laws.** The Lessee shall comply with the
requirements of all federal, state, and county authorities and
observe all federal, state, and county laws, ordinances, and rules
pertaining to the premises which are now in force or later may be
in force.
45. Interpretation. The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees.

46. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this lease.

47. Partial invalidity. If any term, provision, covenant, or condition of this lease should be held to be invalid, void, or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

48. Governing law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.
SPECIAL CONDITIONS:

1. Certification for use of pesticides. The Lessee shall be a certified pesticide applicator, subject to the State of Hawaii, Department of Agriculture's field consultation and inspection program. The Lessee will have the following options:

   (a) The Lessee shall not use any chemical listed by the United States Environmental Protection Agency as a restricted-use pesticide based on its potential to contaminate ground water; or

   (b) The Lessee shall be subject to semi-annual inspections for compliance with use restriction on listed ground-water contaminants, as specified by agreement between the Board of Water Supply and the State of Hawaii, Department of Agriculture.

2. Subdivision of premises. The Lessee shall allow the Lessor to subdivide the premises, with reimbursement of Lessee's reasonable costs.

END OF SPECIAL CONDITIONS
DEFINITIONS

As used in this lease, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Board of Agriculture.

"Corporate successor" means a solely owned corporation which, through an assignment of lease, succeeds an agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, but shall not include any livestock and poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey streamflows from one point to another.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all
other substances or materials defined as or included in the
definition of "hazardous substances," "hazardous wastes,"
"hazardous materials," and/or "toxic substances" under or for the
purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other
governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect
to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge,
contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery,
compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous
materials on, within, or under the premises.

§§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the demised premises and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

"Lessee" includes the Lessee, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.

"Premises", "demised premises", or "demised land" includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

"Waste" includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised premises or any portions
thereof; (3) failure to employ all of the usable portions of the
demised premises; and (4) abandonment of the demised premises.

IN WITNESS WHEREOF, the parties hereto have caused these
presents to be executed this _____ day of ________________,
20____.

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

By ____________________________
Chairperson
Board of Agriculture
LESSOR

By ____________________________
LESSEE

APPROVED AS TO FORM:

Deputy Attorney General
STATE OF HAWAII )
) SS.
CITY AND COUNTY )
) OF HONOLULU )

On this _____ day of __________________, 19____, before me personally appeared _______ and _______ to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _______ executed the same as _______ free act and deed.

__________________________
Notary Public, State of Hawaii
My commission expires:_________

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

On this _____ day of __________________, 19____, before me personally appeared _______ and _______ to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _______ executed the same as _______ free act and deed.

__________________________
Notary Public, State of Hawaii
My commission expires:_________
EXHIBIT "A"

All those certain parcels of land situated at __________, ____________, __________, Hawaii, shown on the map attached hereto as Exhibit "B", designated as __________ Agricultural Park, and hereby made a part hereof, consisting of:

<table>
<thead>
<tr>
<th>TMK</th>
<th>LOT</th>
<th>ACREAGE</th>
<th>MAP NO.</th>
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</table>

The area outlined in red on Exhibit "B" constitutes the premises demised hereunder.

END OF EXHIBIT "A"
EXHIBIT “B”

“Plot Plan”
“Assignment of Lease Evaluation Policy”
AFTER RECORdATION, RETURN BY MAIL ( ) PICK-UP ( )

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
1428 SOUTH KING STREET
HONOLULU, HAWAII 96814

SHORT FORM LEASE

THIS INDENTURE OF LEASE, dated this 1st day of May, 2001 by and between the STATE of HAWAII, hereinafter referred to as the "Lessor," by its Board of Agriculture, hereinafter referred to as the "Board," whose business address is 1428 South King Street, Honolulu, Hawaii 96814, and whose post office address is P.O. Box 22159, Honolulu, Hawaii 96823-2159, and GLAD'S LANDSCAPING & TREE TRIMMING, INC., a Hawaii corporation, whose business address is P. O. Box 19007, Honolulu, Hawaii 96817, hereinafter referred to as "Lessee,

WITNESSETH THAT

Upon the terms and conditions set forth in that certain unrecorded General Lease No. S-4936, dated April 24, 2001, hereinafter referred to as "Lease", entered into by and between Lessor and Lessee, all of which terms and conditions are hereby made parts hereof as fully and completely as if herein specifically set out in full, Lessor has leased, demised and let, and does hereby lease, demise and let unto Lessee:
Lot 10, area 9.401 acres, more or less, of the Waimanalo Agricultural Park, Phase I, situate at Waimanalo, Island of Oahu, State of Hawaii, as shown on File Plan 1850 and as shown on Exhibit "A", which is attached hereto and made a part hereof.

TO HAVE AND TO HOLD such premises unto Lessee, subject to the payment of rentals and the observance and performance of all of the terms, covenants and conditions set forth in the Lease, and on the part of Lessee to be observed and performed, for a term of forty-five (45) years, commencing on May 1, 2001, unless sooner terminated as provided therein.

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

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

James J. Nakatani, Chairperson
Board of Agriculture

LESSOR

GLAD'S LANDSCAPING & TREE TRIMMING, INC.

Silivensui Manufekai
President

APPROVED AS TO FORM:

Deputy Attorney General

Date: 5/1/01

LESSEE

Rhonda Manufekai
Secretary/Treasurer
STATE OF HAWAII  
CITY & COUNTY OF HONOLULU  

On this \[\text{\_}\] day of \[\text{\_}\], 19\__, before me personally appeared \[\text{\_}\],  
to me known to be the person described in and who executed the  
foregoing instrument and acknowledged that he executed the same  
as his free act and deed.

\[\text{\_}\]  
Notary Public, State of Hawaii  
\[\text{\_}\]  
My commission expires:_______

STATE OF HAWAII  
COUNTY OF HAWAII  

On this \[\text{\_}\] day of \[\text{\_}\], 19\__, before me personally appeared \[\text{\_}\],  
to me known to be the person described in and who executed the  
foregoing instrument and acknowledged that he executed the same  
as his free act and deed.

\[\text{\_}\]  
Notary Public, State of Hawaii  
\[\text{\_}\]  
My commission expires:_______
EXHIBIT "A"

All that certain parcel of land situated at Waimanalo, Koolaupoko, Oahu, Hawaii, shown on the map attached hereto as Exhibit "B", designated as Waimanalo Agricultural Park, Phase I, File Plan 1850, and hereby made a part hereof, consisting of:

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The area outlined in red on Exhibit "B" constitutes the premises demised hereunder.

END OF EXHIBIT "A"
STATE OF HAWAII

DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S - 4936

between

STATE OF HAWAII

and

GLAD'S LANDSCAPING AND TREE TRIMMING, INC.

covering Lot No. 10
WAIMANALO AGRICULTURAL PARK, PHASE I
SITUATED AT WAIMANALO, KOOLAUPOKO
ISLAND OF OAHU, HAWAII

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STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
GENERAL LEASE NO. S-4936

THIS INDENTURE OF LEASE, made and entered into this __th____
day of April__________, 20____, by and between the STATE OF
HAWAII, hereinafter referred to as the "Lessor", by its Board of
Agriculture, hereinafter referred to as the "Board", whose
business address is 1428 South King Street, Honolulu, Hawaii
96814, and whose post office address is P.O. Box 22159,
Honolulu, Hawaii 96823-2159, and GLAD'S LANDSCAPING & TREE
TRIMMING, INC., a Hawaii corporation, whose business and post
office address is P. O. Box 19007, Honolulu, Hawaii 96817,
hereinafter referred to as the "Lessee";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be
paid and of the terms, covenants, and conditions contained
herein, all on the part of the Lessee to be kept, observed, and
performed, does hereby demise and lease unto the Lessee, and the
Lessee does hereby lease and hire from the Lessor the premises
identified as Lot No. 10, TMK 1-4-1-35: 10 containing
approximately ___9.401__ gross acres, ___9.401__ arable acres, ___ non-arable acres) of land at Waimanalo Agricultural Park, Phase
I, Koolaupoko, Oahu, more particularly described in Exhibit A,
and outlined in red on Exhibit B, which are attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of forty-five (45) years, commencing on the 1st day of May, 2001, and ending on the 30th day of April, 2046, unless sooner terminated as provided herein, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a net annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments on August 1 and February 1 of each and every year during the term, unless otherwise provided, as follows:

1. **Base annual rental.** For the first fifteen (15) years, the base annual rental shall be the sum of **FOURTEEN THOUSAND FOUR HUNDRED AND NO/100-- DOLLARS ($14,400.00)**, per annum for arable land; except, the Board may permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than two years of base annual rental, the evidence of which shall be submitted to and approved by the Lessor within the first year of the lease term.

2. **Additional rental.** Each year on or before the 31st day of March, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the report, the Lessee shall pay to
the Lessor any additional rental due, which amount shall be determined in the manner described below:

From the report, determine a value representing two per cent (2%) of the gross proceeds, which includes revenues from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.

Failure to submit reports on additional rent together with payment of any additional rent due the Lessor for more than thirty (30) days after the 31st of March shall constitute a breach of this lease and cause for the termination thereon.

3. Reopening of annual rental. The base annual rental and additional rental shall be reopened and redetermined at the expiration of the 15th, 25th, and 35th years of the term.

4. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor’s appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report.
The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may
treat the failure as a breach of the lease and terminate this lease.

5. Facilities capital recovery fee. The Lessee shall pay a facilities capital recovery ("FCR") fee commencing on the date the Lessor installs improvements in support of the Lessee's operations or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is based on one-tenth of one per cent of the Lessor's expenditures and will be added to the base annual rental each year.

6. Interest on delinquent rental. Interest at the rate of one per cent (1%) per month shall be charged on delinquent rentals.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and water rights. (a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. "Minerals", as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporre, boehmite, laterite, gibbsite, alumina, all ores of aluminum and all other mineral substances and ore deposits, whether solid,
gaseous, or liquid, including all geothermal resources in, on, or under the premises, fast or submerged; provided that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee’s permitted activities on the demised premises and not for sale to others.

(b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right, shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee’s improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the premises shall be reserved to the Lessor.

3. Ownership of fixed improvements. The ownership of all improvements, including but not limited to fences and stockwater systems located on the demised land prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.

4. Withdrawal. The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during
the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the premises shall be subject to the right of the Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the premises withdrawn or made unusable. If any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the premises by the Lessee of the leased land being withdrawn. In the case of tree crops, the Lessor shall pay to the Lessee the residual
value of the trees taken and, if there are unharvested crops, the value of the crops also.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. **Payment of rent.** The Lessee shall pay the required rent in legal tender of the United States of America to the Lessor at the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor.

2. **Taxes, assessments, etc.** The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.

3. **Utility services.** The Lessee shall pay when due all charges, duties, and rates of every description, including, but not limited to, water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the term, whether assessed to or payable by the Lessor or the Lessee.
4. **Irrigation costs.** Without limiting the provisions of the proceeding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system which provides irrigation water to Waimanalo Agricultural park, Phase I, including the demised premises. The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, Hawaii Revised Statutes, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set, and the Lessee agrees to abide by and to pay when due all assessments, tolls, fees, and charges set by such project.

5. **Character of use.** (a) The Lessee shall use the premises hereby demised solely for diversified agriculture purposes, subject to the covenants, conditions, and restrictions of any and all encumbrances on the premises existing as of the date of this lease. No other use shall be permitted except as provided in section 4-153-33, Hawaii Administrative Rules.

(b) No livestock production operations shall be conducted on the premises without the prior approval of the Department of Health.

(c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the Department of Health.

(d) No cesspools shall be constructed on the premises. However, upon approval from the Department of Health, the Lessee
may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health.

(f) Unless otherwise provided, the covenants, conditions, and restrictions contained in this section shall run with the land until the time that the premises is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.

6. Utilization and development of the land. The development of the premises shall be completed within three (3) years from the commencement date of this lease, with not less than fifty percent (50%) developed within the first two (2) years of the term. Utilization and development of the premises shall be in accordance with a plan of utilization and development which shall be prepared by the Lessee and approved by the Lessor before execution of this lease. Any modification or deviation from the plan without the prior written approval of
the Lessor may constitute a breach of this lease and cause for the termination thereof.

7. **Good husbandry and conservation practices.** The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a conservation plan developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the conservation plan, the Lessor shall notify the Lessee of the discrepancy, and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.

8. **Major portion of income.** Within five years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty percent (50%) of the Lessee's total annual income; except, that this restriction shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the fifth year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit.
and verification by the Lessor who may impose additional requirements to carry out the requirements of this section.

9. **Sanitation.** The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.

10. **Waste and unlawful, improper, or offensive use of the premises.** The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, nor cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.

11. **Inspection of premises.** The Lessee shall permit the Lessor and its agents, at all reasonable times during the term, to enter the premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.

12. **Improvements.** At any time during the term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, signs, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner
termination of this lease, at which time the ownership thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.

13. **Repairs to improvements.** The Lessee shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted.

14. **Dwelling restrictions.** The Board may permit farm dwellings on the premises if the need is clearly demonstrated. The farm dwellings shall be used in connection with agricultural activities on the premises and shall not be used for rental purposes. The dwellings shall be subject to such additional terms and conditions as the Board may require including, but not limited to, an adjustment of the lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations, and rules, including, but not limited to, laws regarding environmental quality control.

15. **Insurance.** At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount
equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage, and the Lessee shall receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to retain the balance of the proceeds.

16. Right of first refusal. An agricultural park lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the Board, as follows:

(1) The Board shall have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less
appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this section, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements, and "appreciated value" means the replacement cost for developing the demised premises.

(2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value.

(3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who, together with the Lessor's appraiser, shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In this event, the Lessee shall pay for the Lessee's appraiser, the Lessor shall pay for the Lessor's appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

(4) The Board may re-purchase the lease and improvements with funds from the agricultural park special fund or
may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-153-19 and 4-153-22, Hawaii Administrative Rules.

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase.

(6) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35, Hawaii Administrative Rules.

17. Assignments of lease, lease interest, etc. (a) Any transfee, assignee, or sublessee of an agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee’s or heir’s income is derived from the productive use of the property. In the absence of or upon cessation of these
conditions, the devisee or heir shall surrender this lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

1. The lease contains the principal residence of the Lessee;
2. The Lessee becomes mentally or physically disabled;
3. Extreme economic hardship is demonstrated to the satisfaction of the Board; or
4. The assignment is to the corporate successor of the Lessee;

provided that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, any premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further...
that the Lessor may adjust the base annual and percentage (additional) rental pursuant to section 4-153-18, Hawaii Administrative Rules.

18. **Subletting.** The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be included as part of the Lessee’s gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the base annual rental and percentage (additional) rental of the demised premises based upon the rental rate charged to the sublessee; and provided further that the base annual rental and percentage (additional) rental may not be revised downward.

19. **Mortgage.** Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest therein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without approval shall be void.

Upon application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein to create a security interest in the leasehold of the demised
premises. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the premises or any interest therein.

20. **Breach.** Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the premises covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of a holder of a security interest. The Board, after due notice of default, shall terminate this lease or tenancy and take possession of the leased premises together with all improvements placed thereon without demand or previous entry and without legal process and shall retain all
rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.

21. Rights of holder of record of security interest. Whenever any notice of breach or default is given to any party under section 4-153-34, Hawaii Administrative Rules, or under the terms of this lease, a copy of the notice shall be delivered by the Lessor to all holders of record having a security interest in any premises or interest covered by this lease or other instrument whose security interest has been recorded with the Department of Agriculture and the Bureau of Conveyances. In the event the Board seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may cure or remedy the default or breach of rent payment within thirty days, or any other default or breach within sixty days, from the date of receipt of the notice set forth herein, or within such additional period as the Board may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Board may:

(1) Pay to the holder from any moneys at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder; or if ownership of the interest or estate shall have vested in the holder by
way of foreclosure, or action in lieu thereof, the
Board shall be entitled to the conveyance of the
interest or estate upon payment to the holder of the
amount of the mortgage debt, including interest and
penalties, and all reasonable expenses incurred by the
holder in connection with the foreclosure and
preservation of its security interest, less appropriate
credits, including income received from the privilege,
interest, or estate subsequent to the foreclosure, or
(2) If the property cannot be reasonably reassigned without
loss to the Lessor, then terminate the outstanding
privilege, interest, or estate without prejudice to any
other right or remedy for arrears of rent or for any
preceding or other breach or default and use its best
efforts to redispose of the affected land to a
qualified and responsible person free and clear of the
mortgage and the debt thereby secured; provided that a
reasonable delay by the Board in instituting or
prosecuting any right or remedy it may have shall not
operate as a waiver of the right or to deprive it of
the remedy when the delay serves to assist the Board in
resolving the problems created by the breach or default
involved.
(b) The proceeds of any redisposition effected shall
be applied: first, to reimburse the Lessor for costs
and expenses in connection with the redisposition;
second, to discharge in full any unpaid lease rental or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated, and any balance to the owner of the privilege, interest, or estate.

22. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

23. Liability insurance. The Lessee shall procure and maintain during the entire period of this lease a policy or policies of commercial general liability insurance as will protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The minimum limit of said policy or policies shall not be less than the single limit of $1,000,000.00, approved by the Board and subject to periodic
review and adjustment every two (2) year(s), insuring the Lessor and the Lessee against all claims for personal injury, death, and property damage. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.

24. Performance bond. The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a performance bond in an amount equal to two times the annual base rental as a surety for the satisfactory compliance of lease terms, conditions, and covenants. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the
right to reinstate the bond requirement at any time throughout
the term of this lease.

25. Justification of sureties. The bonds that are required
herein shall be supported by the obligation of a corporate
surety organized for the purpose of being a surety and qualified
to do business as a surety in the State of Hawaii, or by no less
than two personal sureties, corporate or individual, for which
justifications shall be filed as provided in section 78-20,
Hawaii Revised Statutes; provided that the Lessee may furnish a
written bond in the same amount and with the same conditions,
executed by it alone as obligor, if, in lieu of any surety or
sureties, the Lessee shall furnish and at all times thereafter
keep and maintain any of the forms of financial guarantee or
performance that is approved by the Lessor.

26. Indemnity. The Lessee shall indemnify, defend, and
hold harmless the Lessor from and against any claim or demand
for loss, liability, or damage, including claims for property
damage, personal injury, or wrongful death, arising out of any
occurrence on the demised premises or on sidewalks, parking
areas, and roadways adjacent thereto, or occasioned by any act
or nuisance made or suffered on the premises, or by any accident
or fire thereon, or growing out of or caused by any failure on
the part of the Lessee to maintain the premises in a safe
condition, or by any act or omission of the Lessee, and from and
against all actions, suits, damages, and claims by whomsoever
brought or made by reason of the non-observance or
non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

27. **Costs of litigation.** If the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), without any fault on the Lessor's part, the Lessee shall pay all costs and expenses incurred by or imposed on the Lessor including, but not limited to, attorney's fees; **furthermore, the Lessee shall pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises, or in the collection of delinquent rental, taxes, and any and all other charges.**

28. **Liens.** The Lessee will not commit or suffer any act or neglect whereby the premises, any improvement, or the estate of the Lessee in the same shall become subject to any attachment, lien, charge, or encumbrance, except as provided herein, and shall indemnify, defend, and hold harmless the Lessor from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.

29. **Lessor's lien.** The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the demised premises, whether
the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.

30. **Condemnation.** If any portion of the demised premises shall be condemned for public purposes by the Lessor, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority: (a) The value of growing crops which it is not permitted to harvest; and (b) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this lease; provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the
portion so taken renders the remainder unsuitable for the use or
uses for which the premises were demised, the Lessee shall have
the option to surrender this lease and be discharged and
relieved from any further liability therefor; provided that the
Lessee may remove the permanent improvements constructed,
erected, and placed by the Lessee within such reasonable period
as may be allowed by the Lessor.

31. **Right to enter.** The Lessor, the City and County of
Honolulu, or their representatives shall have the right at all
reasonable times to enter and cross any portion of the demised
premises for the purpose of performing any public or official
duties; provided that in the exercise of the rights, the Lessor,
the City and County of Honolulu, or their representatives shall
not interfere unreasonably with the Lessee or the Lessee's use
and enjoyment of the premises.

32. **Extension of time.** Notwithstanding any provision to
the contrary, wherever applicable, the Lessor, for good cause
shown, may allow additional time beyond the time or times
specified herein to the Lessee, in which to comply, observe and
perform any of the terms, conditions, and covenants contained in
this lease.

33. **Quiet enjoyment.** The Lessor covenants and agrees with
the Lessee that upon payment of rent at the times and in the
manner specified and the observance and performance of the
covenants, terms, and conditions hereof on the part of the
Lessee to be observed and performed, the Lessee shall have,
hold, possess, and enjoy the demised premises for the term demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

34. **Surrender.** At the end of the term or other sooner termination of this lease, the Lessee shall peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise in this lease. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of the Lessee’s personal property from the premises, the Lessor may remove or dispose of any and all personal property from the premises and either deem the property abandoned and dispose of the property or place such property in storage at the cost and expense of the Lessee, and the Lessee shall pay all costs and expenses for removal, disposal, transporting, and storage of the personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

35. **Non-warranty.** The Lessor does not warrant the conditions of the demised premises, as the same is being leased "as is."

36. **Hazardous materials.** (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials.
except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation:

(1) all foreseeable and unforeseeable consequential damages;

(2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and
implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor’s investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor’s enforcement of this covenant, whether or not a lawsuit is brought therefore and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney’s fees.

(C) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

37. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or physical handicap.

38. Hunting. No hunting shall be allowed on the demised premises during the term of this lease.

39. Boundary stakeout. The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises. The Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

40. Fences. The Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised premises if such fencing shall be required by the Lessor or should be so required by any law now in force or that may hereafter be enacted and shall and will maintain in good
order and condition throughout the period of this lease the
fences so constructed and those now existing on the demised
premises.

41. **Setback requirements.** Building setback lines shall be
in accordance with applicable city and county ordinances and
rules.

42. **Drainage easements.** The demised premises shall be
subject to drainage and flowage easements as applicable. The
easement area shall not be altered or used for any purposes
which may obstruct flow or reduce the effectiveness of the
drainageway. The Lessee shall accept the storm runoff draining
into and through the easement area and shall be responsible for
the maintenance and protection of the drainage easements against
deterioration or loss of functional effectiveness.

43. **Roadway and utility easements.** The demised premises
shall be subject to roadway and utility easements as applicable,
which easements shall be in favor of property owners served by
the easements; provided that the Lessee may cross the easements
at any point; provided further that the Lessee shall be
responsible for maintenance of the easements.

44. **Compliance with laws.** The Lessee shall comply with the
requirements of all federal, state, and county authorities and
observe all federal, state, and county laws, ordinances, and
rules pertaining to the premises which are now in force or later
may be in force.
45. **Interpretation.** The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees.

46. **Headings.** The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this lease.

47. **Partial invalidity.** If any term, provision, covenant, or condition of this lease should be held to be invalid, void, or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

48. **Governing law.** This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.
SPECIAL CONDITION

1. Building restriction. As to Lot 10, Waimanalo Agricultural Park, Phase I, which, in its entirety is situated within a flood hazard zone, no structures may be erected on the premises without first obtaining approval of the Board whose approval may include such additional terms and conditions as an adjustment of the lease rental, requirement to obtain and maintain a federal flood insurance policy, etc. All construction on the premises shall be in accordance with plans approved by Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations, and rules, including but not limited to, laws regarding environmental protection and quality control.

DEFINITIONS

As used in this lease, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Board of Agriculture.

"Corporate successor" means a solely owned corporation which, through an assignment of lease, succeeds an agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related
thereof, but shall not include any livestock and poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey streamflows from one point to another.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," and/or "toxic substances" under or for the purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost
recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.


"Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the described premises and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

"Lessee" includes the Lessee, its heirs, personal
representatives, executors, administrators, successors, and permitted assigns.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.

"Premises", "demised premises", or "demised land" includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

"Waste" includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised premises or any portions thereof; (3) failure to employ all of the usable portions of the demised premises; and (4) abandonment of the demised premises.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 24th day of April, 2001.

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

By
Chairperson
Board of Agriculture

GLAD'S LANDSCAPING & TREE TRIMMING, INC.

By
Silivenusi Manufekai
President

By
Rhonda Manufekai
Secretary/Treasurer

APPROVED AS TO FORM:

Deputy Attorney General

Dated: APRIL 1-

-37-
C-90
STATE OF HAWAII
CITY AND COUNTY
OF HONOLULU

On this _____ day of _____________, 19____,
before me personally appeared ____________________________
and ____________________________, to me known to be the
person(s) described in and who executed the foregoing instrument
and acknowledged that _________ executed the same as
__________ free act and deed.

________________________________________
Notary Public, State of Hawaii
My commission expires:___________

STATE OF HAWAII
CITY AND COUNTY
OF HONOLULU

On this _____ day of _____________, 19____,
before me personally appeared ____________________________
and ____________________________, to me known to be the
person(s) described in and who executed the foregoing instrument
and acknowledged that _________ executed the same as
__________ free act and deed.

________________________________________
Notary Public, State of Hawaii
My commission expires:___________
EXHIBIT "A"

All that certain parcel of land situated at Waimanalo, Koolaupoko, Oahu, Hawaii, shown on the map attached hereto as Exhibit "B", designated as Waimanalo Agricultural Park, Phase I, File Plan 1850 and hereby made a part hereof, consisting of:

<table>
<thead>
<tr>
<th>TMK</th>
<th>LOT</th>
<th>ACREAGE</th>
<th>MAP NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-1-35:10</td>
<td>10</td>
<td>9.401</td>
<td>1850</td>
</tr>
</tbody>
</table>

The area outlined in red on Exhibit "B" constitutes the premises demised hereunder.

END OF EXHIBIT "A"
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S - 3771

between:

STATE OF HAWAII

and

CONTEMPORARY LANDSCAPING LLC
a Limited liability company

covering Lot No. 31

Koolaupoko, Waimanalo, Island of Oahu, State of Hawaii
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STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE
GENERAL LEASE NO. S-3771

THIS INDENTURE OF LEASE, is made and entered into this 23rd day of August, 2011, by and between the STATE OF HAWAI'I, hereinafter referred to as the "Lessor", by its Board of Agriculture, hereinafter referred to as the "Board", whose business address is 1428 South King Street, Honolulu, Hawaii 96814, and CONTEMPORARY LANDSCAPING LLC, a Limited liability company, whose business and post office address is 380 Halaki Street, Honolulu, Hawaii 96821, hereinafter referred to as the "Lessee".

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants, and conditions contained herein, all on the part of the Lessee to be kept, observed, and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises identified as Lot No. 31, containing approximately 10,005 gross acres (10,005 net usable acres), of land at Koolaupoko, Waimanalo, Oahu, more particularly described in Exhibit A, and the premises outlined in red on Exhibit B, which are attached hereto and made a part hereof.
TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of THIRTY-FIVE (35) years commencing on the 1st day of August, 2011, and ending on the 31st day of July, 2046, unless sooner terminated as provided herein, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a net annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments on February 1st and August 1st of each and every year during the lease term, except as otherwise provided, as follows:

A. Base annual rental. For the first ten (10) years, the base annual rental shall be the sum of EIGHT THOUSAND AND NO/100 DOLLARS ($8,000.00); as offered and accepted by the Board; except, the Board may permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than two years of base annual rental, the evidence of which shall be submitted to and approved by the Lessor within the first year of the lease term.

B. Additional rental. Each year on or before the 30th day of April, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the report, the Lessee shall pay to the Lessor any additional rental due, which amount shall be determined in the manner described below:

From the report, determine a value representing 1.5 percent (%) of the gross proceeds, which includes revenues
from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.

C. Reopening of annual rental. The annual rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th, years of the term herein, provided however, in no event shall the base annual rental be revised downward.

D. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three
appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658A, Hawaii Revised Statutes ("HRS"). The Lessee shall pay for its own appraiser. The cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee's or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may, at its option, treat the failure as a breach of this lease and terminate this lease.

E. Facilities capital recovery fee. The facilities capital recovery ("FCR") fee is payable annually and shall be for the full term of this lease, commencing on the date the Lessor installs improvements as described herein in support of the Lessee's operations, or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is calculated on one-tenth of one per cent of the Lessor's expenditures and will be
added to the base annual rental, except that Capital Improvement Projects, as may be authorized by the State of Hawaii Legislature, which are constructed to repair or remedy defects to the physical facility and are not used to expand operations shall not be included as the Lessor's expenditure upon which the FCR fee is based.

F. Interest on delinquent rental. Interest at the rate of one per cent (1%) per month shall be charged to any delinquent rentals.

G. Holdover. Upon expiration of the lease term, if the land is not otherwise disposed of, the Lessor may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the Lessor may prescribe, and further as provided in section 4-158-31, Hawaii Administrative Rules ("HAR").

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and water rights. (a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. "Minerals", as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporre, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances
and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the demised premises, fast or submerged; provided that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others.

(b) All surface and ground waters appurtenant to the demised premises and the right on its own behalf; or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the demised premises shall be reserved to the Lessor.

3. Ownership of fixed improvements. The ownership of all improvements, including but not limited to farm dwellings, barns, maintenance sheds, shadehouses, fences, irrigation and stockwater systems located on the demised premises prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.

4. Withdrawal. The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during
the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the Lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the required rent in legal tender of the United States of America to the Lessor at the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the lease term.

3. Utility services. The Lessee shall pay when due all charges, duties, and rates of every description, including water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the lease term, whether assessed to or payable by the Lessor or the Lessee.

4. Irrigation costs. Without limiting the provisions of the proceeding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system which provides irrigation water to the demised premises.
The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, HRS, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set; and the Lessee agrees to abide by and to pay when due all rates and charges set by such irrigation project.

The Lessee shall use due care to protect the ditches, dikes, pipelines, gates, valves, and all other property and appurtenances of the irrigation system and shall not cause or suffer any damage or destruction thereof.

5. Character of use. (a) The Lessee shall use the premises hereby demised solely for Diversified Agriculture purposes. No other use shall be permitted except as provided in sections 4-138-18 and 4-158-19, HAR.

(b) No cesspools shall be constructed on the premises. However, the Lessee may use alternative wastewater treatment and disposal systems, which do not pose a threat to the groundwater and provided the Lessee obtains the prior approval from the Department of Health.

(c) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health.

(d) The covenants, conditions, and restrictions contained in this section shall run with the land until the time that the land is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions
shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.

6. **Dwelling restrictions.** Residential use and residential dwellings shall not be permitted on the premises. The Board may permit a farm dwelling on the premises if the need is clearly demonstrated. The farm dwelling shall be used in direct connection with the agricultural activities on the premises and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the Board may require including, but not limited to, adjustment of lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations and rules, including, but not limited to, laws regarding environmental quality control.

7. **Utilization and development of the demised premises.** The development of the demised premises shall be completed within three years from the commencement date of this lease, with no less than fifty per cent (50%) developed within the first two years of the lease term. The above schedule shall be in accordance with a Plan of Utilization and Development (P.U.D.) which shall be prepared by the Lessee and approved by the Lessor before the execution of this lease. Any modification or deviation from the plan, without the prior written approval of the Lessor,
may constitute a breach of this lease and cause for the termination thereof.

8. Good husbandry and conservation practices. The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a Conservation Plan (CP) developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the Conservation Plan, the Lessor shall notify the Lessee of the discrepancy and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.

9. Major portion of income. Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty percent (50%) of the Lessee's total annual income; except, that this requirement shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and
verification by the Lessor, who may impose additional requirements to carry out the requirements of this section.

10. Sanitation, etc. The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.

11. Waste and unlawful, improper, or offensive use of the premises. The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.

12. Inspection of premises. The Lessee shall permit the Lessor and its representatives, at all reasonable times during the lease term, to enter the demised premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.

13. Improvements. At any time during the lease term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, sign, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership
thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee, at the Lessee's sole cost and expense.

14. Repairs to improvements. The Lessee shall, at the Lessee's own expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted.

15. Insurance. At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall receive ther
portion of the proceeds which the unexpired term of this lease at
the time of the loss or damage bears to the whole of the term, the
Lessor to retain the balance of the proceeds.

16. **Right of first refusal.** A lease or any interest therein,
including stock of a corporation holding the lease or an interest
in a partnership or association holding the lease, shall not be
transferred or assigned unless the lease and improvements, or any
interest therein, are first surrendered to the Board, as follows:

(1) The Board shall have the option to re-purchase the
lease for the price paid by the current lessee,
including closing costs, or the fair market value,
less appreciated value, at the time of re-purchase,
as determined in paragraph (3), whichever is the
lower but not less than zero. For the purposes of
this section, "price paid by the current lessee"
means the consideration paid for the lease exclusive
of improvements and "appreciated value" means the
replacement cost for developing the leased premises.

(2) Any improvements affixed to the realty, including
trade fixtures and growing crops, shall be re-
purchased at their fair market value.

(3) At the time of the re-purchase, the fair market
value of the lease less appreciated value and the
fair market value of any improvements shall be
determined by a qualified appraiser whose services
shall be contracted for by the Lessor; provided that
should the Lessee disagree with the values, the
Lessee may appoint the Lessee's own appraiser and together with the Lessor's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the Lessee shall pay for the Lessee's own appraiser, the Lessor shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

(4) The Board may re-purchase the lease and improvements with funds from the non-agricultural park lands special fund or may accept a surrender of the lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-158-22 and 4-158-29, HAR.

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase.

(6) This section shall not apply to a holder of record having security interest upon foreclosure pursuant to section 4-158-34, HAR.
17. Assignments of lease, lease interest, etc. (a) Any transferee, assignee, or sublessee of a non-agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the demised premises. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender the lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

(1) The Lessee becomes mentally or physically disabled;

(2) Extreme economic hardship is demonstrated to the satisfaction of the Board; or

(3) The assignment is to the corporate successor of the Lessee;

provided that with the prior written approval of the board the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by
The Board; provided further, that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on October 23, 2007; as amended, a copy of which is attached hereto as Exhibit "D". The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual rental and additional rental pursuant to section 4-158-21, HAR.

18. Subletting. The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rental to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be
included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the rental of the demised premises based upon the rent charged to the sublessee; and provided further that the rental may not be revised downward.

19. **Mortgage.** Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest herein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without such approval shall be void. That upon application and with the prior written consent of the Lessor, the Lessee may mortgage this lease or any interest herein or create a security interest in the leasehold of the public land demised. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the land or any interest therein.

20. **Breach.** Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the land covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make
timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of holder of security interest. Without limiting the foregoing, the Board, after due notice of default shall terminate this lease or tenancy and take possession of the premises together with all improvements placed thereon, without demand or previous entry and without legal process, and shall retain all rental paid in advance as damages for the violations. The retention of advance rental as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.

21. Rights of holder of record of security interest. (a) Prior board action shall be required when an institutional lender acquires the Lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the Lessee’s interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(b) Notwithstanding any provisions of this lease, if any lease is subject to a security interest held by an institutional
lender and if the institutional lender has given to the Board a copy of the encumbrance as recorded in the bureau of conveyances:

(1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed canceled and terminated for all purposes under state law;

(2) If the Lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1), by reason of acquisition of the Lessee's interest pursuant to a foreclosure sale, judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure:

(A) The institutional lender shall be liable for the Obligations of the Lessee under the lease for the period of time during which the institutional lender is the holder of the Lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
(B) The provisions of section 166E-8(b)(1) and (2) shall not apply to the lease or the demised land during such time as the institutional lender holds the lease; provided that:

(i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the Board; and

(ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either sell or assign the lease, after which date section 166E-8(b)(1) and (2) shall apply to the new lease;

(3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the Board, except with the prior written consent by the institutional lender and that consent shall not be unreasonably withheld; and

(4) If the lease contains any provision requiring the payment of a premium to the Lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender shall have been paid in full.
(c) Ownership of both the lease and security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the Board.

(d) The Board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

(1) The purchase, assignment, or transfer shall conform with subsection (b)(4); and

(2) The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender. Other purchasers may not be precluded from acquiring the institutional lender's security interest but shall not have rights as successor interest to the original institutional lender.

22. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, or the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of
any term, covenant, or condition, or to exercise any option conferred herein shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

23. Liability insurance. The Lessee shall procure and maintain during the entire period of this lease, a policy or policies of commercial general liability insurance, in an amount to be determined by the Lessor and approved by the Board, subject to periodic review and adjustment every two years, insuring the Lessor and the Lessee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.

24. Performance bond. The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a good and sufficient surety bond in an amount equal to two times the annual base rental.
conditioned upon the full and faithful observance and performance by the Lessee of the lease terms, conditions, and covenants of this lease. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the performance bond requirement at any time throughout the term of this lease.

25. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.

26. Indemnity. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage,
personal injury, or death, arising out of any occurrence on the
demised premises or on sidewalks, parking areas, and roadways
adjacent thereto resulting from any act or omission of the Lessee,
or occasioned by any act or nuisance made or suffered on the
premises, or by any accident or fire thereon, or growing out of or
causled by any failure on the part of the Lessee to maintain the
premises in a safe condition, or by any act or omission of the
Lessee, and from and against all actions, suits, damages, and
claims brought or made by reason of the non-observance or non-
performance of any of the terms, covenants and conditions herein
or the laws, ordinances, and rules of the federal, state, or
county governments. This provision shall survive the expiration
or earlier termination of this lease.

27. Costs of litigation. If the Lessor shall be made a party
to any litigation commenced by or against the Lessee (other than
condemnation proceedings), without any fault on the Lessor's part,
the Lessee shall pay all costs and expenses incurred by or imposed
on the Lessor, including, but not limited to, attorney's fees;
furthermore, the Lessee shall pay all costs and expenses which may
be incurred by or paid by the Lessor in enforcing the covenants
and agreements of this lease, in recovering possession of the
demised premises, or in the collection of delinquent rental,
taxes, and any and all other charges.

28. Liens. The Lessee will not commit or suffer any act or
neglect whereby the demised premises or any improvement thereof or
the estate of the Lessee in the same shall become subject to any
attachment, lien, charge, or encumbrance, except as provided
herein, and shall indemnify, defend, and hold harmless from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.

29. **Lessor's lien.** The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.

30. **Condemnation.** If any portion of the demised premises shall be condemned for public purposes by the State of Hawaii, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority:

(1) The value of growing crops which the Lessee is not permitted to harvest; and

(2) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease;

provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for compensation or
indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor, provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.

31. **Right to enter.** The Lessor, the City and County of Honolulu, or their representatives shall have the right at all reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.

32. **Extension of time.** Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.

33. **Quiet enjoyment.** The Lessor covenants and agrees with the Lessee that upon payment of rent at the times and in the
manner specified and the observance and performance of the
covenants, terms, and conditions hereof on the part of the Lessee
to be observed and performed, the Lessee shall have, hold,
possess, and enjoy the demised premises for the term demised,
without hindrance or interruption by the Lessor or any other
person or persons lawfully claiming by, through, or under it.

34. Surrender. At the end of the term or other sooner
termination of this lease, the Lessee shall peaceably deliver unto
the Lessor possession of the demised premises, together with all
improvements existing or constructed thereon unless provided
otherwise in this lease. Furthermore, upon the expiration,
termination, or revocation of this lease, should the Lessee fail
to remove any and all of the Lessee's personal property from the
premises, the Lessor may remove any and all personal property from
the premises and either deem the property abandoned and dispose of
the property or place the property in storage at the cost and
expense of the Lessee, and the Lessee shall pay all costs and expenses for the disposal, removal, or storage of the personal
property. This provision shall survive the expiration or earlier
termination of this lease.

35. Non-warranty. The Lessor does not warrant the conditions
of the leased premises, as the same is being leased as is.

36. Covenant against discrimination. The use and enjoyment
of the premises shall not be in support of any policy which
discriminates against anyone based upon race, creed, color,
national origin, sex, familial status, ancestry, physical
handicap, disability, age or HIV (human immunodeficiency virus) infection.

37. **Hunting.** No hunting shall be allowed on the demised premises during the term of this lease.

38. **Boundary stakeout.** The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises; the Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

39. **Setback requirements.** Building setback lines shall be in accordance with applicable county ordinances and rules.

40. **Drainage easements.** The demised premises shall be subject to drainage and flowage easements as applicable. An easement area shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainageway. The Lessee shall accept the storm runoff draining into and through the easement area and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

41. **Roadway and utility easements.** The demised premises shall be subject to roadway and utility easements as applicable, which easements shall be in favor of property owners served by the easements; provided that the Lessee may cross the easements at any point; provided further that the Lessee shall be responsible for maintenance of the easements.

42. **Compliance with laws.** The Lessee shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules
pertaining to the premises which are now in force or later may be in force.

43. **Interpretation.** The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees. The paragraph headings in this lease are for convenience and are not intended to construe the intent or the meaning of any of the provisions.

44. **Hazardous materials.** (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents,
successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

45. Hazardous waste evaluation. Prior to the termination of the lease, Lessee, at its sole cost and expense, shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the federal Environmental Protection Agency and the Department of Agriculture. The termination will not be
approved by the Board of Agriculture or department of Agriculture unless this evaluation and abatement provision has been executed.

46. Commercial operations. The Lessee, its employees, customers, guests, agents and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without prior written approval of the Lessor. No commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

47. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

48. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire perimeter of the land under lease where fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease.

49. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

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50. **Hawaii law.** This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

**SPECIAL CONDITIONS**

1. Notwithstanding anything to the contrary in this lease, the provision in Paragraph A relating to a rental offset for land clearance and leasehold improvements shall not apply to lease extensions or conversions.

2. In accordance with section 4-158-8(b)(4), Hawaii Administrative Rules, Lessee is required to make payment of the annual base rent, as stated herein, and a premium computed at twenty-five percent (25%) of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not exceed seven years.
DEFINITIONS

As used in this lease, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Board of Agriculture.

"Corporate successor" means a solely owned corporation which, through an assignment of lease, succeeds a non-agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows or run-off from one point to another.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of
"hazardous substances," "hazardous wastes," "hazardous materials," and/or "toxic substances" under or for the purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.

To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land demised and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the State and that make loans to qualified applicants under this lease on the basis of a lease awarded pursuant to Chapter 166E, Hawaii revised Statutes for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Lessee" includes the Lessee, its heirs, personal representatives, executors, administrators, successors, or permitted assigns.

"Making a loan" means lending of new money or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender, after June 30, 2006.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.
"Premises" or "demised premises" includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

"Waste" includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof; (3) failure to employ all of the usable portions of the demised premises; and (4) abandonment of the demised premises.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 23rd day of August, 2011.

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

Russell S. Kokubun
Chairperson, Board of Agriculture

LESSOR

CONTEMPORARY LANDSCAPING LLC

It's: Member

It's: Member

LESSEE
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this 18 day of July, 2011, before me personally appeared Mrs. F. Fakaii, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, in the presence

Notary Public, State of Hawaii

My commission expires: 7-1-2014

Document Date: 7/11/2011
Notary Name: Irene N. Nitta
Doc. Description: General Lease No. 5, 3771

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C-136
Company Resolution

1 July 2010

Article 6 of the Operating Agreement of Contemporary Landscaping LLC provides that the Manager shall direct and manage the affairs of the company and shall have all powers necessary or appropriate thereto. Pursuant to Article 6.4 (i) of said Operating Agreement, the undersigned Manager hereby authorizes Iris T. Fukui, Member, to act as an agent for the Company and, in that capacity, to execute leases on behalf of the Company and to take such other actions on behalf of the Company as she may determine necessary or convenient to carry out its business and affairs, all without further authorization from the undersigned. This authorization shall remain in effect until revoked by the undersigned. Any party may rely on this authorization so long as said party has not received actual notice of its revocation.

CONTEMPORARY LANDSCAPING LLC,
a Hawaii limited liability company

MANAGER:

[Signature]

ALFRED E. BURER
EXHIBIT "A"

WAIMANALO AGRICULTURAL SUBDIVISION

LOT 31

Waimanalo, Koolaupoko, Oahu, Hawaii

Being a portion of the Government (Crown) Land of Waimanalo

Beginning at the east corner of this lot, the north-west corner of Lot 32 of Waimanalo Agricultural Subdivision and on the south side of Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 7454.56 feet South and 965.56 feet East, as shown on Government Survey Registered Map 4114,

thence running by azimuths measured clockwise from True South:

1. 42° 50' 30" 126.31 feet along Lot 32 of Waimanalo Agricultural Subdivision;

2. 12° 00' 350.00 feet along Lot 32 of Waimanalo Agricultural Subdivision;

3. Thence along the northerly or makai side of the Easement for Maunawili Ditch, parallel to and 15.00 feet from the centerline of Maunawili Ditch, the direct azimuth and distance being: 8° 20' 437.00 feet;

4. Thence still along the northerly or makai side of the Easement for Maunawili Ditch, parallel to and 15.00 feet from the centerline of Maunawili Ditch, the direct azimuth and distance being: 115° 40' 616.00 feet to the middle of stream;

5. Thence down along the middle of said stream, along Lot 24 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being: 195° 28' 750.38 feet;

6. 282° 00' 590.00 feet along Lot 30 of Waimanalo Agricultural Subdivision and along the south side of Government Road to the point of beginning and containing an AREA OF 10.005 ACRES.

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, an Easement (9.00) feet wide) for the ditch over and across the above described Lot 31, as shown on plan attached hereto and made a part hereof.
SUBJECT, HOWEVER, to a non-exclusive easement in favor of the State of Hawaii to the two existing roads over and across the above described Lot 31, as shown on plan attached hereto and made a part hereof.

SUBJECT ALSO to building set-back line as shown on plan attached hereto and made a part hereof.
WAIMANALO AGRICULTURAL SUBDIVISION

LOTS 31, 32 AND 33

Waimanalo, Koolaupoko, Oahu, Hawaii.

Scale: 1 inch = 200 feet

Coordinates referred to "WAIMANALO RIDGE" A

JOB 1049
C.BK 6 (Tags)

TAX MAP 4-1-09
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT 'E'
DEPARTMENT OF AGRICULTURE
ASSIGNMENT OF LEASE EVALUATION POLICY

1. Reference

§4-158-19(a)(5), effective December 6, 2007, reads in part:

“Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-158-21;”

2. Qualifying Leases

This policy shall be applicable to the subject lease.

3. Prior Approval

Prior to giving its consent to an assignment, the Department of Agriculture (DOA) must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Board of Agriculture (Board) has given its approval. Such assignments shall be entertained only if they meet the criteria set forth in §§4-158-19(a)(3) and (4), HAR.

4. Qualifications of Assignee

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.
5. **Consideration to be Paid**

Prior to review by the Attorney General and approval by the Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. **Payment of Premium**

The rule permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee’s operation on the premises within 30 days after evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.
The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by the state, to determine the valuation of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. **Non-qualifying Deductions**

The statute only recognizes tangible items. Intangibles such as “goodwill,” business name recognition, etc., are not deductible.

8. **Subsequent Assignments**

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the base year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined base year to assignment date), or actual occupancy of the assignor, is used in place of the “expired term” when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (the whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.
The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. **Rights of Holders of Security Interest**

In the event of foreclosure or sale, the premium, if any shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. **State-owned Improvements**

When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.
SCHEDULE A.  Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

   Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (Base Year) to get the adjusted cost of improvements or renovations.

2. Depreciation.

   Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations.

   Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example:

   Actual cost: $500,000
   CCI (most recent): 121.1
   CCI (base): 102.3
   Expired term: 57 mos.
   Whole term: 408 mos.

1. Adjusted Cost of Improvements or Renovations:

   Actual Cost x CCI (most recent) / CCI (base)

   \$500,000 x 121.1 / 102.3 = \$591,887

2. Depreciation:

   \$591,887 / 408 mos. x 57 mos. = \$82,690

3. Adjusted Depreciated Cost of Improvements or Renovations:

   \$591,887 - \$82,690 = \$509,197
SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. **Adjusted Cost of Trade Fixture.**

   Multiply the actual cost of the improvements or renovations by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. **Depreciation.**

   Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. **Depreciated Cost of Trade Fixtures.**

   Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

**Example:**

<table>
<thead>
<tr>
<th>Refrigerator</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual cost:</td>
<td>$1,510</td>
</tr>
<tr>
<td>CPI (most recent):</td>
<td>118.1</td>
</tr>
<tr>
<td>CPI (base):</td>
<td>104.6</td>
</tr>
<tr>
<td>Expired term:</td>
<td>57 mos.</td>
</tr>
<tr>
<td>Whole term:</td>
<td>96 mos.</td>
</tr>
<tr>
<td>(Anticipated Life)</td>
<td></td>
</tr>
</tbody>
</table>

1. **Adjusted Cost of Trade Fixture:**

   \[
   \text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (Base Year)}} = \frac{1,510 \times 118.1}{104.6} = 1,705
   \]

2. **Depreciation:**

   \[
   \frac{1,705}{96 \text{ mos.}} \times 57 \text{ mos.} = 1,012
   \]

3. **Adjusted Depreciated Cost of Trade Fixture:**

   \[
   1,705 - 1,012 = 693
   \]
SCHEDULE C.  Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<table>
<thead>
<tr>
<th>Years</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 5</td>
<td>50%</td>
</tr>
<tr>
<td>6 - 10</td>
<td>45%</td>
</tr>
<tr>
<td>11 - 15</td>
<td>40%</td>
</tr>
<tr>
<td>16 - 20</td>
<td>35%</td>
</tr>
<tr>
<td>21 - 25</td>
<td>30%</td>
</tr>
<tr>
<td>26 - 30</td>
<td>25%</td>
</tr>
<tr>
<td>31 - 35</td>
<td>20%</td>
</tr>
<tr>
<td>36 - 40</td>
<td>15%</td>
</tr>
<tr>
<td>41 - 45</td>
<td>10%</td>
</tr>
<tr>
<td>46 - 50</td>
<td>5%</td>
</tr>
<tr>
<td>51 and over</td>
<td>0%</td>
</tr>
</tbody>
</table>

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10 1/2 years), the percentage would be 40%.

2. The Board may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.
SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.

2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A)

3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).

4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by nos. 2 and 3 from the amount in no. 1 above.

5. Determine the appropriate premium percentage (see Schedule C), multiply by the excess, if any, derived by no. 4.

Example:

A lease is being assigned 57 months after completion of the improvements at a consideration of $600,000.

The initial cost of the improvements was $500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was $1,510 with the current year CPI and base year CPI being 118.1 and 102.3, respectively. The total life expectancy is 96 months.

1. Net Consideration: $600,000
   Depreciation: $82,690
   Adj. Cost Trade Fixture: 1,705
   Depreciation: $1,012
   Adj. Dep Cost Trade Fixtures: $693
4. Excess: $50,110
5. Premium: Percentage: 50% $45,055

EXHIBIT “C”
Page 8 of 9
SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.

2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.

3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).

4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.

5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example:

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is $1,000,000.

The consideration paid by the assignor was $600,000 while the current year CC1 and redefined base year CC1 were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of $45,055 was paid to the state by the previous occupant from the $600,000 consideration.

1. Net Consideration Received: $1,000,000
2. Consideration Paid: $600,000
   Premium: - $45,055
   Net Consideration Paid: $554,945
3. Adj. Value Consideration (improvements):
   $554,945 x (156.4 / 121.1): $716,708
   Depreciation:
   $716,708 x (107 mos. / 408 mos.): - $187,960
   Adj. Depreciated Value Consideration: - $528,748
4. Excess: $471,252
5. Premium: Percentage: 45% $212,063

EXHIBIT "C"
TO: STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 SOUTH BERETANIA STREET, ROOM 205
HONOLULU, HAWAII 96813
No. of Pages: 30

Tax Map Key No. 4th /1-2-002:001 (portion)

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. LE - K1201
between
STATE OF HAWAII
and

BASF PLANT SCIENCE, L.P.
a Limited Partnership

KEKAHA, WAIMEA, ISLAND OF KAUAI, STATE OF HAWAII
LEASE AGREEMENT NO. LE-K1201

between

STATE OF HAWAII
AGribusiness Development Corporation
as LESSOR

and

BASF Plant Science L.P.
as LESSEE
STATE OF HAWAII
AGRI-BUSINESS DEVELOPMENT CORPORATION

LEASE AGREEMENT NO. LE-K1201

THIS LEASE made and issued this 16th day of July, 2012 by and between the State of Hawaii by its AGRI-BUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 South Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LESSOR," and BASF PLANT SCIENCE, L.P., a Delaware limited partnership, the business and post office address in the State of Hawaii for purposes of this Lease Agreement is Post Office Box 127, Kekaha, Hawaii 96752, hereinafter called "LESSEE."

WITNESSETH:

WHEREAS, LESSOR is obligated to manage and operate the Property under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165; and LESSOR is authorized to grant leases for the use of this land for public purposes;

WHEREAS, LESSOR has agreed to allow the Kekaha Agriculture Association, a Hawaii non-profit corporation ("Cooperative"), to manage the operation and maintenance of the common infrastructure of the Property in exchange for mutual consideration and other agreed upon terms; and

WHEREAS, LESSEE has requested a lease to use a portion of said Property at Kekaha, Kauai to construct a farm equipment storage/office/administration building and certain other facilities to be used for seed processing and handling (collectively, "the Facilities") and as construction is completed, to utilize the Facilities;

NOW, THEREFORE, in consideration of the rent to be paid and of the terms and conditions herein contained to be observed and performed by LESSEE, LESSOR, pursuant to and as set forth in this Lease, hereby grants to LESSEE an exclusive lease to use that portion of the Property identified as Field 309 containing approximately 10.00 acres, respectively, of land at Kekaha, Waimea, Kauai, more particularly described in Exhibit A, and outlined in red on Exhibit B, which are attached hereto and made a part

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hereof, hereinafter referred to as the "Premises". The "Premises" shall not include any common infrastructure improvements serving the demised Premises that are under the control, operation, or management of the Cooperative or any other entity, including LESSOR.

The Lease of the Premises hereby granted by LESSOR to LESSEE shall be together with the right to use, in common with other lessees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Cooperative or any other entity, including LESSOR).

THE TERMS AND CONDITIONS upon which LESSOR grants the aforesaid lease, right, and privilege are as follows:

1. Term. The term of this Lease is for thirty five (35) years, or until such time as LESSEE ceases to operate the Facilities or other permitted use, unless this Lease is sooner terminated as hereinafter provided.

LESSEE shall have the option to extend the term of this Lease for one ten-(10) year period, provided that:

(a) At the time of the exercise of the option to extend the lease term and at the commencement of the applicable option period, (i) LESSEE is not then in default in the performance of any of LESSEE's obligations contained in this Lease, and (ii) this Lease is then in full force and effect,

(b) The extended term shall be upon the same terms, covenants and conditions as provided in this Lease, except as to the option being exercised, unless otherwise agreed to by LESSOR and LESSEE, and

(c) LESSEE shall exercise its option to extend the term of this Lease by giving written notice thereof to LESSOR at least one hundred eighty (180) days prior to the expiration of the preceding term.

The base lease fee for the option period shall be computed as set forth in Paragraph 2, below.
2. **Base Annual Rental.** The base annual rental for this Lease shall be payable in monthly installments, within thirty (30) days of receipt of the lease fee invoice.

The $620.00 per acre per year shall be the base rent for the period commencing at execution of this Lease for five (5) years.

LESSOR and LESSEE agree that the Premises consist of ten (10) acres, more or less.

3. **Reopening of Annual Rental.** The annual rental shall be reopened and redetermined at the expiration of the 5th, 10th, 15th, 20th, and 25th years of the term herein, provided however, in no event shall the base annual rental be revised downward.

4. **Determination of Annual Rental Upon Reopening.** The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which this Lease was made shall be determined by an appraiser whose services shall be contracted for by the LESSOR, and the LESSEE shall be notified promptly of the determination; provided that should the LESSEE disagree with the fair market rental as determined by the LESSOR's appraiser, the LESSEE may appoint its own appraiser, within fourteen (14) days after written notice of the fair market rental, to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen (14) after the exchange, the two appraisers, within seven (7) days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding.
upon both the LESSOR and the LESSEE, subject to chapter 658A, Hawaii Revised Statutes ("HRS"). The LESSEE shall pay for its own appraiser. The cost of the services of the third appraiser shall be borne equally by the LESSOR and the LESSEE. All appraisal reports shall become part of the public record of the LESSOR.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the LESSEE shall continue to pay the rent at the rate effective for the previous rental period, but the LESSEE shall make up any deficiency within thirty (30) days after the new rental has been determined. The LESSEE's or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the LESSEE's right to contest the new fair market rental, and the LESSEE shall pay the rental as determined by the LESSOR's appraiser without adjustment.

5. **Common Infrastructure Improvement Costs.** The term "Common Infrastructure Improvements" shall mean the irrigation system, drainage system, electrical power system, and roadway system that serve the Property, including the Premises. The term "Common Infrastructure Improvement Costs" shall mean (i) the cost of operating, managing and maintaining the common infrastructure improvements.

LESSOR has disclosed to LESSEE, and LESSEE acknowledges, that LESSOR has entered into an Amended and Restated Memorandum of Agreement ("MOA"), dated August 29, 2008, between LESSOR and the Cooperative pursuant to which LESSOR has licensed and turned over to the Cooperative responsibility for operation and maintenance of certain portions of the Common Infrastructure Improvements. LESSEE acknowledges that, pursuant to the MOA, the Cooperative is responsible for the operation and maintenance of the portions of the Common Infrastructure Improvements subject to the MOA in accordance with the terms thereof.

LESSEE is a member of the Cooperative and as long as LESSEE is a member of the Cooperative, shall be responsible pursuant to this Lease for paying membership dues or assessments pertaining to the costs of operating the Common Infrastructure Improvements subject to the
MOA, to the extent that such dues and assessments are attributable to the Premises.

LESSEE shall have the option to discontinue its membership in the Cooperative at any time. In the event that LESSEE ceases to be a member of the Cooperative, LESSEE shall pay to the Cooperative such service charges as are attributable to the Premises and assessed by the Cooperative on a "service at cost" basis to non-member subscribers for use of the Common Infrastructure Improvements.

In the event that responsibility for the Common Infrastructure Improvements subject to the MOA is, for any reason, including termination of the MOA in accordance with the terms thereof, turned over to an entity other than the Cooperative or re-assumed by LESSOR, LESSEE shall be obligated to pay, directly to such other entity or LESSOR, such service charges as are attributable to the Premises and assessed on a "service at cost" basis for use of the Common Infrastructure Improvements.

6. Interest on Delinquent Rental. The interest rate on the principal amount of any and all unpaid or delinquent rental payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each delinquent payment.

7. Holdover. Upon expiration of the lease term, including any extension thereof, if the land is not otherwise disposed of, the LESSOR may allow the LESSEE to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the LESSOR may prescribe.

8. Taxes, Assessments, and Utilities. LESSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this Lease be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LESSEE thereon.

9. Character of Use. LESSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary
waste or destruction in and upon the Premises, any
nuisance in and upon the Premises, or any unlawful or
improper use of the Premises.

(a) LESSEE shall use the Premises hereby demised
solely to construct and utilize the Facilities.
LESSEE's use of the Premises shall be subject to any
recorded covenants, conditions, and restrictions of
any and all recorded encumbrances on the Premises
existing as of the date of this Lease.

(b) No cesspools shall be constructed on the
Premises. However, upon approval from the State
Department of Health, LESSEE may use alternative
wastewater treatment and disposal systems which do
not pose a threat to the groundwater.

(c) LESSEE shall take appropriate steps to
reduce the risk of any excessive soil erosion by
reason of LESSEE's use of the Premises and to
address any material increase in weeds or litter on
the Premises.

10. Utilization and Development of the Land. LESSEE shall
utilize and develop the Premises in accordance with
LESSEE's plan for utilization and development which has
been approved by LESSOR before execution of this Lease
and which is incorporated in LESSEE's land utilization
plan attached as Exhibit "C". Any modification or
development from LESSEE's utilization and development plan
without the prior written approval of LESSOR may
constitute a breach of this Lease and a cause for the
termination thereof.

11. Subleasing. LESSEE may sublease any portion of the
Premises provided LESSEE first obtains the prior written
consent of LESSOR. Any subleasing request shall be
submitted in writing to LESSOR, together with a copy of
the sub-lessee's rental payment schedule for LESSOR's
consideration. Profit on any sublease charges is neither
allowed, nor shall be sought by LESSEE.

12. [Reserved.]

13. Setback requirements. Building setback lines shall be
in accordance with applicable county ordinances and
rules.
14. Sanitation. LESSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition.

15. Improvements. During the term of this Lease, LESSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except as otherwise allowed herein, without the prior written approval of LESSOR and upon such reasonable conditions as LESSOR may impose. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the LESSEE until the expiration or sooner termination of this Lease, at which time the ownership thereof shall, at the option of LESSOR, vest in LESSOR or shall be removed by LESSEE at LESSEE's sole cost and expense.

16. Repairs to Improvements. LESSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear and damage by the elements, fire or other casualty excepted. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 5, above, LESSEE shall have no obligation under this Lease to keep, repair, or maintain any common infrastructure improvements.

17. Involuntary Liens. LESSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LESSEE.

18. Dwelling Restrictions. Residential use and residential dwellings shall not be permitted on the Premises. The LESSOR may permit a farm dwelling on the Premises if the need is clearly demonstrated. The farm dwelling shall be used in direct connection with the agricultural activities on the Premises and shall not be used for
rental purposes. The dwelling shall be subject to such additional terms and conditions as the LESSOR may require including, but not limited to, an adjustment of lease rental. All construction on the Premises shall be in accordance with plans approved by the LESSOR and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations and rules, including, but not limited to, laws regarding environmental quality control.

19. Non-Discrimination. LESSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LESSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

20. Breach or Default. Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this Lease, including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 5, above) payable directly to LESSOR, after delivery by LESSOR of a written notice of such failure by personal service or by registered or certified mail to LESSEE and to each holder of record having any security interest in the Premises covered by or subject to this Lease, making demand upon the LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice; or, if LESSEE becomes bankrupt or insolvent or files any debtor proceedings or takes any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LESSEE's debts, liabilities or obligations or if any such proceedings are taken against LESSEE and not dismissed within ninety (90) days thereafter; then, in any such event, LESSOR may, at its option, to the extent permitted by law, cancel this Lease and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LESSOR may have.

21. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this
Lease, of LESSOR's right to re-entry for breach of covenant in accordance with Paragraph 20 above, or of LESSOR's right to declare and enforce a forfeiture for any breach; and the failure of LESSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by LESSOR.

22. Security Deposit. Upon execution of this Lease, LESSEE shall deposit with LESSOR an amount equal to two (2) times the initial monthly lease fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LESSEE upon termination of this Lease, but only after all of the terms and conditions of this Lease have been observed and performed.

23. Assignment. Except as expressly provided in this Lease, this Lease is not transferable. At no time during the term of this Lease shall LESSEE assign, mortgage, or pledge its interest in this Lease, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LESSOR, which consent will not be unreasonably withheld.

24. Liability Insurance. LESSEE shall procure and maintain during the entire period of this Lease a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LESSEE. The minimum limit of said policy or policies shall not be less than $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 5, above, LESSEE shall have no obligation under this Lease to procure or maintain any commercial general liability insurance with regard to any activities of the Cooperative or any other entity (including LESSOR) which
has control from time to time over any of the common infrastructure improvements.

LESSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this Lease, whichever is sooner, shall furnish LESSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Lease, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by the LESSEE or by LESSOR at its option, shall be issued to the LESSEE and LESSOR at least thirty (30) days before cancelation. The policy shall include LESSOR as an additional insured as its interests appear under this Lease.

LESSOR shall retain the right at any time to review the coverage and amount of the insurance required by this Lease. If, in the opinion of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE and any permitted sub-lessee to obtain insurance sufficient in coverage and amount to provide adequate protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LESSOR incorporating the required changes within thirty (30) days of LESSEE's receipt of the notice from LESSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LESSEE's liability under this Lease. Notwithstanding the policy(ies) of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LESSEE's negligence or neglect connected with this Lease.

25. Property Insurance. At all times during the term of this Lease, LESSEE shall at its own cost and expense keep insured all buildings and improvements erected on
the demised premises in the joint names of the LESSOR, the LESSEE, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the LESSOR, the LESSEE, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee, if any, or otherwise be held by LESSEE; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the LESSEE for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the LESSOR; except, that with the approval of the LESSOR which shall not be unreasonably withheld, conditioned or delayed, the LESSEE may surrender this Lease and pay the balance owing on any mortgage and the LESSEE shall receive that proportion of the proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the LESSOR to retain the balance of the proceeds. The certificates of insurance shall indicate LESSOR as an additional insured as its interests appear under this Lease.

LESSEE shall furnish to LESSOR on or before the commencement date of this Lease a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate for such insurance shall contain or be accompanied by an assurance that a notice of cancellation and time to cure by the LESSEE or by LESSOR at its option, shall be issued to the LESSEE and LESSOR at least thirty (30) days before cancellation. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

26. Right to Enter. LESSOR reserves the right for its agents or representatives, at all reasonable times during the term, upon prior notice to LESSEE and accompanied by a representative of LESSEE (except in the event of an emergency), to enter and cross any portion
of the Premises at any time for the purpose of performing any public or official duties.

27. Inspection of Premises. LESSEE shall permit LESSOR and its agents or representatives, at all reasonable times during the term, upon prior notice to LESSEE and accompanied by a representative of LESSEE (except in the event of an emergency), to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LESSEE in connection with the administration of this Lease.

28. Surrender. At the end of the term or other sooner termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this Lease. Furthermore, upon the expiration, termination, or revocation of this Lease, should LESSEE fail to remove any and all of LESSEE's personal property from the Premises, LESSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LESSEE. LESSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LESSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

29. Withdrawal for Public Purpose. LESSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this Lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LESSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental set forth in Paragraph 2, above, shall be reduced in proportion to
the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the Premises by LESSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LESSOR to LESSEE based upon the unexpired term of this Lease; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any crops until such crops are harvested, unless LESSOR pays to LESSEE the value of the crops; and provided further that, upon any withdrawal or taking, LESSER shall be compensated for the present fair market value to be established by an appraisal process outlined in Section 4 hereof, of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LESSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree or orchard crops, LESSOR shall pay to LESSEE the residual value of the trees taken and, if there are un-harvested crops, the value of such crops.

30. Condemnation. If any portion of the demised Premises shall be condemned for public purposes by the State of Hawaii, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The LESSEE shall be entitled to receive from the condemning authority:

(a) The value of growing crops which the LESSEE is not permitted to harvest; and

(b) The proportionate value of the LESSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease;

provided that in the alternative, the LESSEE may remove and relocate its improvements to the remainder of the Premises occupied by the LESSEE. The LESSEE shall not by reason of the condemnation be entitled to any claim against the LESSOR for compensation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the LESSOR. The foregoing rights of the LESSEE shall not be exclusive of any other to
which the LESSEE may be entitled by law, including, without limitation, any and all compensation payable or to be paid for or on account of LESSEE's relocations costs. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises was demised, the LESSEE shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that the LESSEE may remove from the Premises the permanent improvements constructed, erected, and placed by the LESSEE within such reasonable period as may be allowed by the LESSOR.

31. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this Lease, LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LESSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE.

32. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LESSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LESSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this Lease.

33. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LESSEE to be observed and performed, LESSEE shall have, hold, possess, and enjoy the Premises for the term demised, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through, or under LESSOR.

34. Abandonment and Termination. If, after putting the Premises into service, LESSEE abandons or ceases to use the Premises for a period of four (4) or more
consecutive months, except if during a period when the Premises have been rendered temporarily unusable due to damage by casualty or the elements or due to force majeure, LESSOR shall have the right to terminate this Lease. Any abandonment, termination, or cessation shall not affect or release any liability of LESSEE at such time existing by reason of a breach of any of the terms hereof.

35. **Non-warranty.** LESSOR does not warrant the condition of the Premises, as the same is being leased "as is." LESSEE assumes all risks incident to its use.

36. **LESSEE's Risk.** Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this Lease, regardless of ownership of such property, shall be at the sole risk and hazard of LESSEE, and LESSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

37. **Applicable Law; Severability.** This Lease shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this Lease is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

38. **Costs of Litigation.** If LESSOR shall be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), without any fault on LESSOR's part, LESSEE shall pay all costs and expenses incurred by or imposed on LESSOR, including, but not limited to, attorney's fees; furthermore, LESSEE shall pay all costs and expenses which may be incurred by or paid by LESSOR in enforcing the covenants and agreements of this Lease, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges due from LESSEE hereunder.

If LESSEE shall be made a party to any litigation commenced by or against LESSOR (other than condemnation proceedings), without any fault on LESSEE's part, LESSOR shall pay all costs and expenses incurred by or imposed on LESSEE, including, but not limited to, attorney's
fees; furthermore, LESSOR shall pay all costs and expenses which may be incurred by or paid by LESSEE in enforcing the covenants and agreements of this Lease; PROVIDED THAT any such litigation arises out of any damage or personal injury resulting from the wrongful or negligent acts or omissions of LESSOR or LESSOR's employees or agents while acting with the scope of their employment, and LESSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LESSOR. Unless otherwise determined by a court, LESSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

39. Indemnity. LESSEE shall indemnify, defend, and hold harmless the State of Hawaii, LESSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the Premises or on sidewalks, parking areas, and roadways adjacent thereto, resulting from any act or omission of the LESSOR, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon caused by LESSEE, or growing out of or caused by any failure on the part of LESSOR to maintain the Premises in a safe condition, or by any act or omission of LESSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by LESSEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

40. Hunting. No hunting shall be allowed on the Premises during the term of this Lease.

41. Boundary Stakeout. LESSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LESSEE shall be solely responsible for any survey and boundary stakeout of the Premises.
42. [Reserved.]

43. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this Lease. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LESSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LESSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LESSOR. LESSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

44. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Cooperative or any successor or substitute entity (including LESSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LESSEE may cross and may have access over and upon all such easements located on the Premises at any point; provided further that the LESSEE shall be responsible for maintenance of the easements.

45. Compliance with Laws. LESSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.

46. Environmental Regulations. LESSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LESSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
47. **Hazardous Materials.** LESSOR remains responsible for any environmental issues occurring on the demised Premises prior to the commencement date of this Lease and, subject to the last sentence of Paragraph 38 above, shall indemnify LESSEE therefor. Any environmental issue occurring on Premises after the date of this Lease and arising out of the acts or omissions of LESSEE shall be the responsibility of LESSEE.

(a) During the term of this Lease, LESSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by federal, state, and local law. LESSOR shall not allow the storage or use of such materials in any manner not sanctioned by such federal, state, and local law. LESSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LESSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LESSEE, LESSEE shall, in addition to LESSEE's other obligations hereunder, be responsible for the cost of such testing.

LESSEE shall execute affidavits, representations, and the like from time to time at LESSOR's request concerning LESSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LESSEE. If LESSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LESSOR, LESSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LESSEE shall immediately advise LESSOR thereof in writing and provide to LESSOR such detailed reports thereof as may be reasonably requested by LESSOR. LESSOR shall have the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LESSEE shall be responsible for and shall indemnify, defend, and hold harmless LESSOR and its employees, agents, successors, and assigns from and against any
loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this Lease and caused by LESSEE, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any repair, clean-up, or detoxification of the Premises required by hazardous materials laws and of the preparation and implementation of any related closure, remedial, or other required plans; (3) the costs of LESSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LESSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LESSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

48. ASTM Phase I Environmental Site Assessment. At any time during the term or upon termination of this Lease, LESSOR, for good cause, may require LESSEE to conduct at LESSEE's own expense, an ASTM Phase I Environmental Site Assessment and, if indicated thereby, an ASTM Phase II investigation and, if indicated thereby, a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials attributable to the discharge of any hazardous materials on the Premise during the term of this Lease and caused by LESSEE. This provision shall survive and continue in effect after termination of this Lease.

49. [Reserved.]
50. Encumbrances. This Lease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Lease, LESSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LESSEE's use of the Premises.

51. Interpretation. The use of any gender shall include all genders. If there is more than one LESSEE, all words used in the singular shall extend to all LESSEES.

52. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Lease.

53. [Reserved.]

54. [Reserved.]

55. Exhibits - Incorporation in Lease. All Exhibits referred to in this Lease are attached to this Lease and are hereby deemed incorporated by reference.
SPECIAL CONDITIONS:

1. Commercial Operations. LESSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LESSOR and upon such terms and conditions established by LESSOR. No retail activities whatsoever, are permitted without the prior written approval of LESSOR.

2. Abandoned Vehicles. LESSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LESSEE at LESSEE's cost and expense.

3. Removal of Trash. LESSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LESSEE’s cost and expense.

4. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LESSEE and LESSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LESSOR of these events.

5. Audits. LESSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LESSEE concerning its operations under this Lease PROVIDED THAT:
   
a. Such examination and copying shall take place at a reasonable time and upon such other conditions as LESSEE may reasonably establish;

   b. LESSEE shall have the right to mark with the legend “Confidential” any and all confidential, proprietary, and/or trade secret documents and/or other information, in any form, tangible or intangible, obtained by LESSOR as the result of an audit pursuant to this paragraph if the disclosure of such documents and/or other
information would likely cause substantial competitive harm to LESSEE;

c. In the event that LESSOR received a request pursuant to the Hawaii Open Records Law (also known as the Uniform Information Practices Act), Hawaii Revised Statues Chapter 92F, for disclosure of any documents or other information obtained by LESSOR during an audit pursuant to this paragraph and marked with the legend "Confidential":

i. LESSOR shall, within three (3) business days of receiving the request, provide LESSEE with written notice thereof; and

ii. Pursuant to §92F-13(3) of the Hawaii Revised Statues, LESSOR shall withhold such documents or other information from disclosure; and

d. In the event that a requesting party challenges LESSOR's withholding of any documents or information pursuant to Paragraph 5(c) above, LESSOR shall, within three (3) business days of receiving notice thereof, provide LESSEE written notice and shall not disclose any such documents or information until LESSEE has had a reasonable opportunity to obtain a court order prohibiting the disclosure of such documents or information pursuant to §92F-13(4) of the Hawaii Revised Statutes.

6. Passage and Access. LESSEE shall not impede or restrict passage or access by the Cooperative and its agent to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.

7. Holding Over. Any holding over by LESSEE after the expiration of the term of this Lease with the consent of LESSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this Lease and shall otherwise be on the terms and conditions herein specified, so far as applicable. In the event of any inconsistency between
this Special Condition and the provisions of Paragraph 7 of the Lease, this Special Condition shall prevail.

8. Recordation. LESSOR and LESSEE agree that this Lease or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this Lease to third parties and of the lease of the Premises granted hereunder by LESSOR to LESSEE for the term specified herein.

9. Performance Bond. The LESSEE shall procure and deposit with the LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by the LESSEE of the Lease terms, conditions, and covenants of this Lease. The bond shall provide that in case of an uncured breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the LESSOR as liquidated and ascertained damages and not as a penalty.

The LESSOR reserves the right to waive or suspend the performance bond requirement at its discretion; provided that the LESSEE has substantially complied with the terms, conditions, and covenants of this Lease; and provided further that the LESSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of this Lease.

10. Justification of Sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the LESSEE may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the LESSEE shall furnish and at all times thereafter keep and maintain
any of the forms of financial guarantee of performance that is approved by the LESSOR.

DEFINITIONS

As used in this Lease, unless the context otherwise requires:

"Property" means the approximately 12,860 acres of land set aside to LESSOR under Governor's Executive Order No. 4007 dated September 23, 2003, including buildings and improvements.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Sub-leasing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.
"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering the Lease, the Premises, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised Premises.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to hazardous materials laws.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LESSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or
threatened in writing by any third party against LESSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"LESSEE" includes LESSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises or any portions thereof, other than alien plant species introduced pursuant to the land use plan described in Exhibit "C" attached hereto; (3) abandonment of the demised Premises as set forth in Paragraph 34 of the Lease.

"Days" shall mean calendar days, unless otherwise specified.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

LESSOR:

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT
CORPORATION

By
James J. Nakatani
Its Executive Director
Date: July 16, 2012

APPROVED AS TO FORM:

Deputy Attorney General

LESSEE:

BASF PLANT SCIENCE, L.P.

By
Thomas E. Pawlowiaki
Its Business Trap Controller
Date: 13 July 2012

APPROVED AS TO FORM:

Attorney for Lessee
BASF 10 ACRES MANA SITE

LAND SITUATED AT KEKAHA, WAIMEA, KAUAI, HAWAII

Being Portion of the Government (Crown) Land of Waimea

Beginning at the south corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KANALOA" being 1,638.46 feet North and 1,666.63 feet West, thence running by azimuths measured clockwise from true South:

1. 138° 44'  620.00 feet along the remainder of the Government (Crown) Land of Waimea (Parcel 1);

2. 228° 44'  653.91 feet along the remainder of the Government (Crown) Land of Waimea (Parcel 1);

3. 318° 44'  712.29 feet along the remainder of the Government (Crown) Land of Waimea (Parcel 1);

4. 56° 46'  660.39 feet along the remainder of the Government (Crown) Land of Waimea (Parcel 1) to the point of beginning and containing an area of 10,000 Acres.

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

Lihue, Hawaii
November 2011

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596
LICENSE AGREEMENT NO. LI-K1102

between

STATE OF HAWAII
AGRICULTURE DEVELOPMENT CORPORATION
as LICENSOR

and

GREEN ENERGY TEAM LLC
as LICENSEE
STATE OF HAWAII
AGRICULTURE DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-K1102

THIS LICENSE made and issued this $5$ day of May, 2011, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and GREEN ENERGY TEAM LLC, a Hawaii limited liability company, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is PO Box 340, Anahola, Hawaii 96703, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Wailua (Kalepa), Kauai, identified as, "Wailua Agricultural and Related Purpose Site, situated makai of Lihue-Koloa Forest Reserve and between Hanamaulu and the North Fork of the Wailua River," and further identified by Tax Map Key numbers (4)3-9-001:portion 002, (4) 3-9-002: Portion 001, 009, and 020, and (4) 4-2-001:portion 003, containing a gross area of 5963.972 acres, more or less, and a net area of 5870.515 acres, more or less, under Governor's Executive Order No. 4328 dated August 24, 2010, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for public purposes;

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Kekaha, Kauai for agriculture and biomass clearing, cultivation and production purposes;

WHEREAS, the Kalepa Koalition is, at the time of the execution of this License, an informal organization comprised of the existing revocable permittees of the Property described hereinabove, all of whom have worked collectively and cooperatively with the State of Hawaii to equitably parcel the lands amongst themselves, and who have also successfully designed and installed a security gate system throughout the Property thereby allowing necessary ingress into and egress from the Property by all revocable permittees ("Kalepa Koalition"); and
WHEREAS, LICENSEE has entered into that certain Co-Existence Agreement, evidenced by that certain letter agreement dated May 14, 2008 ("Co-Existence Agreement"), a copy of which is attached hereto as Exhibit "C".

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land outlined on the map attached hereto and incorporated herein as Exhibit "A", and more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of one thousand (1,000) acres (portions of Units A, B, and D to M inclusive, and designated as units GEA, GEB, GED, GEE, GEF, GEH, GEI, GEJ, GEK, GEI, and GEm on Exhibit "B"), more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the demised Premises that are under the control, operation, or management of the Kalepa Koalition or any other entity, including Licensor.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Kalepa Koalition or any other entity, including Licensor).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for twenty-two (22) years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided.

LICENSEE shall have the option to extend the term of this License for one ten (10) year, provided that:

(a) At the time of the exercise of the option to extend the license term and at the commencement of the applicable option period, (i) LICENSEE is not then in
default in the performance of any of LICENSEE's obligations contained in this License, and (ii) this License is then in full force and effect.

(b) The extended term shall be upon the same terms, covenants and conditions as provided in this License, except as to the option being exercised, unless otherwise agreed to by LICENSOR and LICENSEE, and

(c) LICENSEE shall exercise its option to extend the term of this License by giving written notice thereof to LICENSOR at least one hundred eighty (180) days prior to the expiration of the preceding term.

The base license fee for the option period shall be computed as set forth in Paragraph 2, below.

2. License Fee. The base license fee for this License shall be as outlined in the following table, payable in monthly installments, on or before the first of each month.

<table>
<thead>
<tr>
<th>When</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon execution - December 2012</td>
<td>$15/acre/year</td>
</tr>
<tr>
<td>January 2013 - December 2015</td>
<td>$20/acre/year</td>
</tr>
<tr>
<td>January 2016 - December 2016</td>
<td>$35/acre/year</td>
</tr>
<tr>
<td>January 2017 - December, 2033</td>
<td>2.5% annual increase of base rent</td>
</tr>
</tbody>
</table>

The $15/acre/year shall be the base rent for the period commencing at execution of this License through December, 2012. The $20/acre/year shall be the base rent for the period January, 2013 through December, 2015. The $35/acre/year shall be the base rent for the period January, 2016 through December, 2016. The additional two and one-half percent (2.50%) added to each calendar year for January, 2017 through December, 2033 shall be the base rent for each subsequent year. Thus, the base rent shall be $35.88/acre/year for January, 2017 through December, 2017, $36.77/acre/year for January, 2018 through December, 2018, $37.69/acre/year for January, 2019 through December, 2019, and so forth.

LICENSOR and LICENSEE agree that the Premises consist of 1,000 acres, more or less.

3. Common Infrastructure Improvement Costs. In addition to the base annual license fee provided in Paragraph 2, above, LICENSEE shall also pay twenty-five percent (25%) of the
costs of operating and maintaining the common infrastructure improvements, the details of such costs and liability therefore to be agreed upon between LICENSEE and the Kalepa Koalition.

4. [Reserved]

5. **Interest on Delinquent License Fees.** The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each delinquent payment.

6. [Reserved.]

7. **Taxes, Assessments, and Utilities.** LICENSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LICENSEE thereon.

8. **Character of Use.** LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

   (a) LICENSEE shall use the Premises hereby demised solely for agriculture and biomass clearing, cultivation and production purposes, as more specifically set forth in LICENSEE’s land utilization plan attached hereto as Exhibit “D”. LICENSEE’s use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.

   (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.

   (c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.
(d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.

(f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.

9. Utilization and Development of the Land. In addition to the ten (10) year harvesting plan set forth in Paragraph 65, below, LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "D" hereto. Any modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.

10. Sublicensing. LICENSEE may sublicense or rent the whole or any portion of the Premises provided LICENSEE first obtains the prior written consent of LICENSOR, which consent shall not be unreasonably withheld. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sublicensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.

11. Good Husbandry and Conservation Practices. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan, Exhibit "D", hereto) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The
conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.

13. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the
option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3, above, LICENSEE shall have no obligation under this License to keep, repair, or maintain any common infrastructure improvements.

15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.

16. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.

17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments, including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 3, above) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to
LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.

19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two (2) times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License have been observed and performed.

21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of this License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.

22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all
roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3, above, LICENSEE shall have no obligation under this License to procure or maintain any commercial general liability insurance with regard to any activities of the Kalepa Koalition or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sublicensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.
The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE’s liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of this License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

24. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.

25. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.

26. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all
improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

27. Withdrawal for Public Purpose. Subject to the restrictions set forth in Paragraph 76, below, LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises originally demised to become unusable for the specific use or uses for which it was demised, the license fee set forth in Paragraph 2, above, shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the residual value of the trees taken and, if there are un-
harvested crops, the value of the crops also. If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.

29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.

30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term demised, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.

31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.
32. Non-warranty. LICENSOR does not warrant the condition of the
Premises, as the same is being licensed "as is." LICENSEE
assumes all risks incident to its use. Notwithstanding the
foregoing or any other provision of this License, LICENSEE
does not assume liability or responsibility for any hazardous
material claims resulting from, arising out of, or relating
to any hazardous materials on the Premises or hazardous
discharge occurring prior to the date of this License, and
LICENSOR (and/or LICENSOR's predecessors in interest) shall
be solely responsible for and in respect of any such
hazardous materials claims.

33. LICENSEE's Risk. Any and all goods, wares, farm supplies,
produce, equipment, and personal property of any kind or
description that may be on the Premises at any time during
the term of this License, regardless of ownership of such
property, shall be at the sole risk and hazard of LICENSEE,
and LICENSOR shall not be liable or responsible for any loss
thereof or damage thereto caused by theft, vandalism,
weather, water, defective electric wiring, fire, or by any
other cause whatsoever.

34. Applicable Law; Severability. This License shall be governed
by and interpreted in accordance with the laws of the State
of Hawaii. If any provision of this License is held to be
invalid or unenforceable, the validity or enforceability of
the other provisions shall remain unaffected.

35. Costs of Litigation. If LICENSOR shall be made a party to
any litigation commenced by or against LICENSEE (other than
condemnation proceedings), without any fault on LICENSOR's
part, LICENSEE shall pay all costs and expenses incurred by
or imposed on LICENSOR, including, but not limited to,
attorney's fees; furthermore, LICENSEE shall pay all costs
and expenses which may be incurred by or paid by LICENSOR in
enforcing the covenants and agreements of this License, in
recovering possession of the Premises, or in the collection
of delinquent license fees, taxes, and any and all other
charges.

If LICENSEE shall be made a party to any litigation commenced
by or against LICENSOR (other than condemnation proceedings),
without any fault on LICENSEE's part, LICENSOR shall pay all
costs and expenses incurred by or imposed on LICENSEE,
including, but not limited to, attorney's fees; furthermore,
LICENSOR shall pay all costs and expenses which may be
incurred by or paid by LICENSEE in enforcing the covenants
and agreements of this License; PROVIDED THAT any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

37. Hunting. Except as otherwise provided in Paragraph 77, below, no hunting shall be allowed on the Premises during the term of this License.

38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.

39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in
good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.

40. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

41. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Kalepa Koalition or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.

42. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.

43. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

44. Hazardous Materials. LICENSOR remains responsible for any environmental issues occurring on the demised Premises prior
to the commencement date of this License. Any environmental issue occurring on Premises after the date of this License shall be the responsibility of LICENSEE.

(a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.
(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. **Level One (1) Hazardous Waste Evaluation.** At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.
46. **Soil Erosion.** LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service ("NRCS"). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.

47. **Encumbrances.** This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.

48. **Interpretation.** The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.

49. **Paragraph Headings.** The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.

50. [Reserved.]

51. [Reserved.]

52. **Exhibits - Incorporation in License.** All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.
SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the term of this License keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.

55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.

57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.

58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division ("SHPD") shall be contacted prior to
any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.

60. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Kalepa Koalition and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.

61. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of
LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.

62. **Crop Changes.** LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.

63. **Recordation.** LICENSOR and LICENSEE agree that this License or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.

64. **Agreements with other Tenants.** Due to the recent realignment of the parcels, LICENSEE shall use its best efforts to: (a) reasonably settle any and all issues that may arise with other tenants on the Property, and (b) memorialize all such agreements in writing no later than December, 2013, including: (1) ingress and egress issues; (2) disputed survey results relating to parcel boundaries; and (3) any other issues which may arise between LICENSEE and the other tenants.

65. **Ten Year Harvesting Plan.** LICENSEE shall submit to LICENSOR a copy of the ten (10) year plan to harvest Albizia trees using best practices in the industry on the Premises as required by the State of Hawaii, Department of Land and Natural Resources ("DLNR") including if applicable and where economically viable the removal of Albizia trees from the other tenants' parcels. The ten (10) year plan is to be submitted prior to harvesting the Albizia trees on LICENSOR property. The species of trees selected for new plantings must be pre-approved in writing by DLNR, Division of Forestry and Wildlife and LICENSOR. Notwithstanding Paragraph 58, above, LICENSEE shall not be required to implement manual clearing of the Premises.

66. **Adequate Funding and Financing.** LICENSEE shall submit to LICENSOR evidence of adequate funding or financing for LICENSEE's proposed project within one (1) year of the date of the execution of this License, such as lending
commitments, investment commitments, bonding commitments or the equivalent.

67. Use of Land. LICENSEE must be conducting agricultural activities, including initial clearing activities, on fifty percent (50%) or more of the Premises and justify that one hundred percent (100%) of the Premises will be needed for the project within three (3) years of the date of the execution of this License.

68. Soil and Water Conservation Plan. LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan, which plan must include the removal of Albizia trees from the Property, if applicable, within two (2) years of the date of the execution of this License. LICENSEE shall submit a revised soil and water conservation plan to LICENSOR if LICENSEE makes changes to its initial planting or harvesting practices which require terrain alteration.

69. Power Purchase Agreement. LICENSEE shall submit to LICENSOR a copy of the approval document from the State of Hawaii, Public Utilities Commission relating to the applicable Power Purchase Agreement with the Kauai Island Utility Cooperative, within three (3) years of the date of the execution of this License.

70. East Kauai Water Users Cooperative. In the event LICENSEE determines that irrigation water is needed for the Premises, LICENSEE shall work with the East Kauai Water Users Cooperative ("EKWUC") and properly compensate the EKWUC for use of the water.

71. Kalepa Koalition. In addition to the Co-Existence Agreement signed by LICENSEE and the Kalepa Koalition, LICENSEE shall join or become a member or shareholder of the Kalepa Koalition or execute a written agreement with the Kalepa Koalition relating to LICENSEE's responsibilities on common infrastructure maintenance.

72. Surety Bond. Unless otherwise instructed by LICENSOR, LICENSEE shall remove all trees and vegetation, including stumps, restoring the Premises to arable, pasture lands condition before vacating the property. LICENSEE shall procure a surety bond in an amount no less than the amount reflected in the letter of commitment, attached hereto as Exhibit "E", to ensure LICENSEE's financial ability to restore the Premises, said bond to cover the removal of trees
for four hundred (400) acres as of the date of the execution of this License, and the entire 1000 acres after year 5 of this License. The bond shall be for no less than $1350/acre plus two percent (2%) annual adjustment for inflation minus the biomass sales.

73. **Vegetative Buffer Zone.** LICENSEE shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of LICENSOR.

74. **Land Clearing.** Prior to any land clearing or land alteration in the gulches or wastelands within the Premises, LICENSEE shall first obtain the written approval of the Historic Preservation Division of the Department of Land and Natural Resources.

75. **Irrigation System Maintenance.** LICENSEE shall be required to maintain that part of the irrigation system that is within the Premises in its current condition, by keeping the ditches free and clear of vegetative overgrowth and debris. Except for routine maintenance, alteration of these irrigation ditches shall not be allowed without prior written approval from LICENSOR.

76. **Restrictions on Withdrawal for Public Purpose.** LICENSOR’s right to withdraw the Premises, or any portion thereof, shall be limited to those public purposes related to infrastructure needs, such as transportation systems such as agricultural and emergency roadways, irrigation systems and accessories thereto, electrical and other energy systems and accessories thereto. For purposes of this License, public purpose infrastructure does not include communication infrastructure or potable water systems.

77. **Hunting.** Notwithstanding the restriction on hunting on the Premises, LICENSEE shall be allowed to eradicate animals and other pest animals that threaten or harm LICENSEE’s operations or activities on the Premises. LICENSEE or its agents shall first secure all appropriate licenses or permits authorizing any eradication method(s) used on the Premises. Where practicable, LICENSEE shall ensure that humane methods of eradication be practiced in all eradication activities.

78. **FENCES.** Notwithstanding Paragraph 39, above, LICENSOR acknowledges that LICENSEE has fulfilled its obligation under
the Co-Existence Agreement, Exhibit "C" hereto, to install new boundary fencing around the perimeter of the Premises.

DEFINITIONS

As used in this License, unless the context otherwise requires:

"Property" means the approximately 6,000 acres of land set aside to LICENSOR under Governor’s Executive Order No. 4328 dated August 24, 2010, including buildings and improvements.

"Premises" or "demised Premises," includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their
products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper
precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises or any portions thereof, other than alien plant species introduced pursuant to the land use plan described in Exhibit "D" attached hereto; (3) abandonment of the demised Premises.

"Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 3rd day of May, 2011.

licoNsoR

STATE OF HAWAII,
AGRIBUSINESS DEVELOPMENT CORPORATION

APPROVED AS TO FORM:

By Its Executive Director

Deputy Attorney General

LICENSEE

GREEN ENERGY TEAM LLC

By Its Authorized Representative

By Its

Green Energy Team LLC license
On this 3rd day of May, 2011, before me personally appeared Eric Knutzen and

Iris Remente 5/3/11

Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 3rd day of May, 2011, before me personally appeared Alfredo A. Lee and

Iris Remente 5/3/11

Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

Notary Public, State of Hawaii
My commission expires: 02/20/2012

Green Energy Team LLC license

- 28 -

C-210
TO: Ron Agor
BLNR
Fax: 246-1091


Aloha,

Kalepa Koalition members voluntarily identified approximately 1050 acres for transfer to Green Energy, as noted on the attached spreadsheet and map of February 8, 2008 (as since amended by Ron Agor in interaction with the unit holders) subject to the following conditions:

1. The transfer of all 6,700 to ADC from DLNR to be completed and long-term licenses be issued to existing parcel holders who desire to continue with their parcels under ADC’s terms and rent.

2. There are no additional plantings of Albizia. Albizia may be harvested for a period of up to ten years on areas retained by the parcel holders, at the discretion of the parcel holder, and as worked out between the parcel holder and GE. GE’s parcels to be managed using reasonable care to avoid infestation with Albizia in areas that are presently clear.

3. Biomass species to be planted by GE to be approved by DLNR Division of Forestry and Wildlife (DOFAW).

4. Should GE's business fail, first right of refusal to reoccupy forfeited areas offered to original parcel holder.

5. A general maintenance agreement shall be established through ADC and all parcel holders to address roads, bridges and all common element areas including security gates.

6. GE to become a member of the Koalition and share 25% of the common maintenance expenses.

7. GE will pay existing RP holders for fencing, security and irrigation improvement as
outlined in the buy-back clause specified in the existing RPs for the areas which GE takes over. These payments to current RP holders will be paid by GE upon the earlier event of the physical removal of the fence by GE or upon the current tenant vacating the respective parcels, in all cases no earlier than 90 days after the Land Board Decision. This is presently estimated at about $97,000, final figure has to be based on actual measurement subject to field survey by GE.

8. GE is responsible to install new boundary fencing where required to separate grazing areas from their plantings. This is estimated at about 5,000 feet of fence.

9. GE to pay to the Kalepa Koalition bank account $1,725 30 days after invoice received, which is 25% of the cost of the security gate system - which has been established and maintained by the Kalepa Koalition. GE to follow Koalition practices with regard to keeping gates locked. GE may acquire non-duplicable keys to the gate system at a cost of $20 each from the Koalition key master, which is Saiva Siddhanta Church.

10. Disagreements to be settled by binding arbitration conducted by the landlord.

These conditions are mutually agreed to by both Green Energy Team LLC and the Kalepa Koalition represented by the Kalepa interim chair who provided all members with a copy of this document on May 10. Koalition members were asked to contact Ron Agor directly should they have any objections.

Respectfully submitted,

Kalepa Koalition

May 15, 2008

Leslie P. Milnes, Interim Chair

Date:

Green Energy Team LLC

Eric Knutzen

Date:
LICENSE AGREEMENT NO. LI-K1101

between

STATE OF HAWAII
AGRICULTURE DEVELOPMENT CORPORATION
as LICENSOR

and

PACIFIC LIGHT AND POWER, INC.
as LICENSEE
STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  

LICENSE AGREEMENT NO. LI-K1101  

THIS LICENSE made and issued this 15th day of April, 2011, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and PACIFIC LIGHT AND POWER, INC. a Delaware Corporation, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is P.O. Box 261, Anahola, HI 96703, Kekaha, Hawaii 96752, hereinafter called "LICENSEE."  

WITNESSETH:  

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02:por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for public purposes;  

WHEREAS, LICENSOR has agreed to allow the Kekaha Agriculture Association, a Hawaii non-profit corporation (the "Cooperative"), to manage the operation and maintenance of the common infrastructure at the Property in exchange for mutual consideration and other agreed upon terms; and  

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Kekaha, Kauai for agricultural and renewable energy purposes;  

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License Agreement, hereby grants to LICENSEE an exclusive license to use that portion of land outlined on the map attached hereto and incorporated herein as Exhibit "A", and more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of 877.48 arable acres and 1107.5 non-arable acres, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas
containing or consisting of any common infrastructure improvements serving the demised Premises that are under the control, operation, or management of the Cooperative or any other entity, including Licensor.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees of other lands included with the Property, the roadways providing ingress and egress to and from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Cooperative or any other entity, including Licensor).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for twenty five (25) years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided. Provided that LICENSEE is not then in any material default under this License, LICENSEE shall have the option, in LICENSEE's sole and absolute discretion, to extend the Term for an additional term of twenty-five (25) years, by providing LICENSOR with written notice of LICENSEE's election to exercise its option not less than ninety (90) days prior to expiration of the Term. LICENSOR and LICENSEE also may agree to extend the term of this License any number of times for such period or periods of time as LICENSOR and LICENSEE shall determine.

2. License Fee. The base license fee for this License shall be as outlined in the following table for arable acres and $1.00/acre/year for non-arable acres, payable in monthly installments, on or before the first of each month.

<table>
<thead>
<tr>
<th>When</th>
<th>Rent for arable lands</th>
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<tbody>
<tr>
<td>Upon execution - September, 2013</td>
<td>$15/acre/year</td>
</tr>
<tr>
<td>October, 2013 - December, 2014</td>
<td>$25/acre/year</td>
</tr>
<tr>
<td>January, 2015 - end of 25-year term</td>
<td>The greater of either $100/acre/year (escalating at 2% annually) or 3% of the annual gross revenue of the Hydro Power Project</td>
</tr>
<tr>
<td>Optional extension</td>
<td>To be determined</td>
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The $10/acre/year shall be the base rent for the period January, 2015 through December, 2015 (first base rent) against which the 3% of annual gross revenue shall be compared. The additional 2% added to each calendar year shall be the base rent for each subsequent year. Thus the base rent for January, 2016 through December, 2016 shall be $102/acre/year against which 3% of the annual gross revenue shall be compared, and so forth.

LICENSOR and LICENSEE agree that the Premises consist of 877.48 arable acres and 1107.5 non-arable acres. For purposes of this License Agreement, "arable acres" shall include all portions of the Premises measured in acres that are suited for cultivation in accordance with normal agronomic practices, and "non-arable acre" shall include all portions of the Premises measured in acres that are not suited for cultivation in accordance with normal agronomic practices.

3. **Common Infrastructure Improvement Costs.** In addition to the base annual license fee provided in Paragraph 2 above, LICENSEE shall also pay its proportionate share of the costs of operating and maintaining the common infrastructure improvements (namely, the irrigation system, drainage system, electrical power system, and roadway system) that serve the Property, including the denised Premises (the "Common Infrastructure Improvement Costs"). Unless otherwise agreed by LICENSEE, all such Common Infrastructure Improvement Costs shall be on a "service at cost" basis, shall not include any "mark-up" or profit (except for reasonable administrative expenses), and shall not include any costs or obligations related to any capital improvements to the common infrastructure serving the Property, including the Premises.

LICENSOR has disclosed to LICENSEE, and LICENSEE acknowledges, that LICENSOR has entered into that certain Restated Memorandum of Agreement dated April 1, 2008 ("MOA") between LICENSOR and the Cooperative pursuant to which LICENSOR has licensed and turned over to the Cooperative responsibility for operation and maintenance of certain portions of the common infrastructure improvements serving the Property. It is contemplated that LICENSEE shall be a member of the Cooperative and shall pay membership dues or assessments pertaining to the costs of operating the common infrastructure improvements subject to the MOA. A copy of the MOA between LICENSOR and the Cooperative is attached hereto as Exhibit "C".
LICENSEE acknowledges that, pursuant to the MOA, the Cooperative is responsible for the operation and maintenance of the portions of the common infrastructure subject to the MOA in accordance with the terms thereof. LICENSEE shall have the option to join or not to join the Cooperative as a member and, if LICENSEE joins the Cooperative, to discontinue such membership at any time. In the event that LICENSEE becomes (and as long as LICENSEE continues to be) a member of the Cooperative, LICENSEE shall be obligated to pay such membership dues or assessments as are chargeable to the members of the Cooperative on a proportionate basis for the cost of maintaining and operating the common infrastructure improvements subject to the MOA, and the payment of such dues or assessments shall fully discharge LICENSEE’s obligations to pay Common Infrastructure Improvement Costs under this License Agreement. In the event that LICENSEE does not become or ceases to be a member of the Cooperative, LICENSEE shall pay to the Cooperative such service charges as are assessed by the Cooperative on a "service at cost" basis to non-member subscribers for use of the common infrastructure services provided to LICENSEE by the Cooperative; and the payment of such service charges shall likewise fully discharge LICENSEE’s obligations to pay Common Infrastructure Improvement Costs under this License Agreement.

In the event that responsibility for the common infrastructure improvements subject to the MOA is, for any reason, including termination of the MOA in accordance with the terms thereof, turned over to an entity other than the Cooperative or re-assumed by LICENSOR, LICENSEE shall be obligated to pay, on a "service at cost" basis, directly to such other entity or LICENSOR, LICENSEE’s proportionate share of the Common Infrastructure Improvement Costs attributable to said Common Infrastructure Improvements.

4. [Reserved]

5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each delinquent payment.

6. [Reserved.]
7. **Taxes, Assessments, and Utilities.** LICENSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LICENSEE thereon. In the event that LICENSEE purchases any utility services from a provider other than the Cooperative or other entity (including LICENSOR) responsible for management of the common infrastructure that serves the Property, LICENSEE shall be required to pay, when due, all fees, charges, and costs of such additional utility services.

8. **Character of Use.** LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

(a) LICENSEE shall use the Premises hereby demised for agricultural and renewable energy purposes, as well as the improvement of the components comprising the "Irrigation Infrastructure" as that phrase is defined in Section 1.a. of the MOA, as set forth in LICENSEE's land utilization plan attached hereto as Exhibit "D". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License Agreement.

(b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.

(c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.

(d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid
animal waste must be by a means acceptable to the State Department of Health.

(f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE and to address any material increase in weeds or litter on the Premises.

9. Utilization and Development of the Land. LICENSEE shall utilize and develop the Premises in accordance with LICENSEE’s plan for utilization and development which has been approved by LICENSOR before execution of this License Agreement and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "D" hereto. Any modification or deviation from LICENSEE’s utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.

10. Sublicensing. LICENSEE shall not sublicense or rent the whole or any portion of the demised Premises without the prior consent of LICENSOR, which consent may be withheld in LICENSOR’s sole discretion. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sub-licensee's land utilization plan and rental payment schedule for LICENSOR’s consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.

11. Good Husbandry and Conservation Practices. Insofar as LICENSEE’s use of the Premises (as set forth in LICENSEE’s land utilization plan) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the demised Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no
apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. **Sanitation.** LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.

13. **Improvements.** During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License Agreement. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. **Repairs to Improvements.** LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3 above, LICENSEE shall have no obligation under this License Agreement to keep, repair, or maintain any common infrastructure improvements.
15. **Involuntary Liens.** LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, except during the course of Hydro Power Project financing or change of ownership control with prior approval from the ADC, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.

16. **Dwelling Restrictions.** The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.

17. **Non-Discrimination.** LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

18. **Breach or Default.** It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30 days) where the default involves a failure to make timely license fee payments, including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 3 above) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.
19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License Agreement have been observed and performed.

21. [Reserved]

22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3 above, LICENSEE shall have no obligation under this License Agreement to procure or maintain any commercial general liability insurance with regard to any activities of the Cooperative or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in
force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(s). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License Agreement, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of its License a certificate showing such
policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the license. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

24. **Right to Enter.** LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the demised Premises at any time for the purpose of performing any public or official duties.

25. **Inspection of Premises.** LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.

26. [Reserved]

27. **Withdrawal for Public Purpose.** LICENSOR shall have the right to withdraw the demised Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises originally demised to become unusable for the specific use or uses for which it was demised, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be
had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the residual value of the trees taken and, if there are unharvested crops, the value of the crops also. If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License Agreement, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.

29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.

30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the demised Premises for the term demised, without hindrance or interruption by LICENSOR or any
other person or persons lawfully claiming by, through, or under LICENSOR.

31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License Agreement. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the demised Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License Agreement, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License Agreement, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.

33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the demised Premises at any time during the term of this License Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the
covenants and agreements of this License Agreement, in recovering possession of the demised Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings), without any fault on LICENSEE's part, LICENSOR shall pay all costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; furthermore, LICENSOR shall pay all costs and expenses which may be incurred by or paid by LICENSEE in enforcing the covenants and agreements of this License Agreement; PROVIDED THAT any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. **Indemnity.** LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the demised Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

37. **Hunting.** No hunting shall be allowed on the demised Premises during the term of this License.
38. **Boundary Stakeout.** LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the demised Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the demised Premises.

39. **Fences.** LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the demised Premises.

40. **Drainage Easements.** The demised Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the demised Premises as of the commencement date of this License Agreement. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

41. **Roadway and Utility Easements.** The demised Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Cooperative or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.

42. **Compliance with Laws.** LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
43. **Environmental Regulations.** LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

44. **Hazardous Materials.** LICENSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Premises as reported in the Phase 1 Environmental Assessment prepared by Clayton Group Services dated August 7, 2003 ("Clayton Report"). Any environmental issue occurring on demised Premises after the date of this License Agreement shall be the responsibility of LICENSEE.

(a) During the term of this license, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the demised Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the demised Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or
contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the Clayton Report) which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. **Level One (1) Hazardous Waste Evaluation.** At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own
expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service (NRCS). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.

47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the demised Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.

48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.

49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.

50. [Reserved.]

51. [Reserved.]
52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the License term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.

55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE’s cost and expense.

57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.
58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gullies or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division (HPD) shall be contacted prior to any work. A field check will be required and shall be performed by the HPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the HPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Wells. Prior to expiration of the term of the License Agreement, LICENSEE shall, at LICENSEE's sole cost and expense, properly seal any unused and abandoned wells on the Premises, if any, that were developed by LICENSEE or otherwise registered to and used by LICENSEE during the term of the License Agreement. Any such unused or abandoned wells shall be sealed in accordance with Hawaii Administrative Rule 13-
168-16 and the Hawaii Well Construction & Pump Installations Standards (Revised 2004). LICENSEE shall make and obtain application(s) and well construction permits prior to the development of any wells and the start of any required work to seal any unused or abandoned wells.

60. Polihale Flood Diversion. LICENSEE shall be aware that the flood water flow in the irrigation ditch, which redirects floodwaters from portions of Mana Plain through the Polihale Park, causes washout of Polihale Road and sedimentation.

61. Agricultural Preservation Easement. LICENSEE shall be aware that approximately 5,000 acres of the Kekaha agricultural lands is situated within the Agricultural Preservation Easement, approved by the Board of Land and Natural Resources on May 12, 2004. To the extent applicable to the Premises, LICENSEE shall be in full compliance with the conditions and restrictions specified in the easement.

62. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.

63. Land Swapping. LICENSEE is allowed, but shall not be obligated, to swap land for uses consistent with its land utilization plan with any other licensees or revocable permit holder of any portions of the Property at no cost to LICENSEE.

64. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Cooperative and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.

65. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.

66. Cropping Changes. LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.
67. **Recordation.** LICENSOR and LICENSEE agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License Agreement to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.

68. At its sole cost and expense, LICENSEE shall prepare and process any and all required environmental assessments (EA), and environmental impact statements (EIS) required under Chapter 343 of the Hawaii Revised Statutes. LICENSEE shall diligently follow the EA process, prepare the final EA, and obtain issuance of a Finding of No Significant Impact (FONSI) within 3 years upon execution of this license agreement. Notwithstanding the foregoing, if a FONSI is not issued by the required deadline for the reason that a full EIS is required, LICENSEE may request in writing for an extension of the deadline.

69. At its sole cost and expense, LICENSEE shall obtain all necessary permits and clearances required for its Hydro Power Project which may include but are not limited to the following: construction permit, electrical permit, grading permit, special use permit, Section 401 water quality certification permit, dams and reservoir permit, forest reserve special use permit, interconnection permit, and power purchase agreement.

70. The amount of water available to the LICENSEE for the Hydro Power Project is subject to any agreements reached between the DHHL, the ADC, and/or other state agencies relating to water allocation. LICENSEE shall comply with all state or federal water-right laws. LICENSEE shall coordinate with the Cooperative for the amount of water that can be allocated for the Hydro Power Project so that other agricultural tenants on the property will not be negatively impacted.

71. Subject to Section 29 above, LICENSEE shall submit to the ADC evidence of adequate funding or financing of the proposed Hydro Power Project within one year upon execution of this license.

72. LICENSEE shall submit to the ADC a copy of their approved soil and water conservation plan within 2 years upon execution of this agreement or before initiating any major planting or
harvesting activities. LICENSEE shall submit a revised soil and water conservation plan to the ADC if LICENSEE makes changes to its initial planting or harvesting practices which would require terrain alteration.

73. LICENSEE shall show agricultural activities in 50% or more of the total arable acreage within 3 years upon execution of this agreement and show evidence that the entire licensed acreage will be needed for the Hydro Power Project.

74. LICENSEE shall submit to the ADC a copy of their signed agreement with the Cooperative relating to power sales arrangement. If LICENSEE were to sell power directly to the KIUC, the licensee shall submit to the ADC a copy of the Public Utilities Commission (PUC) approved Power Purchase Agreement with the KIUC.

75. If the planting of a biomass crop besides a grass crop is desired, licensee shall submit the species of plant to be cultivated for approval by the ADC before planting.

76. Unless instructed differently by the ADC, LICENSEE shall restore the property to its previous condition before vacating the property. If tree crops for biomass production were to be cultivated on the property, LICENSEE shall purchase a surety bond with a value agreeable to the ADC to ensure that this obligation can be fulfilled when the property is vacated at or before the end of the license term.

77. With prior written approval from the ADC, native trees or vegetation for re-forestation, erosion control or aesthetic purposes could be cultivated on certain defined areas.

78. When applicable, LICENSEE shall comply with all state and federal laws regulating Animal Feeding Operations (AFO) and Concentrated Animal Feeding Operation (CAFO) operations.

79. ADC reserves the right to conduct financial audits to determine LICENSEE's gross revenue as per rent agreement.

80. Assignment.

A. Generally. LICENSEE shall not assign this License without the prior express written consent of LICENSOR, which LICENSOR shall not unreasonably withhold, but which may be conditioned upon the proposed assignee providing: (i) reasonable evidence of adequate financial strength to satisfy the financial
obligations of LICENSEE under this License; and (ii) reasonable evidence of experience in the management and operation of facilities similar to the Hydro Project. In connection with any assignment of this License to an individual, corporation, partnership, limited liability company, trust or other entity, LICENSOR may, and shall have the right to, condition consent to such assignment upon being provided with a guaranty of the License, in form and substance reasonably satisfactory to LICENSOR, guaranteeing payment of the license rent and the due observance and performance of the LICENSEE's obligations under this License. LICENSOR understands that LICENSEE will likely collaterally assign this License to lenders or other financing parties for the purpose of procuring Project financing and that LICENSOR's consent shall not be unreasonably withheld pursuant to the terms of this Provision.

B. Restrictions on Mortgaging. LICENSEE shall not mortgage the interest created by this License without the prior express written consent of LICENSOR; provided, however, that any proposed mortgagee shall be a recognized financial institution located in the United States and shall be a lender experienced and skilled in the making of loans for alternative energy projects.

C. Assumption of License. Any permitted assignment of this License shall be specifically made in writing and therein expressly stated to be made subject to all terms, covenants and conditions of this License, and the assignee therein shall expressly assume and agree, with and in favor of LICENSOR, to all such terms, covenants and conditions.

D. LICENSOR's Response. LICENSOR shall respond to any request for consent to an assignment or mortgage of this License within thirty (30) days following LICENSOR's receipt of all financial statements, documents or other information reasonably necessary for LICENSOR to make a determination as to the requested assignment or mortgage.

E. "Assignment" Defined. For purposes of this Licensee, the term "assignment" shall include, but not be limited to, a "change of control", which is defined as one or more sales, assignments, gifts, conveyances or transfers, voluntary or involuntary, whether by operation of law or otherwise, by which:
(i) if the LICENSEE is a corporation, an aggregate of more than fifty percent (50%) of (i) the total common stock of the LICENSEE or (ii) any class of voting stock of the LICENSEE;

(ii) if the LICENSEE is a general partnership, an aggregate of more than fifty percent (50%) of the total partnership interests of the LICENSEE or a change of control (as herein defined) of any managing general partner of the LICENSEE;

(iii) if the LICENSEE is a trust, an aggregate of more than fifty percent (50%) of the total beneficial interest of the LICENSEE;

(iv) if the LICENSEE is a limited partnership, an aggregate of more than fifty percent (50%) of the total partnership interests of the LICENSEE or a change of control (as herein defined) of any general partner of the LICENSEE;

(v) if the LICENSEE is a member-managed limited liability company, an aggregate of more than fifty percent (50%) of the total membership interests of the LICENSEE;

(vi) if the LICENSEE is a manager-managed limited liability company, an aggregate of more than fifty percent (50%) of the total membership interests of the LICENSEE or a change of control (as herein defined) of any manager of the LICENSEE;

shall become vested or controlled by one or more individuals, associations, partnerships, trusts, limited liability companies, corporations, or any other legally recognized entity, or any derivative or combination thereof, who or which do not presently own directly a sixty percent (60%) interest, legally or equitably, in the LICENSEE as of the date of this License (or as of the date of LICENSEE's subsequent acquisition of this License by an assignment as to which LICENSOR's consent was obtained).

81. Definition of LICENSEE's "Hydro Power Project". For purposes of this License, the term "Hydro Power Project" shall mean the installation and construction of hydroelectric generation facilities on the Koke'e Ditch Irrigation System.

82. Definition of "Gross Revenue". For purposes of this License, the term "Gross Revenue" shall mean the revenue received by
LICENSEE for electric power generated by LICENSEE’s Hydro Power Project operations and sold pursuant to the Power Purchase Agreement ("PPA") into which LICENSEE intends to enter into with the Cooperative, and all other revenue received by LICENSEE from the ownership and operation of the Hydro Power Project. Effective on the one (1) year anniversary date of the Commencement of Commercial Operation of the Hydro Power Project, and ever year thereafter during the Term of the License (including the Extension Term, if exercised), LICENSEE shall deliver to LICENSOR the report of gross revenues or other report or documentation produced pursuant to the PPA that details or describes LICENSEE’s gross revenues from the sale of electric power from the Hydro Power Project to the Cooperative.

DEFINITIONS

As used in this License Agreement, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LICENSOR under Governor’s Executive Order #4007, dated September 23, 2003, including buildings and improvements.

"Premises" or "demised Premises," includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License Agreement.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.
"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of
LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises or any portions thereof; (3) failure to employ all of the usable portions of the demised Premises; and (4) abandonment of the demised Premises.

"Days" shall mean calendar days, unless otherwise specified.


IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 15th day of April, 2011.
LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By

Executive Director

LICENSEE

By

Its

APPROVED AS TO FORM:

Deputy Attorney General

Dated: 4/15/11
STATE OF HAWAII
COUNTY OF KAUA'I

On this 15th day of April, 2011, before me personally appeared Alfredo A. Lee, and described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

J. Lam, Jr.
Notary Public, State of Hawaii

My commission expires: 12/16/2013
STATE OF HAWAII     
COUNTY OF KAUAI      

SS.

On this 15th day of April 2011, before me personally appeared Paul A. Luckett and described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, State of Hawaii

My commission expires: 12/14/2013
EXHIBIT "A"

[Map showing location of Premises]

END OF EXHIBIT "A"
Pacific Light and Power

Exhibit "A"

Kekaha Map
Island of Kauai, Hawaii

EXHIBIT "B"

[Description of Premises by Field Numbers]

END OF EXHIBIT "B"
Pacific Light and Power
Exhibit "B"

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Total acres 877.48
STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4923

between

STATE OF HAWAII

and

FRANK F. SEKIYA,
whose wife is Donna S. P. Jay-Sekiya,
as his separate property

covering

Lot 2

WAIMANALO AGRICULTURAL PARK, PHASE I

WAIMANALO, KOOLAUPOKO, ISLAND OF OAHU, HAWAII
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. 5-4923

THIS INDENTURE OF LEASE, made this __th__ day of
November __, 19__, by and between the STATE OF HAWAII,
hereinafter referred to as the "Lessor", by its Board of Land and
Natural Resources, called the "Board", and FRANK F. SEKIYA,
whose wife is Donna S.F. Jay-Sekiya, as his separate property,
whose residence and post office address is
95-139 Kapawa Place, Mililani Town, Hawaii 96789
hereinafter referred to as the "Lessee";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent
to be paid and of the terms, covenants and conditions herein
contained, all on the part of the Lessee to be kept, observed and
performed, does hereby demise and lease unto the Lessee, and the
Lessee does hereby lease and hire from the Lessor the premises
identified as Lot 2, Waimanalo Agricultural Park Phase I,
Waimanalo, Koolaupoko, Oahu, as shown on File Plan 1950 on file
at the Bureau of Conveyances, State of Hawaii, and as shown on
Exhibit "A" attached hereto for reference and informational
purposes only.

TO HAVE AND TO HOLD the demised premises unto the
Lessee for the term of thirty-five (35) years, commencing on the
1st day of August __, 19__, up to and including
the 31st day of July __, 2021, unless
sooner terminated as hereinafter provided, the Lessor reserving
and the Lessee yielding and paying to the Lessor at the Office
of the Department of Land and Natural Resources, Honolulu,

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Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand, in semi-annual installments on August 1st and February 1st of each and every year during said term as follows:

A. For the first fifteen (15) years, the sum of ONE THOUSAND THREE HUNDRED TEN AND NO/100 ($1,310.00) per annum; PROVIDED, HOWEVER, that in lieu of rental waiver, the Lessee shall be credited in an amount not to exceed two (2) years' rent for improvements performed and approved by the Chairperson during the first two (2) years of the lease term.

B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the 15th and 25th years of said term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor; and the Lessee shall be promptly notified of the fair market rental as determined by the Lessor's appraiser; provided, that should the Lessee fail to agree upon the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint his own appraiser who shall prepare an independent appraisal report and the two appraisers shall then exchange their reports for review. The two appraisers shall make every effort to resolve whatever differences they may have. However, should differences still exist 14 days after the exchange, the two appraisers shall then appoint a third appraiser who shall also prepare an independent appraisal report and furnish copies thereof to the first two appraisers.
After review, all three shall meet to determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. The Lessee shall pay for his own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the Lessee shall continue to pay the rent effective for the previous rental period, but the Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

D. Interest at the rate of one per cent (1%) per month shall be charged to delinquent rentals.

E. Additional Rent. Each year during the month of January, the Lessee shall submit to the Lessor a report showing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the said report, the Lessee shall pay to the Lessor the additional rent due, if any, which amount shall be determined in the manner described below:

From the above report, determine a value representing one and one-half (1-1/2) percent of the gross proceeds. The excess, if any, over the value so derived over the basic annual lease rent constitutes the additional rent.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises
and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspor, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on or under said land.

3. Ownership of fixed improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.
4. Withdrawal. The Lessor shall have the right to withdraw the demised land, or any portion thereof, at any time during the term of this lease upon the giving of reasonable notice by the Board and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided, further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of such crops.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

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

4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or physical handicap.
5. **Sanitation, etc.** That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. **Waste and unlawful, improper or offensive use of premises.** That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

7. **Compliance with laws.** That the Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the said premises, now in force or which may hereinafter be in force.

8. **Inspection of premises.** That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. **Improvements.** That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Chairperson and upon such conditions as the Chairperson may impose, including any adjustment of rent, unless otherwise provided herein. The ownership thereof shall be in the Lessee until the expiration or termination pursuant to a breach of the lease, at which time the ownership thereof shall vest in the Lessor.
10. **Repairs to improvements.** That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

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

12. **Character of use.** That the Lessee shall use or allow the premises hereby demised to be used solely for nursery purpose(s).

13. **Assignments, etc.** That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is
demonstrated to the satisfaction of Lessor or (5) it is to the corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and, if necessary, revise the rent of the demised premises based upon the consideration paid by the Assignee; and, provided, further, that the rent shall not be revised downward.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.
16. **Costs of litigation.** That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

17. **Liability insurance.** That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Chairperson, insuring the Lessor and Lessee against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises; including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.
18. **Bond, performance.** That the Lessee shall:

at its own cost and expense, within **thirty** (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. **Lessor's lien.** That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.
20. **Mortgage.** That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof of this lease or any interest therein without the prior written approval of the Chairperson and any such mortgage, hypothecation or pledge without such approval shall be null and void.

That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the leasehold of the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or other- wise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable.

The term “holder” shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental...
holder shall not confer any greater rights or powers in
the holder than those which would be required by any of
the aforementioned Federal agencies.

21. Breach. That time is of the essence of this
agreement and if the Lessee shall fail to yield to pay such
rent or any part thereof at the times and in the manner
aforesaid within thirty (30) days after delivery by the Lessor
of a written notice of such breach or default, or if the Lessee
shall become bankrupt, or shall abandon the said premises, or
if this lease and said premises shall be attached or otherwise
be taken by operation of law, or if any assignment be made of
the Lessee's property for the benefit of creditors, or shall
fail to observe and perform any of the covenants, terms and
conditions herein contained and on its part to be observed
and performed, and such failure shall continue for a period
of more than sixty (60) days after delivery by the Lessor of
a written notice of such breach or default, by personal
service, registered mail or certified mail to the Lessee at
its last known address and to each mortgagee or holder of
record having a security interest in the demised premises,
the Lessor may, subject to the provisions of Section 171-11,
Hawaii Revised Statutes, at once re-enter such premises or any
part thereof, and upon or without such entry, at its option,
terminate this lease without prejudice to any other remedy or
right of action for arrears of rent or for any preceding or
other breach of contract; and in the event of such termination,
all buildings and improvements thereon shall remain and become
the property of the Lessor; furthermore, Lessor shall receive
all rent paid in advance as damages.

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22. **Right of holder of record of a security interest.**

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such privilege, interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of said privilege, interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said privilege, interest, or estate subsequent to such foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for an preceding or other breach or default and use its best efforts to redissepose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby.
secured; provided that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of the right or to deprive it of a remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any redisposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. **Condemnation.** If at any time, during the term of this lease, any portion of the demised premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, in any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be

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paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

24. Right to enter. The Lessor or the County and the agents or representatives thereof shall have the right to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessee shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than two years before the expiration of the term of this lease.

26. **Acceptance of rent not a waiver.** That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

27. **Extension of time.** That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

28. **Justification of sureties.** Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates
of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing provision shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

29. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee or the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.
30. **Quiet enjoyment.** The Lessor hereby covenants and agrees with the Lessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

31. **Surrender.** That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises together with all improvements existing or constructed thereon unless provided otherwise. Furthermore, upon the expiration, termination and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, the Board of Land and Natural Resources may remove any and all such personal property from the premises and place said property in storage at the cost and expense of Lessee, and the Lessee does hereby agree to pay all costs and expenses for removal and storage of such personal property.

32. **Non-warranty.** The Lessor does not warrant the conditions of the leased premises, as the same is being leased as is.

33. **Incorporation by reference.** References to various parcels of land herein are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Applicants are incorporated herein and made a part hereof. The terms of this lease shall govern where there is any inconsistency between the terms thereof and the terms contained in the Special Notice to Applicants.

34. **Hunting.** No hunting shall be allowed on the demised premises during the term of this lease.
35. **Utilization of the land.** That the Lessee shall, at its own cost and expense, utilize the land for agricultural and related purposes in accordance with the following schedule: Not less than fifty (50) percent within the first two (2) years of the lease term and the balance within the first four (4) years of the lease term. The above schedule shall be in accordance with a plan of utilization and development which shall be submitted by the Lessee within six (6) months of the commencement date of the lease for approval by the Chairperson.

36. **Good husbandry and conservation program.** That the Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall apply for and attain cooperative status. Said conservation program shall be developed and a copy of the plan submitted to the Chairperson within one (1) year following the commencement of the lease. The conservation program shall be with respect to the overall use of the premises and shall include, where applicable but not limited to, such practices as clearing of land, cropping system, irrigation system, storm runoff control system, noxious weed control, and such others as are required to conserve and prevent deterioration of the natural resources inherent to the premises, and further, to prevent the pollution of the environment. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall so notify the Lessee and the Lessee shall be required, within sixty (60) days of such notice, to cure such fault and submit proof thereof satisfactory to the Chairperson.
37. **Dwelling restrictions.** That the Chairperson may permit construction of one (1) single-family dwelling for Lessee use, or one (1) employee dwelling if the need is clearly demonstrated, provided, however, that the Lessee intending to reside on the premises, or his or her spouse, or both of them, must not own or be leasing, under a residential lease for a term exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the Lessee), any land situated within the State suitable for residential use. The dwelling shall be constructed of masonry or new material and must contain an area of not less than 800 square feet exclusive of garage and open lanai. The dwelling unit shall in no event and at no time during the term of this lease be used for rental purposes. Plans and specifications for the dwelling shall have the Chairperson's approval prior to construction.

38. **Insurance.** That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, to their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee
may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

39. **Boundary Stakeout.** The Lessor shall not be responsible and/or liable for surveying and boundary stakeout of the demised premises; the Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

40. **Setback Requirements.** Building setback lines shall be as follows: Thirty (30) feet from the front and rear boundaries and twenty (20) feet from the side boundaries.

41. **Major Portion of Income.** That the Lessee shall, within five (5) years following the lease commencement date, attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty (50) percent of his total annual income. Each year during the month of January following the fifth (5th) year of the lease term, the Lessee shall submit a report substantiating the said status for the year immediately preceding. The report submitted as required shall be subject to audit by the Chairperson or his representative.

42. **Drainage Easement.** That Lots 1 through 11, 14 and 14 shall be subject to drainage and flowage easements as shown on File Plan 1850 on file at the Bureau of Conveyances, State of Hawaii, and as shown on Exhibit "A" attached hereto for reference and informational purposes only. The easement area shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of said drainageway. The Lessee shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
43. **Irrigation system, inclusion in.** That the premises herein demised shall be included in the Waimanalo Irrigation System and shall be subject to the basic charges and water rates in effect as of the effective date of this lease or as may be adjusted from time to time, and the Lessee shall pay such charges promptly when due, and such charges shall become a first lien against the demised premises.

44. **Roadway easement.** That Lots 11 and 13 shall be subject to roadway easements shown on File Plan 1850, which easements shall be in favor of property owners served by said easements; provided, that the Lessee may cross said easements at any point; provided, further, that the Lessee shall not be responsible for the maintenance of said roadway easements.
Definitions.

As used herein, unless clearly repugnant to the context:

(a) "Chairperson" shall mean the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one Lessee, then all words used in the singular shall extend to and include the plural;

(f) The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof;

(g) "Waste" shall be deemed to include, but not limited to, (1) permitting the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof and (3) failure to employ all of the usable portions of the demised premises.
(h) "Noxious weed" shall mean any plant species which is injurious, harmful or deleterious or which may be likely to become so to the agricultural industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

(i) "Diversified agriculture" shall mean the conduct of activities concerned with the production and marketing of horticultural crops such as vegetables, orchard, flowers, foliage, melons and others including such other activities related thereto but shall not include any livestock operations.

(j) "Nursery" shall mean the conduct of activities concerned with the production and marketing of nursery products and flowers including other activities related thereto.

(k) "Drainage easements" including "flowage easements" are natural or improved drainage courses that serve to convey streamflows from one point to another.
STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU

On this 3rd day of November, 199_, before me personally appeared FRANK F. SEKIYA

and

to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, State of Hawaii
My Commission Expires: 24-9-

STATE OF HAWAI'I

COUNTY OF

On this ______ day of ______________, 19__, before me appeared

and

to me personally known, who, being by me duly sworn, did say that they are the

and

respectively, of ______________,

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said

and

acknowledged that they executed said instrument as the free act and deed of said corporation.

Notary Public, State of Hawaii
My Commission Expires: ______

-27-

C-281
STATE OF HAWAII

DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S - 3766

between

STATE OF HAWAII

CONTEMPORARY LANDSCAPING LLC
a Limited liability company

covering Lot No. 26

Koolaupoko, Waimanalo, Island of Oahu, State of Hawaii
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STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
GENERAL LEASE NO. S-3766

THIS INDENTURE OF LEASE, is made and entered into this 23rd day of August, 2011, by and between the
STATE OF HAWAII, hereinafter referred to as the "Lessor",
by its Board of Agriculture, hereinafter referred to as the
"Board", whose business address is 1428 South King Street,
Honolulu, Hawaii 96814, and CONTEMPORARY LANDSCAPING LLC, a
Limited liability company, whose business and post office address
is 380 Halaki Street, Honolulu, Hawaii 96821, hereinafter
referred to as the "Lessee".

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be
paid and of the terms, covenants, and conditions contained herein,
all on the part of the Lessee to be kept, observed, and performed,
does hereby demise and lease unto the Lessee, and the Lessee does
hereby lease and hire from the Lessor the premises identified as
Lot No. 26, containing approximately 7.001 gross acres (7.001
net usable acres), of land at Koolaupoko, Waimanalo, Oahu,
more particularly described in Exhibit A, and the premises
outlined in red on Exhibit B, which are attached hereto and made a
part hereof.
TO HAVE AND TO HOLD the demised premises unto the Lessee for
the term of THIRTY-FIVE (35) years commencing on the 1st day
of August, 2011, and ending on the 31st day of July, 2046,
unless sooner terminated as provided herein, the Lessor reserving
and the Lessee yielding and paying to the Lessor at the office of
the Department of Agriculture, Honolulu, Oahu, a net annual rental
as provided herein, payable in advance without notice or demand,
in semi-annual installments on February 1st and August 1st of
each and every year during the lease term, except as otherwise
provided, as follows:

A. Base annual rental. For the first ten (10) years, the
base annual rental shall be the sum of EIGHT THOUSAND FIVE
HUNDRED FORTY AND NO/100 DOLLARS ($8,540.00); as offered and
accepted by the Board; except, the Board may permit the Lessee to
offset the cost of land clearance and leasehold improvements
against not more than two years of base annual rental, the
evidence of which shall be submitted to and approved by the Lessor
within the first year of the lease term.

B. Additional rental. Each year on or before the 30th day of
April, the Lessee shall submit to the Lessor a report disclosing
the gross proceeds from the sale of commodities produced on the
demised premises during the year immediately preceding. Together
with the report, the Lessee shall pay to the Lessor any additional
rental due, which amount shall be determined in the manner
described below:

From the report, determine a value representing 1.5 per
cent (%) of the gross proceeds, which includes revenues
from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.

C. Reopening of annual rental. The annual rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years of the term herein, provided however, in no event shall the base annual rental be revised downward.

D. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three
appraisers shall meet to determine the fair market rental. The
fair market rental as determined by a majority of the appraisers
shall be final and binding upon both the Lessor and the Lessee,
subject to chapter 658A, Hawaii Revised Statutes ("HRS"). The
Lessee shall pay for its own appraiser. The cost of the services
of the third appraiser shall be borne equally by the Lessor and
the Lessee. All appraisal reports shall become part of the public
record of the Lessor.

In the event that the appraisers are unable to determine the
fair market rental before the reopening date, the Lessee shall
continue to pay the rent at the rate effective for the previous
rental period, but the Lessee shall make up any deficiency within
thirty days after the new rental has been determined. The
Lessee's or its appraiser's failure to comply with the procedures
set forth herein shall constitute a waiver of the Lessee's right
to contest the new fair market rental, and the Lessee shall pay
the rental as determined by the Lessor's appraiser without
adjustment. Alternatively, the Board may, at its option, treat
the failure as a breach of this lease and terminate this lease.

E. Facilities capital recovery fee. The facilities capital
recovery ("FCR") fee is payable annually and shall be for the full
term of this lease, commencing on the date the Lessor installs
improvements as described herein in support of the Lessee's
operations, or the commencement of the term of this lease,
whichever is later. The FCR fee is based on the Lessor's
expenditures to install the improvements and is calculated on one-
tenth of one per cent of the Lessor's expenditures and will be
added to the base annual rental, except that Capital Improvement Projects, as may be authorized by the State of Hawaii Legislature, which are constructed to repair or remedy defects to the physical facility and are not used to expand operations shall not be included as the Lessor's expenditure upon which the FCR fee is based.

F. Interest on delinquent rental. Interest at the rate of one per cent (1%) per month shall be charged to any delinquent rentals.

G. Holdover. Upon expiration of the lease term, if the land is not otherwise disposed of, the Lessor may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the Lessor may prescribe, and further as provided in section 4-158-31, Hawaii Administrative Rules ("HAR").

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and water rights. (a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. "Minerals", as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances
and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the demised premises, fast or submerged; provided that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others.

(b) All surface and ground waters appurtenant to the demised premises and the right on its own behalf; or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the demised premises shall be reserved to the Lessor.

3. Ownership of fixed improvements. The ownership of all improvements, including but not limited to farm dwellings, baths, maintenance sheds, shadehouses, fences, irrigation and stockwater systems located on the demised premises prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.

4. Withdrawal. The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during
the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the Lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. **Payment of rent.** The Lessee shall pay the required rent in legal tender of the United States of America to the Lessor at the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor.

2. **Taxes, assessments, etc.** The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the lease term.

3. **Utility services.** The Lessee shall pay when due all charges, duties, and rates of every description, including water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the lease term, whether assessed to or payable by the Lessor or the Lessee.

4. **Irrigation costs.** Without limiting the provisions of the proceeding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system which provides irrigation water to the demised premises.
The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, HRS, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set; and the Lessee agrees to abide by and to pay when due all rates and charges set by such irrigation project.

The Lessee shall use due care to protect the ditches, flumes, pipelines, gates, valves, and all other property and appurtenances of the irrigation system and shall not cause or suffer any damage or destruction thereof.

5. Character of use. (a) The Lessee shall use the premises hereby demised solely for Diversified Agriculture purposes. No other use shall be permitted except as provided in sections 4-158-18 and 4-158-19, HAR.

(b) No cesspools shall be constructed on the premises. However, the Lessee may use alternative wastewater treatment and disposal systems, which do not pose a threat to the groundwater and provided the Lessee obtains the prior approval from the Department of Health.

(c) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health.

(d) The covenants, conditions, and restrictions contained in this section shall run with the land until the time that the land is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions
shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.

6. Dwelling restrictions. Residential use and residential dwellings shall not be permitted on the premises. The Board may permit a farm dwelling on the premises if the need is clearly demonstrated. The farm dwelling shall be used in direct connection with the agricultural activities on the premises and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the Board may require including, but not limited to, and adjustment of lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations and rules, including, but not limited to, laws regarding environmental quality control.

7. Utilization and development of the demised premises. The development of the demised premises shall be completed within three years from the commencement date of this lease, with not less than fifty per cent (50%) developed within the first two years of the lease term. The above schedule shall be in accordance with a Plan of Utilization and Development (P.U.D.) which shall be prepared by the Lessee and approved by the Lessor before the execution of this lease. Any modification or deviation from the plan, without the prior written approval of the Lessor.
may constitute a breach of this lease and cause for the termination thereof.

8. Good husbandry and conservation practices. The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a Conservation Plan (CP) developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the Conservation Plan, the Lessor shall notify the Lessee of the discrepancy and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.

9. Major portion of income. Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty per cent (50%) of the Lessee's total annual income; except, that this requirement shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and
verification by the Lessor, who may impose additional requirements to carry out the requirements of this section.

10. Sanitation, etc. The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.

11. Waste and unlawful, improper, or offensive use of the premises. The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, nor cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.

12. Inspection of premises. The Lessee shall permit the Lessor and its representatives, at all reasonable times during the lease term, to enter the demised premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.

13. Improvements. At any time during the lease term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, sign, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership
thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee, at the Lessee's sole cost and expense.

14. Repairs to improvements. The Lessee shall, at the Lessee's own expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted.

15. Insurance. At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall receive that
portion of the proceeds which the unexpired term of this lease at
the time of the loss or damage bears to the whole of the term, the
Lessor to retain the balance of the proceeds.

16. **Right of first refusal.** A lease or any interest therein,
including stock of a corporation holding the lease or an interest
in a partnership or association holding the lease, shall not be
transferred or assigned unless the lease and improvements, or any
interest therein, are first surrendered to the Board, as follows:

1. The Board shall have the option to re-purchase the
lease for the price paid by the current lessee,
including closing costs, or the fair market value,
less appreciated value, at the time of re-purchase,
as determined in paragraph (3), whichever is the
lower but not less than zero. For the purposes of
this section, "price paid by the current lessee"
means the consideration paid for the lease exclusive
of improvements and "appreciated value" means the
replacement cost for developing the leased premises.

2. Any improvements affixed to the realty, including
trade fixtures and growing crops, shall be re-
purchased at their fair market value.

3. At the time of the re-purchase, the fair market
value of the lease less appreciated value and the
fair market value of any improvements shall be
determined by a qualified appraiser whose services
shall be contracted for by the Lessor; provided that
should the Lessee disagree with the values, the
Lessee may appoint the Lessee's own appraiser who together with the Lessor's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the Lessee shall pay for the Lessee's own appraiser, the Lessor shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

(4) The Board may re-purchase the lease and improvements with funds from the non-agricultural park lands special fund or may accept a surrender of the lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-158-22 and 4-158-29, HAR.

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase.

(6) This section shall not apply to a holder of record having security interest upon foreclosure pursuant to section 4-158-34, HAR.
17. **Assignments of lease, lease interest, etc.** (a) Any transforee, assignee, or sublessee of a non-agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the demised premises. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender the lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

1. The Lessee becomes mentally or physically disabled;
2. Extreme economic hardship is demonstrated to the satisfaction of the Board; or
3. The assignment is to the corporate successor of the Lessee;

provided that with the prior written approval of the board the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by
the Board; provided further, that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on October 23, 2007; as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual rental and additional rental pursuant to section 4-158-21, HAR.

18. Subletting. The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rental to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be
included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the rental of the demised premises based upon the rent charged to the sublessee; and provided further that the rental may not be revised downward.

19. Mortgage. Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest herein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without such approval shall be void. That upon application and with the prior written consent of the Lessor, the Lessee may mortgage this lease or any interest herein or create a security interest in the leasehold of the public land demised. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the land or any interest therein.

20. Breach. Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the land covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make
timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of holder of security interest. Without limiting the foregoing, the Board, after due notice of default shall terminate this lease or tenancy and take possession of the premises together with all improvements placed thereon, without demand or previous entry and without legal process, and shall retain all rental paid in advance as damages for the violations. The retention of advance rental as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.

21. Rights of holder of record of security interest. (a) Prior board action shall be required when an institutional lender acquires the Lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the Lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(b) Notwithstanding any provisions of this lease, if any lease is subject to a security interest held by an institutional
lender and if the institutional lender has given to the Board a
copy of the encumbrance as recorded in the bureau of conveyances:

(1) If the lease is canceled for violation of any non-
monetary lease term or condition, or if the lease is deemed
terminated or rejected under bankruptcy laws, the institutional
lender shall be entitled to issuance of a new lease in its name
for a term equal to the term of the lease remaining immediately
prior to the cancellation, termination, or rejection, with all
terms and conditions being the same as in the canceled,
terminated, or rejected lease, except only for the liens, claims,
and encumbrances, if any, that were superior to the institutional
lender before cancellation, termination, or rejection. If a lease
is rejected or deemed rejected under bankruptcy law, the lease
shall be deemed canceled and terminated for all purposes under
state law;

(2) If the Lessee’s interest under a lease is transferred to an
institutional lender, including by reason of the provisions of
paragraph (1), by reason of acquisition of the Lessee’s interest
pursuant to a foreclosure sale, judicial or nonjudicial, and by
reason of an assignment in lieu of foreclosure:

(A) The institutional lender shall be liable for the
Obligations of the Lessee under the lease for the period of time
during which the institutional lender is the holder of the
Lessee’s interest but shall not be liable for any obligations of
the lessee arising after the institutional lender has assigned the
lease; and
(B) The provisions of section 166E-8(b)(1) and (2) shall not apply to the lease or the demised land during such time as the institutional lender holds the lease; provided that:

(i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the Board; and

(ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either sell or assign the lease, after which date section 166E-8(b)(1) and (2) shall apply to the new lease;

(3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the Board, except with the prior written consent by the institutional lender and that consent shall not be unreasonably withheld; and

(4) If the lease contains any provision requiring the payment of a premium to the Lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender shall have been paid in full.
(c) Ownership of both the lease and security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the Board.

(d) The Board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

1. The purchase, assignment, or transfer shall conform with subsection (b)(4); and

2. The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender. Other purchasers may not be precluded from acquiring the institutional lender's security interest but shall not have rights as successor interest to the original institutional lender.

22. Acceptance of rent not a waiver. The acceptance or rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of
any term, covenant, or condition, or to exercise any option conferred herein shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

23. Liability insurance. The Lessee shall procure and maintain during the entire period of this lease, a policy or policies of commercial general liability insurance, in an amount to be determined by the Lessor and approved by the Board, subject to periodic review and adjustment every two years, insuring the Lessor and the Lessee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.

24. Performance bond. The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a good and sufficient surety bond in an amount equal to two times the annual base rental.
conditioned upon the full and faithful observance and performance by the Lessee of the lease terms, conditions, and covenants of this lease. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the performance bond requirement at any time throughout the term of this lease.

25. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.

26. Indemnity. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage,
personal injury, or death, arising out of any occurrence on the
demised premises or on sidewalks, parking areas, and roadways
adjacent thereto resulting from any act or omission of the Lessee,
or occasioned by any act or nuisance made or suffered on the
premises, or by any accident or fire thereon, or growing out of or
caused by any failure on the part of the Lessee to maintain the
premises in a safe condition, or by any act or omission of the
Lessee, and from and against all actions, suits, damages, and
claims brought or made by reason of the non-observance or non-
performance of any of the terms, covenants and conditions herein
or the laws, ordinances, and rules of the federal, state, or
county governments. This provision shall survive the expiration
or earlier termination of this lease.

27. Costs of litigation. If the Lessor shall be made a party
to any litigation commenced by or against the Lessee (other than
condemnation proceedings), without any fault on the Lessor's part,
the Lessee shall pay all costs and expenses incurred by or imposed
on the Lessor, including, but not limited to, attorney's fees;
furthermore, the Lessee shall pay all costs and expenses which may
be incurred by or paid by the Lessor in enforcing the covenants
and agreements of this lease, in recovering possession of the
demised premises, or in the collection of delinquent rental,
taxes, and any and all other charges.

28. Liens. The Lessee will not commit or suffer any act or
neglect whereby the demised premises or any improvement thereon or
the estate of the Lessee in the same shall become subject to any
attachment, lien, charge, or encumbrance, except as provided
herein, and shall indemnify, defend, and hold harmless from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.

29. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.

30. Condemnation. If any portion of the demised premises shall be condemned for public purposes by the State of Hawaii, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority:

(1) The value of growing crops which the Lessee is not permitted to harvest; and

(2) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for compensation or
indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.

31. **Right to enter.** The Lessor, the City and County of Honolulu, or their representatives shall have the right at any reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.

32. **Extension of time.** Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown, may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.

33. **Quiet enjoyment.** The Lessor covenants and agrees with the Lessee that upon payment of rent at the times and in the
manner specified and the observance and performance of the
covenants, terms, and conditions hereof on the part of the Lessee
to be observed and performed, the Lessee shall have, hold,
possess, and enjoy the demised premises for the term demised,
without hindrance or interruption by the Lessor or any other
person or persons lawfully claiming by, through, or under it.

34. **Surrender.** At the end of the term or other sooner
termination of this lease, the Lessee shall peaceably deliver unto
the Lessor possession of the demised premises, together with all
improvements existing or constructed thereon unless provided
otherwise in this lease. Furthermore, upon the expiration,
termination, or revocation of this lease, should the Lessee fail
to remove any and all of the Lessee’s personal property from the
premises, the Lessor may remove any and all personal property from
the premises and either deem the property abandoned and dispose of
the property or place the property in storage at the cost and
expense of the Lessee, and the Lessee shall pay all costs and
expenses for the disposal, removal, or storage of the personal
property. This provision shall survive the expiration or earlier
termination of this lease.

35. **Non-warranty.** The Lessor does not warrant the conditions
of the leased premises, as the same is being leased as is.

36. **Covenant against discrimination.** The use and enjoyment
of the premises shall not be in support of any policy which
discriminates against anyone based upon race, creed, color,
national origin, sex, familial status, ancestry, physical
handicap, disability, age or HIV (human immunodeficiency virus) infection.

37. **Hunting.** No hunting shall be allowed on the demised premises during the term of this lease.

38. **Boundary stakeout.** The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises; the Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

39. **Setback requirements.** Building setback lines shall be in accordance with applicable county ordinances and rules.

40. **Drainage easements.** The demised premises shall be subject to drainage and flowage easements as applicable. An easement area shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainageway. The Lessee shall accept the storm runoff draining into and through the easement area and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

41. **Roadway and utility easements.** The demised premises shall be subject to roadway and utility easements as applicable, which easements shall be in favor of property owners served by the easements; provided that the Lessee may cross the easements at any point; provided further that the Lessee shall be responsible for maintenance of the easements.

42. **Compliance with laws.** The Lessee shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules
pertaining to the premises which are now in force or later may be in force.

43. **Interpretation.** The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees. The paragraph headings in this lease are for convenience and are not intended to construe the intent or the meaning of any of the provisions.

44. **Hazardous materials.** (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents.
successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

45. Hazardous waste evaluation. Prior to the termination of the lease, Lessee, at its sole cost and expense, shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the federal Environmental Protection Agency and the Department of Agriculture. The termination will not be
approved by the Board of Agriculture or department of Agriculture
unless this evaluation and abatement provision has been executed.

46. Commercial operations. The Lessee, its employees,
customers, guests, agents and/or invitees shall not display or
offer for sale or sell any article(s) or merchandise whatsoever
within the premises without prior written approval of the Lessor.
No commercial activities whatsoever shall be allowed within the
premises without the prior written approval of the Lessor.

47. Abandoned vehicles. Lessee shall take all steps
necessary to prevent the placing or storing of abandoned vehicles
within the premises. Any and all abandoned vehicles within the
premises shall be removed by Lessee at Lessee’s cost and expense.

48. Boundary fences. The Lessee shall, within six (6) months
of the lease commencement date, install stockproof fence along the
entire perimeter of the land under lease where fencing does not
now exist, regardless of whether the Lessee has an interest of
ownership in adjoining lands, and shall maintain these fences in
good order and condition throughout the term of this lease and
those now existing on the premises. The Lessee shall, wholly at
its own cost and expense, stake out the boundaries wherever
necessary in conformance with the legal descriptions provided in
this lease.

49. Partial invalidity. If any term, provision, covenant or
condition of this lease should be held to be invalid, void or
unenforceable, the remainder of this lease shall continue in full
force and effect and shall in no way be affected, impaired or
invalidated thereby.
50. **Hawaii law.** This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

**SPECIAL CONDITIONS**

1. Notwithstanding anything to the contrary in this lease, the provision in Paragraph A relating to a rental offset for land clearance and leasehold improvements shall not apply to lease extensions or conversions.

2. In accordance with Section 4-158-8(b)(4), Hawaii Administrative Rules, Lessee is required to make payment of the annual base rent, as stated herein, and a premium computed at twenty-five percent (25%) of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years.
DEFINITIONS

As used in this lease, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Board of Agriculture.

"Corporate successor" means a solely owned corporation which, through an assignment of lease, succeeds a non-agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows or run-off from one point to another.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of
"hazardous substances," "hazardous wastes," "hazardous materials," and/or "toxic substances" under or for the purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.

To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land demised and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the State and that make loans to qualified applicants under this lease on the basis of a lease awarded pursuant to Chapter 166E, Hawaii Revised Statutes for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Lessee" includes the Lessee, its heirs, personal representatives, executors, administrators, successors, or permitted assigns.

"Making a loan" means lending of new money or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender, after June 30, 2006.

"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.
"Premises" or "demised premises" includes the land hereinafter demised and all buildings and improvements now or hereinafter constructed and installed thereon.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

"Waste" includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof; (3) failure to employ all or the usable portions of the demised premises; and (4) abandonment of the demised premises.
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 23rd day of August, 2011.

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

Russell S. Kokubun
Chairperson, Board of Agriculture

LESSOR

CONTEMPORARY LANDSCAPING LLC

Its: Member

Its:

LESSEE
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this 18 day of July, 2011, before me personally appeared luis takai, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed,

Notary Public, State of Hawaii

My commission expires: 6/1/2014

Document Date: 7/18/2011

Notary Name: lilene. nitta

Doc. Description:

General Lease No. 9-3766

Notary Name

Date: 7/18/2011
Company Resolution

1 July 2010

Article 6 of the Operating Agreement of Contemporary Landscaping LLC provides that the Manager shall direct and manage the affairs of the company and shall have all powers necessary or appropriate thereto. Pursuant to Article 6.4 (f) of said Operating Agreement, the undersigned Manager hereby authorizes Iris T. Fukui, Member, to act as an agent for the Company and, in that capacity, to execute leases on behalf of the Company and to take such other actions on behalf of the Company as she may determine necessary or convenient to carry out its business and affairs, all without further authorization from the undersigned. This authorization shall remain in effect until revoked by the undersigned. Any party may rely on this authorization so long as said party has not received actual notice of its revocation.

CONTEMPORARY LANDSCAPING LLC,
a Hawaii limited liability company

MANAGER:

ALFRED E. BURER
EXHIBIT "A"

WAIMANALO AGRICULTURAL SUBDIVISION
LOT 26
Waimanalo, Koolaupoko, Oahu, Hawaii

Being a portion of the Government (Crown) Land of Waimanalo

Beginning at the northwest corner of this lot, the east corner of Lot 25 of Waimanalo Agricultural Subdivision and on the south side of Waikupanaha Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 6262.43 feet South and 1075.96 feet East, as shown on Government Survey Registered Map 4114, thence running by azimuths measured clockwise from True South:

1. 283° 54' 25.00 feet along the south side of Waikupanaha Street;

2. Thence along the south side of Waikupanaha Street, on a curve to the right with a radius of 1392.50 feet, the chord azimuth and distance being: 290° 29' 319.30 feet;

3. 297° 04' 28.73 feet along the south side of Waikupanaha Street;

4. 24° 17' 30'' 738.65 feet along Lot 27 of Waimanalo Agricultural Subdivision;

5. 106° 10' 433.31 feet along Lot 30 of Waimanalo Agricultural Subdivision;

6. 208° 30' 777.66 feet along Lot 25 of Waimanalo Agricultural Subdivision to the point of beginning and containing an AREA OF 7.001 ACRES.

SUBJECT, HOWEVER, to the non-exclusive use of the road right-of-way 20.00 feet wide over and across the above described Lot 26, in favor of Lots 25 and 27, as shown on plan attached hereto and made a part hereof.
SUBJECT, ALSO, to a non-exclusive easement in favor of the State of Hawaii to the existing road over and across the above described Lot 26, as shown on plan attached hereto and made a part hereof.

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, an Easement (40.00 feet wide) for Kailua Ditch and Road Right-of-way (20.00 feet wide) over and across the above described Lot 26, as shown on plan attached hereto and made a part hereof.

RESERVING ALSO, to the State of Hawaii, its successors and assigns, in perpetuity, an Easement (5.00 feet wide) for irrigation pipeline, over, under and across the above described Lot 26, as shown on plan attached hereto and made a part hereof.
WAIMANALO AGRICULTURAL SUBDIVISION
LOTS 26, 27, 28, 29 AND 30
Waimanalo, Koolaupoko, Oahu, Hawaii.
Scale: 1 inch = 200 feet

Coordinates referred to "WAIMANALO RIDGE" A

Survey Division
Department of Accounting and General Services
State of Hawaii
DEPARTMENT OF AGRICULTURE
ASSIGNMENT OF LEASE EVALUATION POLICY

1. Reference

§4-158-19(a)(5), effective December 6, 2007, reads in part:

"Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-158-21;"

2. Qualifying Leases

This policy shall be applicable to the subject lease.

3. Prior Approval

Prior to giving its consent to an assignment, the Department of Agriculture (DOA) must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Board of Agriculture (Board) has given its approval. Such assignments shall be entertained only if they meet the criteria set forth in §§4-158-19(a)(3) and (4), HAR.

4. Qualifications of Assignee

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

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5. **Consideration to be Paid**

Prior to review by the Attorney General and approval by the Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. **Payment of Premium**

The rule permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee’s operation on the premises within 30 days after evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.
The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by the state, to determine the valuation of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions

The statute only recognizes tangible items. Intangibles such as "goodwill," business name recognition, etc., are not deductible.

8. Subsequent Assignments

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the base year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined base year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (the whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.
The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. **Rights of Holders of Security Interest**

In the event of foreclosure or sale, the premium, if any shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. **State-owned Improvements**

When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.
SCHEDULE A.  

Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (Base Year) to get the adjusted cost of improvements or renovations.

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations.

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example:

<table>
<thead>
<tr>
<th>Actual cost:</th>
<th>$500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCI (most recent)</td>
<td>121.1</td>
</tr>
<tr>
<td>CCI (base):</td>
<td>102.3</td>
</tr>
<tr>
<td>Expired term:</td>
<td>57 mos.</td>
</tr>
<tr>
<td>Whole term:</td>
<td>408 mos.</td>
</tr>
</tbody>
</table>

1. Adjusted Cost of Improvements or Renovations:

Actual Cost x CCI (most recent) / CCI (base)

$500,000 x 121.1 / 102.3 = $591,887

2. Depreciation:

$591,887 / 408 mos. x 57 mos. = $82,690

3. Adjusted Depreciated Cost of Improvements or Renovations:

$591,887 - $82,690 = $509,197
SCHEDULE B.  

Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

   Multiply the actual cost of the improvements or renovations by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

   Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

   Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example:  

<table>
<thead>
<tr>
<th>Refrigerator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual cost: $1,510</td>
</tr>
<tr>
<td>CPI (most recent): 118.1</td>
</tr>
<tr>
<td>CPI (base): 104.6</td>
</tr>
<tr>
<td>Expired term: 57 mos.</td>
</tr>
<tr>
<td>Whole term (Anticipated Life): 96 mos.</td>
</tr>
</tbody>
</table>

1. Adjusted Cost of Trade Fixture:

   Actual Cost x CPI (most recent) / CPI (Base Year)

   $1,510 x 118.1 / 104.6 = $1,705

2. Depreciation:

   $1,705 / 96 mos. x 57 mos. = $1,012

3. Adjusted Depreciated Cost of Trade Fixture:

   $1,705 - $1,012 = $693
SCHEDULE C.  

Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<table>
<thead>
<tr>
<th>Years</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 5</td>
<td>50%</td>
</tr>
<tr>
<td>6 - 10</td>
<td>45%</td>
</tr>
<tr>
<td>11 - 15</td>
<td>40%</td>
</tr>
<tr>
<td>16 - 20</td>
<td>35%</td>
</tr>
<tr>
<td>21 - 25</td>
<td>30%</td>
</tr>
<tr>
<td>26 - 30</td>
<td>25%</td>
</tr>
<tr>
<td>31 - 35</td>
<td>20%</td>
</tr>
<tr>
<td>36 - 40</td>
<td>15%</td>
</tr>
<tr>
<td>41 - 45</td>
<td>10%</td>
</tr>
<tr>
<td>46 - 50</td>
<td>5%</td>
</tr>
<tr>
<td>51 and over</td>
<td>0%</td>
</tr>
</tbody>
</table>

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.
SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.

2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).

3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).

4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by nos. 2 and 3 from the amount in no. 1 above.

5. Determine the appropriate premium percentage (see Schedule C). multiply by the excess, if any, derived by no. 4.

Example:

A lease is being assigned 57 months after completion of the improvements at a consideration of $600,000.

The initial cost of the improvements was $500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was $1.510 with the current year CPI and base year CPI being 118.1 and 102.3, respectively. The total life expectancy is 96 months.

1. Net Consideration: $600,000
   Depreciation: -82,690
3. Adj. Cost Imp/Ren: -509,197
   Adj. Cost Trade Fixture: 1,705
   Depreciation: -1,012
   Adj. Dep Cost Trade Fixtures: -693
4. Excess: 90,110
5. Premium: Percentage: 50% $45,055

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SCHEDULE E.  Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.

2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.

3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).

4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.

5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example:

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is $1,000,000.

The consideration paid by the assignor was $600,000 while the current year CC1 and redefined base year CC1 were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of $45,055 was paid to the state by the previous occupant from the $600,000 consideration.

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Calculation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Net Consideration Received</td>
<td></td>
<td>$1,000,000</td>
</tr>
<tr>
<td>2.</td>
<td>Consideration Paid</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Premium</td>
<td></td>
<td>- 45,055</td>
</tr>
<tr>
<td></td>
<td>Net Consideration Paid</td>
<td></td>
<td>$554,945</td>
</tr>
<tr>
<td>3.</td>
<td>Adj. Value Consideration (improvements)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$554,945 x (156.4 / 121.1)</td>
<td></td>
<td>$716,708</td>
</tr>
<tr>
<td></td>
<td>Depreciation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$716,708 x (107 mos. / 408 mos.)</td>
<td></td>
<td>- 187,960</td>
</tr>
<tr>
<td></td>
<td>Adj. Depreciated Value Consideration</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Excess</td>
<td></td>
<td>$528,748</td>
</tr>
<tr>
<td>4.</td>
<td>Premium</td>
<td></td>
<td>$471,252</td>
</tr>
<tr>
<td>5.</td>
<td>Premium</td>
<td>Percentage</td>
<td>45%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$212,063</td>
</tr>
</tbody>
</table>
LICENSE AGREEMENT NO. LI-K1001

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

SUNRISE CAPITAL, INC.
a Hawaii corporation
as LICENSEE
STATE OF HAWAII
AGRICULTURE DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-K1001

THIS LICENSE made and issued this 21st day of July, 2009, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and SUNRISE CAPITAL, INC., a Hawaii corporation, the business and post office address in the State of Hawaii for purposes of this License Agreement is P. O. Box 1282, Kekaha, Hawaii 96752, hereinafter called "LICENSEE."

WITNESSETH:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Kekaha, Waimea, Kauai, identified as "Portion of the Government Crown Land of Waimea," and further identified by Tax Map Key (4)1-2-02;por.1, under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for public purposes;

WHEREAS, LICENSOR has agreed to allow the Kekaha Agriculture Association, a Hawaii non-profit corporation (the "Cooperative"), to manage the operation and maintenance of the common infrastructure at the Property in exchange for mutual consideration and other agreed upon terms; and

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Kekaha, Kauai for agricultural purposes;

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License Agreement, hereby grants to LICENSEE an exclusive license to use that portion of land outlined on the map attached hereto and incorporated herein as Exhibit "A", and more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of 433.85 acres, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the Premises that are under
the control, operation, or management of the Cooperative or any other entity, including Licensor.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees of other lands included with the Property, the roadways providing ingress and egress to and from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Cooperative or any other entity, including Licensor).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for twenty (20) years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided. LICENSOR and LICENSEE also may agree to extend the term of this License any number of times for such period or periods of time as LICENSOR and LICENSEE shall determine.

2. License Fee. The base license fee for this License shall be $50.00/acre/year for usable acres and $1.00/acre/year for non-usable acres, payable in monthly installments, on or before the first of each month. LICENSOR and LICENSEE agree that the Premises consist of ___433.85___ usable acres and ___[Nil]___ non-usable acres. For purposes of this License Agreement, "usable acres" shall include all portions of the Premises measured in acres that are suited for construction of aquaculture ponds or cultivation in accordance with normal agronomic practices, and "non-usable acre" shall include all portions of the Premises measured in acres that are not suited for construction of aquaculture ponds or cultivation in accordance with normal agronomic practices.

3. Common Infrastructure Improvement Costs. In addition to the base annual license fee provided in Paragraph 2 above, LICENSEE shall also pay its proportionate share of the costs of operating, managing, and maintaining the common infrastructure improvements (namely, the irrigation system, drainage system, electrical power system, and roadway system) that serve the Property, including the Premises (the "Common Infrastructure Improvement Costs"). Unless otherwise agreed by LICENSEE, all such Common Infrastructure Improvement Costs shall be on a "service at cost" basis, shall not include any
"mark-up" or profit (except for reasonable administrative expenses), and shall not include any costs or obligations related to any capital improvements to the common infrastructure serving the Property, including the Premises. For purposes of this Agreement, the term "Common Infrastructure Improvement Costs" shall mean (i) the cost of operating, managing, and maintaining the common infrastructure improvements, less (ii) any income derived from the common infrastructure improvements received from third-party sources by the Cooperative (or any successor entity, including LICENSOR, which becomes responsible for operating, managing, and maintaining the common infrastructure improvements). Income, fees, or assessments received from or charged to members of the Cooperative for the purpose of defraying Common Infrastructure Improvement Costs shall not be considered income received from third-party sources. The Common Infrastructure Improvement Costs shall be determined on an annual basis.

LICENSOR has disclosed to LICENSEE, and LICENSEE acknowledges, that LICENSOR has entered into a Restated Memorandum of Agreement ("MOA"), dated April 1, 2008, between LICENSOR and the Cooperative pursuant to which LICENSOR has licensed and turned over to the Cooperative responsibility for operation and maintenance of certain portions of the common infrastructure improvements serving the Property. It is contemplated that LICENSEE shall be a member of the Cooperative and shall pay membership dues or assessments pertaining to the costs of operating the common infrastructure improvements subject to the MOA.

LICENSEE acknowledges that, pursuant to the MOA, the Cooperative is responsible for the operation and maintenance of the portions of the common infrastructure subject to the MOA in accordance with the terms thereof. LICENSEE shall have the option to join or not to join the Cooperative as a member and, if LICENSEE joins the Cooperative, to discontinue such membership at any time. In the event that LICENSEE becomes (and as long as LICENSEE continues to be) a member of the Cooperative, LICENSEE shall be obligated to pay such membership dues or assessments as are chargeable to the members of the Cooperative on a proportionate basis for the cost of maintaining and operating the common infrastructure improvements subject to the MOA, and the payment of such dues or assessments shall fully discharge LICENSEE's obligations to pay Common Infrastructure Improvement Costs under this License Agreement. In the event that LICENSEE does not become or
ceases to be a member of the Cooperative, LICENSEE shall pay to the Cooperative such service charges as are assessed by the Cooperative on a "service at cost" basis to non-member subscribers for use of the common infrastructure services provided to LICENSEE by the Cooperative; and the payment of such service charges shall likewise fully discharge LICENSEE's obligations to pay Common Infrastructure Improvement Costs under this License Agreement.

In the event that responsibility for the common infrastructure improvements subject to the MOA is, for any reason, including termination of the MOA in accordance with the terms thereof, turned over to an entity other than the Cooperative or re-assumed by LICENSOR, LICENSEE shall be obligated to pay, on a "service at cost" basis, directly to such other entity or LICENSOR, LICENSEE's proportionate share of the Common Infrastructure Improvement Costs attributable to said Common Infrastructure Improvements.

4. Re-opening of Base Annual License Fee.

A. Adjustments to License Fee Related to Changes in Common Infrastructure Improvement Costs. The base annual license fee for usable acres shall be increased or decreased, after the first twelve months of the term of the MOA between the LICENSOR and the Cooperative described in Paragraph 3 above, to the extent (hereinafter the "Common Infrastructure Improvement Costs Adjustment") that the amount (determined on a per acre basis for usable acres) assessed against or charged to LICENSEE by the Cooperative or any other entity (including LICENSOR) for LICENSEE's share of Common Infrastructure Improvement Costs is more or less than $75.00/acre/year. In the event that the Common Infrastructure Improvement Cost Adjustment results in a reduction in the base annual license fee, any such reduction shall not in any circumstances exceed on a per acre basis the base annual license fee then payable for usable acres.

The base annual license fee for usable acres shall thereafter be renegotiated after the third year of the term of the MOA and every five (5) years thereafter during the term of the MOA, and shall be increased or decreased to the extent that the amount (determined on a per acre basis for usable acres) assessed against or charged to LICENSEE by the Cooperative or any other entity (including LICENSOR) for LICENSEE's share of Common Infrastructure Improvement Costs is more or less than $75.00/acre/year, plus or minus, as the case may be, any
Common Infrastructure Improvement Costs Adjustment previously taken into account.

The adjustment to the base annual license fee specified in this Paragraph 4.A shall be made independently of any adjustment specified in Paragraph 4.B below.

Examples. The following examples are intended to illustrate the foregoing license fee adjustments based on any resulting difference between actual Common Infrastructure Improvement Costs and the initial estimated amount of $75.00/acre/year.

Example 1. By way of example, if the Common Infrastructure Improvement Costs charged to LICENSEE by the Cooperative for the first twelve months of the term of the MOA amounted to $60.00 per acre (determined on a per acre basis for usable acres), the base annual license fee for usable acres for the ensuing two years would be increased by $15.00/acre/year (being the difference between $75.00/acre/year and the actual amount charged by the Cooperative), so that the base annual license fee for usable acres for such ensuing two-year period would be $65.00/acre/year. On the other hand, if the Common Infrastructure Improvement Costs charged to LICENSEE for the first twelve months of the term of the MOA amounted to $90.00 per acre (determined on a per acre basis for usable acres), the base annual license fee for usable acres for the ensuing two years would be decreased by $15.00/acre/year, so that the base annual license fee for such ensuing two-year period would be $35.00/acre/year.

Example 2. If the Common Infrastructure Improvement Costs charged to LICENSEE for the first twelve months of the term of the MOA amounted to $90.00 per acre, so that the base annual license fee for the next two years was reduced by $15.00/acre/year to $35.00/acre/year for usable acres, and the Common Infrastructure Improvement Costs charged to LICENSEE for the third year of the term of the MOA amounted to $100.00/acre/year, the base annual license fee for usable acres would be further reduced by an additional $10.00/acre/year (being the difference between the $75.00/acre/year and the $100.00/acre/year actually charged by the Cooperative, less the $15.00/acre/year already taken into account in making the adjustment after the first year of the term of the MOA.)
Example 3. The base annual license fee for usable acres shall under no circumstances be reduced below zero (0) by reason of the adjustments specified in this paragraph 4.A. Accordingly, if the Common Infrastructure Improvement Costs charged to LICENSEE for the first twelve months of the term of the MOA amounted to $125.00 per acre (determined on a per acre basis for usable acres), the base annual license fee for usable acres would be reduced by $50.00/acre/year (being the difference between the $75.00/acre/year and the $125.00/acre/year actually charged by the Cooperative), so that the base annual license fee for the ensuing two-year period would be zero (0). On the other hand, if Common Infrastructure Improvement Costs charged to LICENSEE for the first twelve months of the term of the MOA amounted to $150.00 per acre (determined on a per acre basis for usable acres), the base annual license fee would be reduced to zero (0), but not to a negative number, and LICENSOR would not be required to pay any amounts to LICENSEE to subsidize such excess Common Infrastructure Improvement Costs charged to LICENSEE or to refund to LICENSEE any base annual license fee amounts previously collected.

B. Adjustments Related to Changes in Fair Market Rental Values. The base annual license fee for usable acres shall also be re-opened and re-determined at the expiration of the 5th and 10th years of the term to take into account any change in the fair market rental value of the usable acres included in the Premises.

Upon re-opening, the base annual license fee may be increased by LICENSOR to the fair market rental value of the usable acres included in Premises. If LICENSOR and LICENSEE are unable to agree on the fair market rental value of the usable acres included in the Premises at least four (4) months prior to the effective date of any such re-opening of the base annual license fee, the fair market rental value of the usable acres shall be determined by a single arbitrator who shall be a licensed real estate appraiser. Subject to any procurement requirements applicable to LICENSOR under the laws of the State of Hawaii, the arbitrator shall be selected by mutual agreement of LICENSOR and LICENSEE or by a court in the event that LICENSOR and LICENSEE are unable to select the arbitrator by mutual agreement. In determining the fair market rental value of the usable acres, LICENSOR, LICENSEE, and the arbitrator shall take into account that the LICENSEE is required under the terms of this License Agreement to pay
the Common Infrastructure Improvements Costs allocable to the Premises. Except as provided in Paragraph 4.A above, in no event shall the new base annual license fee be less than the base annual license fee for the immediately preceding period. The fees and costs of the arbitrator shall be paid one-half (1/2) by LICENSOR and one-half (1/2) by LICENSEE.

The adjustment to the base annual license fee specified in this Paragraph 4.B shall be made independently of any adjustment specified in Paragraph 4.A below.

**Examples.** The following examples are intended to illustrate the foregoing license fee adjustments effective as of the expiration of the 5th and 10th years of the term of this License Agreement.

**Example 1.** This example assumes that there has been no adjustment in the base annual license fee for usable acres under Paragraph 4.A above. Assume that the fair market value of the usable acres included in the Premises (as determined by the appraiser) increased by $35.00/acre/year between the commencement date and the expiration of the 5th year of the term of this License Agreement. In such circumstances, the base annual license fee would be increased from $50.00/acre/year for usable acres to $85.00/acre/year. In making the determination whether the fair market value of the land increased during said five-year period, the appraiser shall take into account that the LICENSEE is required under the terms of this License Agreement to pay the Common Infrastructure Improvements Costs allocable to the Premises, meaning that, in determining the fair market value of the usable acres, the appraiser shall consider only comparable transactions in which a tenant of agricultural land must provide and pay for all irrigation, power, drainage, road, and other similar infrastructure service costs.

**Example 2.** Except as provided in Paragraph 4.A above, in no event shall the new base annual license fee be less than the base annual license fee for the immediately preceding period. Therefore, in Example 1 immediately preceding, if the appraiser determined that the fair market value of the usable acres decreased, instead of increased, by $35.00/acre/year between the commencement date of this License Agreement and the expiration of the 5th year of the term of this License Agreement, the base annual license fee for usable acres during the second five years of
the term of the License Agreement would remain at $50.00/acre/year, the amount of the base annual license fee for usable acres for the immediately preceding period.

Example 3.  This example assumes that, pursuant to Paragraph 4.A above, the base annual license fee for usable acres has been increased by the fifth year of the term of this License Agreement from $50/acre/year for usable acres to $100.00/acre/year as a result of differences between the Common Infrastructure Improvement Costs actually charged to LICENSEE and the estimated amount of $75.00/acre/year specified in Paragraph 4.A.  This example also assumes that the appraiser determines that the fair market value of usable acres involved in comparable transactions in which the tenant is required to provide and pay for all irrigation, power, drainage, road, and other similar infrastructure service costs has increased by $35.00/acre/year between the commencement date of this License Agreement and the expiration of the fifth year of the term of this License Agreement.  Under such circumstances, the base annual license fee for usable acres for the second five years of the term of this License Agreement would be increased to $135.00/acre/year ($100.00/acre/year plus $35.00/acre/year).

Example 4.  Assume all of the same facts as set forth in Example 3 immediately preceding, except that, instead of increasing, the fair market rent for usable acres decreased by $35.00/acre/year by the fifth year of the term of this License Agreement.  Paragraph 4.B provides that, except as provided in Paragraph 4.A above, in no event shall the new base annual license fee be less than the base annual license fee for the immediately preceding period.  Accordingly, under the facts of this Example 4, the base annual license fee for usable acres for the second five years of the term of this License Agreement would remain at $100.00/acre/year (computed as the base annual license fee of $50.00/acre/year for the first five years of the term as adjusted pursuant to Paragraph 4.A.)

Example 5.  Assume all of the same facts as set forth in Example 3 above, and that, as set forth in Example 3, the base annual license fee for usable acres for the second five years of the term of this License Agreement has been increased to $135.00/acre/year.  Assume also that, at the next adjustment in the base annual license fee for usable acres specified in Paragraph 4.A, the Common
Infrastructure Improvement Costs charged to LICENSEE by the Cooperative amounted to $165.00/acre/year. Pursuant to Paragraph 4.A, the base annual license fee for usable acres would be reduced by $90.00/acre/year (being the difference between the actual amount of Common Infrastructure Improvement Costs actually charged by the Cooperative and the $75.00/acre/year estimated amount specified in Paragraph 4.A) from $135.00/acre/year to $45.00/acre/year. (Paragraph 4.A permits the base annual license fee to be reduced below the initial amount of $50.00/acre/year, but not below zero (0), in the event that the Common Infrastructure Improvement Costs exceed the initial estimated amount of $75.00/acre/year.)

5. **Interest on Delinquent License Fees.** The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) per month for each delinquent payment.

6. [Reserved.]

7. **Taxes, Assessments, and Utilities.** LICENSEE shall pay, if and when due, LICENSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings, if any, of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Premises and the improvements now on or hereafter erected by LICENSEE thereon. In the event that any taxes or similar rates, assessments, charges, or outgoings are levied against any larger tract of land or property, including the Property, which includes the Premises, LICENSEE's proportionate share shall be based on the ratio that the total acreage of the Premises bears to the total acreage of such larger property subject to any such taxes, rates, assessments, charges, and outgoings. In the event that LICENSEE purchases any utility services from a provider other than the Cooperative or other entity (including LICENSOR) responsible for management of the common infrastructure that serves the Property, LICENSEE shall be required to pay, when due, all fees, charges, and costs of such additional utility services.

8. **Character of Use.** LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
(a) LICENSEE shall use the Premises solely for agricultural purposes, as set forth in LICENSEE's land utilization plan attached hereto as Exhibit "C". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License Agreement.

(b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.

(c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.

(d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.

(f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE and to address any material increase in weeds or litter on the Premises.

9. Utilization and Development of the Land. LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License Agreement and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "C" hereto. Any material modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.
10. **Sublicensing.** LICENSEE shall not sublicense or rent the whole or any portion of the Premises without the prior consent of LICENSOR, which consent may be withheld in LICENSOR’s sole discretion. Any sublicenseing request shall be submitted in writing to LICENSOR, together with a copy of the sub-licensee’s land utilization plan and rental payment schedule for LICENSOR’s consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.

11. **Good Husbandry and Conservation Practices.** Insofar as LICENSEE’s use of the Premises (as set forth in LICENSEE’s land utilization plan) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. **Sanitation.** LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.

13. **Improvements.** During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any
building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License Agreement. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3 above, LICENSEE shall have no obligation under this License Agreement to keep, repair, or maintain any common infrastructure improvements.

15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.

16. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.

17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE
shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30 days) where the default involves a failure to make timely license fee payments, including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 3 above) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.

19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License Agreement have been observed and performed.
21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR’S sole discretion.

22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3 above, LICENSEE shall have no obligation under this License Agreement to procure or maintain any commercial general liability insurance with regard to any activities of the Cooperative or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(s). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy shall name LICENSOR as an additional insured.

LICENSEE shall retain the right at any time to review the coverage, form, and amount of the insurance required by this
License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License Agreement (but which are not licensed to the Cooperative pursuant to the MOA), insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of its License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.
24. **Right to Enter.** LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.

25. **Inspection of Premises.** LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.

26. **Surrender.** At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

27. **Withdrawal for Public Purpose; Condemnation.**

   A. **Withdrawal for a Public Purpose.** LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises to become unusable for the specific use or uses for which it was licensed, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made
unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the residual value of the trees taken and, if there are un-harvested crops, the value of the crops also. If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

B. Condemnation. If at any time, during the term of this License Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the base annual license fee and any other charges under this License Agreement, including LICENSEE's proportionate share of Common Infrastructure Improvement Costs, shall be reduced in proportion to the value of the portion of the Premises condemned. LICENSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LICENSEE is not permitted to harvest, and (b) the proportionate value of LICENSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the License Agreement; provided, that LICENSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE. LICENSEE shall not by reason of the condemnation be entitled to any claim against the LICENSOR for compensation or indemnity for the license interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LICENSOR. The foregoing rights of LICENSEE shall not be exclusive of any other rights to which LICENSEE may be entitled by law, and
LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such compensation as may be separately awarded or recoverable in LICENSEE's own right on account of such condemnation of LICENSEE's interest under this License Agreement and any improvements constructed by LICENSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were licensed, LICENSEE shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that LICENSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LICENSOR.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License Agreement, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.

29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.

30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term that the same are licensed to LICENSEE hereunder, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.

31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises
for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License Agreement. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License Agreement, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License Agreement, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.

33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.

34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings), without any fault on LICENSEE's part, LICENSOR shall pay all costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; PROVIDED THAT, any such litigation arises out of any damage or personal
injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

37. Hunting. No hunting shall be allowed on the Premises during the term of this License.

38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.

39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.
40. **Drainage Easements.** The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License Agreement. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

41. **Roadway and Utility Easements.** The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Cooperative or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.

42. **Compliance with Laws.** LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.

43. **Environmental Regulations.** LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

44. **Hazardous Materials.** LICENSOR remains responsible under a prior agreement with the State Department of Land and Natural Resources for addressing any issue identified as having occurred prior to or during Kekaha Sugar's occupancy of the Premises as reported in the Phase 1 Environmental Assessment prepared by Clayton Group Services dated August 7, 2003 ("Clayton Report"). Any environmental issue occurring on
Premises after the date of this License Agreement shall be the responsibility of LICENSEE.

(a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry; for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the Clayton Report) which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.
(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall
control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service (NRCS). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.

47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.

48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.

49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.

50. [Reserved.]

51. [Reserved.]

52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.
SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the License term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.

55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE’s cost and expense.

57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.

58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division (HPD) shall be contacted prior to any work. A field check will be required and shall be performed.
by the HPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the HPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Wells. Prior to expiration of the term of the License Agreement, LICENSEE shall, at LICENSEE's sole cost and expense, properly seal any unused and abandoned wells on the Premises, if any, that were developed by LICENSEE or otherwise registered to and used by LICENSEE during the term of the License Agreement. Any such unused or abandoned wells shall be sealed in accordance with Hawaii Administrative Rule 13-168-16 and the Hawaii Well Construction & Pump Installations Standards (Revised 2004). LICENSEE shall make and obtain application(s) and well construction permits prior to the development of any wells and the start of any required work to seal any unused or abandoned wells.
60. **Polihale Flood Diversion.** LICENSEE shall be aware that the flood water flow in the irrigation ditch, which redirects floodwaters from portions of Mana Plain through the Polihale Park, causes washout of Polihale Road and sedimentation.

61. **Agricultural Preservation Easement.** LICENSEE shall be aware that approximately 5,000 acres of the Kekaha agricultural lands is situated within the Agricultural Preservation Easement, approved by the Board of Land and Natural Resources on May 12, 2004. To the extent applicable to the Premises, LICENSEE shall be in full compliance with the conditions and restrictions specified in the easement.

62. **Audits.** LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.

63. **Land Swapping.** LICENSEE is allowed, but shall not be obligated, to swap land for uses consistent with its land utilization plan with any other licensees or revocable permit holder of any portions of the Property at no cost to LICENSEE.

64. **Passage and Access.** LICENSEE shall not impede or restrict passage or access by other licensees or the Cooperative and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.

65. **Holding Over.** Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.

66. **Cropping Changes.** LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.

67. **Recordation.** LICENSOR and LICENSEE agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License Agreement to third parties and of the license of the Premises.
granted hereunder by LICENSOR to LICENSEE for the term specified herein.

DEFINITIONS

As used in this License Agreement, unless the context otherwise requires:

"Property" means the approximately 12,500 acres of land set aside to LICENSOR under Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, dated September 16, 2003, including buildings and improvements.

"Premises" includes the land hereby licensed by LICENSOR to LICENSEE and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License Agreement.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives,
radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief
resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.


"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.
"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the Premises or any portions thereof; (3) failure to employ all of the usable portions of the Premises; and (4) abandonment of the Premises.

"Days" shall mean calendar days, unless otherwise specified.


IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 21st day of July, 2009.

LICENSOR

STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION

By __________________________

Executive Director
LICENSEE

SUNRISE CAPITAL, INC.,
a Hawaii corporation

By George Chamberlain
Its President

By James N. Sweeney
Its Vice President

APPROVED AS TO FORM:

Deputy Attorney General
Dated: July 21, 2009
On this 24th day of July, 2009, before me personally appeared Alfredo A. Lee, to me personally known or adequately proven to be the person in and who executed the foregoing 38-page License Agreement No. LI-K1001, dated July 2009, [or in the alternative, undated at the time of notarization] in the First Judicial Circuit of the State of Hawaii as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.
STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 9th day of July, 2009, before me personally appeared GEORGE CHAMBERLAIN, to me personally known or adequately proven to be the person in and who executed the foregoing thirty-eight (38) page License Agreement No.____, dated__ 2009, in the First Judicial Circuit of the State of Hawaii as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii
Print Name: Cathleen Y. I. Bacana
My commission expires: 04/12/2012

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 9th day of July, 2009, before me personally appeared JAMES N. SWEENEY, to me personally known or adequately proven to be the person in and who executed the foregoing thirty-eight (38) page License Agreement No.____, dated__ 2009, in the First Judicial Circuit of the State of Hawaii as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii
Print Name: Cathleen Y. I. Bacana
My commission expires: 04/12/2012
ADDENDUM

The foregoing License Agreement and the provisions thereof shall be subject to the following provisions of this Addendum, and, in the event of any conflict between the foregoing terms of the License Agreement and this Addendum, the provisions of this Addendum shall be controlling. Unless otherwise specified, any capitalized terms used in this Addendum shall have the same respective meanings given to such capitalized terms in the License Agreement.

1. Use. LICENSOR acknowledges that LICENSEE is involved in various types of aquaculture research and development aimed at increasing the quality, yield, productivity, disease-resistance, and sustainability of various species of shrimp and other fish and marine species, including without limitation specific pathogen free (or "SPF") shrimp and shrimp broodstock. LICENSOR also acknowledges that, with LICENSOR's consent and permission, LICENSEE currently permits certain sub-permittees or sub-licensees to use portions of the Premises for the planting and cultivation of corn and other crops and for various types of agribusiness research and development aimed at increasing the quality, yield, productivity, and sustainability of various fruit, vegetable, and seed crops. LICENSOR also acknowledges that LICENSEE has disclosed to LICENSOR that LICENSEE has entered into, or may hereafter enter into, one or more operating agreements with one or more agricultural farming entities for the joint use of the Premises for aquaculture and agriculture purposes involving, among other things, the development of aquaculture feed and feed additives.

Licensee has disclosed to Licensor, and Licensor acknowledges, that certain aspects of the research and development conducted by LICENSEE and its sub-permittees, sub-licensees, and joint users may involve the utilization of so-called "genome science" and other forms of biotechnology to develop genetically modified shrimp, fish, and other marine species and crops that, among other attributes, are variously potentially more resistant to disease and pests, have higher levels of herbicide tolerance, lower rates or mortality, and produce greater yields. These aspects of LICENSEE's research and development and the research and development of LICENSEE's sub-permittees, sub-licensees, and joint users are or may be
subject to regulation by various governmental agencies, including specifically the United States Food and Drug Administration ("FDA") and United States Department of Agriculture ("USDA").

Research and development relating to these types of products (referred to as "Regulated Products") is conducted by LICENSEE and its sub-permittees, sub-licensees, and joint users in accordance with local, state, and federal regulations. LICENSEE also conducts research, and development involving shrimp, fish, and other marine species and its sub-permittees and sub-licensees also conduct research and development involving crops, that are not subject to regulation by any governmental authorities (referred to as "Non-Regulated Products").

LICENSED and LICENSEE agree that the Premises shall be used solely for aquaculture and agricultural activities, including the development of SPF shrimp, fish, and other marine species, and the planting and cultivation corn, soy beans, cotton, wheat, sweet corn, specialty green bean crops, maize, and other vegetable crops, including both Regulated Products and Non-Regulated Products.

2. Ownership of Products. LICENSED hereby acknowledges and agrees that, because of the nature of the research and development engaged in by LICENSEE and its sub-permittees and sub-licensees, including research and development involving Regulated Products, any and all aquaculture and agricultural products that LICENSEE or its sub-permittees, sub-licensee, and joint users breed, develop, plant, or cultivate on the Premises must and shall remain the sole, absolute, and exclusive property of LICENSEE (or its sub-permittees or sub-licensees, as the case may be), and that LICENSED shall have no rights in or claims against any such products, whether in the form of a landlord's lien or otherwise, even in the event of any default hereunder by LICENSEE. The Regulated Products and Non-Regulated Products developed, bred, planted, or cultivated by LICENSEE (or its sub-permittees, sub-licensees, or joint users) on the Premises shall be disposed of in the manner more particularly specified below.

3. Paragraphs 24, 25, and 28 - Right of Entry and Inspections. In light of the nature of LICENSEE's (and its sub-permittees', sub-licensees', and joint users') research and development activities, LICENSED's right to have reasonable access to the Licensed Premises for purposes of inspecting the same shall be subject to the requirement that LICENSED shall give LICENSEE prior written notice of at least seventy-two (72) hours of any such inspection, and LICENSED shall conduct such inspections in accordance with such reasonable guidelines as LICENSEE shall provide to protect the security and integrity of such research and development activities.
4. **Disposal of Regulated Products.** LICENSEE (directly or through its sub-permittees, sub-licencsees, and joint users) hereby assumes sole and exclusive responsibility for the disposal of any and all Regulated Products developed, bred, planted, or cultivated on any portions of the Premises.

Notwithstanding Paragraphs 26 and 27 of the License Agreement, LICENSOR understands, acknowledges, and agrees that, in the event of any withdrawal of any portion of the Premises pursuant to Paragraph 27 of the License Agreement, or upon expiration of the term or earlier termination of this License Agreement, including by reason of any default on the part of LICENSEE, any portions of the Premises that have been most recently used for the development, breeding, planting, or cultivation of Regulated Products shall not be released and surrendered to or withdrawn by LICENSOR, and LICENSOR shall not have any right to withdraw, enter upon, take possession of, or otherwise repossess same, until such time as LICENSEE certifies that such fields are free from any such Regulated Products in issue.

In the event that any portion of the Premises are used for the purpose of planting and cultivating any crops that are Regulated Products, LICENSEE agrees that, following the harvesting of any such Regulated Products, LICENSEE (either directly or through its sub-permittees, sub-licensees, or joint users) shall be required to proceed with all deliberate speed to mechanically till under and bury any plant stalks or residue or otherwise treat such fields with herbicides to ensure that such fields are free from possible regeneration or renewed growth of the Regulated Products in issue. In the event that LICENSEE requires additional time beyond the expiration or termination of this License Agreement to render the Premises free from possible regeneration or renewed growth of any such Regulated Products, LICENSOR shall allow LICENSEE to remain in possession of the Premises, on a month-to-month basis, upon the same terms and conditions as set forth in this License Agreement, for the sole purpose of taking whatever actions are appropriate to ensure that there is and will be no regeneration or renewed growth of the subject Regulated Products on the fields or portions of the Premises in question.

6. **Paragraph 62 -- Audits.** Notwithstanding Paragraph 62 of the License Agreement, LICENSOR shall not be entitled to examine or make copies of any of LICENSEE's (or LICENSEE's sub-permittees', sub-licensees', or joint users') confidential proprietary business information, trade secrets, patents, copyrights, or other intellectual property in connection with any audits or inspections of the Premises or any audits or inspections of LICENSEE's books, accounts, records, and
receipts concerning LICENSEE's operations on the Premises covered by the License Agreement.
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCAElE PERMIT NO. S-7452

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is executed this 1st day of November 2010, by and between the STATE OF HAWAII, hereinafter referred to as the “State,” by its Board of Land and Natural Resources, hereinafter called the “Board,” and Leslie P. Milnes, married to Anne L. Milnes, as his separate property, hereinafter called the “Permittee,” whose mailing address is 6277 Puuopae Place, Kapaa, Hawaii 96746. The parties agree that commencing on the 1st day of November 2010, (“commencement date”), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Wailua, Lihue, Kauai, Hawaii (Kalepa). Tax Map Key: (4) 3-9-2: Portion 1 and 20, as indicated on the map attached hereto as Exhibit “A,” and made a part hereof, containing an approximate area of 587 acres (Unit E), which parcels are hereinafter referred to as the “Premises.”

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the premises for the following specified purposes only:

   Pasture, equestrian pasture and accessory uses.

2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawaii 96809, monthly rent in the sum of ONE HUNDRED TWENTY-THREE DOLLARS AND NO/CENTS ($123.00) payable in advance by the first of each and every month.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

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Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraph 2, as security for the faithful performance of all of these terms and conditions.

The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board’s other rights hereunder.

4. At the Permittee’s own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.

5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.

6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.

7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.

10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.

11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.

12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.

13. At all times with respect to the Premises, use due care for public safety.

14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, comprehensive general liability insurance, in an amount acceptable to the Chairperson of the Board with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire Premises, including all grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after sixty (60) days written notice has been given to the State.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of
any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance certificate(s) shall be mailed to:

State of Hawaii  
Department of Land and Natural Resources  
Land Division  
Box 621  
Honolulu, Hawaii  96809

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.

2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.

3. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.

6. Except as otherwise provided for in this Permit, any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee fails to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.

7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.

8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.

10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.

11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.

13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Prior to termination or revocation of the subject permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so,
arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.

15. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

16. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.

17. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawaii shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple permittees hereunder, notice to one Permittee shall be deemed notice to all permittees.

18. a. Permittee shall not be held liable for existing conditions which may be associated with previous use of the land by Amfac.

b. Permits will subordinate to any long-term leases.

c. By acceptance of this Permit, Permittee represents that the Premises have been inspected and Permittee accepts the Premises as is.

d. Permittee shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of the district land agent for the Fourth Land District, or a designee, in consultation with the Division of State Parks and Division of Forestry and Wildlife of the Department of Land and Natural Resources.
e. Permittee shall be required to maintain that part of the irrigation system that is within the Premises in its current condition, by keeping the ditches free and clear of vegetative overgrowth and/or destruction by livestock. Except for routine maintenance, alteration of these irrigation ditches, including but not limited to, filling ditches with any solid materials, shall not be permitted without prior written approval from the State Historic Preservation Officer and the district land agent for the Fourth Land District, and compliance with all applicable laws.

f. A development and use plan shall be developed and submitted to the district land agent for review and approval. Upon approval of the development and use plan, such plan shall become incorporated into this Permit by reference as further conditions and failure to substantially comply with the development and use plan shall be grounds for revocation of this Permit.

g. In the event that a water user group shall be organized or required by the Board to be organized to manage and/or operate a water system that provides irrigation water to the Premises, Permittee shall be a participating member of such water user group. The water user group shall manage such water as may be permitted or licensed for the user group's use, and shall operate and manage the water system necessary for the storage, transport, and delivery of such water, including, but limited to, reservoirs and main transmission ditches.

h. Along with other permittees in the vicinity of the Premises, Permittee shall be responsible, on a fair share basis, for the maintenance of common area roadways.

i. Water, reservoirs and main transmission ditches, as may be identified by the water licensee, shall be under the control of the water user group.

19. The Permittee agrees to collectively be responsible for the maintenance and operation of the infrastructure necessary to support the use of the land.

20. Permittee shall comply with all laws and governmental regulations, and, upon request, shall cooperate with the implementation of governmental programs such as, but not limited to, cultural and historical site identification, miconia eradication, and the expansion of state parks.

21. As recommended by the Historic Preservation Division:

a. In former sugar cane lands, the plantation era historic sites such as bridges and irrigation ditches shall be preserved or shall be maintained. If Permittee proposes to destroy these historic sites, then the State
Historic Preservation Division shall be contacted to determine what requirements must be met.

b. Prior to any land clearing or land alteration in the gulches or wastelands within the Premises, Permittee shall first obtain the approval of the Historic Preservation Division of the Department of Land and Natural Resources. Permittee shall submit a proposal for land clearing or land alteration to the Historic Preservation Division, which shall conduct a field check to determine if historic sites may be affected. If historic sites may be affected, an archaeological inventory survey shall be conducted, at Permittee's cost and expense, by a qualified archaeologist, who shall submit a report on such survey to the State Historic Preservation Division for review and approval. Such report shall identify any significant historic sites and recommend a mitigation plan, if necessary, for the protection of the historic sites. If the State Historic Preservation Division determines that mitigation measures are necessary, Permittee shall submit a detailed mitigation plan to the State Historic Preservation Division for review and approval. The approved detailed mitigation plan shall be successfully executed prior to any land clearing or any land alteration.

c. If burials exist, the procedures outlined in Hawaii Revised Statutes, Chapter 6E and associated administrative rules shall be followed.

22. This Permit is subject to the co-existence plan, dated May 14, 2008, between the Kalepa Koalition and the Green Energy Team, LLC, designated as Exhibit "B," attached hereto and made a part hereof. However, items numbered 1, 4, 5, and 10 on the plan are subject to approval by both the Board of Land and Natural Resources and the Agribusiness Development Corporation or whichever entity has jurisdiction over the matter.

23. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

24. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By

Chairperson of the Board of Land and Natural Resources

Approved by the Board of Land and Natural Resources at its meeting held on May 23, 2008.

PERMITTEE

Leslie P. Milnes

APPROVED AS TO FORM:

Deputy Attorney General

Dated: 9/10/09
On this 29 day of September, 2009, before me personally appeared Leslie P. Milnes, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

BARRY Y. TAKEKUMA

My commission expires: 12/28/2011
Summary of Interview with:

Randolph Y. Teruya, Agricultural Asset Manager
Agricultural Resource Management Division
State of Hawaii, Department of Agriculture
Tuesday, 10 July 2012

- The Agribusiness Development Corporation (ADC), although administratively a part of the Department of Agriculture (DOA), is an autonomous entity that succeeded the Governor’s Agriculture Advisory Council.
  - Unlike the DOA, which is restricted by statute to agricultural commodities and ranching, the ADC will deal with any agriculturally related industry.
  - The ADC does not lease land, and its administrative rules do not refer to leases. The ADC does not convey land by way of leases.
  - Instead, the ADC issues licenses, usually of 10 years duration. Consequently, it is very difficult to borrow against property licensed from the ADC. Licenses are legal documents that do not convey a real property interest in the land and therefore make it difficult for collateralization.
  - For information on ADC licensing policies, practices, and procedures, the ADC must be contacted separately.
- The DOA does not generally lease land from other agencies or private entities.
- All lands leased by DOA were acquired from the Department of Land and Natural Resources pursuant to governor’s executive order (EO) from ca. 1989. There are roughly 21 33+ EOs transferring land from DLNR to DOA, about half issued under the Abercrombie administration. EOs issued by the current administration are available via the governor’s website. EOs from previous administrations should be on file with the office of the lieutenant governor. Land transfers from DLNR to DOA are expected to continue for roughly another 5 to 10 years—much longer than originally anticipated. Indefinitely. Once lands are transferred from DLNR to DOA, DLNR retains no role in their management.
- While relevant statutes and rules describe at least five categories of land in relation to the DOA1, only two categories, Agricultural Park (AP) land and Non-Agricultural Park (NAP) land are relevant to DOA land leasing.
  - AP lands under control of DOA
    - All AP lands managed by DOA were transferred to DOA for the specific purpose of AP creation.
    - Although HRS § 166-1 implies that APs are developed on IAL, most APs are on marginal lands. There is, however, a new AP in planning on prime land.
    - APs generally consist of smaller lots ranging from 5 to 20 acres. The lots are usually developed in clusters of up to 3 or 4 dozen contiguous lots.

1 The five categories are: (1) land managed by the ADC, (2) Important Agricultural Land (IAL), (3) Land acquired by the DOA under HRS § 155-4(11) (i.e., via foreclosure, voluntary surrender, etc.), (4) Agricultural Park (AP) land, and (5) Non-Agricultural Park (NAP) land.
• APs are generally intended to foster new farmers/start-up agricultural producers and accommodate displaced farmers (e.g., those required to relocate for H3 interstate highway).  
• AP lands are leased for 15 – 55 years (avg. 35), and the leases are not renewable. APs are for start-ups, not established producers.  
• There are currently 10 APs owned and operated by DOA consisting of 227 total lots.² (There are also a handful of private APs over which DOA has some responsibility, but they are on private land and thus not germane here.) DOA has NO responsibility over Private Ag Parks.

   o NAP lands under control of DOA  
   • NAPs are usually on non-contiguous lots spread widely across the state, ranging from 2 to 5,000 acres. The larger lots are generally used for ranching. Unlike APs, which are mostly developed on marginal lands, NAPs are developed on a wide range of lands, contingent on intended use.  
   • NAPs are for use by established farmers and ranchers.  
   • The term “Non-Agricultural Park” is potentially confusing: NAPs are for agricultural purposes, but just not designated as APs under statute. They serve a separate purpose and certain lease terms are different.  
   • NAP lands are leased for 15 – 65 years (avg. 35), and the lease can be renewed.

- DOA has statutory authority to develop APs and NAPs in joint venture (JV) with other agencies and private entities. While the DOA has been approached with such proposals, there are no JVs currently in operation.

- DOA leasing and land use restrictions: Although statute and rule allow DOA to exempt APs and NAPs, whether developed by the DOA alone or in partnership with governmental and/or private entities, from all county-level land use restrictions, the DOA strongly prefers that lessees conform to county ordinances whenever possible. This paragraph is misstated…the reference to “exemptions” are with respect to the DOA’s ability to develop the AP only. DOA strongly prefers to develop APs in consonance with the county building/subdivision codes so that the roadways within the AP may be dedicated to the county, thus providing lessees with the ability to receive county services (e.g. public utilities, refuse collection, street lights and police patrols). Additionally, the U.S. Postal Service may assign street addresses to receive mail.

  o Failure to meet county standards and requirements in developing APs and NAPs often results in:  
     • Inability to dedicate roads and obtain street addresses  
     • Problems with trash collection and utility companies  
     • No police patrols

- The leasing process for APs and NAPs is the same, although certain lease terms differ.

- Statute and rule authorize DOA to lease AP and NAP land via 4 methods:  
  • (1) public auction, (2) negotiation, and (3) public drawing, and (4) conversion
  • Conversion applies only to NAPs

² Number of total AP lots taken from http://hawaii.gov/hdoa/arm/arm_agparks/arm_agparks.
Selecting a method turns in part on the number of lots up for lease and the number of qualified applicants seeking to lease them.

1. **Public auction**: the DOA has not leased AP or NAP lands via public auction for at least the last 16 years. In theory, auction would be useful in cases where very few lots were up for lease; however, auction is a non-preferred method and has not been used by DOA for several years because it functions contrary to DOA’s mission. DOA’s job is to assist farmers and educate the public. DOA does not seek the highest or best use, in an economic sense, for AP and NAP lands. Doing so would drive up rents and increase food costs. This is a notable difference between DOA and DLNR leasing practices, as DLNR is required by statute to hold public auctions, achieve highest and best use.

2. **Negotiation** is the method preferred by DOA when there is only one qualified applicant (QA) for a given lot. However, where there are more than one QA, QAs are requested to submit sealed bids and by rule the high-bidder is awarded the lease, assuming the bid is judged sustainable in light of the economic position of the bidder and/or the revenue expected from the lot.

3. **Public drawing** is used when there is more than one QA for a lot. QAs submit sealed bids and by rule the high bidder is awarded the lease, assuming the bid is judged sustainable in light of the economic position of the bidder and/or the revenue expected from the lot.

4. **Conversion** allows a current lessee of an NAP lot to renew the lease without competition and can occur within 5–10 years of expiration of the current lease. Generally speaking, conversion results in an additional term of 25 years being added to the average 25-year original lease. **Conversion is not one of the methods of disposition within the statute or rules. Rather, it is a rule relating to NAP leases only.**

- All lease awards must be approved by the Board of Agriculture (BOA). There is no public hearing process for lease approval. Awardees are announced at a BOA meeting, after which the public usually has 20 days to file a challenge, contingent on the method of disposition.

- For both AP and NAP lots, whether disposed of by negotiation or public drawing, the DOA establishes a minimum rental value by in-house independent appraisal. That value can be challenged by potential and renewing lessees (the procedure for same set out in HAR and HRS). The value established for lease dispositions **CANNOT be challenged. Once a lease is awarded and fully executed, independent appraisals are used to establish rents for “reopening” periods as delineated in the lease terms.**

Prior to signing a formal lease, the prospective lessee (either the high bidder at public drawing or the sole QA interested) is given a 6-month right of entry to the parcel to prepare whatever is necessary to meet pre-signing conditions.

- Several conditions must be met prior to signing a lease with DOA, including:
  - Procurement of liability insurance
  - Obtaining a performance bond in cash or surety equivalent to 2 years of rent
  - Clearance and background check to ensure the bidder can meet financial obligations.
  - Submission and approval of a farm layout for the lot
  - Approval of a conservation plan (CP) covering soil and water
• Completing the CP within 6 months is usually the most difficult condition to meet.
• The intended lessee has four options for preparing a CP:
  • Work with Oahu Resource Conservation & Development Council (ORCD), a non-profit, to prepare a CP.
  • Hire a private civil engineering firm: most expensive option.
  • Self-create a CP using the Natural Resources Conservation Service (NRCS) website. NRCS is an agency of the U.S. DOA.
  • NRCS will work with the intended lessee in preparing a CP, but the average wait time is 1 – 2 years, making this option unviable unless one can somehow speed up the process.
• The resulting CP must be approved at a Soil and Water Conservation District meeting.
  • Usually approval is not a problem. Getting the plan together is the real challenge for most prospective lessees.
• Other lease conditions include:
  o Lessee must complete 50% of lot development within 2 years of signing a lease for AP or NAP lands.
  o 100% of lot development must occur within 3 years.
  o Lot must achieve 100% production within 3 years.
  o Any structure built on the land must be approved by DOA and insured by the lessee, unless the structure is a small storage or processing shed without utilities. (Often, farmers will construct small shelters to keep their workers out of the sun and these are usually exempt.)
    • What happens to the structure upon lease expiration is usually determined at the time the structure is approved by DOA and is later set out in the lease. Typically, larger and more valuable structures will be hauled off the lot by the lessee, assuming that such a removal has been negotiated and approved. All other improvements vest in the lessor (i.e., DOA) at expiration.
    • Unless a parcel is developed as a JV (of which there are currently none), the lessee bears the risk of loss in case of destruction of leasehold property.
• Permitting as it relates to the leasing process
  o DOA generally requires that construction and use permits be obtained before the lease is signed. There are no permitting requirements at lease execution, only upon lessee’s proposal to construct an improvement on the land and after receiving prior approval from the Board of Agriculture.
  o Permitting from federal agencies and state department of health pertinent to health and safety issues usually takes place after the farm is up and running.
• Property lists
  o Providing a list of AP lots should be relatively easy.
  o A list of NAP lands is more difficult to provide as the list is constantly changing.
  o The way that information is electronically stored by the state makes generating any list of DOA- or DLRN-managed lands somewhat troublesome.
• DLNR maintains the records for all such properties, but you cannot simply ask for a list. Typically one gives DLNR a tax map key (TMK), and DLNR advise whether the parcel is state managed.
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PROPERTIES TRANSFERRED FROM DLNR TO HDOA BY GOVERNOR'S EXECUTIVE ORDER as August 9, 2012
AGRICULTURAL LEASE PROGRAM
1428 South King Street
Honolulu, HI 96814-2512

EXPRESSION OF INTEREST
Note: For entries on more than one island/district, this form may be photocopied.

I am interested in a State Agricultural Lease:

Location Desired: Island: _________________________ District: _________________________

Acres (check one):  □ 5 to 10  □ 10 to 20  □ More than 20

Type of farming (check one)  □ Field Crops  □ Flowers/Foliage  □ Orchard
□ Pasture  □ Aquaculture  □ Other _________________________

AGRICULTURAL EXPERIENCE: Based on the qualifications and experience requirements defined on the back of this page, I am applying as a:

(check one)  □ Bona Fide Farmer  □ New Farmer  □ Qualified Aquaculturist

GENERAL BACKGROUND:

□ In addition, I meet all three (3) of the GENERAL BACKGROUND requirements as defined on the back of this page.

If you meet one category of AGRICULTURAL EXPERIENCE and all three of the GENERAL BACKGROUND requirements, your name will be placed on the revised Expression of Interest list.

THIS FORM IS AN EXPRESSION OF YOUR INTEREST IN THE AGRICULTURAL LEASE PROGRAM AND NOT AN "APPLICATION FORM". THE STATE DEPARTMENT OF AGRICULTURE IS NOT OBLIGATED TO AWARD AN AGRICULTURAL LEASE TO YOU AS A RESULT OF THIS SUBMITTAL.

However, should agricultural land become available within the area requested, we will send you a notice.

This form shall be effective for 2 years after its receipt. If you do not respond to the application request or do not re-file when it expires, your name will be withdrawn from the revised Expression of Interest list.

PLEASE PRINT OR TYPE

Name: ____________________________________________

Address: __________________________________________

City: ___________________________ State: _____________ Zip code: _____________

E-Mail Address: __________________________________________

Telephone Number(s): Work: _____________ Home: _____________ Cell: _____________

DO NOT WRITE BELOW THIS LINE

Date Received: _____________________________ By: _____________________________

C-400
AGRICULTURAL EXPERIENCE

1. BONA FIDE FARMER:

(a) Is/was an owner-operator of an established farm conducting a substantial farming operation and for a substantial period of his/her life, resided on a farm or depended on farm income for livelihood; or

(b) Has no less than 2 years experience as a full-time farmer or 4 years experience as a part-time farmer and who, in the administrator’s judgment, is likely to successfully operate a farm by reason of experience, ability, and training as a vocational trainee.

2. NEW FARMER:

(a) Is a college or community college graduate in agriculture or aquaculture who has less than two years experience as a full-time farmer or less than two years experience as a part-time farmer; and

(b) By reason of ability, experience, and training as a vocational trainee, is likely to successfully operate a farm, in the administrator’s judgment.

3. QUALIFIED AQUACULTURIST:

Is a bona fide farmer or new farmer (as defined above) who is actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product-development activities.

GENERAL BACKGROUND

1. You are a citizen of the United States who has resided in Hawaii for at least 3 years, or a permanent-status alien who has resided in Hawaii for at least 5 years; and

2. You have not had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof during the 5 years preceding the date of disposition; and

3. You are not in arrears in payment of taxes or other financial obligations to the State of Hawaii or to any of its counties.

When requested, you should be able to provide proof of your Agricultural Experience and General Background qualifications.
APPENDIX A
APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Agricultural or Pasture)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

IMPORTANT NOTE: The Applicant shall be the entity that will execute the Memorandum of Lease (if applicable) and the new lease (if Applicant is the successful bidder at the public disposition).

If Applicant is the successful awardee at disposition, but the entity that intends to execute the Memorandum of Lease and/or the new lease is different from the Applicant described in this Application (including changes to the ownership of Applicant), HDOA shall, at its sole discretion, have the right to (1) deem these changes to Applicant as an assignment of the rights of Applicant to the new entity requiring the consent of the Board of Agriculture; or (2) nullify the results of the disposition and cancel any rights of Applicant to obtain the lease as the successful awardee.

Alternatively, if Applicant intends to form a new entity to enter the Memorandum of Lease and/or new lease, Applicant may submit this Application and Qualification Questionnaire under the proposed entity by indicating “Yes” in Question 1 below and providing the name of the proposed entity AND submitting information regarding the proposed owners, partners, shareholders, directors, officers, LLC members, etc. HDOA will evaluate Applicant for eligibility to participate in the disposition by applying the evaluation criteria to the proposed entity.

Applicant must be a citizen of the United States and have resided in the State of Hawaii for at least three (3) years; or, if you are not a citizen of the United States, you must be a permanent status alien who has resided in the State of Hawaii for at least five (5) years.

Citizen of the U.S.: Yes/No If not a citizen, what is your status?:

Resident in the State of Hawaii since: ___________
(month/year)

If you are a U.S citizen or permanent status alien and have resided in the State of Hawaii for less than three (3) years or five (5) years, respectively, you do not meet the eligibility requirement to hold a State of Hawaii agricultural lease. Stop here, do not complete this application!

If you plan to hold title as husband and wife, your spouse must also complete an Application and Qualification Questionnaire and be qualified as a bona fide farmer.

If Applicant is an association, partnership, agricultural cooperative or a corporation, all of its associates, partners, stockholders, officers and directors, and LLC members, as applicable, must complete an Application and Qualification Questionnaire; and seventy-five percent (75%) of the associates, partners, stockholders, officers and directors, and LLC members, as applicable, must meet the individual qualification requirements.
Part 1: General Information

1. Applicant's legal name: ____________________________________________________________
   Applicant's full mailing address: ____________________________________________________
   
2. Name of contact person: __________________________________________________________
   Phone Number: ___________________________ Cellular: ________________________________
   E-Mail: ___________________________ Fax: ________________________________
   
3. Applicant intends to submit an Application & Qualify for the following parcels:
   
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Location</th>
<th>Intended Use</th>
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<tbody>
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</table>
   
4. Applicant intends to hold title to the lease as:
   
   Type of Ownership (check one): Tenancy (check one, if applicable)
   ( ) Individual/Sole Proprietorship ( ) Tenant in Severalty
   ( ) Husband and Wife ( ) Joint Tenants
   ( ) Partnership ( ) Tenants in Common
   ( ) Joint Venture ( ) Tenants by Entirety
   ( ) Association ( ) ________________________________
   ( ) Corporation ( ) General Liability Company
   ( ) Limited Liability Company ( ) Other
   
5. Applicant's Fiscal Year-End: ________________________________

6. If Applicant is a partnership or joint venture, answer the following:
   
   A. Name, address, & percentage share owned by each partner or joint venture member:
      
      | Name | Address | Share |
      |------|--------|-------|
      |      |        |       |
      |      |        |       |
      |      |        |       |
      
   B. Date of Organization: ________________________________
   
   C. General or Limited Partnership (if applicable): ________________________________
D. Recorded: Date- ___________ County- ___________ State- ___________

E. Currently registered in Hawaii: Yes/No If Yes, as of: ____________________

7. If Applicant is a corporation, answer the following:
   A. When incorporated: ________________________________________________
   B. In what State or country: _________________________________________
   C. Authorized to do business in Hawaii: Yes/No If Yes, as of: ______________

D. Provide the name, address, and shares of stock for each officer or director of the corporation:
   President: Name: ____________________________________________________
               Address: _____________________________________________________
               Number of stock shares: ___________ Percentage of shares: _________
   Vice President: Name: ______________________________________________
                 Address: _________________________________________________
                 Number of stock shares: ___________ Percentage of shares: _________
   Secretary: Name: __________________________________________________
              Address: ___________________________________________________
              Number of stock shares: ___________ Percentage of shares: _________
   Treasurer: Name: __________________________________________________
             Address: ___________________________________________________
             Number of stock shares: ___________ Percentage of shares: _________
   Other: Name: ______________________________________________________
          Address: _____________________________________________________
          Number of stock shares: ___________ Percentage of shares: _________

E. Provide the name, address and shares of stock for each member of the Corporation’s Board of Directors:
   Name: _____________________________________________________________
   Address: __________________________________________________________
   Number of stock shares: ___________ Percentage of shares: ______________
   Name: _____________________________________________________________
   Address: __________________________________________________________
   Number of stock shares: ___________ Percentage of shares: ______________
Name: ____________________________
Address: ____________________________
Number of stock shares: ___________  Percentage of shares: ___________

F. Provide the name, address and shares of stock for **principal stockholder** who is not named in 6.D. and 6.E. above. ("Principal stockholder" means one holding 10% or more of the outstanding stock of the corporation.)

Name: ____________________________
Address: ____________________________
Number of stock shares: ___________  Percentage of shares: ___________
Name: ____________________________
Address: ____________________________
Number of stock shares: ___________  Percentage of shares: ___________
Name: ____________________________
Address: ____________________________
Number of stock shares: ___________  Percentage of shares: ___________
Name: ____________________________
Address: ____________________________
Number of stock shares: ___________  Percentage of shares: ___________

8. If Applicant is a **Limited Liability Company (LLC)**, answer the following:
A. State or country of formation: ____________________________
B. Date of formation: ____________________________
C. Registered to do business in Hawaii: Yes/No  If Yes, as of: ____________________________
D. Member-managed or manager-managed?
   (a) Name and Address: ____________________________
   (b) Percentage of ownership interest: ____________________________
   (c) If the member is an entity, describe the type of entity, where/when it was formed, and the entity’s ownership & management (i.e. principal owners and their respective ownership interests, directors, officers, etc.)
      ____________________________
      ____________________________
E. If the LLC is a manager-managed LLC, provide the following information for the manager:
   (a) Name and Address: ________________________________
   (b) Percentage of ownership: _______________________ 
   (c) If the manager is an entity, describe the type of entity, where/when it was formed, and the 
   entity's ownership & management (i.e. principal owners and their respective ownership 
   interests, directors, officers, etc.)

9. Applicant **must** submit evidence acceptable to the Administrator-Chief Engineer, Agricultural Resource 
   Management Division (e.g. certified corporate resolutions) that Applicant is duly authorized to apply for 
   and participate in the disposition of public land for lease, and if the successful awardee, to enter into the 
   lease. Applicant shall also identify the person(s) that will be authorized to submit an offer/bid on behalf of 
   the Applicant at public disposition.

10. List all State of Hawaii leases, permits, licenses, easements, sales, etc. to which Applicant has been a 
    party to, including as a director, officer or shareholder:

    | Doc. No. | Type of Agreement | Term of Agreement |
    |----------|-------------------|-------------------|
    |          |                   |                   |
    |          |                   |                   |
    |          |                   |                   |
    |          |                   |                   |

11. Attach tax clearances from both the State of Hawaii and the county in which the proposed land is situated 
    in. **(See Appendix E)**

12. Is the Applicant registered with the U.S. Securities and Exchange Commission (SEC) **Yes/No** 
    and been a publicly traded corporation for at least the last three years.

    If Applicant answered "Yes" to Question 12, Applicant may proceed directly to Questions 18 to 32 and 
    Part VI of this Application and Qualification Questionnaire Form. If Applicant answered "No" to Question 
    12, Applicant is required to complete all remaining Questions.

**Part II: Qualification and Experience**

13. Indicate experience to qualify as a bona fide farmer pursuant to Section 4-158-1, HAR (Definitions) and 
    4-158-27, HAR, Application Requirements. For partnerships, joint ventures and corporations, "Applicant" 
    will apply.

   A. Has the Applicant spent not less than two years, full-time, in 
      farming operation? If Yes, explain in Questions 15. **Yes/No**
B. Is the Applicant an owner-operator of an established farm conducting a substantial farming operation? If Yes, explain in Question 15. Yes/No

C. Has the Applicant, for a substantial period of the individual's adult life, resided on a farm and depended on farm income for a livelihood? If Yes, explain (number years, location, income, etc.). Yes/No

D. Is the Applicant an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the disposition, obtained the major portion of his/her income from farming operations? If Yes, explain in Question 15. Yes/No

E. Does the Applicant have a college degree in agriculture, horticulture, floriculture, mariculture, or aquaculture? If Yes, explain in Question 14. Yes/No

F. Is the Applicant an individual who, by reason of ability, experience, and training as a vocational trainee, is likely to successfully operate a farm? If Yes, explain in Question 14. Yes/No

G. Has the Applicant received a commitment for a loan under the Bankhead-Jones Farm Tenant Act for the acquisition of a farm? If Yes, attach a copy of executed loan document or notification letter. Yes/No

H. Is the Applicant an individual who is displaced from employment in an agricultural production enterprise? If Yes, explain in Question 15. Yes/No

I. Is the Applicant a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects? If Yes, attach letter confirming membership and training and explain in Question 14. Yes/No

J. Does the Applicant possess the qualifications under the new farmer definition pursuant to Section 4-158-1, HAR? If Yes, explain: Yes/No
K. Does the Applicant possess such other qualifications? Yes/No
If Yes, briefly describe any other information which you may consider pertinent to assessing your qualifications and experience and which is not contained in your responses to Questions 14 & 15:


14. Education and Training

A. List all vocational training, business, trade, college or university, graduate or professional schools (for partnerships, joint ventures, or corporations, indicate name of principal or manager for which the education applies):

<table>
<thead>
<tr>
<th>Name &amp; Location of School (and Name of Person, if applicable)</th>
<th>Field of Study</th>
<th>Degree Type</th>
<th>Date Recv'd</th>
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B. Attach evidence of your graduation from college (copy of transcripts or diploma).

C. Describe any vocational or other training you have received which relates to your qualifications and experience to successfully operate your farm/ranch:


15. In chronological order, starting with the Applicant's most current experience, briefly describe Applicant's farming/ranching experience and business experience (management, financial and marketing) as it relates to the land intended to be awarded. For partnerships, joint ventures and corporations, include both experience of business entity itself as well as experience of principals or managers. **Copy and attach additional sheets as needed.**

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<th>Business Name</th>
<th>From:</th>
<th>Month</th>
<th>Year</th>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>To:</td>
<td>Month</td>
<td>Year</td>
</tr>
<tr>
<td>Name &amp; Title of Supervisor</td>
<td>Full-Time</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Your Position</td>
<td>Part-Time</td>
<td>( )</td>
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<td>Commodity Produced</td>
<td>Average hours worked per week:</td>
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<tr>
<td>Size of Operations (no. of employees, acres)</td>
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<tr>
<td>Duties &amp; Responsibilities</td>
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<th>Business Name</th>
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<tr>
<td>Address</td>
<td>To:</td>
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<td>Name &amp; Title of Supervisor</td>
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<tr>
<td>Your Position</td>
<td>Part-Time</td>
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<tr>
<td>Commodity Produced</td>
<td>Average hours worked per week:</td>
<td></td>
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</tr>
</tbody>
</table>
Business Name ________________________________ From: ___________________

Address ________________________________________ Month Year

Name & Title of Supervisor ____________________________

Your Position ______________________________________

Commodity Produced _________________________________

Size of Operations (no. of employees, acres) ________________

Duties & Responsibilities _______________________________


16. For any experience listed above which the Applicant would like to be considered in order to qualify as a bona fide farmer pursuant to Section 4-158-1, HAR, under Question 12, attach verification, including but not limited to: 1) pay stubs or W-2 forms where Applicant was employed as an individual or 2) Schedule F of federal income tax returns or General Excise tax returns where Applicant was a self-employed individual or a corporation.

17. Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background (applies to farm laborer or previous farm experience).

Part III: Business Plan

Complete one Business Plan for each item/parcel you intend to apply for (copy and attach additional plans as needed)

18. Item No.: ____ Location: ______________________________

19. What will the land be used for? List the goals and objectives to utilize and develop the land:

____________________________________________________

____________________________________________________

____________________________________________________
20. What products will be sold?

21. What is the projected yearly level of production?

22. What is the demand for your products in the near- and long-term?

23. Who are your customers and how will the products be distributed?

24. What is your pricing strategy?

25. How will you market your products?

26. Who are your major competitors and what is your competitive strategy?

27. What improvements to the land do you intend to make and at what cost?
28. How will you develop the land from the beginning of the lease until it is in full operation? Give estimated
times required by each major activity and projected percentages of development. (Your projection must
show at least 50% development in the first year and 100% within the first three years.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

29. How will you finance the operations?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

30. What problems are anticipated in carrying out this plan and how will you resolve them?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

31. Attach a completed Cash Flow Projection. You must show all income and expenses applicable to your
business for a five-year period or one crop rotation, whichever is greater. Appendix D provides a
sample form. You may use your own format.

32. Attach a Preliminary Map Plan (can be drawn free hand). Please note:

A. Pasture leases should show fencing, stock watering troughs, water distribution system, if needed,
   and topography with physical features to be protected, such as streams, erodible lands, steep
   areas, etc.

B. Intensive agriculture leases should show crop rows, roadways, structures, windbreaks, if
   necessary, and water distribution system plus topography with physical features such as streams,
   gullies, steep areas, etc. If you are proposing crops that are not prevalent in the area, letters from
   agricultural experts testifying to the viability of the crop within the area should be included.

Part IV: Financial Capacity

33. Attach Applicant's financial statements (balance sheet, income/expense statement, and reconciliation of
net worth) for the past three (3) fiscal years, and the most current interim financial statement. If Applicant
has not been in existence for three (3) years, also attach financial statements of the principals, i.e. those
holding at least 10% ownership interest.
34. Does Applicant have funding and financing commitments for Applicant's proposed improvements and business operations? If so, provide verification, confirmation(s) from all sources, as follows:

a. If Applicant intends to obtain a loan, attach preliminary loan commitment letter from a recognized lending institution. To be considered, the letter must specify approved loan amount and what loan proceeds will be used for.

b. If Applicant is unable to or does not intend to secure a loan and Applicant is an individual, husband and wife, sole proprietorship or partnership, attach Personal Financial Statements (Appendix C) for each individual and federal income tax returns for the most recent three (3) years.

c. If Applicant is unable to or does not intend to secure a loan and Applicant is a corporation or joint venture, attach corporate financial statements (current balance sheet and income/expense statements) and federal income tax returns for the most recent three (3) years.

d. Has the Applicant received a business loan within the last two (2) years from an institution that is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii? Yes/No

If Yes, attach a copy of the loan agreement and any other documentation evidencing the loan and purpose of the loan proceeds.

35. Credit History: The Applicant shall have a satisfactory credit rating or credit history. Submit a Dun and Bradstreet "Comprehensive Report" for the Applicant.

If Dun and Bradstreet "Comprehensive Report" is not available for the Applicant, this Credit History requirement shall be satisfied by submitting a credit report for each individual or entity with a 10% or more ownership interest in the applicant as follows:

- Individuals: Credit reports for individual owners shall be from a national credit reporting agency such as Equifax, Experian or TransUnion.

- Entities: Credit reports for entities with a 10% or more ownership interest in the applicant shall comply with the above-stated requirement regarding a Dun and Bradstreet "Comprehensive Report", provided, however, that if such a report is not available for any such entity, then credit reports for each individual with a 10% or more ownership interest in such entity shall be submitted in accordance with the above-stated requirements for individual credit reports.

All credit reports submitted to satisfy this Credit History Requirement shall be dated no earlier than thirty (30) days prior to the date of the Applicant's Application and Qualification Questionnaire. Failure to submit the required credit report(s) may result in disqualification to participate in the lease disposition.
For questions 36-42: 1) If applying as an individual, husband and wife, sole proprietorship or partnership, "you" refers to all individuals involved, including all partners, and 2) if applying as a corporation or joint venture, "you" refers to the entity itself and any director, officer or major stockholder or limited liability company member or manager.

36. Are there any outstanding judgments against you? If Yes, explain: \hspace{1cm} Yes/No

37. Have you filed bankruptcy within the past seven years? \hspace{1cm} Yes/No

38. Have you had property foreclosed upon or given title or deed in lieu thereof in the last seven years? \hspace{1cm} Yes/No

39. Are you currently a party in any legal action? If Yes, explain: \hspace{1cm} Yes/No

40. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment. If Yes, provide details, including date, name and address of lender and reasons for the action. \hspace{1cm} Yes/No

41. Are you presently delinquent or in default on any Federal, State or county rent, debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If Yes, explain: \hspace{1cm} Yes/No

---

Part V. Criminal Convictions

42. Have you ever been convicted of the crime of cruelty to animals and/or have you been convicted of a violation of law? If Yes, explain: \hspace{1cm} Yes/No
Part VI. Notarized Certification

The undersigned Applicant hereby certifies that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of Applicant's knowledge and understand that if any statements are shown to be false or misrepresented, Applicant may be disqualified from participating in the lease award, or in the case of an executed lease, the lease may be canceled. The undersigned Applicant also authorizes the State of Hawaii, Department of Agriculture and any of its employees or representatives to conduct investigations regarding any of the information provided in this Application and contact any of the references named herein.

Applicant Name

By: ____________________________
Its: ____________________________
Date: __________________________

Subscribed and sworn to before me this ______ day of ____________, 20__.

________________________________________
Notary Public

County of: __________________________
State of: __________________________
My Commission expires: ________________
APPENDIX B

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

Memorandum of Lease

DATE

NAME:________________________________________

ADDRESS:________________________________________

PHONE: Residence________________________ Business________________________

Cellular________________________ Fax________________________

DESCRIPTION:________________________________________

________________________________________________________________

UPSET RENTAL: $____________ BID RENTAL: $____________

(I)/(We) hereby agree to rent and lease from the State of Hawaii, and the State of Hawaii agrees
to demise and lease to the Lessee(s) named above, the described above for the rental per
annum above set forth in accordance with the terms, covenants, and conditions of the published
Notice of Lease appearing in the________________________, 20____, which notice by this reference is incorporated herein
and made a part hereof.

LESSEE

LESSEE

Administrator and Chief Engineer
Agricultural Resource Management Division
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

AFFIDAVIT

STATE OF HAWAII

COUNTY OF

______________________________________ of ____________________________________ do
under oath solemnly swear that (1) (I am)(We are) the ____________________________
and __________________________________ respectively, of ____________________________
(2) said corporation is not in arrears in the payment of taxes, rents or other obligations owing the
State of Hawaii or any of its political subdivisions; and (3) said corporation has not, during the five
(5) years preceding the date of this public offering, had a previous sale, lease, license, permit or
easement covering public lands cancelled for failure to satisfy the terms and conditions thereof.
DATED this _________ day of __________________, 20___.

By: ______________________________________
    Its

By: ______________________________________
    Its

Subscribed and sworn to
Before me this _________ day of _____________, 20__.

____________________________________
Notary Public, State of Hawaii

My commission expires:

(CORPORATION)
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

AFFIDAVIT

STATE OF HAWAII
)
) ss.
COUNTY OF
)

________________________________________ of ______________________________________ do

hereby under oath solemnly swear that: (1) I am not in arrears in the payment of taxes, rents or
other obligations owing the State of Hawaii or any of its political subdivisions; and (2) I have not
during the five (5) years preceding the date of this public disposition a previous sale, lease,
license, permit or easement veering public lands cancelled for failure to satisfy the terms and
conditions thereof.

DATED this _______ day of ____________, 20____.

________________________________________
Notary Public, State of Hawaii

My commission expires:

(SINGLE)
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

AFFIDAVIT

STATE OF HAWAII
) ss.
COUNTY OF
)

____________________  of ___________________________ do
hereby under oath solemnly swear that: (1) (I am)(We are) authorized to sign this affidavit for
________________________ a partnership consisting of ___________________________
(2) said partnership nor any member of said partnership is in arrears in the payment of taxes,
rents or other obligations owing that State of Hawaii or any of its political subdivisions; and (3)
neither said partnership nor any member of said partnership has not had during five (5) years
preceding the date of this public offering, a previous sale, lease, license, permit or easement
covering public lands cancelled for failure to satisfy the terms and conditions thereof.
DATED this _________ day of _____________________, 20___.

__________________________________________________________

__________________________________________________________

Subscribed and sworn to
Before me this _______ day of _____________, 20__.

Notary Public, State of Hawaii

My Commission expires:

(PARTNERSHIP)
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

AFFIDAVIT

STATE OF HAWAII

COUNTY OF

_________________________ of ________________________________ do
hereby under oath solemnly swear that: (1) we are married to each other; (2) we jointly and
severally are not in arrears in the payment of taxes, rents or other obligations owing the State of
Hawaii or any of its political subdivisions; and (3) neither I nor my spouse, nor both of us, has not
during the five (5) years preceding the sale of this public offering, had a previous sale, lease,
license, permit or easement covering public lands cancelled for failure to satisfy the terms and
conditions thereof.

DATED this _______ day of ____________, 20____.

_________________________

Subscribed and sworn to
Before me this ________ day of ________________, 20____.

_________________________

Notary Public, State of Hawaii

My commission expires:

(MARRIED TO EACH OTHER AND WHO BUY PROPERTY TOGETHER)
STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION

AFFIDAVIT

STATE OF HAWAII )
) ss.
COUNTY OF )

_____________________________ of _______________________________ do

hereby under oath solemnly swear that: (1) I am a married person; (2) I am not in arrears in the
payment of taxes, rents or other obligations owing the State of Hawaii or any of its political
subdivisions; and (3) I have not during the five (5) years preceding the sale of this public offering,
had a previous sale, lease, license, permit or easement covering public lands cancelled for failure
to satisfy the terms and conditions thereof.

DATED this _______ day of ____________, 20___.

_____________________________

Subscribed and sworn to
Before me this _______ day of ____________, 20___.

_____________________________

Notary Public, State of Hawaii

My commission expires:

(MARRIED BUT BUYS PROPERTY SEPARATELY)
STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESOURCE MANAGEMENT DIVISION  

MEMORANDUM

NAME: ___________________________  DATE: ___________________________
ADDRESS: ___________________________

SUBJECT:  
Item No. ___________________________
Location: ___________________________
Tax Map Key: ___________________________

Upset Rental: $ ___________________________
Bid Rental: $ ___________________________

<table>
<thead>
<tr>
<th></th>
<th>Charge</th>
<th>Paid</th>
<th>Balance Due (Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Down Payment</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Document Fee</td>
<td>$30.00</td>
<td>$0.00</td>
<td>$30.00</td>
</tr>
<tr>
<td>Description &amp; Maps</td>
<td>$25.00</td>
<td>$0.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Conveyance Tax</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Advertising</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$55.00</strong></td>
<td><strong>$0.00</strong></td>
<td><strong>$55.00</strong></td>
</tr>
</tbody>
</table>

CASH: $ ___________________________
BANK: $ ___________________________
CHECK NO.: ___________________________

NOTE: If other than the present occupant is the successful awardee, the lease shall commence sixty (60) days from the date of award.
### PERSONAL FINANCIAL STATEMENT FORM

#### Name of Applicant:  

#### Social Security Number:

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>OMIT CENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash in Bank (Checking)</td>
<td>Notes Payable</td>
</tr>
<tr>
<td>Cash in Bank (Savings)</td>
<td>Secured</td>
</tr>
<tr>
<td>Cash in Bank (Savings)</td>
<td>Unsecured</td>
</tr>
<tr>
<td>Accounts &amp; Notes Receivable</td>
<td>Notes Payable Other (Itemize on Reverse)</td>
</tr>
<tr>
<td>U.S. Government Bonds</td>
<td>Accounts Payable</td>
</tr>
<tr>
<td>Investments in Own Business</td>
<td>Charge Account</td>
</tr>
<tr>
<td>Other Stocks &amp; Bonds (Itemize on Reverse)</td>
<td>Other</td>
</tr>
<tr>
<td>CSVLI (Itemize on Reverse)</td>
<td>Unpaid Taxes</td>
</tr>
<tr>
<td>Residence (Itemize on Reverse)</td>
<td>Real Estate Mtgs. Payable</td>
</tr>
<tr>
<td>Other Real Estate (Itemize on Reverse)</td>
<td>Other</td>
</tr>
<tr>
<td>Automobiles Make &amp; Year</td>
<td>IL Accts - Auto (Itemize on Reverse)</td>
</tr>
<tr>
<td></td>
<td>IL Accts - Other (Itemize on Reverse)</td>
</tr>
<tr>
<td></td>
<td>Loans on Life Insurance</td>
</tr>
<tr>
<td></td>
<td>Other Liabilities</td>
</tr>
<tr>
<td></td>
<td>Note Payable - Equipment &amp; Machinery</td>
</tr>
<tr>
<td></td>
<td>TOTAL LIABILITIES</td>
</tr>
<tr>
<td></td>
<td>NET WORTH (Assets Less Liabilities)</td>
</tr>
</tbody>
</table>

#### TOTAL ASSETS:                                  

| CONTINGENT LIABILITY: As Endorser/Guarantor $            | On Letters of Credit $                           |
| EXPRESS過程中的法律權利和判決 (Explain) $                   |                                                 |

#### MONTHLY INCOME:                                   

(Alimony, Child Support, Etc. is Optional)

<table>
<thead>
<tr>
<th>OMIT CENTS</th>
<th>MONTHLY PAYMENTS</th>
<th>OMIT CENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICANT'S GROSS SALARY</td>
<td>Rent or Mortgage</td>
<td></td>
</tr>
<tr>
<td>Overtime (Constant &amp; Regularly Recurring)</td>
<td>Note Payments</td>
<td></td>
</tr>
<tr>
<td>Bonus of Commissions</td>
<td>Charge Accounts</td>
<td></td>
</tr>
<tr>
<td>Dividends &amp; Investments</td>
<td>IL Loan - Auto</td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>IL Loan - Other</td>
<td></td>
</tr>
<tr>
<td>Rents</td>
<td>Loans on Life Insurance</td>
<td></td>
</tr>
<tr>
<td>Other (Explain)</td>
<td>Federal &amp; State Income Tax</td>
<td></td>
</tr>
<tr>
<td>SUBTOTAL - APPLICANT</td>
<td>Insurance Premiums</td>
<td></td>
</tr>
<tr>
<td>CO-APPLICANT'S GROSS SALARY</td>
<td>Alimony, Child Support, Etc.</td>
<td></td>
</tr>
<tr>
<td>Other (Explain)</td>
<td>Other Fixed Monthly Payments</td>
<td></td>
</tr>
<tr>
<td>SUBTOTAL - CO-APPLICANT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>TOTAL PAYMENTS</td>
<td></td>
</tr>
</tbody>
</table>
## APPENDIX C

### PERSONAL FINANCIAL STATEMENT FORM

#### STOCKS AND BONDS (Listed and Unlisted)

All Securities Listed are Mine Soley and are in My Possession, Except as Shown Hereon

<table>
<thead>
<tr>
<th>Name of Issuing Corporation &amp; Type of Security</th>
<th># of Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(If Stock)</td>
</tr>
<tr>
<td></td>
<td>Face Value</td>
</tr>
<tr>
<td></td>
<td>(If Bond)</td>
</tr>
<tr>
<td></td>
<td>Market Value</td>
</tr>
<tr>
<td></td>
<td>Book Value</td>
</tr>
<tr>
<td></td>
<td>Registered in Name of</td>
</tr>
<tr>
<td></td>
<td>(Be Sure to Show all Other Names that Stock is Registered in)</td>
</tr>
</tbody>
</table>

#### REAL ESTATE

Title to All Real Estate Listed is in My Name Soley and Unencumbered, Except as Shown Hereon

<table>
<thead>
<tr>
<th>Location &amp; Description</th>
<th>Title Held in Name of</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Show all names that title is held in &amp; type of tenancy)</td>
</tr>
<tr>
<td></td>
<td>Date Acquired</td>
</tr>
<tr>
<td></td>
<td>Original Purchase Price</td>
</tr>
<tr>
<td></td>
<td>Actual Market Value</td>
</tr>
<tr>
<td></td>
<td>Balance of Mortgage</td>
</tr>
<tr>
<td></td>
<td>To Whom Mortgage Payable</td>
</tr>
</tbody>
</table>

#### LIFE INSURANCE

<table>
<thead>
<tr>
<th>Company</th>
<th>Face Amount of Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cash Surrender Value</td>
</tr>
<tr>
<td></td>
<td>Loans Against Policy</td>
</tr>
<tr>
<td></td>
<td>Beneficiary</td>
</tr>
<tr>
<td></td>
<td>To Whom Policy is Assigned</td>
</tr>
</tbody>
</table>

#### NOTES PAYABLE TO BANKS AND OTHERS

<table>
<thead>
<tr>
<th>Name &amp; Address of Holder</th>
<th>Amount of Loan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original Balance</td>
</tr>
<tr>
<td></td>
<td>Present Balance</td>
</tr>
<tr>
<td></td>
<td>Terms of Repayment</td>
</tr>
<tr>
<td></td>
<td>Maturity of Loan</td>
</tr>
<tr>
<td></td>
<td>Describe Assets Pledged</td>
</tr>
</tbody>
</table>

#### MACHINERY AND EQUIPMENT

<table>
<thead>
<tr>
<th>Item &amp; Description (include Make &amp; Model)</th>
<th>Age</th>
<th>Original Cost</th>
<th>Current Value</th>
<th>Mortgage or Lien</th>
<th>Balance of Mortgage</th>
<th>To Whom Payable</th>
</tr>
</thead>
</table>
### APPENDIX D

#### CASH FLOW PROJECTION FORM

**Agricultural/Pasture Leases**

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Item No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 1</td>
</tr>
<tr>
<td><strong>Income:</strong></td>
<td></td>
</tr>
<tr>
<td>Initial capitalization</td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td></td>
</tr>
<tr>
<td>Loans</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
</tr>
<tr>
<td>Labor</td>
<td></td>
</tr>
<tr>
<td>Salaries</td>
<td></td>
</tr>
<tr>
<td>Employee benefit programs</td>
<td></td>
</tr>
<tr>
<td>Pension &amp; profit-sharing plans</td>
<td></td>
</tr>
<tr>
<td>Custom hire (labor, machinery)</td>
<td></td>
</tr>
<tr>
<td><strong>Materials</strong></td>
<td></td>
</tr>
<tr>
<td>Livestock</td>
<td></td>
</tr>
<tr>
<td>Farm supplies (fertilizer, pesticides, etc.)</td>
<td></td>
</tr>
<tr>
<td>Improvements</td>
<td></td>
</tr>
<tr>
<td><strong>Machinery &amp; Equipment</strong></td>
<td></td>
</tr>
<tr>
<td>Car and truck expenses</td>
<td></td>
</tr>
<tr>
<td>Gasoline; fuel expenses</td>
<td></td>
</tr>
<tr>
<td>Rent payments</td>
<td></td>
</tr>
<tr>
<td>Repairs and maintenance</td>
<td></td>
</tr>
<tr>
<td><strong>Overhead</strong></td>
<td></td>
</tr>
<tr>
<td>Lease rent (land)</td>
<td></td>
</tr>
<tr>
<td>Utilities</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
</tr>
<tr>
<td>Advertising and promotion</td>
<td></td>
</tr>
<tr>
<td>Storage and warehousing</td>
<td></td>
</tr>
<tr>
<td>Taxes (property, income, GTE)</td>
<td></td>
</tr>
<tr>
<td>Interest expense</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Net Cash Flow</strong></td>
<td></td>
</tr>
</tbody>
</table>
### APPENDIX D

**CASH FLOW PROJECTION FORM**  
Agricultural/Pasture Leases

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Item No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 6</td>
</tr>
</tbody>
</table>

#### Income:
- Initial capitalization
- Sales
- Loans
- Other
- Other

**Total Income**

#### Expenses:

**Labor**
- Salaries
- Employee benefit programs
- Pension & profit-sharing plans
- Custom hire (labor, machinery)

**Materials**
- Livestock
- Farm supplies (fertilizer, pesticides, etc.)
- Improvements

**Machinery & Equipment**
- Car and truck expenses
- Gasoline, fuel expenses
- Rent payments
- Repairs and maintenance

**Overhead**
- Lease rent (land)
- Utilities
- Insurance
- Advertising and promotion
- Storage and warehousing
- Taxes (property, income, GTE)
- Interest expense
- Other
- Other

**Total Expenses**

**Net Cash Flow**
APPENDIX E
TAX CLEARANCE INFORMATION

Applicants must submit State and County tax clearance certificates within the timeframe specified in the Public Auction Bid Packet.

Original or certified copies of tax clearance certificates issued by (i) the Hawaii State Department of Taxation; and (ii) the County in which the subject property is located (pertaining to property taxes, special assessments or other County obligations) must be submitted with this application for the Applicant and all affiliated entities. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the bidding entity; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the bidding entity; or any entity in which the bidding entity has more than fifty percent (50%) interest. The bidder shall be responsible for obtaining the verifications for all affiliated companies.

The tax clearances must be valid on any date between the advertisement date and any date thereafter up to the date the lease is executed.

For information on obtaining State tax clearances, contact the State Department of Taxation:

State District Tax Offices

- Oahu District Tax Office
  830 Punchbowl Street, Post Office Box 259, Honolulu, Hawaii 96809-0259
  Telephone: (808)-587-4242; Toll-Free 1 (800) 222-3229

- Hawaii District Tax Office
  75 Aupuni Street, Post Office Box 833, Hilo, Hawaii 96721-0833
  Telephone: (888) 974-6321

- Maui District Tax Office
  54 South High Street, Post Office Box 1169, Wailuku, Hawaii 96793-1169
  Telephone: (808) 984-8511

- Kauai District Tax Office
  3060 Eiwa Street, #105, Lihue, Hawaii 96766-1889
  Telephone: (808) 274-3403

Website: [http://www.state.hi.us/tax/current/a6.pdf](http://www.state.hi.us/tax/current/a6.pdf)

For information on obtaining County tax clearances, contact the applicable County Real Property Tax Office:

- City & County of Honolulu
  City Hall, Treasury Office, Room 115
  530 South King Street, Honolulu, Hawaii 96813
  Telephone: (808) 523-4856 (forms can be mailed or emailed to you)

- County of Hawaii
  Real Property Tax Office/Collections Division
  Aupuni Center, 101 Pauahi Street, Suite 4, Hilo, Hawaii 96720
  Telephone: (808) 961-8282; Facsimile (808) 961-8415
- County of Maui
  Real Property Tax Division
  70 E Kaahumanu Avenue, Suite A-16, Kahului, Hawaii 96732
  Telephone (808) 270-7697

- County of Kauai
  Real Property Tax Collection
  4444 Rice Street, Suite 463, Lihue, Hawaii 96766
  Telephone: (808) 241-6555
**Increase Markets and Product Value**

| Bridge sanitary and phytosanitary barriers to markets  
| -approved treatments for mainland and foreign markets  
| -coordinate approval efforts with marketing efforts |
| **PI, ADD, QAD** |

| Promote Hawaii products in local, domestic and foreign markets |
| **ADD, ADP** |

| Establish analytical, diagnostic, and inspection services to assure safe and high quality products and fair commercial practices |
| **ADP, QAD, AI** |

| Provide tools to assist marketing and add value  
| -branding, truth in labeling, statistics, market intelligence |
| **ADD, MS, QAD** |

| Provide market research and analysis to identify new opportunities to produce agricultural products for different markets |
| **ADD** |

| Address transportation issues  
| Ad hoc: **ADD, AI, Admin., PI,** |

| Increase Production Value  
| (volume, profitability, crop) |

| Tighten biosecurity to protect agriculture, environment and human health  
| -prevent introduction; control or eradicate diseases and pests affecting livestock, aquaculture and crops |
| **AI, ADP, PI, Admin** |

| Facilitate development of value added products and other activities to increase farm income; strive to achieve the most efficient and productive use of the state’s lands to attain the state’s food and energy objectives. |
| **ADD, ARM, Admin.** |

| Assure land, water and financing for farming |
| **ADC, Ag Loan, ARM, Admin.** |

| Provide tools needed for production agriculture  
| -pesticides, risk management, disaster response/recovery |
| **ADD, Ag Loan, AI, Admin., ARM, PEST.** |

| Support research to solve production problems, improve varieties and performance |
| **ADC, ADD, PI** |

| Address labor and agriculture worker housing issues  
| Ad hoc: **ADC, ADD, Admin.** |

---

**Lead and co-lead divisions for the accomplishment of goals and objectives are identified in **bold font**, support divisions are identified in regular font.**

Admin = Chairperson’s Office  
AI = Animal Industry Division  
ADC = Agribusiness Development Corporation  
MS = Measurement Standards Branch  
ADD = Agriculture Development Division  
PEST = Pesticides Branch  
ADP = Aquaculture Development Program  
PI = Plant Industry Division  
Ag Loan = Agricultural Loan Division  
QAD = Quality Assurance Division
Mission: To lead the State’s effort to maintain the agricultural sector of Hawaii’s economy, including livestock production, forestry, crops and aquaculture, in a strong and competitive condition by providing policies, services, loans, subsidies, environmental protection, land and water, operations, facilities, advice, coordination, and information so as to achieve appropriate rates of growth, high levels of employment, reasonable returns on investment, and steady gains in real personal income.

<table>
<thead>
<tr>
<th>Goal 1</th>
<th>Goal 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Increase Markets and Product Value</strong></td>
<td><strong>Increase Production Value</strong></td>
</tr>
<tr>
<td><strong>Objective 1:</strong></td>
<td><strong>Objective 1:</strong></td>
</tr>
<tr>
<td><strong>Bridge Sanitary And Phytosanitary Barriers To Markets</strong></td>
<td><strong>Tighten Biosecurity To Protect Agriculture, Environment And Human Health</strong></td>
</tr>
<tr>
<td><strong>Activities:</strong></td>
<td><strong>Activities:</strong></td>
</tr>
<tr>
<td>▪ Negotiate export agreements for specific products and markets;</td>
<td>▪ Establish a joint use inspection facility at Honolulu International Airport for the inspection of agricultural products and other regulated commodities by State and Federal Quarantine Programs;</td>
</tr>
<tr>
<td>▪ Facilitate discussions for a private sector development of a second irradiator in Hawaii to be located on Oahu;</td>
<td>▪ Establish a system of transition inspection facilities for sea containers to assure the more efficient handling and inspection of cargo arriving in Hawaii from domestic ports;</td>
</tr>
<tr>
<td>▪ Identify industry needs for export and import phytosanitary requirements;</td>
<td>▪ Assign and advance dairy and beef herds in the Voluntary Johne's disease (VJD) control and status program;</td>
</tr>
<tr>
<td>▪ Facilitate discussion between the United States Department of Agriculture and the private sector for the use of a private treatment facility for the sterilization of fruit fly pupae;</td>
<td>▪ Control and reduce the prevalence of bovine tuberculosis (BTB) in feral swine;</td>
</tr>
<tr>
<td>▪ Establish a data management system (&quot;Invicta&quot;) to more efficiently track the movement of pests from foreign, domestic and island sources to strengthen Export Certification Programs;</td>
<td>▪ Conduct surveillance for high impact disease agents, i.e., avian influenza, West Nile and classical swine fever viruses, by performing pathological examinations and collecting appropriate specimens for laboratory testing;</td>
</tr>
<tr>
<td></td>
<td>▪ Register livestock premises as part of the National Animal Identification System to facilitate rapid disease trace back;</td>
</tr>
<tr>
<td></td>
<td>▪ Conduct statewide surveys to delineate infestations of regulated pests for control or eradication.</td>
</tr>
</tbody>
</table>
| **Goal 1**  
<table>
<thead>
<tr>
<th>Increase Markets and Product Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective 1:</strong> (continued)</td>
</tr>
<tr>
<td>- Develop food safety certification procedures and standards and assist producers to incorporate them into their daily operations;</td>
</tr>
<tr>
<td>- Assist Kauai papaya farmers to reopen the Kauai Tropical Fruit Disinfestation Facility;</td>
</tr>
<tr>
<td>- Contain, control and/or eradicate plant pests that enter the state through chemical and mechanical means or through biocontrol strategies;</td>
</tr>
<tr>
<td>- Seek federal and private sector funding to conduct foreign explorations to search for and introduce potential biocontrol agents of targeted weeds and plant pests;</td>
</tr>
<tr>
<td>- Upgrade biocontrol facilities and/or investigate the potential for building new modernized facilities to increase the biocontrol program’s capabilities to respond to new emerging and established pests.</td>
</tr>
<tr>
<td><strong>Objective 2:</strong></td>
</tr>
<tr>
<td><strong>Promote Hawaii products in local, domestic and foreign markets</strong></td>
</tr>
<tr>
<td><strong>Activities:</strong></td>
</tr>
<tr>
<td>- Develop and promote the Hawaii Food Safety Center website to assist buyers seeking food safety certified supply chain members and products;</td>
</tr>
<tr>
<td>- Facilitate development of higher-end farmers’ markets to showcase the high quality of Hawaii’s agricultural and value-added products;</td>
</tr>
<tr>
<td>- Conduct sales generating activities in selected target or niche markets with the highest demand for selected agricultural products and value-added processed products in local, domestic and international markets;</td>
</tr>
<tr>
<td>- Continue the Hawaii Export Readiness Training (ERT) Program.</td>
</tr>
</tbody>
</table>
| **Goal 2**  
<table>
<thead>
<tr>
<th>Increase Production Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective 1:</strong> (continued)</td>
</tr>
<tr>
<td>- Reduce the risk of <em>Brucella suis</em> infections in domestic swine herds and maintain Hawaii’s Swine Brucellosis Free status in domestic swine;</td>
</tr>
<tr>
<td>- Expand the aquatic animal broodstock and seedstock products segment of the aquaculture industry;</td>
</tr>
<tr>
<td>- Apply new information on rabies virus and public policy to analyze the quarantine program and respond to needs of users and the general public.</td>
</tr>
<tr>
<td><strong>Objective 2:</strong></td>
</tr>
<tr>
<td><strong>Facilitate development of value added products and other farm income activities; support energy and food security</strong></td>
</tr>
<tr>
<td><strong>Activities:</strong></td>
</tr>
<tr>
<td>- Develop open ocean aquaculture;</td>
</tr>
<tr>
<td>- Develop the freshwater and marine aquarium products segment of the aquaculture industry;</td>
</tr>
<tr>
<td>- Support and sustain the livestock industries in Hawaii;</td>
</tr>
<tr>
<td>- Continue to administer the livestock feed reimbursement program;</td>
</tr>
<tr>
<td>- Facilitate development of ag-tourism as a complementary activity to farming.</td>
</tr>
<tr>
<td>Goal 1</td>
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<tr>
<td><strong>Objective 3:</strong></td>
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<tr>
<td><strong>Assure safe and high quality products and fair practices</strong></td>
</tr>
<tr>
<td><strong>Activities:</strong></td>
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<tr>
<td>- Identify and implement technologies designed to provide food safety traceability, risk assessment and certification for farmers, distributors, shippers and retailers;</td>
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<tr>
<td>- Implement more efficient and accurate measurement technologies to increase consumer confidence;</td>
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<tr>
<td>- Establish recall procedures in the event of bioterrorism or other bacterial or chemical contamination;</td>
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<tr>
<td>- Create hybrid internet system designed to reduce on-line advertising costs;</td>
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<tr>
<td>- Register livestock premises according to requirements of the National Animal Identification System (NAIS) to facilitate trace back of animals.</td>
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<td>Goal 1</td>
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<td><strong>Objective 4:</strong></td>
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<td><strong>Activities:</strong></td>
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<tr>
<td>▪ Identify agricultural products (or groups) with high revenue growth potential and related target or niche markets;</td>
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<td>▪ Provide timely, accurate and useful statistics of Hawaii’s agriculture to support production, marketing, policy, planning and research functions;</td>
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<tr>
<td>▪ Promote the Seals of Quality program to protect Hawaii’s brand cachet in local, domestic and international markets;</td>
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<tr>
<td>▪ Expand the Buy Fresh, Buy Local call-to-action campaign to raise awareness and increase consumption of local produce by local consumers and visitors.</td>
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<tr>
<td><strong>Goal 1</strong></td>
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<tr>
<td><strong>Increase Markets and Product Value</strong></td>
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<td><strong>Objective 5:</strong></td>
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<tr>
<td>Provide market research and analysis to identify new opportunities to produce agricultural products for different markets</td>
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<tr>
<td><strong>Activities:</strong></td>
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<tr>
<td>▪ Provide relevant market reports, analyses and other pertinent information to support understanding of agricultural commodity markets.</td>
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<tr>
<td><strong>Objective 6:</strong></td>
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<td><strong>Address transportation issues</strong></td>
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<td><strong>Activities:</strong></td>
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<tr>
<td>▪ Explore and identify various consolidation and distribution venues to deliver products to identified target or niche markets in the most efficient manner;</td>
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<tr>
<td>▪ Expedite and simplify procedures for the movement of dogs and cats to and from the State.</td>
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### Mission Statement

The mission of the Agribusiness Development Corporation (ADC) is to acquire, and manage in partnership with farmers, ranchers, and aquaculture groups, selected high-value lands, water systems, and infrastructure for commercial agricultural use and to direct research into areas that will lead to the development of new crops, markets, and lower production costs.

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<th>Goal 1: Transition former plantation land and water systems for diversified agriculture.</th>
<th>Goal 2: Initiate development of facilities and provide support as necessary for successful diversified agriculture.</th>
<th>Goal 3: Provide solutions to certain bottleneck issues facing the agriculture industry.</th>
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<td>Objective 1: Assist in the acquisition or construction of processing and/or treatment facilities to enhance producers’ ability to take advantage of export or value-added opportunities.</td>
<td>Objective 1: Conduct research and demonstrative projects to facilitate the transfer of knowledge or technology.</td>
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<td>Objective 2: Acquire agricultural conservation easements to protect certain valuable agriculture lands.</td>
<td>Objective 2: Inform, educate or train farmers on various areas to include food safety, pesticide application, production techniques, ag theft, and land issues.</td>
<td>Objective 2: Conduct economic and feasibility studies relating to agriculture.</td>
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<tr>
<td>Objective 3: Organize farmers and users into cooperatives to coordinate their common interest and collective efforts.</td>
<td>Objective 3: Coordinate and cooperate with other government agencies, educational institutions, or private organizations to advance agriculture.</td>
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<td>Objective 4: Form subsidiaries to create private and public partnership.</td>
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Background

The Agribusiness Development Corporation (ADC) was established pursuant to Act 264, SLH 1994 to coordinate the development of Hawaii's agricultural industry and to facilitate its transition from a dual-crop (sugar and pineapple) industry to a diversified, multi-crop and animal industry. More specifically, ADC is responsible for devising means by which arable sugar and pineapple lands and their production infrastructure can be used again by a diversified agricultural industry and for providing marketing assistance that can lead to the development of local, national, and international markets for Hawaii-grown products.

ADC’s enabling legislation, HRS Chapter 163D, was written with a broad purpose to promote agribusiness development. Certain exemptions and powers were given to allow ADC to expedite projects and act more like the private sector. Some of the exemption and powers include the following:

- Being a state agency and allowed to be converted to a private non-profit organization
- Exemption from HRS Chapter 171 (public lands)
- Exemption from the Public Utilities Commission regulations
- Exemption from civil service
- Issue bonds
- Form subsidiaries
- Acquire real and personal properties

A Board of Directors consisting of 3 ex-officio and 8 private-sector members appointed by the Governor heads ADC. For administrative purposes, ADC is attached to the Hawaii Department of Agriculture.

Vision

- ADC contributes to the diversification of the Hawaii's economy by providing the necessary basic ingredients, such as land and water, for the agricultural industry to succeed
- ADC creates management models to handling large tracts of agricultural lands and infrastructure
- ADC demonstrates the use of leading edge technology to control, direct, and measure water flows; protect irrigation systems and structure; and minimize system losses
- ADC provides solutions to solve bottleneck issues relating to agriculture.

Values

- Always see the big picture
- Entrepreneurial spirit
• Fair
• Innovation
• Stewardship

**Key Strategies, the ADC approach**

ADC specializes in the management of irrigation systems and the handling of large tracts of agricultural land. Our flexibility also allows us to work with and form alliances with many and to do research and demonstrative projects on a wide variety of topics.

Although Chapter 163D, HRS allows ADC to be involved in many areas to assist with the development of agriculture, ADC faces challenges on (1) having limited resources, and (2) duplicating efforts of other state agencies or non-profit organizations. Unless required by law, ADC strongly believes that it should only take on projects based on one or more of the following criteria.

1. The project requires the unique advantages available through ADC;
2. ADC brings value to the project because of our state agency status, resources or expertise;
3. ADC is in a position to help others by facilitating or filling in a niche;
4. The project is or has the potential to become financially self-sustaining;
5. The project has a major economic impact or could benefit many;
6. The project has long-term value.

Some of the characteristics of ADC projects:

1. Every project is treated differently or uniquely to optimize its potential;
2. Users are often organized into Cooperatives to coordinate their common interest and collective efforts;
3. ADC assets are often managed, operated, and maintained by Coops or non-profit organizations;
4. Sometimes our efforts may only have a narrow and regional audience, rather than appealing to all farmers statewide.

**Project Selection Criteria:**

1. The project requires the unique advantages available through ADC;
2. ADC brings value to the project because of our state agency status, resources or expertise;
3. ADC is in a position to help others by facilitating or filling in a niche;
4. The project is or has the potential to become financially self-sustaining;
5. The project has a major economic impact or could benefit many;
6. The project has long-term value.
Summary and Description of Current Projects

Goal 1. Transition former plantation land and water systems for diversified agriculture.

Objective 1: Acquire and manage selected high-value agriculture lands, water systems, and infrastructure.

Objective 2: Acquire agricultural conservation easements to protect certain valuable agriculture lands.

Objective 3: Organize farmers and users into cooperatives to coordinate their common interest and collective efforts.

Waiahole Water System (WWS). Pursuant to Act 111, SLH 1998, ADC purchased the Waiahole ditch from Amfac JMB/Hawaii in 1999 as Oahu Sugar Company, the former operator of the ditch, ceased its operations a few years earlier. The system has daily usage of about 5 million gallons of irrigation water distributed to 5,600 acres of land on central Oahu. It was estimated that the agribusinesses that use WWS water collectively generated an agricultural production value of approximately $95 million per year and employed about 2,000 individuals based on 2000 statistics. With Del Monte’s departure from the island, ADC worked with the landowner, the Kilia Water Cooperative and the various agencies to transition the land from pineapple, plantation-style operation to diversified agriculture. The recent acquisition of thousands of acres of agriculture land from Campbell Estate by various agribusinesses has helped to ensure that these land parcels in Kunia will continue to stay in agriculture.

As a result of the Waiahole Combined Contested Case, the WWS is required to provide flow data and usage information to the Commission on Water Resource Management monthly. A water use permit for system loss was also issued to ADC.

Upon taken control of the ditch system, ADC has replaced three deteriorated wooden siphons and performed many repairs on various parts of the system. ADC is currently working with the U.S. Army Corps of Engineers and the Hawaii Department of Agriculture (HDOA) to line Reservoirs 155 and 225 with a non-permeable liner under a 65/35 cost-sharing arrangement between the federal government and the state. Since Reservoir 155 has a regulated dam, all repairs and alternation work must first be approved by the Department of Land and Natural Resources (DLNR). It was estimated that the cost of lining the reservoirs would be around $6 million.

Kekaha Ag Land and Infrastructure. As Kekaha Sugar Company ceased its operations in 2001, ADC has since been involved in the management of the 12,500 acres of state-own agricultural land and related infrastructure including two irrigation systems, an extensive drainage system fitted with two pump stations, an electrical
system with two hydroelectric plants, and many miles of roadways. ADC is also responsible for the integrity and safe operation of three reservoirs/dams which are part of the irrigation system infrastructure. In 2005, ADC was awarded a 3-year contract from the Navy to operate and maintain the pump stations and drainage canals within the Pacific Missile Range Facility (PMRF). A new 5-year contract was awarded to ADC in September 2008 for similar work.

From 2001 to 2005 ADC completed about $4.5 million of projects to refurbish a hydroelectric plant, replace six drainage pumps, strengthen the pump station structure, replace transformers and improve the drainage channels at or near Kekaha. These improvements, funded by the U.S. Navy, were critical in controlling and reducing the severity of flooding at the Mana plain and the nearby Kekaha town. By taking on this responsibility, ADC has helped to lower the overall maintenance expenses for the Kekaha common infrastructure and make farming affordable in this area.

ADC formally assumed management responsibility of the Kekaha agricultural lands in late 2003 when Executive Order No. 4007 was executed. Subsequently ADC has executed an agreement with the Kekaha Agriculture Association (Coop) for the operation and maintenance of the common infrastructure and issued long-term land licenses to several of the tenants. A combination of favorable climate, fertile soil, and availability of water makes Kekaha one of the most productive farming areas in the state. An economic analysis performed by the HDOA estimated the farm gate value of crops produced at Kekaha between $35-50 million.

**Kalepa Lands.** The Kalepa lands reverted back to DLNR management when Lihue plantation ceased its operation in 2001. Revocable permits were issued to various ranchers and farmers on a temporary basis. At its March 18, 2005 meeting, the ADC Board agreed to accept the Kalepa property and the East Kauai water system as a project when the water users and tenants approached ADC.

In 2007, the Green Energy Team, LLC, proposed to take 2,000 acres in Kalepa to grow albizia, an invasive species, for energy production. The proposal generated a lot of opposition at the Board of Land and Natural Resources (BLNR) meeting. ADC was tasked to convene a series of co-existence meetings between the revocable permit holders and the energy company. As a result of the meetings, the Green Energy Team agreed to reduce its acreage request to 1,000 acres and to grow eucalyptus, instead of albizia. The various tenants agreed to give up a portion of their permitted area to the energy project. DLNR agreed to issue new revocable permits to the various parties.

On May 21, 2008, the BLNR approved to (1) recommend to the governor the set aside of the 6,200 acres of Kalepa land to the ADC, and (2) issue a management right of entry to the ADC for the property. The set aside will not take place until a previously approved subdivision of land to the Division of Fish and Wildlife (DOFAW) is completed.
**East Kauai Irrigation System.** Since 2001 ADC has provided state funding for the operation and maintenance of the East Kauai Irrigation System. ADC has continued to work with the East Kauai Water Users' Cooperative to operate, maintain, and improve the irrigation system. Although the set aside of the ditch system to ADC has been under consideration at the BLNR for sometime, it will not take place until water use and other issues involving hydroelectric plants of the Kauai Island Utility Cooperative (KIUC) are resolved.

**Kau Water Sources.** When the sugar plantation departed, deterioration of the water system infrastructure in the Kau district has put the continued availability of irrigation water for agriculture in question. What makes this project unique is that the irrigation water sources (tunnels) are on state land but the water transmission pipelines belong to private landowners. At the March 1, 2007 meeting, the ADC Board of Directors agreed to take on this project as it fits well into ADC's goal of preserving agricultural infrastructure abandoned by former plantations. ADC began to work with the water users on the formation of a master cooperative which would handle management of the state-owned water sources and the various private water systems.

At its January 11, 2008 meeting, the BLNR approved the set aside of the various Kau District irrigation water sources and a management right of entry to ADC. Before an executive order for the set aside can be executed, ADC needs to prepare a CAD map with metes and bounds descriptions of the water sources.

**Wahiawa Irrigation System.** In the fall of 2006, ADC was approached by Dole Food Company, owner of the Wahiawa irrigation system (WIS), to look at the feasibility of having the state (ADC) to take over the irrigation system which services about 10,000 acres of former plantation lands on the North Shore of Oahu. ADC commissioned an engineering study of the irrigation system which includes the Wahiawa Reservoir (Lake Wilson), with objectives to evaluate the cost to repair the system and the potential liabilities if ADC decides to take on the system.

Besides deteriorated infrastructure requiring a budget for short-term and long-term repairs, there are complex issues involving a high-hazard dam and water quality. A considerable amount of money, expertise, and effort will be needed to run this system. Negotiation between Dole and ADC is ongoing.

It is estimated that the WIS service area supports about $38 million of agricultural production and about 635 full-time and part-time jobs.

**Farm and Ranch Land Protection Program (FRPP).** The federal Farm and Ranch Land Protection Program (FRPP) is funded through the farm bill and is an important tool for states and private entities to protect agricultural lands under development pressure. In August 2006, ADC executed an agreement with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and obligated $1.8 million of federal
funds for the purchase of an agricultural conservation easement in Kunia under this program. In June 2007, ADC was also able to secure $1.1 million from the Legacy Land Conservation fund managed by the DLNR as matching fund for the federal money. ADC continued to work with the various agencies and the landowner on issues relating to the purchase of the easement which is expected to close in 2009.

**Galbraith Estate Land.** Act 234, SLH 2008, established various provisions and mechanisms to allow the ADC to acquire agricultural lands and authorized ADC to acquire specific agricultural lands located on Oahu and owned by the Galbraith Estate. The Galbraith Estate lands comprises of over 2,000 acres of prime agricultural land in central Oahu, including a 50% interest in Lake Wilson. The $13 million CIP funding appropriated for this purchase, which needs to be released by the Governor, will be matched with funds from various partners including the U.S. Army, Honolulu City and County, OHA, and the Trust for Public Land.

**Goal 2.** Initiate development of facilities and provide support as necessary for successful diversified agriculture.

Objective 1: Assist in the acquisition or construction of processing and/or treatment facilities to enhance producers’ ability to take advantage of export or value-added opportunities.

Objective 2: Inform, educate or train farmers on various areas to include food safety, pesticide application, production techniques, ag theft, and land issues.

Objective 3: Coordinate and cooperate with other government agencies, educational institutions, or private organizations to advance agriculture.

**Kauai Tropical Fruit Disinfestation Facility.** In addition to obtaining a lease from the University of Hawaii (UH) for the facility, ADC refurbished and upgraded the treatment chambers, instrumentation, and the fruit-fly free packing area. ADC is managing a $250,000 grant-in-aid awarded to the Kauai Economic Opportunity (KEO) and continues to work with other partners (County of Kauai, Kauai Agriculture Development Corporation and CTAHR) on the training of papaya farmers/disinfestations facility operators and recertification of the facility. Goal is to reopen this facility so that the papaya farmers will have a facility to treat and pack their papaya for exporting to mainland and foreign markets.

**Development of a Tea Industry.** CTAHR’s Tea Project Team has partnered with other agencies and private individuals to create a tea industry in Hawaii and to establish a demonstration farm and pilot processing facility at the Meilani Experiment Station. The processing facility is being used to develop and fine-tune commercial-scale processing methods for locally grown products, and also serves as the industry’s interim processing
plant until a permanent facility is built. ADC executed a Memorandum of Agreement with CTAHR to provide $100,000 in funding to assist with this project.

Goal 3. Provide solutions to certain bottleneck issues facing the agriculture industry.

Objective 1: Conduct research and demonstrative projects to facilitate the transfer of knowledge or technology.

Objective 2: Conduct economic and feasibility studies relating to agriculture.

Past projects:

Inter-Island Transportation Study. ADC contracted with the Manufacturing Extension Partnership (MEP) of the High Technology Development Corporation to conduct a study on inter-island transportation of agricultural products. Focus of the study was on less-than-container load cargo service and its potential impact on agriculture in the event that this service was discontinued. The report was completed in early 2008.

Solar Water Pasteurization Project. ADC teamed up with CTAHR to demonstrate the use of solar energy to disinfect irrigation water. Another objective of the project was to evaluate the feasibility and operating costs associated with this technology in a remote farm setting. The demonstrative unit was assembled and operated at a farm in the Kula Ag Park on Maui in 2006. Test results showed a significant microbial reduction in the water treated by this method. It was concluded that a solar pasteurization unit could be used as an alternative to chlorine, ozone, or UV treatments.

Current projects:

Animal Feed Demonstrative Project. The objective of this project is to demonstrate an alternative feed production method which uses locally available resources and at the same time mitigates normal environmental issues associated with piggery operations. ADC has contracted with CTAHR extension personnel in Hilo to evaluate the feasibility of producing animal (pig) feed using a specialty organic fertilizer manufacturing machine. Raw ingredients, including green wastes, mill by-products, and slop collected from local restaurants are heated up and fermented with beneficial microorganisms in the process. The project also includes feeding trials of the end product against commercial feed at nearby farms.

Design of a Waste Stream Management System. Waste disposal has become a challenging task for various segments of the agricultural industry. The objective of this project is to provide practical and holistic solutions to the sustainable reutilization of waste products generated from local food production. ADC agreed to assist on funding
the design of an anaerobic bio-digester which could be used to handle waste stream from a slaughter house or other commercial sources. Although the design is intended for a facility on Maui, it could easily be used for other locations around the state.

**Browse Feeding Project.** Beef production in Hawaii is currently at a crisis stage owing to both high feed costs which limit local finishing of cattle with imported feeds and high transportation costs which limit the transport of Hawaii cattle to mainland U.S. and Canada feedlots. Browse feeding, a practice which has become a standard procedure in central and northern Queensland, Australia, is a potential long term solution for Hawaii. Dr James Brewbaker from CTAHR has selected and improved advance generations of leucaena leucocephala (haole koa) for this purpose and has supplied the Australians with his breeding material under royalty agreements. In addition to its high nutrient content, leucaena’s nitrogen-fixing property brings tremendous benefits to the pastures.

With help from CTAHR, ADC plans on bringing experts from Australia to conduct browse feeding workshops on the islands and sponsoring a trip for Hawaiian ranchers to visit the Australian operations in 2009.

**Mobile Slaughter House.** As the cattle industry in Hawaii converted to cow-calf operations and shipped their calves to the mainland, the infrastructure for slaughtering and processing livestock deteriorated over time. Most, if not all, of our facilities are old, obsolete, and not operating efficiently to support our livestock industry’s efforts to expand local marketing.

It was suggested that a mobile slaughter house may work for some of the smaller ranches on the islands and is an alternative to permanent and more costly facilities. A mobile slaughter house has the following advantages: (1) relatively low cost to set up as compared to larger permanent facility; (2) production of a higher quality meat due to its “stress free” environment as the cattle are slaughtered at the ranch; (3) reduction of cattle transportation costs; (4) the unit can be easily sold to another rancher or operator if the owner decides to exit the business.

The objective of this project is to demonstrate the feasibility of slaughtering cattle in a mobile slaughter unit on the islands. The project involves purchasing the mobile slaughter house, getting the necessary permits, operating the mobile slaughter house, conducting economic analysis, and providing recommendations to the industry. The demonstrative project will have rancher collaborators on Oahu, Maui, and Kauai to test run the unit. The concept of using a mobile slaughter house, certifiable by the USDA, has been successfully demonstrative at various locations on the mainland.
An Economic Assessment

of the

Former Kekaha Sugar Company Land and Infrastructure: Its Current and Potential Economic Capability

FINAL REPORT

October 6, 2005

By

Mana K. Southichack, Ph.D.
Hawaii Department of Agriculture
Agricultural Development Division
Market News Section
Acknowledgments

Appreciation is extended to Mr. Alfre do Lee, ADC Executive Director, and Mr. Sam Lee, ADC Kauai Representative, for arranging the study and providing extremely helpful information. The paper also benefited from Alfredo’s comments on the first draft and from Mr. Mark Hudson, Director, Hawaii Agricultural Statistics, for clarifying HAS data and for helpful suggestions. The cooperation of the tenants for making the time for interviews is greatly appreciated. They include Mr. Charles Okamoto, Director of Finance & Property Management, Gay & Robinson; Mr. Kenny Chicoine of Syngenta Seeds, Inc.; Mr. Maurice Munechika, Treasurer and Investor, Wines of Kauai; Mr. Steven Kai, Plant Manager, Parent Seed-Kekaha, Pioneer; and Mr. Wally Johnson of Far West Ag. All errors and omissions are the author’s responsibility alone.

Disclaimer

All views and opinions expressed herein do not necessarily represent those of, nor endorsed by the Hawaii Department of Agriculture (HDOA).
Executive Summary

Given the existing infrastructure left by the former Kekaha Sugar Company (KSC) and a favorable climate, the Kekaha agricultural land has considerable potential for generating income and employment for the people of Hawaii.

The combined output potential of all farms, excluding Ceatech’s shrimp farm and Wines of Kauai, increased as a result of land acquisition by some existing tenants, from $19.5 million in 2002 to $34.9 million in 2004 (Table 3). The actual output value in aggregate has also increased moderately, from a range of $14.7-$15.6 million in 2002 to a range of $16.4-$19.9 million in 2004. Due to rapid capacity expansion, the combined actual output value as percent of its potential declined from a range of 75-80% in 2002 to 47-57% in 2004. Farm employment declined slightly over this brief period with the phasing out of the remaining sugar plantation, from 387 to 375 full- and part-time positions. In 2004, there were 100 full-time (19 managerial and professional positions, 38 skilled technical positions, and 43 hourly-paid laborers) and 275 part-time and seasonal workers.

Based on the land area existing tenants intend to hold, by 2010, the potential farm output in aggregate could grow to approximately $38.4 million, providing 60 full-time and 345 part-time and seasonal jobs. However, actual output could be in the range of 60-70% of its potential (in the 2010a scenario). With the multiplier effects, farm activities originated in Kekaha’s former sugar land as described could contribute approximately $71 million in total to Hawaii’s Gross State Product (GSP) and provide about 834 full-time and part-time jobs. If the most productive cropland, approximately 58% of the entire 12,592 acres complex, were fully utilized (in the 2010b scenario), the aggregate farm gate value of output could rise to approximately $50.8 million, providing about 73 full-time and 440 part-time and seasonal jobs. With the multiplier effects, the Kekaha former sugar land could contribute about $95 million in total to the GSP and provide about 1,056 full-time and part-time jobs.

Major advantages for farm operations in Kekaha include relatively long annual production period, relatively low rent, abundant and inexpensive water supply and hydroelectricity power generated using hydraulic power from the irrigation system. Disadvantages include a limited local market, relatively high input costs, and scarce skilled farm workers. The extra costs for shipping in the many necessary inputs and shipping out the products are major constraints for farming in Kauai. However, the supper ferry, which is expected to begin operation in 2007 will help to offset some of these costs.

The major challenge for the managing agency is to maximize the potential of this agricultural production asset to generate income and employment for Hawaii’s residents. Managing the number and type of tenants in the Kekaha agricultural land may prove to be the most challenging point for the managing agency. A minimum land size requirement that is too large for leasing, designed to keep the number of tenants small, could result in much of the land being left idle while small farmers who need farm land the size less than the existing minimum requirement of 300 acres would be left out. On the other hand, too many small, independent farms producing diversified products in a given region could create logistical problems associated with pest control, which could affect crop yields in the whole area as well as food safety.
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<td>Figure 1</td>
<td>Average Yield in Dollar Value of Selected Commodities: Kauai Versus State</td>
<td>5</td>
</tr>
</tbody>
</table>
1 Introduction

Approximately 12,592 acres were assigned to the Agribusiness Development Corporation (ADC) in October 2001, for management. This is a portion of the 27,720 state-owned land located in Kekaha, Kauai County, where the Kekaha Sugar Company operated sugarcane plantation for about a century until November 2001, when the mother company Amfac officially announced the closure. This portion of the land is the focus of this study. The study’s main objective is to assess the current and potential economic capability of this agricultural asset.

Hawaii’s agricultural development trend is one of increasing product diversification, necessitated by the changing market forces that resulted in a decline of sugar and pineapple plantations, which have dominated state’s agricultural landscape for more than a century. Diversified agriculture has been widely accepted as a way to assure the state’s agricultural needs. Thus the assessment of economic potential of this particular agricultural production asset is consistent with this on-going agricultural trend and accepted view. As ADC is the managing agent of the Kekaha former sugar land in question, including infrastructure in place, since the plantation closure, the assessment ultimately is an assessment of ADC’s contribution to the county’s and state’s economy.

Section 2 provides a brief historical background and description of the property, with a review of changes in production and employment that have taken place within the property. Section 3 examines Kauai’s competitive products. Section 4 analyzes the economic potential of the property, its direct (farm) and total contribution to Gross State Product (GSP) and jobs. Section 5 discusses challenges and constraints faced by farmers in Kekaha. Finally, Section 6 concludes the study.

2 Historical Background and Description of the Land

The former sugar land in Kekaha is located on the northwest portion of the Kauai Island. The state-owned land was under the management of the Department of Land and Natural Resources (DLNR) since the sugar plantation time until October 2001, when the Board of Land and Natural Resources (BLNR) handed a master lease to ADC.

The land has a relatively long history in commercial agriculture. The land and infrastructure designed specifically for sugarcane plantation were developed by the Kekaha Sugar Company, which was formed in 1898. Thus, sugar was the single dominant crop in the entire region until recently, when Kekaha Sugar Company (owned by AMFAC) closed down in February 2001. It was a single major crop for which the economy and livelihood of the people in Kekaha depended on for about a century. In fact, Kekaha is a town started by the sugar plantation workers where, in 2000, 3,178 people lived, about 5.4% of Kauai’s total population. An average Kekaha resident earned $17,117 in 2000, about 80% of state’s average.¹

The land is extensively irrigated, as average annual rainfalls range from 20 inches in the coastal area to 40 inches on the ridges while sugar plantation requires approximately 90 inches of rain. Originally, three main ditches (Kekaha Ditch, Kokee Ditch, Waimea Ditch) formed the irrigation network that diverts water to the sugarcane field, with approximately 2,668 acres in the highland area and 5,090 acres in the coastal Kekaha-Mana plain.

The Kekaha Ditch, 27 miles long, was built in 1907. The ditch carries water from an altitude of about 500 feet from the Waimea River to Kekaha. The Kekaha Ditch provides water to users beyond the subject land, including Kikiola Land Co. and Knudsen Land Co. The Kokee Ditch, approximately 21 miles long, diverts water from Mohili Stream and the headwater of the Waimea River in the Alakai Swamp at an altitude of 3,400 feet. The Waimea Ditch was abandoned about 14 years ago due to a landslide.

The Kekaha plain was once mostly marshland. The drainage system, with two pumps at the Kawaele and Nohili pumping stations constantly running to lower the groundwater table, which made possible for sugarcane cultivation. Today, these pumping stations must continue running to keep the groundwater table from rising too high, which could result in root rots and hence low crop yields. During storm season, with five inches of rain in one day would result in flooding. These pumping stations help shorten the time required for the water table to return to its normal level.

The pumping stations are run with hydroelectricity generated within the subject land, which also provides relatively inexpensive electricity for other uses for farm operations. The hydroelectricity is generated using hydraulic power provided by the irrigation system. Three generating plants were originally constructed, including Kekaha power plant, Waiawa Hydro, and Mauka Hydro. The Kekaha plant has been shutdown together with the sugar mill, leaving the other two plants in operation to provide electricity to the existing tenants.

Changes in Employment and Crops Since the Plantation Closure

Other crops besides sugar were grown in the subject land before the plantation closure. Since the closure of the Kekaha Sugar Company in 2001, the Kekaha agricultural lands have supported besides sugar cane, the production of seed corn, sweet corn, melons, tropical fruits and various vegetable crops. Some of the agricultural activities have proven successful, while others are still in their trial period.

Seed crops, of which corn seeds make up more than 90% in sales value at farm gate price, have been grown in the area since the late 1960s. They have proven to be profitable agricultural products in Kekaha, in place of sugarcane. Shrimp farming has also been attempted, but failed. After years of struggle over finance, an outbreak of the white spot syndrome virus prompted the shrimp farm company Ceatech USA Inc. to destroy its entire shrimp population in the farm, shutting down operations in 2004, and filing for Chapter 11 bankruptcy protection in early 2005. Vegetables (cucumber, cabbage, kaichoi, daikon), melons (seedless and water melon) and fruits (grapes and mangoes) are also being grown on the former sugar land.
In 1997, the Kekaha Sugar Company’s operation provided 465 jobs. After the plantation closure, the six legitimate farm tenants together, which occupied approximately 40% of the 12,592 acres, provided 432 jobs in total, including 157 full time jobs and 275 part-time and seasonal jobs for a relatively short period of time. The closure of Ceatech shrimp farm operations in 2004 eliminated 33 jobs and the phasing out of the remaining sugarcane plantation under Gay & Robinson will result in a total loss of between 60 and 70 full time jobs.

Gay & Robinson, which initially occupied 3,500 acres after the plantation closure, has reduced the size of its land holding to 1,750 acres by April 2005. The acreage will continue to decline throughout the year as harvest progresses. The company will retain 400 acres for sugar seed crop, according to the company’s Director of Finance & Property Management.

### 3 Kauai’s Competitive Products

To assess the economic potential of the Kekaha agricultural land, it is useful to first identify products that are currently thriving in Kauai. The level of competitiveness of a product depends on its per unit production cost. Although data on production costs are unavailable, competitiveness of a given agricultural product produced in Kauai can be assessed by inferring from its per acre yield in dollar value relative to the same products produced elsewhere. In addition, the product’s marketing information can also provide its “revealed” competitiveness. The reason is simply that, if a product is not competitive, it will not last in the market over a long period of time. For this, the Honolulu market supply data (inter-island inshipment to Honolulu plus Honolulu’s own supply and inshipment from the Mainland) for fresh produces are utilized.

#### Competitiveness Based on Yield

For the purpose at hand, yield per acreage used (or allocated) for a given crop, which includes fallow land, is the most desirable unit measure as it reflects the total cost of land. However, in Table 1, due to data availability yield per acreage harvested is reported for most crops. Yields for seed crops, pineapple and taro are reported with different acreage definitions, causing inconsistency. In HAS’s statistical reports, land information for certain crops contain only “acreage harvested,” others contain only “acreage used for crop” or “acreage in crop” with acreage harvested. Acreage harvested accounts for only part of the total land a farmer must pay. Whether or not part of the land within a given farm allocated for a specific crop is left fallow, for any reason, there is a cost to it. Cultural practices differ for different crops and, often, across farms growing the same crops. Different crops have different time requirements for maturity and for land rotation. Thus, fallow land left for rotation purpose and acreage not harvested as a proportion of the total acreage varies across crops and farms. Therefore, even if yield is measured as the output value per acreage harvested for all crops used for productivity (with respect to land) comparison, inconsistency remains.

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3 Part-time farm laborers, according to the interviews, generally worked between 30 and 35 hours per week throughout the year. Seasonal workers also worked more than 30 hours per week, 2.5 to eight months, depending on which farm they employed at.
Table 1 shows some commodities that have been grown in the state and in Kauai with per acre yield in term of dollar value above $5,000. The value for each commodity is the average across farms and over a specified time period as indicated in the parenthesis following the name of each commodity. Only four of Kauai’s high value yield commodities are compared with statewide averages, as data for Kauai’s other commodities are not available.

Starfruits, rambutan and longan are still in their early phase of commercial production in Hawaii, as they have just appeared in the market and are not widely visible. The relatively small amount of total supply in the Honolulu market, revealed in Table 2, indicates that these products either have a limited market or still in their early stage of marketing. Thus their existing per pound dollar value may still be unstable. That is, per unit dollar value sold in the market may be too high. The cases of longan and rambutan, their prices in the market, as of April 2005, are most likely too high to be used for profitability calculation in making an investment decision.

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Specification</th>
<th>Statewide Average</th>
<th>Kauai Average</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acre</td>
<td>lbs/acre</td>
<td>$/acre</td>
</tr>
<tr>
<td>1. Ginger Root</td>
<td>Acre Harvested</td>
<td>44,500</td>
<td>25,899</td>
</tr>
<tr>
<td>(00-04)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Tomatoes</td>
<td>Acre Harvested</td>
<td>32,500</td>
<td>17,245</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Seed Crops</td>
<td>Total Acre</td>
<td>1,593 d</td>
<td>12,880</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Pineapples</td>
<td>Acre Used</td>
<td>34,016</td>
<td>10,453</td>
</tr>
<tr>
<td>(00-04)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Papayas</td>
<td>Acre Harvested</td>
<td>27,241</td>
<td>8,105</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Taro</td>
<td>Acre In Crop</td>
<td>14,850</td>
<td>7,951</td>
</tr>
<tr>
<td>(00-04)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Vegetables</td>
<td>Acre Harvested</td>
<td>14,864</td>
<td>7,302</td>
</tr>
<tr>
<td>&amp; Melons (99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Cucumbers</td>
<td>Acre Harvested</td>
<td>13,775</td>
<td>6,201</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Starfruit</td>
<td>Acre Harvested</td>
<td>1,882</td>
<td>5,482</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Rambutan</td>
<td>Acre Harvested</td>
<td>5,358</td>
<td>5,045</td>
</tr>
<tr>
<td>(99-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Longan</td>
<td>Acre Harvested</td>
<td>1,473</td>
<td>5,009</td>
</tr>
<tr>
<td>(00-03)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Data Source: Calculated from data reported in “Statistics of Hawaii Agriculture 2002” and other commodity annual summary reports, HAS. Notes: For those values that are reported by measures other than per acre harvested are due to the lack of data.

Numbers in each parenthesis indicate a period for which the average is calculated. For example, (00-04) indicates that the statewide and Kauai averages are for the 2000-2004 period. There is no report for Kauai, see footnote 5. Total acre refers to the total acre owned and leased by seed crop farms. This is outshipment volume only; part of the output is normally retained for research activity. Value is combined with Maui.

Figure 1 shows Kauai’s farm productivity, in dollar term, relative to state’s average for selected commodities, with some not included in Table 1. On a per acre dollar value basis, yield for some products (papayas, cucumbers, sweet potatoes, green beans, sweet corn, watermelons) shown as Kauai’s are combined with other counties. Although the values for these products do

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4 The list in the table is by no mean exhaustive. There may be other, relatively new products that produced above this dollar value yield, but are not included in the Hawaii’s agricultural statistics.

5 In some cases, HAS refrains from reporting county data in order to avoid disclosure of specific operations. This usually applies to a case in which there are few operations in any given county.

6 Selection is based on data availability.
not represent Kauai’s competitiveness, they are still useful for assessing Kauai’s competitiveness. For instance, Kauai’s yield for watermelon is combined with Hawaii and Maui. Since Honolulu is the only county remaining, the higher state’s average yield must be due to Honolulu. Thus, a farmer can be cautioned about whether he should grow watermelon in Kekaha and hope to sell his product in Honolulu. A similar precaution can be made for green bean.

Other products that may thrive in the market if they are fertile in the Kekaha agricultural land can be inferred from the Honolulu market supply data collected by the Market News Section, ADD, HDOA. Commodities that have been shipped from Kauai to supply the Honolulu market are shown in Table 2. Kauai, where 4.8% of Hawaii’s 1.2 million residents lived in 2000 and 10.6% of approximately 60.1 million total state’s visitor days spent in 2002, has relatively small share in the total intrastate inshipment to Honolulu market in 2004 for all products familiar to the Honolulu consumers, except for wet land taro for poi processing, which had 92.8% market share. Other products that Kauai has relatively large share in Honolulu market include longan (47.7%), rambutan (27.8%), starfruit (81.8%), and caimito (100%). These latter products are relatively new to the Honolulu consumers, and the market demand for them in 2004, as indicated in the far right column in Table 2, was relatively limited.

![Figure 1](image.png)

Figure 1
Average Yield in Dollar Value of Selected Commodities: Kauai Versus State


**Revealed Competitiveness**

Kauai’s share of the total in-state supply in the Honolulu market in 2004 for processed lettuce (28.7%) was relatively large, but its share in the Honolulu total market supply of 6.06 million pounds, which includes imports from the Mainland, was a tiny fraction 0.1% (Table 2). The relatively high share in the in-state supply reveals that Kauai is competitive in producing
processed lettuce relative to other counties, while its very low share in Honolulu’s total market supply indicates that there is an opportunity for import substitution of processed lettuce in the Honolulu market. Table 2 also indicates that Kauai has revealed competitive advantage in sweet corn and seedless melon, as well as room for producers in Kauai to compete with the Mainland imports in the Honolulu market.

It is noticeable that the only product for which Kauai clearly has a competitive advantage over other counties is taro, which Kauai has higher per acre yield than state’s average in both output and dollar value (indicated in Table 1). For taro, Kauai has a substantially large share in the Honolulu total market supply in 2004, 92.8%. For cucumber, which Kauai seems to have higher per acre yield than other counties in both output and dollar value, Kauai’s share in the in-state supply and total supply in the Honolulu market was only 0.8% and 0.7%, respectively. In 2004, 76.5% of the 2.5 million pounds of cucumber in the Honolulu market came from Maui County. Specifically, 74.8% of the 2.5 million pounds came from Molokai, part of Maui County.

Table 2
Kauai’s Share in Honolulu Market: 2004

<table>
<thead>
<tr>
<th>Commodities</th>
<th>% of State’s Supply</th>
<th>% of Total Market Supply</th>
<th>Total Market Supply in Honolulu (1,000 lbs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Avocados</td>
<td>8.8</td>
<td>2.6</td>
<td>1,845.2</td>
</tr>
<tr>
<td>2 Guava (processed)</td>
<td>0.01</td>
<td>0.0</td>
<td>1,619.6</td>
</tr>
<tr>
<td>3 Longan</td>
<td>47.7</td>
<td>21.2</td>
<td>15.7</td>
</tr>
<tr>
<td>4 Lychee</td>
<td>0.3</td>
<td>0.0</td>
<td>93.5</td>
</tr>
<tr>
<td>5 Papayas</td>
<td>0.2</td>
<td>0.2</td>
<td>14,597.6</td>
</tr>
<tr>
<td>6 Pineapples</td>
<td>0.05</td>
<td>0.0</td>
<td>17,268.8</td>
</tr>
<tr>
<td>7 Rambutan</td>
<td>27.8</td>
<td>27.4</td>
<td>18.7</td>
</tr>
<tr>
<td>8 Starfruit</td>
<td>81.8</td>
<td>16.6</td>
<td>15.8</td>
</tr>
<tr>
<td>9 Tangelo</td>
<td>0.4</td>
<td>0.0</td>
<td>138.2</td>
</tr>
<tr>
<td>10 Beans (green)</td>
<td>0.02</td>
<td>0.0</td>
<td>596.7</td>
</tr>
<tr>
<td>11 Cabbage (Chinese)</td>
<td>na</td>
<td>na</td>
<td>5,611.7</td>
</tr>
<tr>
<td>12 Cabbage (head)</td>
<td>na</td>
<td>na</td>
<td>8,681.6</td>
</tr>
<tr>
<td>13 Cabbage (Pak Choi)</td>
<td>0.2</td>
<td>0.1</td>
<td>356.2</td>
</tr>
<tr>
<td>14 Caimilo</td>
<td>100.0</td>
<td>100.0</td>
<td>0.01</td>
</tr>
<tr>
<td>15 Corn (sweet)</td>
<td>17.1</td>
<td>1.4</td>
<td>1,315.1</td>
</tr>
<tr>
<td>16 Cucumbers</td>
<td>0.8</td>
<td>0.7</td>
<td>2,472.7</td>
</tr>
<tr>
<td>17 Ginger Root</td>
<td>1.1</td>
<td>0.9</td>
<td>1,102.7</td>
</tr>
<tr>
<td>18 Lettuce (head and semi-head)</td>
<td>na</td>
<td>na</td>
<td>7,290.4</td>
</tr>
<tr>
<td>19 Lettuce (processed)</td>
<td>28.7</td>
<td>0.1</td>
<td>6,062.7</td>
</tr>
<tr>
<td>20 Lettuce (specialty)</td>
<td>2.1</td>
<td>0.1</td>
<td>667.1</td>
</tr>
<tr>
<td>21 Luau Leaf</td>
<td>0.1</td>
<td>0.1</td>
<td>83.7</td>
</tr>
<tr>
<td>22 Melon (seedless)</td>
<td>100.0</td>
<td>21.5</td>
<td>1,946.3</td>
</tr>
<tr>
<td>23 Melon (watermelon)</td>
<td>0.7</td>
<td>0.6</td>
<td>5,990.9</td>
</tr>
<tr>
<td>24 Potato (sweet)</td>
<td>0.1</td>
<td>0.1</td>
<td>3,040.6</td>
</tr>
<tr>
<td>25 Taro (processed, poi,)</td>
<td>92.8</td>
<td>92.8</td>
<td>2,799.6</td>
</tr>
<tr>
<td>26 Tomatoes</td>
<td>0.01</td>
<td>0.0</td>
<td>8,415.8</td>
</tr>
<tr>
<td>27 Unspecified</td>
<td>14.1</td>
<td>0.1</td>
<td>21,438.8</td>
</tr>
</tbody>
</table>

Data Source: Market News Section, ADD, HDOA
4 Economic Potential of the Kekaha Former Sugar Land

Given the existing infrastructure (irrigation system, hydroelectricity power stations, roadways and other support structures) left by the former Kekaha Sugar Company and a favorable climate for crop production, the Kekaha agricultural land has considerable potential to generate income and employment for the people of Hawaii. The question is not whether it will make a positive net contribution to the state’s economy. Rather, it is by how much could the Kekaha agricultural land contribute to the county’s and state’s economy. The answer lies upon how the land is used and for what commodities it is used to produce.

Hawaii’s agricultural trend is one of increasing product diversification, necessitated by the changing market forces that resulted in a decline of sugar and pineapple plantations, which have dominated state’s agricultural landscape for more than a century. Diversified agriculture has been a force of growth in Hawaii’s agriculture for more than a decade and is widely accepted as a way of assuring state’s agricultural needs. Thus, this paper examines the economic potential of the Kekaha agricultural land in question consistent with on-going agricultural trend in Hawaii.

Because the term “diversified agriculture” can be interpreted slightly differently by individuals of different occupation and professional background, to avoid misunderstanding, the meaning of the term “diversified agriculture” in this report is clarified.

Diversified agriculture is generally understood as agriculture that is characterized by multiple product varieties. In Hawaii, it is viewed as agriculture comprising of a variety of profitable agricultural products that are replacing sugarcane and pineapple plantations, which have become increasingly less profitable. There is a difference in perspective regarding diversified agriculture between a farmer, region, and state. For a particular farmer, diversified agriculture means producing a variety of crops and, in some cases, including crop rotation. Thus, a farmer producing a single crop on a sizeable agricultural land is not diversifying his business. If it happens that this farmer is the only one in an agricultural region of any county, then the region is not diversifying its agriculture. Nonetheless, given such a scenario, state would still be diversifying agriculture as long as there are many other farmers producing many other products in other agricultural regions in the state. Thus, even if there were only a single type of crop being grown in the entire Kekaha agricultural land by a single producer, as long as it is not sugarcane and pineapple, Hawaii’s agriculture is being diversified while Kekaha’s agriculture is not.

However, Kekaha former sugar land has actually been diversified. As of April 2005, six legitimate farm tenants, with five active, producing more than five crop varieties commercially, occupied most of the more productive 7,758 acres former sugar land. However, approximately 46% of that would become unutilized as the phasing out of Gay & Robinson’s sugarcane cultivation approaches completion by the end of 2005. Although part of the remaining land within the 12,592 acres, after subtracting 7,758 acres, has not been cultivated by the Kekaha Sugar Company, it may be productive for certain crops and other agricultural products.
Estimation Method

While both actual and potential production capacities are important information, for several reasons, the estimation emphasizes potential economic contributions of the land. First, while an estimation of the actual production would be useful for evaluating resource utilization, or for establishing a basis for tax, or for GSP estimation purpose, they are not the purposes of this study. Nonetheless, the estimations of actual farm production value for 2002 and 2004 are attempted and summarized in Table 3 for comparison with the corresponding potential values. Second, this study takes the economic asset management perspective. As Kekaha former sugar land is in transition, an objective analysis of its potential will be useful for decision making by policy makers and the management agency, ADC, for management planning and execution.

Two levels of potential economic contributions of the former sugar land are estimated: direct contributions and total contributions. Direct contributions include farm output value and farm employment. Total contributions to the economy by farm operations in the Kekaha former sugar land include farm output value plus economic value produced through the linkages effects, to be explained further later, and farm and non-farm employment.

Estimates for potential direct economic contributions of the Kekaha former sugar land are based on land area, Kauai and state average yield and price for each crop. Each farmer is assumed to be able to achieve an average yield for each crop by using common farm practices, management and technology that are common to farmers in Kauai and elsewhere in State of Hawaii and sell output at an average price specific to Kauai or State of Hawaii. The area of land used in the estimation is for the 7,758 acres, which are considered to be among the most productive land within the 12,592 acres complex under ADC’s control. Land productivity is assumed to be identical for each acre. Estimates for potential total economic contributions of farm operations originated in the Kekaha former sugar land are based on the estimates of direct economic contributions and multiplier coefficients produced by DBEDT and adjusted for Kekaha’s agricultural production context.

To minimize the effects of annual yield and price fluctuations, both the average yields and average prices used for estimation are the averages of annual averages across farms over a five-year period. For sugarcane and vegetables and melons, yield and price averages are Kauai-specific; for seed crops, due to the lack of Kauai-specific data, they are statewide averages.

Readers should be aware that although HAS’s data are used to calculate the averages used for estimation, the estimated results for any given commodity and year in this study are differ from those of HAS, for three reasons. First, the average yield used in this study is the average of HAS’s average yield in each year over five years. Second, the average yield used in this study is the output volume per acre of “area in crop” or “area use” based on leasehold, not on output volume per acre of “area harvest.” To account for the opportunity cost of agricultural land, farm output is estimated based on the “total acreage holding or use” rather than on the “total acreage harvest” or “total acreage farm.” HAS output per acre is based on harvested or bearing acres. Depending on individual farm practices, land area under the lease that is not farmed may serve

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7 Per acre yield in output for crops used in the estimation are derived from HAS’s annual reports, calculated in terms of yield per “acre in crop” and “acre use,” not in terms of per acre harvest as commonly reported by HAS.
various functions for the area that is farmed, such as roadway, buffer zone (to prevent cross-breeding), wind blocker, etc. Whether or not all acres under the lease are used for any purpose, once the land is taken by one farmer it is no longer available for others. Third, the estimation in this study emphasizes the potential economic value of an agricultural production asset while HAS’s estimates are for actual output of the past.

Interviews of existing farm tenants were made in mid-April 2005 as part of the overall assessment of production and employment possibilities of the farmland and its infrastructure. Complementing the interviews used for the analysis are published and unpublished data from various units within the HDOA and published data from the National Agriculture Statistics Service.

Direct Potential Economic Contributions

Table 3 provides a picture of economic potential of the Kekaha agricultural land in terms of farm output value—farm output measured at average farm gate prices—and employment creation. All farm potential output values are estimated based on land holding (row 9), crop types (row 10), and average yields and prices as explained earlier.

In 2002, with approximately 5,000 acres allocated for sugarcane, seed crops, vegetables and melons, the aggregate potential farm output value is estimated at $19.5 million (row 1). Actual output value in aggregate is estimated to be in the range of 75-80% of the potential value (row 2). All together, farm operations in 2002 employed approximately 387 jobs, with 112 full-time, and 275 part-time and seasonal jobs. Although shrimp and other crops were already grown there, they are not included in the estimate due to inadequate data. Sugarcane operation is phasing out, thus its output value estimated in Table 3 is declining in each year and approaching zero by the end of 2005. The company will retain 400 acres for sugar seed crop.

In 2004, six farm entities occupied 7,122 acres of the former sugar plantation, with 6,689 acres under the lease for crop production and 433 acres for aquaculture. The assessment is made for cropland area held by four companies only. They include Gay & Robinson (sugar), Pioneer (seed crop), Syngenta (seed crop), and Wally Johnson (seed crop, fruits, vegetables & melons). Ceatech (shrimp farm) and Wines of Kauai are excluded from the estimation due to inadequate data. Given the total leasehold, average yields and prices as explained earlier, the combined potential output by the four farms in 2004 is estimated at $34.9 million (Table 3). Crops grown by the four farms used in the estimation include sugar, seed crops, and vegetables & melons. The actual production value in 2004 is estimated to be in the range of 47-57% of the potential value. Although actual production as a percent of land potential capacity declined between 2002 and 2004, because of some existing tenants acquired more land faster than they could farm, the actual value of production increased moderately over this period. Farm operations by the four companies employed 375 workers in total in 2004, including 100 full-time, 275 part-time and

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8 Nature of operation, cost and market constraints for shrimp farms are different from crop farms. The Wines of Kauai project is in its infancy and grape wine production is uncommon for Kauai, and data for grape wine production and price in Hawaii are not available.
9 Both yields and prices used for estimation are the averages over time (1999-2003) of the annual averages across farms.
seasonal workers. The number of employment declined due to the phasing out of sugar plantation. Among the full-time jobs, 19 were managerial and professional positions, 38 skilled technical positions, and 43 hourly-paid laborers. Part-time workers worked between 30 and 35 hours per week throughout the year. Seasonal workers worked between two and a half and six months, depending on which farm they employed at.

By 2010, aggregate potential farm output value could grow to between $38.4 million (2010a) and $50.8 million (2010b), and farm jobs, between 405 (2010a) and 513 (2010b), depending on land use and types of crop grown. Crop types used in the estimation are based on existing crops being grown there and have proven commercially successful and the existing tenants’ future investment plans. In both 2010a and 2010b cases, 3,150 acres are assumed used for seed crops. While only 350 acres are assumed used productively for vegetables and melons in the 2010a scenario, in the 2010b scenario, 4,175 acres are assumed used for vegetables and melons. Land leased by Ceatech is excluded from the estimation. The remaining land (of the 12,592 acres) is assumed left idled, although it may be productive for certain crops and agricultural activities.

The smaller two of the four companies experienced actual output growth of approximately 30% and 67% each between 2002 and 2004. Each of the two companies plans to double or triple production in Kekaha in the next five years. If these tenants could achieve their growth target as planned, the aggregate actual output would be in the neighborhood of 60-70% of the potential output value in column 2010a.

Table 3  
Economic Potential of the Former Kekaha Sugar Land:  
Direct and Total Contributions to Hawaii’s Economy

<table>
<thead>
<tr>
<th></th>
<th>Direct Contribution</th>
<th>Total Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002</td>
<td>2004</td>
</tr>
<tr>
<td>1. Potential Output Value ($ million)</td>
<td>19.5</td>
<td>34.9</td>
</tr>
<tr>
<td>2. Actual Output Value (% of Potential)</td>
<td>75-80%</td>
<td>47-57%</td>
</tr>
<tr>
<td>3. Total Number of Jobs (actual &amp; potential),</td>
<td>387</td>
<td>375</td>
</tr>
<tr>
<td>Full-Time</td>
<td>112</td>
<td>100</td>
</tr>
<tr>
<td>Part-Time and Seasonal</td>
<td>275</td>
<td>275</td>
</tr>
<tr>
<td>Managerial/Professional (all Full-Time)</td>
<td>na</td>
<td>19</td>
</tr>
<tr>
<td>Skilled Technical (all Full-Time)</td>
<td>na</td>
<td>38</td>
</tr>
<tr>
<td>Laborer (Full- and Part-Time and Seasonal)</td>
<td>na</td>
<td>318</td>
</tr>
<tr>
<td>9. Total Acreage of Cropland Held by Tenants</td>
<td>5,000</td>
<td>6,172</td>
</tr>
</tbody>
</table>

Notes:  
* This is an expected actual output value in aggregate based on existing tenants’ growth plan.  
* Number of jobs for 2002 and 2004 are estimates of actual farm employment. For 2010, they are estimates of potential job creation.  
* Total acreages for 2002 and 2004 are based on leasehold of the four farms used in the estimation; for 2010a, the total acreage is based on business plans of the existing tenants; and for 2010b, it is the total acreage of the readily arable and most productive cropland of the 12,592 acres, with a hypothetical land allocation. Farm yields and prices of crops used for estimation are Kauai’s averages, except for seed crops, which are statewide averages.

The estimated potential farm output values are based on a set of assumptions regarding land, productivity, farm practice and technology, and price as described earlier. However, whether the
potential farm output values will be realized will depend on various constraints including market limitations, pests that may arise as production expands, and the required skilled labors. Vegetables and melons as a group is used in the estimation because it’s already being grown in Kekaha, proven profitable in Kauai, widely consumed by Hawaii residents, and is exportable. Expanding the production of existing products, as long as there is more room in the market for them, is a safer route than trying something unfamiliar to neither producers nor consumers. Data in section 3 offer a preliminary indication that there may be more room in the market for certain vegetables, melons and fruits to grow. However, a detailed market study for each crop is required before any conclusion can be made regarding market constraints. In addition, it should not be interpreted that this study recommends vegetables and melons for Kekaha, nor does it provides any indication that vegetables and melons will take half of the Kekaha agricultural landscape in the next 5-10 years. Ornamental plants, including flowers and potted plants, and other crops may thrive in Kekaha. For a number of reasons, such as changes in the market conditions, technology and input costs, crops that are profitable today may become unprofitable in the future. For the same reasons, crops that are not in the market today may be popular in the future.

**Total Potential Economic Contribution**

Beyond its direct contribution to the state’s economy in the form of farm income and farm jobs, farm activities also create demand for various types of farm inputs including tools, machinery, equipment, fertilizers, pesticides, materials, and services. Farm products are also used by manufacturers and eatery and tour-related businesses. In addition, the farm itself is used for tourism. Incomes earned by farm workers and all others whose job either supplying farm inputs or using farm outputs will be spent and further induced growth in income and employment elsewhere. These phenomena are called the *multiplier or linkage* effects. In order to assess the total potential contribution of the Kekaha former sugar land, these linkages effects must be accounted for.

For this purpose, output and job multipliers for vegetables and other agricultural products, estimated by DBEDT, are employed. Take the weighted average of the two multipliers according to their estimated shares in the Kekaha agricultural land yields output and job multipliers for Kekaha’s farm production. Applying these multipliers, which have been adjusted for Kekaha, the total potential contributions of the Kekaha former sugar land to state’s economy are derived and summarized in the far right columns in Table 3. With the linkages effects, farm production originated in the Kekaha former sugar land could contribute to the GSP between $71 million and $95 million and to state’s employment between 834 and 1,056 farm and non-farm jobs.

### 5 Constraints and Challenges

Kekaha former sugar land is an ideal place for agricultural production. The relative dryness of the region together with isolation is a natural pest control condition. Yet the irrigation system that is in place, which was designed specifically for the sugarcane plantation that uses

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10 Only type 2 multipliers, as defined by DBEDT, are considered.
11 The (Type 2) output and job multipliers for 2010a are respectively 1.84 and 2.06, and for 2010b, 1.89 and 2.06.
water approximately three times the amount the average tropical farm products need, allows farm
operators to have a better control of the amount of water in the field. This condition allows
farmer to have better control of the farm environment. However, farmers in Kauai in general face
relatively high input costs, a limited local market, and an extra cost for transporting goods to the
markets outside the island.

**Advantages and Disadvantages for Farm Operations in Kekaha:** There are advantages as
well as disadvantages for farm operations in Kekaha, and in Kauai in general. The existing land
rental rates, which are determined by size and type of crop to be grown, administered by ADC
are low relative to other agricultural lease land both in Kauai and elsewhere in Hawaii. The
extensive irrigation system and natural climate in the region allow farmers to have better control
of the farm environment. Relatively low-cost irrigation water and hydroelectricity available
within the property are both exceptional advantages farm tenants have.

Major advantages and disadvantages associated with farm operations in the subject Kekaha land
can be summarized as follows:

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Good climate and soil condition allowing longer production period within a year</td>
<td>- Limited supply of farm workers</td>
</tr>
<tr>
<td>- Abundant water supply through the irrigation network</td>
<td>- Extra transportation cost to major markets, but should diminish with the upper ferry in operation beginning in 2007</td>
</tr>
<tr>
<td>- Availability of relatively low-cost hydroelectricity</td>
<td>- Relatively high input cost</td>
</tr>
<tr>
<td>- Relatively low rent</td>
<td>- Relatively small local market</td>
</tr>
<tr>
<td>- Isolation –natural pest control</td>
<td></td>
</tr>
</tbody>
</table>

**Diversification Constraint:** Crop diversification, if properly practiced, could be useful for
controlling pests and diseases, maintaining soil quality, and for mitigating the negative impact of
market disturbances. However, careless crop diversification in a given region could also
complicate pest and disease problems, hampering productivity. An introduction of a new crop or
growing an existing crop of certain type at a certain time of the year could complicate pest
control for the existing crops nearby. Such potential problem can be prevented through a
cooperative effort among farmers in the same region by refraining from growing certain crops
completely or at a certain time of the year, among others. For instance, seed crop farmers in
Kekaha today control pests by limiting the amount of soybeans grown, and reserving the months
of August and September as a corn-free period. Even if chemical pest control method is applied,
cooperation among farmers in the same region is required for effectiveness in many cases.
Without cooperation, there is room for pests to develop resistance to chemical by hopping across
farms.

Because, in a diversified agricultural context, effective pest control requires cooperation among
farmers, an increase in the number of either farmers that compete for the same market or farmers
that produce different variety of crops would likely increase difficulties and costs associated with
maintaining cooperation.
Cost Constraint: Based on the 2002 Census of Agriculture, Kauai had lower farm operation expenses per acre of cropland, as well as per acre of harvested cropland, than any other island counties (Table 4). These statistics seem to contradict the general perception about Kauai’s production costs, as prices of goods, including gasoline, are generally higher than elsewhere in the state.

Kauai’s relatively low total operation expenses per acre of cropland, on average, was a result of the county’s lower per acre expenses on seeds, livestock, feed, utilities, contract labor, depreciation, and “other expenses” (details in Appendix 3). This may be attributed to low utilization of purchased inputs, to the type of farm operations, possibly to cultural practices, and not to efficiency. Despite the county’s lower per acre operation expenditures, Kauai was the only county with a negative net cash income of farm operation ($30 per acre of cropland) in 2002. In contrast, Honolulu, which had the highest expenses per acre of cropland, also had the highest net cash income of operation per acre of cropland (Table 4).

<table>
<thead>
<tr>
<th>Table 4</th>
<th>State of Hawaii’s Agricultural Status 2002: Cross-County Competitiveness Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State</td>
</tr>
<tr>
<td>Farm operation expenses per acre of harvested cropland ($)</td>
<td>4,120</td>
</tr>
<tr>
<td>Farm operation expenses per acre of cropland ($)</td>
<td>2,136</td>
</tr>
<tr>
<td>Operation Expenses-Product Value Ratio*</td>
<td>0.85</td>
</tr>
<tr>
<td>Net cash income of operation per acre of cropland</td>
<td>465</td>
</tr>
<tr>
<td>Government payment as %share of total operation expenses</td>
<td>0.002</td>
</tr>
<tr>
<td>Irrigated land as % of cropland</td>
<td>32.8</td>
</tr>
<tr>
<td>Number of farms with 180 acres and above as %share of the total number of farms within own jurisdiction</td>
<td>5.82</td>
</tr>
</tbody>
</table>

*Total farm operation expenses divided by total value of products sold. Data Source: Calculated from data reported in the 2002 Census of Agriculture, Hawaii State and County Data, NASS.

An explanation to Kauai’s negative net cash income is the county’s high total expenses per dollar worth of output sold, at $1.10 (Table 4). This is attributed to a combination of relatively low yields and high expenses on fertilizers, lime and soil conditioners; gasoline fuel and oil; supplies, repairs, and maintenance; machinery and equipment rental; property taxes (see Appendix 3). As a percent share in county’s own total operation expenses, Kauai’s expenses on these items were higher than those of any other county. With more than 64% of total cropland irrigated, Kauai is also most extensively irrigated than any other county in Hawaii (Table 4). Maintaining the irrigation system is costly.

Market Constraint: Kauai’s small population is a natural barrier to commercial farming on the island. In 2003, with about 60,747 residents, Kauai’s population made up only 4.8% of Hawaii’s total population (DBEDT). In 2003, the island hosted 11.07% of state’s 58.78 million total visitor days. Visitors’ share in state’s total consumption of fresh produces in 2003 is 11.35%. With such a limited local market, farmers in Kauai must rely on export markets (defined as any market beyond the island county).

12 Southichack, August 2005.
Diversifying agriculture means searching for new products that are profitable, and it usually requires a new idea, which may require new farmers. Certain products that are known to be fertile in Hawaii soil and climate already have established markets and others do not. If there were an abundant supply of products that are already established in the market, new farmers would have to come up with new products, which must pass through experimentation on both production and marketing in order to achieve a relatively stable supply and consistent quality. Under such a situation, new farmers would cautiously start farm operations with relatively small initial investment and land area. Given the relatively high input and transportation costs between the farm and the market destinations beyond the island of Kauai, the variety of agricultural products that can be profitably grown in Kekaha is limited. Large investment requires large and ready markets for the products to be produced. Thus, given the island’s unique situations (as well as Hawaii as a whole), if the minimum land lease size is designed for large investment projects to keep down cost associated with management and monitoring, much agricultural land may be sat unutilized over a long period of time. This poses a challenge for the land management agency, ADC.

**ADC’s Challenge:** The number of farmers occupying the land could have a significant implication on the cost and effectiveness of management. Property management and monitoring cost tends to be lower, the smaller the number of tenants. However, both advantages and disadvantages exist whether the number of tenants is large or small. While it is less costly for the ADC to deal with a few large mono-cropping tenants, a business downturn resulting in bankruptcy and departure of a large tenant could be costly in terms of lost rent revenue and cost associated with finding a new tenant. On the other hand, with a relative large number of small tenants, management and monitoring costs would be higher than with a few large tenants. However, the departure of a small tenant would have a relatively small impact on the land manager’s rent revenue. Considering food safety and environmental impact of farm operations (i.e., from the application of pesticides), the larger the number of farmers tends to raise costs associated with monitoring and control. Although these costs will be mostly absorbed by the farmers themselves and the HDOA, part of the cost could be transferred to ADC if some historically good (paying) tenants decided to leave due to problems associated with pest control and contamination.

The Sunshine Markets (Farmers Markets), as they are called in Kauai, although will probably never become the ultimate outlets where diversified agricultural products are sold at a level that sustain Hawaii’s agriculture economy, they are useful for both new farms with new products and established products. Sunshine markets are useful outlets in the initial stage of marketing experimentation for certain new products. They are also good marketing tools for all of Hawaii agricultural products, as they are known to be tourist attraction, especially for Kauai. Based on the surveys of four markets, conducted in mid-April 2005, Sunshine markets are frequented by locals, island visitors and vacationers who have kitchen facilities.13 Prices were highly varied. Certain fruits (mangoes, pineapples, longans) were sold at much higher prices than in the supermarket. Each market was small, but the buying traffic (turnover) was rapid in each market visited. Based on 15-minute counts of the number of buyers leaving the market with goods

13 Surveys were conducted on Saturday, April 16, 2005. Three private-run and one county-run Sunshine Markets were visited (Kekaha—County-run, Wailua, Hanalei, and Kilauea).
bought, roughly, the total value of goods sold per minute in each market could be anywhere between $50 and $200. Some vendors were seen to have moved from one market to another in the same day, as each market lasted two to three hours. Total sales value in 2004 from the county-run Sunshine Markets alone was reported at $405,000. Although the reported figure is small, which the County’s official in charge of the market operation admittedly to be much underreported, it grew 157% between 1990 and 2004.\(^\text{14}\)

The University of Hawaii’s College of Tropical Agriculture and Human Resources (UH-CTAHR) has proposed an incubator facility in Kekaha in cooperation with ADC, which could occupy between 100 and 500 acres. The incubator facility is to allow the university to provide technical and infrastructure assistances to start-up farmers. The program has the potential to promote growth in diversified agriculture and complementary industries (e.g. processing, tourism) and may put a vast area of fallow lands in Hawaii State back into productive use and increase greenery in Hawaii’s landscape. However, the program is not costless. A number of factors must be taken into consideration in deciding where the incubator program is to be located. The state of Hawaii owns vast areas of fallowed land, left by the demise of sugar plantations at different locations. If there were enough paying-tenants to occupy all the farmable acreage in the Kekaha agricultural land in question, it may be in the best interest of the state to consider the possibility of locating the program elsewhere. By its definition and purpose, if it requires public funding, the establishment of an incubator program would be justified only if there is a vast excess agricultural land left unutilized. The program should not crowd out the private sector. In determining its location, the opportunity cost of land in which it would occupy must be considered in addition to other parts of the cost.

**Potential Water Shortages and Floods:** Water shortages occurred for sugar plantation in some years during the dry season. However, existing farmers that are growing seed crops and other diversified products there have never experienced water shortage and, according to the interviews, in fact there has been more water available than needed. Flooding, nonetheless, could become a problem especially during the storm season if the drainage system is not properly maintained. Currently, excess water must be pumped out 24 hours with two pumping stations using hydroelectric power generated within the subject land to keep down the groundwater table to prevent possible root rots. During storm season, with five inches of rain in one day would result in flooding. These pumping stations help shorten the time required for the water table to return to its normal level. Although there is a good drainage system in place, a heavy storm similar to the Iniki that hit the island in the early 1990s could result in serious damages.

**The Unexpected:** A shrimp farm has experienced the so-called white spot syndrome virus, which forced the farm operator to destroy its two million shrimps and close down its operation in 2004. However, the farm has been officially declared clean and a new investor is set to renew operations in 2006.

\(^\text{14}\) An interview was made on April 15, 2005 with an Economic Development Specialist of the Kauai County’s Office of Economic Development, C. W. “Bill” Spitz, who also supplied official data.
6 Conclusion

Given the existing infrastructure left by the former Kekaha Sugar Company (KSC) and a favorable climate, the Kekaha agricultural land has considerable potential in generating income and employment for the people of Hawaii. The actual contribution of Kekaha agricultural land to the county’s and state’s economy would ultimately depend upon land use and types of crop grown.

Since the KSC officially closed down its plantation operations in 2001, seed crops, with corn comprising of more than 90% of the total, melons, mangoes, and vegetables have been grown successfully there. Shrimp farming has been attempted, but the operation continues to face challenges such as the need for capital infusion and white spot syndrome virus. The Wines of Kauai project is at its infancy. The remaining sugarcane operations under Gay and Robinson are phasing out and will finally complete by the end of 2005. The company will retain 400 acres for sugar seed crop. The future of Kekaha’s former sugar land tends toward seed crops and other diversified products.

The combined output potential of all farms, excluding shrimp farm and Wines of Kauai, increased as a result of land acquisition by some existing tenants, from $19.5 million in 2002 to $34.9 million in 2004 (Table 3), valued at average farm gate prices. The actual output value in aggregate has also increased moderately, from a range of $14.7-$15.6 million in 2002 to a range of $16.4-$19.9 million in 2004. Due to rapid capacity expansion, based on leases, the combined actual output value as percent of its potential declined from a range of 75-80% in 2002 to 47-57% in 2004. Farm employment, however, declined slightly over this brief period due to the phasing out of the remaining sugar plantation, from 387 to 375 full- and part-time positions. In 2004, there were 100 full-time and 275 part-time and seasonal workers. Among the full-time jobs, 19 were managerial and professional positions, 38 skilled technical positions, and 43 hourly-paid laborers. Part-time workers worked between 30 and 35 hours per week throughout the year. Seasonal workers worked between two and a half and six months, depending on which farm they employed at.

Based on the land area existing tenants intend to hold, by 2010, the potential farm output could in aggregate grow to approximately $38.4 million, providing 405 farm jobs in total, with 60 full-time and 345 part-time and seasonal jobs. However, based on the estimated actual output in 2004 combining with existing farms’ expansion plans, actual output could be in the range of 60-70% of its potential in the 2010a scenario. With the multiplier effects, farm activities originated in Kekaha’s former sugar land could contribute approximately $71 million in total to Hawaii’s GSP and provide about 834 full-time and part-time jobs. If 7,325 acres that are considered most productive and readily arable cropland of the 12,592 acres were fully utilized, the farm gate value of output in aggregate could rise to approximately $50.8 million, providing about 73 full-time and 440 part-time and seasonal jobs. With the multiplier effects, the Kekaha former sugar land could contribute about $95 million in total to the GSP and provide about 1,056 full-time and part-time jobs.
Products used in the estimation are neither by any mean what this study recommends, nor does this study provides any indication that vegetables and melons will take half of the Kekaha agricultural landscape in the next 5-10 years. They are used for the estimation because they are already being grown there and have proven commercially successful in Hawaii. For many reasons, such as changes in the market conditions, technology and input costs, crops that are profitable today may become unprofitable in the future. For the same reason, crops that are not in the market today may be popular in the future.

Major advantages for farm operations in Kekaha include relatively long annual production period, relatively low rent, abundant and inexpensive water supply and hydroelectricity power generated from the irrigation system. Disadvantages include a limited local market, relatively high input costs, and scarce skilled farm workers. The extra costs for shipping in the many necessary inputs and shipping out the products are major constraints for farming in Kauai.

The major challenge for ADC, as a managing agent, is to find ways to maximize the potential of the land as agricultural production asset to generate income and employment for Hawaii’s residents. Currently, all tenants have revocable permits, which is renewable annually. The long-term lease ADC is considering to issue is an important step to encourage investment. Given Hawaii’s unique situations, which includes both constraints and advantages, together with farm practices and complexities involved in product quality control and pest management that farmers must deal with, managing the number and type of tenants in the Kekaha agricultural land may prove to be the most challenging point for ADC. A minimum land size requirement that is too large for leasing, designed to keep the number of tenants small, could result in much of the land being left idle while small farmers who need farm land the size less than the existing minimum requirement of 300 acres would be left out. On the other hand, too many small, independent farms producing diversified products in a given region could create logistical problems associated with pest control, which could affect crop yields in the whole area, as well as food safety.

Interviews:
Mr. Alfredo Lee, Executive Director, Agribusiness Development Corporation, State of Hawaii.
Mr. C. W. “Bill” Spitz, Economic Development Specialist, Office of Economic Development, Kauai County.
Mr. Charles Okamoto, Director of Finance & Property Management, Gay & Robinson.
Mr. Kenny Chicoine of Syngenta Seeds, Inc.
Mr. Maurice Munechika, Wines of Kauai.
Mr. Steven Kai, Plant Manager, Parent Seed-Kekaha, Pioneer Supply Management, Poineer.
Mr. Wally Johnson of Far West Ag.
References
### Appendix 1  Kauai's Agricultural Production and Yield in Comparison with State’s Average Yield for Selected Commodities

<table>
<thead>
<tr>
<th>Commodities</th>
<th>Kauai</th>
<th>State of Hawaii</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Farm Production Value in Latest Year ($1,000)</td>
<td>% Share in State's Total Farm Production Value in Latest Year</td>
</tr>
<tr>
<td>1. Floriculture &amp; Nursery (2003)</td>
<td>3,203</td>
<td>3.3</td>
</tr>
<tr>
<td>2. Cut flowers [1]</td>
<td>268</td>
<td>1.9</td>
</tr>
<tr>
<td>3. Orchids [2]</td>
<td>459</td>
<td>1.9</td>
</tr>
<tr>
<td>4. Potted flowering plants</td>
<td>148</td>
<td>2.6</td>
</tr>
<tr>
<td>5. Other nursery products [3]</td>
<td>2,198</td>
<td>7.0</td>
</tr>
<tr>
<td>6. Fruits (2003, including pineapple)</td>
<td>1,739</td>
<td>1.3</td>
</tr>
<tr>
<td>7. Avocados (99-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>8. Guava (proc., 99-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>9. Longan (00-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>10. Lychee (99, 02-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>11. Papayas (98-02)</td>
<td>482</td>
<td>4.0</td>
</tr>
<tr>
<td>12. Pineapples (00-04)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>13. Rambutan (99-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>14. Starfruit (99-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>15. Seed Crops (99-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>16. Vegetables and Melons (99-03)</td>
<td>1,558</td>
<td>3.0</td>
</tr>
<tr>
<td>17. Beans (Green, 98-02, HAKA)</td>
<td>147</td>
<td>16.7</td>
</tr>
<tr>
<td>18. Cabbages (Chinese, 98-02, HOKAMA)</td>
<td>528</td>
<td>32.4</td>
</tr>
<tr>
<td>19. Cabbages (Head, 98-02, HAHOKA)</td>
<td>1,844</td>
<td>67.5</td>
</tr>
<tr>
<td>20. Corn (sweet, 98-02, HAKA)</td>
<td>513</td>
<td>39.6</td>
</tr>
<tr>
<td>21. Cucumbers (98-02, HAKA)</td>
<td>289</td>
<td>11.6</td>
</tr>
<tr>
<td>22. Ginger Root (00-04)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>23. Lettuce (head and semi-head, 98-03)</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>24. Melons (watermelons, 98-02, HAMAKA) [5]</td>
<td>100</td>
<td>3.4</td>
</tr>
<tr>
<td>25. Potato (sweet, 98-02, HAHOKA)</td>
<td>657</td>
<td>66.4</td>
</tr>
<tr>
<td>26. Taro (processed, poi, 00-04) [6]</td>
<td>2,079</td>
<td>74.0</td>
</tr>
<tr>
<td>27. Tomatoes (98-02)</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>


Data Sources: Production and farm prices are from Statistics of Hawaii Agriculture 2002 and various issues of annual summary reports for specific products, HAS. Honolulu market supply and Kauai's shares in Honolulu market are calculated from inshipment data of fresh produces, Market News Section, Agricultural Development Division, HDOA.
Appendix 2  Commodity Briefs

Floriculture and nursery products: Kauai’s floriculture and nursery production sale value (grower sale value) has been growing consistently in recent years, from $1.3 million in 2000 to $3.2 million in 2003 (Hawaii Flowers & Nursery Products Annual Summary, June 4, 2004, HAS). Kauai’s floriculture and nursery production value in 2003 accounted for approximately 3% of state’s $97.7 million industry. Hawaii County is the largest producer (52%), followed by Honolulu (33%) and Maui (12%) counties.

Fruits and nuts: Kauai’s fruit sale value declined consistently since 2001, from $3.8 million in 2000 to $1.7 million in 2003, and the county’s share in state’s total production also declined from 2.6% in 1999 to 1.3% in 2003. Included in the sale value are guava, tropical specialty fruits, bananas, papayas, avocados and citrus fruits. Tropical fruits are referring to longan, lychee, mango, rambutan, starfruit, among others. Kauai’s papaya production increased more than double between 1999 and 1999, growing from 2.06 to 4.76 million pounds. However, the county’s production declined by 57 percent between 2000 and 2001, from 3.94 to 1.69 million pounds, and dropped again in 2002 by more than 34 percent.

Seed crops: Production of seed crops grew steadily since 1999. Total land use in production statewide expanded from 2,450 acres in 1999 to 4,080 acres in 2003. Total outshipment of seed increased from 3.5 million pounds in 1999 to 6.4 million pounds in 2003. Total sales value (based on gross operational budget) increased from $30.5 million in 1999 to $50.5 million. The majority of seed crops produced commercially is seed corn, which made up 98 percent of total production sale value in 2003.

Vegetables and melons: Kauai’s total production value of vegetables and melons grew from $0.80 million in 1999 to $1.56 million by 2003. Kauai share in state's total production value of vegetables and melons also grew, from 1.86% in 1999 to approximately 3% by 2003. Although on a five-year average (1999-2003) Kauai’s per pound farm value of vegetables and melons is more than twice that of state’s average, $1 versus $0.49, the county’s per acre yield in dollar terms is only approximately 90 percent of state’s average. The explanation lies with low per acre physical output of vegetables and melons grown in Kauai. On a five year average (1999-2003) Kauai’s per acre yield is 6,508 lbs while statewide average per acre yield is 14,864 lbs.

Sweet potatoes: State’s total production of sweet potatoes declined steadily since after 1999, when aggregate farm output value was $1.83 million. In 2002 state’s total output was estimated at less than a million.

Taro: State’s total taro production fluctuated downward since 1953. Oahu and Maui together was once the major taro producers. However, urbanization and the changing relative demand in the market had bidden away land and water resources from taro production in Hawaii, Oahu and Maui, making Kauai a leading taro producer in the state. In 2004, Kauai accounted for 74% of state’s total production. Kauai is also a major supplying base for Honolulu market. In 2004, Honolulu received 93% of all taro prepared for poi and chips from Kauai alone. Kauai’s taro production declined 19.6% in 2003, from $2.18 million in 2002, but regained 15.3% in 2004, while price remained roughly constant on an average over this period. Kauai’s competitive edge is in its higher yield (pounds of output per acre). If production cost for Kauai’s taro producers is roughly the same as for producers in other counties, Kauai will remain competitive relative to other counties. Threats: Since mid-1990’s to the present pests are the major problems for taro farmers. Apple snails and Taro Pocket Rot—a fungal disease caused by a species of Phytophthora—for wet taro; root aphids for dry land taro growers; and theft (reported) for all farmers.

Cultured shrimp: Aquaculture in Hawaii has continued to grow in the past five years. Most growth took place in Hawaii County, which accounts for 71% of state’s total production of approximately $27.7 million in 2003. Honolulu, with approximately 17% share in state’s total output value in 2003, is state’s second largest aquaculture producer. Given a growing world’s cultured shrimp market, with the U.S. taking the lead as importer which purchased 48% of the $3.2 billion culture shrimp traded internationally, and with the existing infrastructure for cultured shrimp in place, Kekaha has the potential for commercial shrimp farming. However, given domination by the relatively low-cost S.E. Asian, Central and South American countries in the world major markets (U.S., Japan, and EU), the profitability of commercial shrimp culture in Kekaha is unclear.
# Appendix 3  
## County Comparison:  
### Farm Characteristics, Expenses and Income in 2002

<table>
<thead>
<tr>
<th></th>
<th>State Total</th>
<th>Hawaii</th>
<th>Honolulu</th>
<th>Kauai</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of farms</td>
<td>5,398</td>
<td>3,216</td>
<td>794</td>
<td>565</td>
<td>823</td>
</tr>
<tr>
<td>Land in farm (acres)</td>
<td>1,300,499</td>
<td>821,276</td>
<td>70,705</td>
<td>151,828</td>
<td>256,690</td>
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<tr>
<td>Total cropland</td>
<td>211,120</td>
<td>90,778</td>
<td>29,103</td>
<td>30,510</td>
<td>60,729</td>
</tr>
<tr>
<td>Harvested cropland</td>
<td>109,461</td>
<td>55,529</td>
<td>13,757</td>
<td>11,771</td>
<td>28,404</td>
</tr>
<tr>
<td>Irrigated land</td>
<td>69,194</td>
<td>9,041</td>
<td>13,703</td>
<td>19,595</td>
<td>26,855</td>
</tr>
<tr>
<td>Average farm size</td>
<td>241</td>
<td>255</td>
<td>89</td>
<td>269</td>
<td>312</td>
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<tr>
<td>Irrigated land as % of cropland</td>
<td>32.8</td>
<td>10.0</td>
<td>47.1</td>
<td>64.2</td>
<td>44.2</td>
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<tr>
<td>Market value of agricultural products sold ($1,000)</td>
<td>533,423</td>
<td>187,736</td>
<td>179,321</td>
<td>41,855</td>
<td>124,511</td>
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<tr>
<td>Government payment ($1,000)</td>
<td>886</td>
<td>397</td>
<td>60</td>
<td>165</td>
<td>264</td>
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<tr>
<td>Income from farm-related sources ($1,000)</td>
<td>19,237</td>
<td>7,625</td>
<td>5,433</td>
<td>2,834</td>
<td>3,345</td>
</tr>
<tr>
<td>Total farm production expenses ($1,000)</td>
<td>450,946</td>
<td>161,441</td>
<td>129,730</td>
<td>46,151</td>
<td>113,624</td>
</tr>
<tr>
<td>Net cash income of operation ($1,000)</td>
<td>98,145</td>
<td>34,408</td>
<td>52,347</td>
<td>(914)</td>
<td>12,303</td>
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### Farm sizes (acres)

<table>
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<tr>
<th>Farm size (acres)</th>
<th>1-9</th>
<th>10-49</th>
<th>50-179</th>
<th>180-499</th>
<th>500-999</th>
<th>1000 or more</th>
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<tr>
<td></td>
<td>3,440</td>
<td>1,309</td>
<td>335</td>
<td>146</td>
<td>61</td>
<td>107</td>
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<tr>
<td></td>
<td>2,009</td>
<td>818</td>
<td>207</td>
<td>90</td>
<td>38</td>
<td>54</td>
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<tr>
<td></td>
<td>574</td>
<td>152</td>
<td>34</td>
<td>15</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>352</td>
<td>127</td>
<td>38</td>
<td>21</td>
<td>11</td>
<td>16</td>
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<td></td>
<td>505</td>
<td>212</td>
<td>56</td>
<td>20</td>
<td>7</td>
<td>23</td>
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</table>

### Expenses ($1,000)

<table>
<thead>
<tr>
<th>Expense</th>
<th>State Total</th>
<th>Hawaii</th>
<th>Honolulu</th>
<th>Kauai</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total farm production expenses</td>
<td>450,946</td>
<td>161,441</td>
<td>129,730</td>
<td>46,151</td>
<td>113,624</td>
</tr>
<tr>
<td>Fertilizer, lime, and soil conditioners</td>
<td>17,791</td>
<td>5,738</td>
<td>5,009</td>
<td>2,329</td>
<td>4,714</td>
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<tr>
<td>Chemicals</td>
<td>16,134</td>
<td>4,310</td>
<td>4,572</td>
<td>1,715</td>
<td>5,538</td>
</tr>
<tr>
<td>Seeds, plants, vines, and trees</td>
<td>11,188</td>
<td>4,613</td>
<td>3,686</td>
<td>520</td>
<td>2,368</td>
</tr>
<tr>
<td>Livestock and poultry</td>
<td>6,025</td>
<td>3,293</td>
<td>2,032</td>
<td>155</td>
<td>545</td>
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<tr>
<td>Feed</td>
<td>27,997</td>
<td>11,993</td>
<td>11,148</td>
<td>2,282</td>
<td>2,575</td>
</tr>
<tr>
<td>Gasoline fuel and oil</td>
<td>14,458</td>
<td>4,964</td>
<td>3,668</td>
<td>1,964</td>
<td>3,862</td>
</tr>
<tr>
<td>Utilities</td>
<td>19,474</td>
<td>5,725</td>
<td>5,398</td>
<td>1,057</td>
<td>7,294</td>
</tr>
<tr>
<td>Supplies, repairs, and maintenance</td>
<td>50,411</td>
<td>17,354</td>
<td>9,377</td>
<td>7,207</td>
<td>16,472</td>
</tr>
<tr>
<td>Hired farm labor</td>
<td>177,692</td>
<td>47,453</td>
<td>18,082</td>
<td>52,452</td>
<td></td>
</tr>
<tr>
<td>Contract labor</td>
<td>7,159</td>
<td>5,156</td>
<td>940</td>
<td>96</td>
<td>967</td>
</tr>
<tr>
<td>Custom work and custom hauling</td>
<td>9,232</td>
<td>6,795</td>
<td>989</td>
<td>1,177</td>
<td>272</td>
</tr>
<tr>
<td>Cash rent for land, building and grazing land</td>
<td>19,723</td>
<td>6,866</td>
<td>7,471</td>
<td>1,938</td>
<td>3,448</td>
</tr>
<tr>
<td>Rent and lease expenses for machinery, equipment and farm share of vehicles</td>
<td>3,066</td>
<td>1,128</td>
<td>678</td>
<td>608</td>
<td>653</td>
</tr>
<tr>
<td>Interest expenses</td>
<td>8,633</td>
<td>5,372</td>
<td>1,202</td>
<td>1,372</td>
<td>688</td>
</tr>
<tr>
<td>Property taxes</td>
<td>6,463</td>
<td>3,071</td>
<td>1,300</td>
<td>1,086</td>
<td>1,006</td>
</tr>
<tr>
<td>All other production expenses</td>
<td>55,499</td>
<td>27,609</td>
<td>12,646</td>
<td>4,563</td>
<td>10,682</td>
</tr>
<tr>
<td>Depreciation expenses claimed</td>
<td>34,498</td>
<td>16,031</td>
<td>5,823</td>
<td>2,352</td>
<td>10,292</td>
</tr>
</tbody>
</table>

Data Source: 2002 Census of Agriculture, USDA, National Agricultural Statistics Service.
Appendix 4

Technical Notes on Estimation Method:

The aggregate potential farm output value is estimated using the following equation:

\[ Y = \sum_{i}^{n} \sum_{j}^{4} a_{ij} H_j y_i p_i, \]

The variable \( a_{ij} \) represents farm \( j \)'s fraction of the land area (in acreage) allocated for producing commodity \( i \), for \( 0 < a_{ij} \leq 1 \), and \( a_{11} + a_{21} + \ldots + a_{n1} = 1 \). \( H_j \) is farm \( j \)'s total land area. Thus, \( a_{ij} H_j \) is the total land area farm \( j \) allocated for producing commodity \( i \). The variables \( y_i \) and \( p_i \) respectively represent commodity \( i \)'s five-year average output per acre of land use and five-year average farm gate price. Output per acre and prices are averaged over five years period to minimize the effects of annual yield and price fluctuations, which could cause either over or under estimation. For commodities that have Kauai-specific data (sugarcane and vegetables and melons), the averages of output per acre and prices are Kauai-specific. Otherwise, they are statewide averages.

Each farmer is assumed to be able to achieve an average yield for each crop by using common farm practices, management and technology that are common to farmers in Kauai and elsewhere in State of Hawaii and sell output at an average price specific to Kauai or State of Hawaii. The area of land used in the estimation is for the 7,758 acres, which are considered to be among the most productive land within the 12,592 acres complex under ADC’s control. Land productivity is assumed to be identical for each acre.
STATE OF HAWAII
AGRICULTURE DEVELOPMENT CORPORATION (ADC)

REQUEST FOR LANDS APPLICATION FORM—FOR NEW APPLICANTS

Please submit two copies of the completed application form, including all parts and requirements, to the
Agribusiness Development Corporation, 235 S. Beretania St. Room #205, Honolulu, HI 96813

PART I

I. APPLICANT

Should a land disposition result from your application, the following information will
be used in the preparation of the legal documents. Therefore, please include all
applicable, full legal names and addresses, one for each person/entity (attach
additional sheets as necessary). If title is held by a trust, please include the
trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of
the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s):

________________________________________

________________________________________

Mailing address:

No. and Street

City/State Zip Code

Phone numbers:

Work Home Cellular

Pager Fax E-mail address

Signature: __________________________ Date: ________

Applicant intends to hold title as:

( ) Individual ( ) Corporation ( ) Partnership
( ) Husband and Wife ( ) Limited Liability Corporation ( ) Limited Partnership
( ) Trust ( ) Non-Profit Corporation ( ) Limited Liability Partnership
( ) Association ( ) Joint Venture ( ) Other (specify):

For individual or husband and wife, type of tenancy:

( ) Tenant in Severalty ( ) Tenants in Common ( ) Joint Tenants ( ) Tenants by
the Entirety

For individual, marital status:

( ) Single ( ) Married – spouse of: _______________________

For partnership, corporation, or other entity, state under whose laws the entity was formed

________________________

Persons representing a trust, association, partnership, corporation, or any other entity must
provide evidence that they are so authorized to act on behalf of said entity.

C-471
II. **AGENT**
If you have an attorney, consultant or other person processing this request for you, please include the following information:

Agent name: ________________________________

Agent address: ______________________________________
No. and Street

______________________________________________
City/State Zip Code

Phone numbers: ________________________ Home ________________ Cellular ________________

Work ___________________________ Pager ________________ Fax ________________ E-mail address ________________

III. **TYPE OF REQUEST**
( ) Revocable Permit (30 days, renewable, must be reissued annually)
( ) License (up to 20 years)
( ) Lease (requires survey and county subdivision approval)

IV. **LOCATION AND AREA**
Island: ____________________________

Project Name or Location: ________________________________

Approximate acreage requested: ____________________________

If your request pertains to a specific parcel, please specify below:

V. **USE**
Identify the specific uses intended.
VI. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all parts and attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our permit, lease, or license agreement may be cancelled.

I/We will comply with all applicable federal, state, and county zoning, environmental and permitting laws and regulations (e.g., State Land Use classification, Special Management Area, County General Plan, Office of Environmental Quality Control, etc.)

I/We are responsible for paying processing fees. If granted a disposition, I/we will be required to obtain insurance, among other requirements.

Print Name _______________________________ Signature _______________________________

Print Name _______________________________ Signature _______________________________

STATE OF HAWAII )
COUNTY OF ) SS.

On this __________ day of ________________, 20______, before me personally appeared ________________________________, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

My commission expires: ____________________

For ADC use only
Date Received: ____________________
REQUEST FOR LANDS APPLICATION FORM—FOR NEW APPLICANTS
PART II

I. GENERAL INFORMATION

1. Are you 18 years of age or older? _____Yes _____No

2. Are you a citizen or permanent resident of the United States of America? Yes_____ No_____ If no, please explain legal status____________________________________________

3. Have you, within the past five (5) years, had a previous sale, lease, license, permit or
   easement covering public lands cancelled for failure to satisfy the terms and
   conditions thereof? _____Yes _____No

4. Do you owe any delinquent taxes or other obligations to the State or any of its
   counties? _____Yes _____No

II. FARM STATUS AND PREFERENCES

You may claim preference as a “bona fide farmer” or “new farmer.” Please check one.

   ______ “Bona fide farmer” means a person who:
   (1) was a owner-operator of an established farm conducting a substantial farming
       operation, and for a substantial period of a person’s life resided on a farm or
       depended on farm income for livelihood; or
   (2) has not less than two (2) years of experience as a full-time farmer or four (4)
       years of experience as a part-time farmer and who is likely to successfully
       operate a farm by reason of ability, experience, and vocational training.

   ______ “New Farmer” means a person who:
   (1) is a college graduate in agriculture or aquaculture, who has less than two (2)
       years of experience as a full-time farmer or less than four (4) years of
       experience as a part-time farmer; or
   (2) is a person who, by reason of ability, experience, and vocational training, is
       likely to successfully operate a farm.
REQUEST FOR LANDS APPLICATION FORM—FOR NEW APPLICANTS
PART II

Describe any educational, vocational or other training you have received which relates to your qualifications and experience to successfully operate your farm:
IV. AGRICULTURAL EXPERIENCE

In chronological order starting with your most current experience, briefly describe your farming/ranching experience and business experience (management, financial and marketing) as it relates to the land intended to be bid on. For partnerships, joint ventures, corporations, or other entities, include both experience of business entity itself as well as experience of principals or managers. If preferred, you may submit a resume. Copy and attach additional sheets as needed.

<table>
<thead>
<tr>
<th>Business Name:</th>
<th>From:</th>
<th>Month</th>
<th>Year</th>
</tr>
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<tbody>
<tr>
<td>Address/Phone:</td>
<td>To:</td>
<td>Month</td>
<td>Year</td>
</tr>
<tr>
<td></td>
<td>Full-time ( )</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Part-time ( )</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name &amp; Title of Supervisor:</td>
<td>Average hours worked per week:</td>
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<td></td>
</tr>
<tr>
<td>Your Position:</td>
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<tr>
<td>Commodity Produced:</td>
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</tr>
<tr>
<td>Size of Operations (no. of employees, acres):</td>
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<tr>
<td>Duties &amp; Responsibilities:</td>
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<thead>
<tr>
<th>Business Name:</th>
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<td>Address/Phone:</td>
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<td>Name &amp; Title of Supervisor:</td>
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<td>Your Position:</td>
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<td>Commodity Produced:</td>
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<tr>
<td>Size of Operations (no. of employees, acres):</td>
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<tr>
<td>Duties &amp; Responsibilities:</td>
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<tr>
<td>Address/Phone:</td>
<td>To:</td>
<td>Month</td>
<td>Year</td>
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<tr>
<td></td>
<td>Full-time ( )</td>
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<td></td>
<td>Part-time ( )</td>
<td></td>
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<tr>
<td>Name &amp; Title of Supervisor:</td>
<td>Average hours worked per week:</td>
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<td>Your Position:</td>
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<td>Commodity Produced:</td>
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<tr>
<td>Duties &amp; Responsibilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background.
REQUEST FOR LANDS APPLICATION FORM—FOR NEW APPLICANTS

PART III

I. PRELIMINARY PLAN OF UTILIZATION AND DEVELOPMENT

Submit a land development/utilization plan showing the exterior boundaries of the land being applied for, including but not limited to type of crop, cultivatable acres, waste areas and contributory lands, field roads, field ditches, drip irrigation systems, etc. The plan must include diagrams and/or discussion regarding timeframes within which the applicant will develop and/or use all of the arable acreage being requested. The projection must show at least 50% development in two to three years and 100% development in five years.

II. BUSINESS PLAN

Submit a business plan to show how you will run your agribusiness. The plan should include the following elements: executive summary, company description, industry or market analysis (to include target market and competition), sales/marketing plan, operations plan, organization and management, development plan, financial plan (to include cash flow projections for 5 years or one crop rotation, whichever is greater), and relevant attachments.

III. FINANCIAL CAPACITY

All applicants must attach the following:

a. Federal income tax returns for the most recent 3 years.

b. At least one (1) credit reference letter from a bank or other financial institution with which you do business regularly.

c. If applying as an individual, husband and wife, sole proprietorship or partnership, attach a personal financial statement for each person (see sample form attached)

If applying as a corporation, attach financial statements (current balance sheet and income/expense statement) for the most recent 3 years. If your corporation is less than 3 years old, please attach personal financial statement from each principal stockholder so that a minimum of 3 consecutive years of statements are submitted.

d. Submit tax clearances from the State of Hawaii, Department of Taxation.

e. Submit a copy of your General Excise Tax License, if any.
f. If applying as an association, partnership, agricultural cooperative, corporation, or other entity, submit evidence that the organization is registered with the State Department of Commerce and Consumer Affairs and is authorized to do business in the State of Hawaii. If a corporation or limited liability company, submit your Articles of Incorporation reflecting the date of filing, purpose of the organization, and the names of the stockholders, officers, and directors. If an association, partnership, agricultural cooperative, or other entity, submit a copy of your By-Laws, Partnership Agreement, or other similar documents, as the case may be, and the names of the officers, directors and/or members.
ADC request for lands application form for new applicants
Page 9 of 9

Applicant Name______________________________

Personal Financial Statement As Of (Date)______________________________

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<tr>
<th>Assets</th>
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<th>Liabilities</th>
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<td><strong>Total Assets</strong></td>
<td></td>
<td><strong>Total Liabilities</strong></td>
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</tbody>
</table>

**NET WORTH (Assets - Liabilities)**

I certify that the above represents the applicant's financial condition as of the above date.

__________________________________________

Applicant Signature, Date

If above statement is prepared by someone else.

__________________________________________

Preparer Signature, Date

__________________________________________

Company Name

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The table below supplements the table in the main text relating to DOA and ADC instruments for land disposition. Whereas the table in the text reflects only selected terms, all terms of all five instruments are included here.

**The instruments compared in the table below are:**

1. **DOA AP Lot Lease:** General Lease No. S-4936 between DOA and Glad’s Landscaping and Tree Trimming, Inc., dated May 1, 2001, for approx. 9.4 acres on Oahu.
2. **DOA NAP Lot Lease:** General Lease No. S-3771 between DOA and Contemporary Landscaping, LLC, dated August 23, 2011, for approx. 10 acres on Oahu.
3. **ADC Lease:** General Lease No. LE-K1202 between ADC and BASF Plant Science, L.P., dated July 16, 2012, for approx. 10 acres on Kauai.
4. **ADC License:** License No. LI-K1102 between ADC and Green Energy Team, LLC, dated May 3, 2011, for approx. 5,870 acres on Kauai.
5. **ADC License:** License No. LI-K1101 between ADC and Pacific Light and Power, Inc., dated April 15, 2011, for approx. 1,985 acres on Kauai.

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**Complete Lease Provisions from DOA Agricultural Park (AP) Lot Lease Template**

*Payment Terms and Conditions (p. 2)*

“... the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a net annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments ...”

*Base Annual Rental (p.2)*

“For the first ten (10) years, the base annual rental shall be the sum of _____ DOLLARS ($_____), computed at _____ AND XX/100 DOLLARS ($_____) per acre per annum for arable land, and _____ AND NO/100 DOLLAR ($_____) per acre per annum for non-arable land, provided that if any non-arable land is converted to arable land, the base annual rental for such land will be computed at _____ AND XX/100 DOLLARS ($_____) per acre per annum, commencing on the date of final execution of this lease, or the date of such conversion, whichever is later, and such base annual rental shall be prorated ratably for the period; except, the Board may permit the Lessee to offset the cost of land
clearance and leasehold improvements against not more than two years of base annual rental, the evidence of which shall be submitted to and approved by the Lessor within the first year of the lease term.”

Additional Rental (p. 3)

“Each year on or before the 31st day of March, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the year immediately preceding. Together with the report, the Lessee shall pay to the Lessor any additional rental due, which amount shall be determined in the manner described below: From the report, determine a value representing _____ per cent (_____%) of the gross proceeds, which includes revenues from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.”

Reopening of Annual Rental (p. 3)

“The base annual rental and additional rental shall be reopened and redetermined at the expiration of the 10th, 20th, and 30th years of the term, provided however, in no event shall the base annual rental be revised downward.”

Determination of Annual Rental upon Reopening (p. 4)

“The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after written notice of the fair market rental, to prepare an independent appraisal report. The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for its own appraiser and the cost of services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor. In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may treat the failure as a breach of the lease and terminate this lease.”
Facilities Capital Recovery Fee (p. 5)

“The Lessee shall pay a facilities capital recovery (‘FCR’) fee commencing on the date the Lessor installs improvements in support of the Lessee's operations or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is based on one-tenth of one per cent of the Lessor's expenditures and will be added to the base annual rental each year.”

Interest on Delinquent Rental (p. 5)

“Interest at the rate of one per cent (1%) per month shall be charged on delinquent rentals.”

Minerals and Water Rights (p. 5)

“(a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means, including strip mining, shall be reserved to the Lessor. ‘Minerals’, as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the premises, fast or submerged; provided that ‘minerals’ shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right, shall be reserved to the Lessor; provided that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of the Lessee's improvements taken.”

Prehistoric and Historic Remains (p. 6)

“All prehistoric and historic remains found in, on, or under the premises shall be reserved to the Lessor.”

Ownership of Fixed Improvements (p. 6)

“The ownership of all improvements, including but not limited to fences and stockwater systems located on the demised land prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.”
Withdrawal (p. 6)

“The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the premises shall be subject to the right of the Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the premises withdrawn or made unusable. If any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the premises by the Lessee of the leased land being withdrawn. In the case of tree crops, the Lessor shall pay to the Lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also.”

Payment of Rent (p. 7)

“The Lessee shall pay the required rent in legal tender of the United States of America to the Lessor at the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor.”

Taxes, Assessments, etc. (p. 8)

“The Lessee shall pay or cause to be paid when due the amount of all taxes, rates, assessments, and other outgoings of every description as to which the demised premises or any part thereof, or any improvements thereon, or the Lessor or the Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.”

Utility Services (p. 8)

“The Lessee shall pay when due all charges, duties, and rates of every description, including, but not limited to, water, sewer, gas, refuse collection, or any other charges, as to which the demised premises, any part thereof, any improvements thereon, or the Lessor or the Lessee in respect thereof may become liable during the term, whether assessed to or payable by the Lessor or the Lessee.”
Irrigation Costs (p. 8)

“Without limiting the provisions of the preceding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system, if any, which provides irrigation water to _____ Agricultural Park including the demised premises. The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, Hawaii Revised Statutes, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set, and the Lessee agrees to abide by and to pay when due all assessments, tolls, fees, and charges set by such project.”

Character of Use (p. 9)

“(a) The Lessee shall use the premises hereby demised solely for diversified agriculture purposes, subject to the covenants, conditions, and restrictions of any and all encumbrances on the premises existing as of the date of this lease. No other use shall be permitted except as provided in section 4-153-33, Hawaii Administrative Rules. (b) No livestock production operations shall be conducted on the premises without the prior approval of the Department of Health. (c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the Department of Health. (d) No cesspools shall be constructed on the premises. However, upon approval from the Department of Health, the Lessee may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater. (e) No solid or liquid animal waste shall be disposed of at the premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the Department of Health. (f) Unless otherwise provided, the covenants, conditions, and restrictions contained in this section shall run with the land until the time that the premises is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.”

Utilization and Development of the Land (p. 10)

“The development of the premises shall be completed within three (3) years from the commencement date of this lease, with not less than fifty percent (50%) developed within the first two (2) years of the term. Utilization and development of the premises shall be in accordance with a plan of utilization and development which shall be prepared by the Lessee and approved by the Lessor before execution of this lease. Any modification or deviation from the plan without the prior written approval of the Lessor may constitute a breach of this lease and cause for the termination thereof.”

Good Husbandry and Conservation Practices (p. 10)

“The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a conservation plan developed by the Lessee in cooperation with the appropriate Soil and Water Conservation District. In the event the activities of the Lessee are determined to be contrary to the conservation plan, the Lessor shall notify
the Lessee of the discrepancy, and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.”

**Major Portion of Income (p. 11)**

“Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty per cent (50%) of the Lessee's total annual income; except, that this restriction shall not apply if failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and verification by the Lessor who may impose additional requirements to carry out the requirements of this section.

**Sanitation (p. 11)**

“The Lessee shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.”

**Waste and Unlawful, Improper, or Offensive Use of the Premises (p. 11)**

“The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper, or offensive use of the demised premises or any part thereof, nor cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the premises without the prior written approval of the Lessor.”

**Inspection of Premises (p. 12)**

“The Lessee shall permit the Lessor and its agents, at all reasonable times during the term, to enter the premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of the Lessee in connection with the administration of this lease.”

**Improvements (p. 12)**

“At any time during the term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, signs, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.”

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Repairs to Improvements (p. 12)

“The Lessee shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition, and repair, reasonable wear and tear excepted. Said buildings, structures, and improvements shall include, without limitation, roadways, drainage facilities, ditches, drains, culverts, reservoirs, flumes, pipelines, water courses, fences, gates, bridges, sidewalks, curbs, sewers, parking areas, fillings, pumps, wells, boundary markers and monuments, and other works and structures.”

Dwelling Restrictions (p. 13)

“The Board may permit farm dwellings on the premises if the need is clearly demonstrated. The farm dwellings shall be used in direct connection with agricultural activities on the premises and shall not be used for rental or any other purposes. The dwellings shall be subject to such additional terms and conditions as the Board may require including, but not limited to, an adjustment of the lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations, and rules, including, but not limited to, laws regarding environmental quality control.”

Insurance (p. 13)

“At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage, and the Lessee shall receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to retain the balance of the proceeds.”

Right of First Refusal (p. 14)

“An agricultural park lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the Board, as follows: (1) The Board shall have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is
the lower but not less than zero. For the purposes of this section, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements, and "appreciated value" means the replacement cost for developing the demised premises. (2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value. (3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who, together with the Lessor's appraiser, shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In this event, the Lessee shall pay for the Lessee's appraiser, the Lessor shall pay for the Lessor's appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor. (4) The Board may re-purchase the lease and improvements with funds from the agricultural park special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-153-19 and 4-153-22, Hawaii Administrative Rules. (5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase. (6) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35, Hawaii Administrative Rules.”

Assignments of Lease, Lease Interest, etc. (p. 16)

“(a) Any transferee, assignee, or sublessee of an agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender this lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal. (b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if: (1) The lease contains the principal residence of the Lessee; (2) The Lessee becomes mentally or physically disabled; (3) Extreme economic hardship is demonstrated to the satisfaction of the Board; or (4) The assignment is to the corporate successor of the Lessee; provided that with the prior written approval of the Board, the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on March 6, 1992; as amended, a copy of which is attached hereto as Exhibit “C.” The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and

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any other advances made by the holder of a security interest are paid; and provided further that the Lessor may adjust the base annual and percentage (additional) rental pursuant to section 4-153-18, Hawaii Administrative Rules.”

Subletting (p. 18)

“The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the base annual rental and percentage (additional) rental of the demised premises based upon the rental rate charged to the sublessee; and provided further that the base annual rental and percentage (additional) rental may not be revised downward.”

Mortgage (p. 18)

“Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest therein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without approval shall be void. Upon application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the leasehold of the demised premises. If the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the premises or any interest therein.”

Breach (p. 19)

“Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the premises covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of a holder of a security interest. Without limiting the foregoing, the Board, after due notice of default, shall terminate this lease or tenancy and take possession of the leased premises together with all improvements placed thereon without demand or previous entry and without legal process and shall retain all rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.”
Rights of Holder of Record of Security Interest (p. 20)

“(a) Whenever any notice of breach or default is given to any party under section 4-153-34, Hawaii Administrative Rules, or under the terms of this lease, a copy of the notice shall be delivered by the Lessor to all holders of record having a security interest in any premises or interest covered by this lease or other instrument whose security interest has been recorded with the Department of Agriculture and the Bureau of Conveyances. In the event the Board seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may cure or remedy the default or breach of rent payment within thirty days, or any other default or breach within sixty days, from the date of receipt of the notice set forth herein, or within such additional period as the Board may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Board may: (1) Pay to the holder from any moneys at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder; or if ownership of the interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Board shall be entitled to the conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (2) If the property cannot be reasonably reassigned without loss to the Lessor, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redisseminate the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the Board in instituting or prosecuting any right or remedy it may have shall not operate as a waiver of the right or to deprive it of the remedy when the delay serves to assist the Board in resolving the problems created by the breach or default involved. (b) The proceeds of any redissemination effected shall be applied: first, to reimburse the Lessor for costs and expenses in connection with the redissemination; second, to discharge in full any unpaid lease rental or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated, and any balance to the owner of the privilege, interest, or estate.”

Acceptance of Rent Not a Waiver (p. 21)

“The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.”

Liability Insurance (p. 22)

“The Lessee shall procure and maintain during the entire period of this lease a policy or policies of commercial general liability insurance as will protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The minimum limit of said policy or policies
shall not be less than the single limit of $1,000,000.00, approved by the Board and subject to periodic review and adjustment every two (2) year(s), insuring the Lessor and the Lessee against all claims for personal injury, death, and property damage. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.”

**Performance bond (p. 23)**

“The Lessee shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease, a performance bond in an amount equal to two times the annual base rental as a surety for the satisfactory compliance of lease terms, conditions, and covenants. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty. The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the bond requirement at any time throughout the term of this lease.”

**Justification of Sureties (p. 23)**

“The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.”

**Indemnity (p. 24)**

“The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the demised premises or on sidewalks, parking areas, and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.
**Costs of Litigation (p. 24)**

“If the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), without any fault on the Lessor's part, the Lessee shall pay all costs and expenses incurred by or imposed on the Lessor including, but not limited to, attorney's fees; furthermore, the Lessee shall pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises, or in the collection of delinquent rental, taxes, and any and all other charges.”

**Liens (p. 25)**

“The Lessee will not commit or suffer any act or neglect whereby the premises, any improvement, or the estate of the Lessee in the same shall become subject to any attachment, lien, charge, or encumbrance, except as provided herein, and shall indemnify, defend, and hold harmless the Lessor from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.”

**Lessor's Lien (p. 25)**

“The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.”

**Condemnation (p. 25)**

“If any portion of the demised premises shall be condemned for public purposes by the Lessor, a county, or any other governmental agency, the base annual rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority: (a) The value of growing crops which it is not permitted to harvest; and (b) The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this lease; provided that in the alternative, the Lessee may remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessor shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the premises were demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.”
**Right to Enter (p. 26)**

“The Lessor, the City and County of Honolulu, or their representatives shall have the right at all reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.”

**Extension of Time (p. 26)**

“Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown, may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.”

**Quiet Enjoyment (p. 27)**

“The Lessor covenants and agrees with the Lessee that upon payment of rent at the times and in the manner specified and the observance and performance of the covenants, terms, and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall have, hold, possess, and enjoy the demised premises for the term demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.”

**Surrender (p. 27)**

“At the end of the term or other sooner termination of this lease, the Lessee shall peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise in this lease. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of the Lessee's personal property from the premises, the Lessor may remove or dispose of any and all personal property from the premises and either deem the property abandoned and dispose of the property or place such property in storage at the cost and expense of the Lessee, and the Lessee shall pay all costs and expenses for removal, disposal, transporting, and storage of the personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this lease.”

**Non-warranty (p. 28)**

“The Lessor does not warrant the conditions of the demised premises, as the same is being leased ‘as is.’”
Hazardous Materials (p. 28)

“(a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims. (b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees. (c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.”

Covenant Against Discrimination (p. 29)

“The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or physical handicap.”

Hunting (p. 29)

“No hunting shall be allowed on the demised premises during the term of this lease.”

Boundary Stakeout (p. 29)

“The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises. The Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.”
**Fences (p. 29)**

“The Lessee shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the demised premises if such fencing shall be required by the Lessor or should be so required by any law now in force or that may hereafter be enacted and shall and will maintain in good order and condition throughout the period of this lease the fences so constructed and those now existing on the demised premises.”

**Setback Requirements (p. 30)**

“Building setback lines shall be in accordance with applicable city and county ordinances and rules.”

**Drainage Easements (p. 30)**

“The demised premises shall be subject to drainage and flowage easements as applicable. The easement area shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainageway. The Lessee shall accept the storm runoff draining into and through the easement area and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.”

**Roadway and Utility Easements (p. 30)**

“The demised premises shall be subject to roadway and utility easements as applicable, which easements shall be in favor of property owners served by the easements; provided that the Lessee may cross the easements at any point; provided further that the Lessee shall be responsible for maintenance of the easements.”

**Compliance with Laws (p. 30)**

“The Lessee shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the premises which are now in force or later may be in force.”

**Interpretation (p. 31)**

“The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees.”
Headings (p. 31)

“The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this lease.”

Partial Invalidity (p. 31)

“If any term, provision, covenant, or condition of this lease should be held to be invalid, void, or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.”

Governing Law (p. 31)

“This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.”

Certification for Use of Pesticides (p. 32)

“The Lessee shall be a certified pesticide applicator, subject to the State of Hawaii, Department of Agriculture's field consultation and inspection program. The Lessee will have the following options: (a) The Lessee shall not use any chemical listed by the United States Environmental Protection Agency as a restricted-use pesticide based on its potential to contaminate ground water; or (b) The Lessee shall be subject to semi-annual inspections for compliance with use restriction on listed groundwater contaminants, as specified by agreement between the Board of Water Supply and the State of Hawaii, Department of Agriculture.”

Subdivision of Premises (p. 32)

“The Lessee shall allow the Lessor to subdivide the premises, with reimbursement of Lessee's reasonable costs.”

Definitions (p. 33)

“As used in this lease, unless the context otherwise requires:
‘Chairperson’ means the Chairperson of the Board of Agriculture.
‘Corporate successor’ means a solely owned corporation which, through an assignment of lease, succeeds an agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.
‘Diversified agriculture’ means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, but shall not include any livestock and poultry operations.
‘Drainage easements’ and ‘flowage easements’ mean natural or improved drainage courses that serve to convey streamflows from one point to another.

‘Hazardous discharge’ means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

‘Hazardous materials’ means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of ‘hazardous substances,’ ‘hazardous wastes,’ ‘hazardous materials,’ and/or ‘toxic substances’ under or for the purposes of the hazardous materials laws.

‘Hazardous materials claims’ means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.


‘Holder of record of a security interest’ means a person who is the owner or possessor of a security interest in the demised premises and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

‘Lessee’ includes the Lessee, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

‘Noxious weed’ means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.

‘Premises,’ ‘demised premises,” or ‘demised land’ includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

‘Waste’ includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised premises or any portions thereof; (3) failure to employ all of the usable portions of the demised premises; and (4) abandonment of the demised premises.”
Provisions from Selected Leases and Licenses Compared to DOA AP Lease Template

**Key:**
- **I** = identical to the template
- **C** = some differences in language but consistent with the substance of the template
- **M** = minor but meaningful differences from the template
- **S** = significant and substantial differences from the template
- **X** = template provision not in lease

*(text) = provides page number in lease and sets out select similarities to, or differences from, the template and/or other instruments*

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<tbody>
<tr>
<td><strong>Lease or License Length</strong></td>
<td>45 Years</td>
<td>35 years</td>
<td>35 Years</td>
<td>22 years or until such time licensee ceases to operate the permitted use</td>
</tr>
<tr>
<td><strong>Payment Terms and Conditions</strong></td>
<td>I (p. 2)</td>
<td>I (p. 2)</td>
<td>S (monthly installments, p. 5)</td>
<td>S (monthly installments, p. 3)</td>
</tr>
<tr>
<td><strong>Base Annual Rental</strong></td>
<td>M (base annual rental is calculated for first 15 years, not first 10 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 2)</td>
<td>M (does not distinguish between arable and non-arable lands, p. 2)</td>
<td>S (base annual rental is calculated for first 5 years; does not distinguish between arable and non-arable lands; no offset of rental amount for land clearances or leasehold improvements, p. 5)</td>
<td>S (increasing scale of annual rental every one or two years over the life of the license, either specified by dollars/acre or as percentage of increase over preceding year, p. 3)</td>
</tr>
<tr>
<td><strong>Additional Rental</strong></td>
<td>S (failure to submit report on gross proceeds and to pay additional rental due within 30 days of date)</td>
<td>C (April 30, instead of March 31, is date for submission of report disclosing gross proceeds for</td>
<td>X</td>
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<td>due constitutes breach, p. 2)</td>
<td>calculation of additional rental, p. 2)</td>
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<tr>
<td>Reopening of Annual Rental</td>
<td>S (re-openings at 15th, 25th, and 35th years; lacks clause that base annual rental cannot be revised downward, p. 3)</td>
<td>I (p. 3)</td>
<td>S (re-openings at 5th, 10th, 15th, 20th, and 25th years, p. 5)</td>
<td>X</td>
</tr>
<tr>
<td>Determination of Annual Rental upon Reopening</td>
<td>I (p. 3)</td>
<td>I (p. 3)</td>
<td>M (failure to accept terms of section is not considered in the alternative as a breach allowing lessor to terminate, p. 5)</td>
<td>X</td>
</tr>
<tr>
<td>Facilities Capital Recovery Fee</td>
<td>I (p. 5)</td>
<td>M (adds language removing Capital Improvement Projects not used by lessee from calculation of FCR fee, p. 4)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Interest on Delinquent Rental</td>
<td>I (p. 5)</td>
<td>I (p. 5)</td>
<td>M (in addition to 1% per month interest, lessee pays $50 per month service fee for each delinquent payment, p. 7)</td>
<td>M (same as ADC lease, p. 4)</td>
</tr>
<tr>
<td>Minerals and Water Rights</td>
<td>I (p. 5)</td>
<td>I (p. 6)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Prehistoric and Historic Remains</td>
<td>I (p. 6)</td>
<td>I (p. 6)</td>
<td>S (terms more detailed than template and include examples; no provision that lessor owns remains; requirement to follow HRS chapter 6E, p. 23)</td>
<td>S (same as ADC lease, p. 19)</td>
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<tr>
<td>I (p. 6)</td>
<td>C (includes several additional examples of “improvements,” p. 6)</td>
<td>M (covered under section titled “improvements” at p. 15; improvements made by lessee either vest in lessor or are to be removed at lessee’s sole cost and expense.)</td>
<td>X</td>
<td>X</td>
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| Withdrawal                     | I (p. 6)                      | C (p. 7)                                             | M (section titled “withdrawal for public purposes”; mostly consistent, but includes appraisal process for determining compensation, p. 14) | S (similar to ADC lease, but provides that licensee can terminate if it deems taking leaves premises unusable; refers to ¶ 76, p. 23, which states withdrawal can only be for emergency roadways and irrigation systems, p. 11) | S (similar to Green Energy license, but lacks separate section to limit what can be withdrawn, p. 11) |

| Payment of Rent               | I (p. 8)                      | I (p. 8)                                             | X                                                | X                                                | X                                                |

| Taxes, Assessments, etc.      | I (p. 8)                      | C (p. 8)                                             | C (section combines utilities and taxes provisions, p. 7) | C (same as ADC lease, p. 4)                      | M (requirement to pay even if licensee doesn’t purchase utility services from the Cooperative, p. 5) |

| Utility Services              | I (p. 8)                      | C (p. 8)                                             | C (combined with “Taxes, Assessments, etc.,” above, p. 7) | C (combined with “Taxes, Assessments, etc.,” above, p. 4) | M (combined with “Taxes, Assessments, etc.,” above, p. 5) |

| Irrigation Costs             | C (p. 8)                      | C (add sentence specifying that lessee “shall use due care” to protect the irrigation system, p. 8) | X                                                | S (section titled “irrigation system maintenance”; licensee must maintain irrigation system on |

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<td>Irrigation Costs (cont.)</td>
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<tr>
<td>Character of Use</td>
<td>I (p. 9)</td>
<td>M (cites to rules for NAP, not AP program; removes two clauses regarding livestock production operations, p. 9)</td>
<td>S (most of the terms from template have been omitted, with the exception of prohibition of cesspools, p. 7)</td>
<td>S (more similar to template than ADC lease, but adds soil erosion provision and omits section on assignments, subleases, and covenants; also incorporates some provisions from template section on waste and nuisance, p. 4)</td>
<td>S (similar to Green Energy license, p. 5)</td>
</tr>
<tr>
<td>Utilization and Development of the Land</td>
<td>I (p. 10)</td>
<td>C (p. 10)</td>
<td>S (omits terms requiring 50% development within 2 years and 100% within 3 years; property must be developed according to plans submitted and deviations therefrom must be approved, p. 8)</td>
<td>S (similar to ADC lease, but specifically references a ten year harvesting plan, p. 5)</td>
<td>S (similar to Green Energy license; specifically references plan attached as exhibit, p. 6)</td>
</tr>
<tr>
<td>Good Husbandry and Conservation Practices</td>
<td>I (p. 11)</td>
<td>C (p. 11)</td>
<td>X</td>
<td>S (licensee must submit conservation plan developed with soil and water conservation district; covers land clearing, irrigation, drainage, noxious weed control, and general environmental degradation, p. 5)</td>
<td>S (same as Green Energy license, p. 6)</td>
</tr>
<tr>
<td>Major Portion of Income</td>
<td>I (p. 11)</td>
<td>I (p. 11)</td>
<td>X</td>
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<tr>
<td>I (p. 12)</td>
<td>I (p. 12)</td>
<td>I (p. 9)</td>
<td>C (adds language specifically referring to weed and grass control, p. 6)</td>
<td>C (same as Green Energy license, p. 7)</td>
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<tr>
<td>Waste and Unlawful, Improper, or Offensive Use of the Premises</td>
<td>I (p. 12)</td>
<td>I (p. 12)</td>
<td>S (waste, nuisance, unlawful use, etc., are covered under “Character of Use,” above; term omits protection of trees but adds provision on soil erosion, p. 7)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Inspection of Premises</td>
<td>I (p. 12)</td>
<td>I (p. 12)</td>
<td>M (Lessor may enter upon prior notice and accompanied by representative of lessee, except in case of emergency, when lessor may enter alone, p. 14)</td>
<td>M (licensor can enter at reasonable time to inspect state of repair, equipment, books, and records, p. 10)</td>
<td>M (same as Green Energy license, p. 11)</td>
</tr>
<tr>
<td>Improvements</td>
<td>I (p. 12)</td>
<td>I (p. 12)</td>
<td>S (term called “common infrastructure improvements costs” (see below); Lessee enters into MOA with Kekaha Agricultural Cooperative and pays share of construction and maintenance costs as specified, p. 6; section titled “improvements” is generally consistent with template, p. 9)</td>
<td>C (wordy restatement of template language which adds provisions about approved assigns and permittees, p. 6)</td>
<td>S (term called “common infrastructure improvements costs” (see below); Lessee enters into MOA with Kekaha Agricultural Cooperative and pays share of construction and maintenance costs as specified, p. 3; section titled “improvements” is generally consistent with template, p. 7)</td>
</tr>
<tr>
<td>Repairs to Improvements</td>
<td>C (lacks long sentence giving examples of)</td>
<td>C (lacks long sentence giving examples of)</td>
<td>S (SEE “Improvements,” immediately above; section</td>
<td>M (consistent with template except for</td>
<td>S (SEE “Improvements,”)</td>
</tr>
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<tr>
<td>improvements covered under the clause, p. 13</td>
<td>improvements covered under the clause, p. 13</td>
<td>titled “repairs to improvements,” p. 9, is consistent with template, plus limitation on payment for “common infrastructure improvements.”</td>
<td>brief reference to common infrastructure improvements costs share percentage; see that provision, below, p. 7</td>
<td>immediately above; section titled “repairs to improvements,” p. 7, is consistent with template, plus limitation on payment for “common infrastructure improvements.”</td>
<td></td>
</tr>
<tr>
<td>Dwelling Restrictions</td>
<td>I (p. 13)</td>
<td>C (p. 10)</td>
<td>C (emphasizes only farm dwellings allowed with permission, p. 9)</td>
<td>S (all dwellings strictly prohibited; licensee cannot use premises for residence, p. 7)</td>
<td>S (same as Green Energy license, p. 8)</td>
</tr>
<tr>
<td>Insurance</td>
<td>I (p. 13)</td>
<td>I (p. 13)</td>
<td>S (section titled “property insurance”; specifies “full replacement value”; submission of certificate of insurance made a condition of lease award, p. 12)</td>
<td>S (generally similar to but much shorter than ADC lease; specifies “full insurable value,” “state-owned improvements,” and policy must waive subrogation claims against state or its officers, p. 10)</td>
<td>S (same as Green Energy license, p. 10)</td>
</tr>
<tr>
<td>Right of First Refusal</td>
<td>I (p. 14)</td>
<td>C (references are to NAP parks and to NAP chapters of HRS and rules, p. 14)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Assignments of Lease, Lease Interest, etc.</td>
<td>S (the clause does not mention the March 6, 1992, “Assignment of Lease Evaluation Policy” and associated calculations for determining premium to be paid, p. 16)</td>
<td>M (includes additional reason for assignment—primary residence—as specified in relevant NAP administrative rules; references more recent “Assignment of Lease”</td>
<td>S (short clause prohibiting any assignment or mortgage without prior approval of lessor, “which consent will not be unreasonably withheld,” p. 11)</td>
<td>S (similar to ADC lease, but states that “consent may be withheld in licensor’s sole discretion,” p. 8)</td>
<td>Extensive section titled “assignment,” with multiple, separately numbered subparts, treats assignment and related issues in depth. (p. 24)</td>
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<tr>
<td>Subletting</td>
<td>I (p. 18)</td>
<td>C (p. 18)</td>
<td>S (section titled “subleasing”; only allowed with prior approval; “profit on an sublease charges is neither allowed, nor shall be sought by lessee”; omits clause related to gross receipts of lessee in determining rental amount, p. 8)</td>
<td>S (similar to ADC lease; section titled “sublicensing”; lessee can sublicense with consent of licensor, but cannot profit from same, p. 5)</td>
<td>S (similar to Green Energy license, but “consent may be withheld at licensor’s sole discretion,” p. 6)</td>
</tr>
<tr>
<td>Mortgage</td>
<td>I (p. 18)</td>
<td>I (p. 18)</td>
<td>X (not included as a separate clause; however, assignments clause simply states that any mortgage must be approve by lessor, p. 11)</td>
<td>X (not included as a separate clause; however, assignments clause simply states that any mortgage must be approve by lessor, p. 8)</td>
<td>Subpart to assignments section specifies that mortgage must be approved by licensor. (p. 24)</td>
</tr>
<tr>
<td>Breach</td>
<td>C (p. 19)</td>
<td>I (p. 18)</td>
<td>M (generally same as template, but includes bankruptcy and failure to pay common infrastructure improvements costs as causes for breach and termination; does not mention advance rent retainable as liquidated damages, p. 10)</td>
<td>M (titled “breach or default”; similar to ADC lease, p. 7)</td>
<td>M (same as Green Energy license, p. 8)</td>
</tr>
<tr>
<td>Rights of Holder of Record of Security Interest</td>
<td>I (p. 20)</td>
<td>S (significant provisions added; other changes, p. 19)</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>I (p. 22)</td>
<td>I (p. 22)</td>
<td>C (p. 10)</td>
<td>C (closer to template language than ADC lease is, p. 8)</td>
<td>C (same as Green Energy license, p. 9)</td>
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<thead>
<tr>
<th><strong>Liability Insurance</strong></th>
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</thead>
<tbody>
<tr>
<td>I (p. 22)</td>
<td>M (insurance “shall be in an amount to be determined by the lessor” and other differences, p. 23)</td>
<td>M ($500K/occurrence, $1M total coverage specified; no insurance needed for activities of agricultural cooperative; lessor reserves right to review coverage and require more if inadequate to risks on the property, p. 11)</td>
<td>M (similar to ADC lease, p. 8)</td>
<td>M (same as Green Energy license, p. 9)</td>
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<tr>
<th><strong>Performance Bond</strong></th>
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<tbody>
<tr>
<td>I (p. 23)</td>
<td>C (p. 23)</td>
<td>C (p. 25)</td>
<td>S (Licensee must submit surety bond to support commitment to remove all trees and vegetation from land and restore it to arable pasture land condition; calculation for increasing amount of bond set out, p. 22)</td>
<td>S (untitled section; licensee must submit surety bond to support commitment to return property to previous condition prior to vacation, p. 23)</td>
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<thead>
<tr>
<th><strong>Justification of Sureties</strong></th>
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<tbody>
<tr>
<td>I (p. 24)</td>
<td>I (p. 24)</td>
<td>I (p. 25)</td>
<td>X</td>
<td>X</td>
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<tr>
<th><strong>Indemnity</strong></th>
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<tbody>
<tr>
<td>I (p. 24)</td>
<td>C (p. 24)</td>
<td>C (p. 18)</td>
<td>C (similar to ADC lease, but omits parking areas and sidewalks, p. 14)</td>
<td>C (same as Green Energy license, p. 14)</td>
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<tr>
<th><strong>Costs of Litigation</strong></th>
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<tbody>
<tr>
<td>I (p. 25)</td>
<td>I (p. 25)</td>
<td>S (adds mirroring provision that if lessee is made party</td>
<td>S (same as ADC lease, p. 13)</td>
<td>S (same as ADC lease and Green Energy</td>
<td></td>
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<td></td>
<td>to litigation by or because of lessor, without fault of the lessee, the lessor must cover costs, p. 17</td>
<td></td>
<td>C (similar to provision in ADC lease; section titled “involuntary liens,” p. 7)</td>
<td>C (allows liens for Hydro Power Project financing, p. 8)</td>
<td></td>
</tr>
<tr>
<td>Liens</td>
<td>I (p. 25)</td>
<td>C (p. 25)</td>
<td>C (section titled “involuntary liens,” p. 9)</td>
<td>S (similar to provision in ADC lease; section titled “involuntary liens,” p. 7)</td>
<td>S (allows liens for Hydro Power Project financing, p. 8)</td>
</tr>
<tr>
<td>Lessor’s Lien</td>
<td>I (p. 25)</td>
<td>I (p. 26)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Condemnation</td>
<td>I (p. 26)</td>
<td>C (p. 26)</td>
<td>C (specifies that lessee is entitled to compensation for relocation costs if only part of property is condemned, which is only implied in the template, p. 15)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Right to Enter</td>
<td>I (p. 27)</td>
<td>I (p. 27)</td>
<td>S (does not give City and County of HNL right to enter; entry must be preceded by prior notice and be accompanied by lessee, unless in case of emergency, p. 13)</td>
<td>S (more lessor-friendly than ADC lease; lessor can enter at any time on official duties, p. 10)</td>
<td>S (same as Green Energy license, p. 11)</td>
</tr>
<tr>
<td>Extension of Time</td>
<td>I (p. 27)</td>
<td>I (p. 27)</td>
<td>S (treated in two separate sections; under “term” the lease extendable for one 10-year term; option must be exercised at least 180 days prior to expiration of current term, p. 4; section titled “extension of time” is identical to section in template, p. 16)</td>
<td>S (extendable for ten years under conditions similar to ADC lease, p. 2; general “extension of time” section on p. 12 is consistent with ADC lease.)</td>
<td>S (licensee can extend for an additional term of 25 years by exercising option not less than 90 days before expiration of license, p. 2; general “extension of time” section on p. 12 is same as Green Energy license.)</td>
</tr>
<tr>
<td>Quiet Enjoyment</td>
<td>I (p. 27)</td>
<td>I (p. 27)</td>
<td>C (p. 16)</td>
<td>C (same as ADC lease, p. 12)</td>
<td>C (nearly identical to Green Energy license, p. 12)</td>
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<tr>
<td>Surrender</td>
<td>I (p. 28)</td>
<td>C (p. 28)</td>
<td>I (p. 14)</td>
<td>C (p. 10)</td>
<td>X</td>
</tr>
<tr>
<td>Non-Warranty</td>
<td>I (p. 28)</td>
<td>C (p. 28)</td>
<td>C (adds “lessee assumes all risks incident” to use of the property, p. 17)</td>
<td>S (same as ADC lease, but adds provisions specifically exempting licensee from any hazardous materials claims resulting from discharge prior to execution of license, p. 13)</td>
<td>S (same as Green Energy license, p. 13)</td>
</tr>
<tr>
<td>Hazardous Materials</td>
<td>I (p. 28)</td>
<td>I (p. 30)</td>
<td>S (in addition to template provisions, section adds clauses making lessor responsible for contamination caused prior to execution of lease, allows lessor to demand testing and affidavits to ascertain whether hazardous materials are stored or have been released on the premises. (p. 20)</td>
<td>S (similar to ADC lease, but allows hazmat on the site with express permission of licensor or if used in normal course of licensee’s operations, p. 15)</td>
<td>S (same as Green Energy license, but notes that licensee remains responsible under DLNR agreement for some issues during Kekaha Sugar’s occupation of the premises, p. 16)</td>
</tr>
<tr>
<td>Covenant Against Discrimination</td>
<td>I (p. 30)</td>
<td>M (adds factors upon which lessee may not discriminate, including family status, ancestry, disability, age, and HIV infection, p. 28)</td>
<td>C (longer than template, but less detailed than clause in NAP lease; does not mention family status, ancestry, disability, age, and HIV infection, p. 10)</td>
<td>C (similar to ADC lease, p. 7)</td>
<td>C (same as Green Energy license, p. 8)</td>
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<tr>
<td>I (p. 30)</td>
<td>I (p. 30)</td>
<td>I (p. 18)</td>
<td>S (no hunting allowed, except for pest eradication as specified in ¶ 77, p. 23, which must be done in humane manner, p. 14)</td>
<td>C (nearly identical to template, p. 14)</td>
<td></td>
</tr>
<tr>
<td>Boundary Stakeout</td>
<td>I (p. 30)</td>
<td>I (p. 29)</td>
<td>C (p. 18)</td>
<td>C (same as ADC lease, p. 14)</td>
<td>C (same as ADC lease and Green Energy license, p. 15)</td>
</tr>
<tr>
<td>I (p. 30)</td>
<td>I (p. 29)</td>
<td>C (p. 18)</td>
<td></td>
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<tr>
<td>Fences</td>
<td>I (p. 30)</td>
<td>M (requires “stockproof fence” to be installed within six months of the date of lease execution; clause titled “Boundary Fences,” p. 32)</td>
<td>X</td>
<td>I (p. 14); additional clause near end of licensee, however, stipulates at licensee has fulfilled obligation to install boundary fencing, (p. 23)</td>
<td>I (p. 15)</td>
</tr>
<tr>
<td>Setback Requirements</td>
<td>I (p. 31)</td>
<td>I (p. 29)</td>
<td>C (p. 8)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Drainage Easements</td>
<td>I (p. 31)</td>
<td>C (p. 29)</td>
<td>M (drainage ways may be altered with prior written consent of lessor, p. 19)</td>
<td>M (same as ADC lease, p. 15)</td>
<td>M (same as ADC lease and Green Energy license, p. 15)</td>
</tr>
<tr>
<td>Roadway and Utility Easements</td>
<td>I (p. 31)</td>
<td>I (p. 29)</td>
<td>M (allows members of the cooperative entry to maintain and operate common infrastructure improvements; lessee responsible for maintenance of easements, p. 19)</td>
<td>M (similar to ADC lease, but licensee not responsible for maintenance of easements, p. 15)</td>
<td>M (nearly identical to Green Energy license, but Kalepa Koalition cooperative not mentioned by name, p. 15)</td>
</tr>
<tr>
<td>Compliance with Laws</td>
<td>I (p. 31)</td>
<td>I (p. 29)</td>
<td>I (p. 19)</td>
<td>I (p. 15)</td>
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<tr>
<td>Interpretation</td>
<td>I (p. 32)</td>
<td>C (includes “headings” clause along with this clause, p. 30)</td>
<td>I (p. 22)</td>
<td>I (p. 18)</td>
<td>I (p. 18)</td>
</tr>
<tr>
<td>Headings</td>
<td>I (p. 32)</td>
<td>C (but included with “Interpretation” clause, above, p. 30)</td>
<td>I (but titled “paragraph headings,” p. 22)</td>
<td>I (titled “paragraph headings,” p. 18)</td>
<td>I (titled “paragraph headings,” p. 18)</td>
</tr>
<tr>
<td>Partial Invalidity</td>
<td>I (p. 32)</td>
<td>I (p. 32)</td>
<td>C (but incorporated into “applicable law” section, below, p. 17)</td>
<td>C (but incorporated into “applicable law” section, below, p. 13)</td>
<td>C (but incorporated into “applicable law” section, below, p. 13)</td>
</tr>
<tr>
<td>Governing Law</td>
<td>I (p. 32)</td>
<td>C (clause is titled “Hawaii Law,” p. 33)</td>
<td>C (section titled “applicable law; severability”; adds severability clause, p. 17)</td>
<td>C (same as ADC lease, p. 13)</td>
<td>C (same as ADC lease and Green Energy license, p. 13)</td>
</tr>
<tr>
<td>Certification for Use of Pesticides</td>
<td>X</td>
<td>X X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Subdivision of Premises</td>
<td>X</td>
<td>X X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Definitions</td>
<td>I (p. 33)</td>
<td>M (adds definitions for “Institutional Lender,” “Making a loan,” and “Security Interest,” p. 34)</td>
<td>M (both adds to and omits from list of terms defined in template, p. 26)</td>
<td>M (differences based on nature of the lease, p. 24)</td>
<td>M (differences based on nature of the lease, p. 25)</td>
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<td>Terms not in Template</td>
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<tr>
<td>Holdover</td>
<td>X</td>
<td>“Upon expiration of the lease term, if the land is</td>
<td>Same as NAP lease, but lacks citation to admin.</td>
<td>Same as “holding over” provisions in</td>
<td>Same as ADC lease and Green Energy license.</td>
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<td>Same as “holding over” provisions in</td>
<td>Same as ADC lease and Green Energy license.</td>
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licensee must comply with laws relating to animal feeding operations. (p. 23)
| Holdover (cont.) | DOA AP Lease No. S-4936 (Glad’s Landscaping and Tree Trimming, Inc.), 2001 | not otherwise disposed of, the Lessor may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the Lessor may prescribe, and further as provided in section 4-148-31, Hawaii Administrative Rules.” (p. 5) | ADC lease; provides for month-to-month tenancy with consent of licensor. (p. 21) |
| Hazardous Waste Evaluation | X | Requires Level One Hazardous Waste Evaluation per EPA standards. (p. 31) | Somewhat similar to provision in NAP lease, though heading title is different. Lessor may at any time during lease require the lessee to conduct an ASTM Phase I Environmental Site Assessment and, if necessary, a Phase II investigation. (p. 21) | Similar to NAP lease. (p. 17) |
| Commercial Operations | X | Lessor must approve any commercial operations (p. 32) | Lessor must approve commercial or retail activities (p. 23) | Similar to ADC lease; lessor must approve commercial and retail activities; adds feedlot, dairy milking parlors, and boarding of horses to examples of commercial activities. (p. 19) |

ADC License No. LI-K1102 (Green Energy Team, LLC), 2011

ADC License No. LI-K1101 (Pacific Light and Power, Inc.), 2011
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<tr>
<td>X</td>
<td>Prohibits abandoned vehicle storage (p. 32)</td>
<td>Same as NAP lease. (p. 23)</td>
<td>Same as other instruments. (p. 19)</td>
<td>Same as other instruments. (p. 19)</td>
<td></td>
</tr>
<tr>
<td>UNTITLED</td>
<td>X</td>
<td>Rental offsets for land clearance or leasehold improvements do not apply to lease extensions or conversions (p. 33)</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>X</td>
<td>Adds to annual rental amount for up to seven years a premium for lease conversion. (p. 33)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Building Restriction</td>
<td>Special Condition added because lot is within a flood hazard zone in Waimanalo; lessee must obtain flood insurance and construct in accordance with all applicable laws</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Security Deposit</td>
<td>X</td>
<td>Deposit equivalent to 2 months’ rent due at execution; refundable after all terms and conditions of lease have been fulfilled. (p. 11)</td>
<td>Same ADC lease, but references licensee and license. (p. 8)</td>
<td>Same as Green Energy license. (p. 9)</td>
<td></td>
</tr>
<tr>
<td>Inspection by Prospective Bidders</td>
<td>X</td>
<td>X In</td>
<td>Same ADC lease. (p. 12)</td>
<td>Same as ADC lease and Green Energy license. (p. 12)</td>
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<tr>
<td>X</td>
<td>Abandonment or failure to use for 4 or more consecutive months, except in force majeure situations, constitutes breach. (p. 16)</td>
<td>Abandonment or failure to use for 4 or more consecutive months, except in force majeure situations, constitutes breach. (p. 12)</td>
<td>Same as ADC lease. (p. 12)</td>
<td>Same as ADC lease and Green Energy license. (p. 13)</td>
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</tr>
</tbody>
</table>

| Lessee’s Risk | X | X | All risk for all situations, including theft, weather, wiring, vandalism, or “any other cause whatsoever” is borne by lessee. (p. 36) | Same as ADC lease. (p. 13) | Same as ADC lease and Green Energy license. (p. 13) |

<table>
<thead>
<tr>
<th>Environmental Regulations</th>
<th>X</th>
<th>X Lessee</th>
<th>Lessee must comply with all applicable environmental impact regulations, including HRS chapter 343; lessee responsible for obtaining all clearances. (p. 19)</th>
<th>Same as ADC lease. (p. 15)</th>
<th>Same as ADC lease and Green Energy license. (p. 16)</th>
</tr>
</thead>
</table>

| Encumbrances | X | X | Lease is subject to existing recorded and unrecorded encumbrances; lessor may further encumber property so long as such does not restrict or interfere with lessee’s enjoyment of the premises. (p. 22) | Same as ADC lease. (p. 18) | Same as ADC lease and Green Energy license. (p. 18) |

| Exhibits—Incorporation in Lease | X | X | All exhibits are deemed incorporated by reference. (p. 22) | Same as ADC lease. (p. 18) | Same as ADC lease and Green Energy license. (p. 19) |

<table>
<thead>
<tr>
<th>Removal of Trash</th>
<th>X</th>
<th>X Lessee</th>
<th>Lessee responsible for removal of all illegally dumped trash. (p. 23)</th>
<th>Same as ADC lease. (p. 19)</th>
<th>Same as ADC lease and Green Energy license. (p. 19)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit</td>
<td>X</td>
<td>X</td>
<td>Lessor has right to inspect all documents relating to operation, including documents sought under Hawaii Open Records Law, but cannot disclose confidential documents or trade secrets. Elements of this provision appear to overlap with “right to inspect” clauses in this and the other leases. (p. 23)</td>
<td>Much shorter than ¶ in ADC lease; licensor can audit all records concerning licensee’s operations on the premises. (p. 20)</td>
<td>Same as Green Energy license. (p. 21)</td>
</tr>
<tr>
<td>Passage and Access</td>
<td>X</td>
<td>X Cooperative’s agents have access to all common infrastructure. This appears to overlap with several other provisions. (p. 24)</td>
<td>Same as ADC lease. (p. 20)</td>
<td>Same as Green Energy license. (p. 21)</td>
<td></td>
</tr>
<tr>
<td>Recordation</td>
<td>X</td>
<td>X</td>
<td>Lessee may record lease or short form thereof with Bureau of Conveyances. (p. 25)</td>
<td>Same as ADC lease. (p. 21)</td>
<td>Same as ADC lease and Green Energy license. (p. 22)</td>
</tr>
<tr>
<td>Common Infrastructure Improvement Costs</td>
<td>X</td>
<td>X Covered</td>
<td>Licensee to pay 25% of cooperative’s costs for infrastructure maintenance and improvement. (p. 3)</td>
<td>Similar to ADC lease; Covered above under “improvements” and “repairs to improvements”; actual clause at p. 3.</td>
<td></td>
</tr>
<tr>
<td>Soil Erosion</td>
<td>X</td>
<td>X X</td>
<td>Licensee cannot engage in activities that result in soil erosion from water or wind; licensee must fill in small washes and ditches; prior to termination of</td>
<td></td>
<td>Same as Green Energy license. (p. 18)</td>
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<tbody>
<tr>
<td>Exclusion of Animals from Forest Lands</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Land Clearing</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Crop Changes</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Agreements with Other Tenants</td>
<td>X</td>
<td>X X</td>
<td>Licensee must use best efforts to settle disputes with other tenants due to recent parcel realignment; written records of agreements must be kept. (p. 21)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Ten Year Harvesting Plan</td>
<td>X</td>
<td>X X</td>
<td>Licensee must submit 10-year plan for harvesting invasive Albizia trees from its and other tenants’ parcels; species of trees selected for replanting must be approved by DLNR. (p. 21)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Adequate Funding and Financing</td>
<td>X</td>
<td>X</td>
<td>Licensee has 1 year to submit financing plan for proposed project. (p. 22)</td>
<td>Untitled section; similar to Green Energy license. (p. 22)</td>
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<tr>
<td>Use of Land</td>
<td>X</td>
<td>X X</td>
<td>Initial clearing must begin on 50% of parcel and licensee must justify that 100% of parcel will be needed for the project within 3 years. (p. 22)</td>
<td>Untitled section; Licensee must show activity in at least 50% of arable acreage within 3 years and show that entire acreage will be needed for Hydro Power Project. (p. 23)</td>
<td></td>
</tr>
<tr>
<td>Soil and Water Conservation Plan</td>
<td>X</td>
<td>X X</td>
<td>Within 2 years of execution, licensee must submit soil and water conservation plan. (p. 22)</td>
<td>Untitled section; similar to Green Energy license. (p. 22)</td>
<td></td>
</tr>
<tr>
<td>Power Purchase Agreement</td>
<td>X</td>
<td>X X</td>
<td>Within 3 years of execution licensee must submit PUC approval of power purchase agreement with Kauai Island Utility Cooperative. (p. 22)</td>
<td>Untitled section; Licensee must submit copy of power SALES agreement with KIUC as approved by PUC.</td>
<td></td>
</tr>
<tr>
<td>East Kauai Water Users Cooperative</td>
<td>X</td>
<td>X X</td>
<td>If project requires irrigation, licensee must work with EKWUC and pay for use of water. (p. 22)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Kalepa Koalition</td>
<td>X</td>
<td>X X</td>
<td>Licensee must join Kalepa Koalition or enter into written agreement with the organization. (p. 22)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Vegetative Buffer Zone</td>
<td>X</td>
<td>X X</td>
<td>Licensee must maintain existing vegetative buffer along plateau and valley rims. (p. 23)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Licensee</td>
<td>Wells</td>
<td>Polihale Flood Diversion</td>
<td>Agricultural Preservation Easement</td>
<td>Land Swapping</td>
<td>UNTITLED</td>
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<tr>
<td>DOA AP Lease No. S-4936 (Glad’s Landscaping and Tree Trimming, Inc.), 2001</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>DOA NAP Lease No. S-3771 (Contemporary Landscaping LLC), 2011</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>ADC Lease No. LE-K1201 (BASF Plant Science, LP), 2012</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>ADC License No. LI-K1102 (Green Energy Team, LLC), 2011</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>ADC License No. LI-K1101 (Pacific Light and Power, Inc.), 2011</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

- **Wells**: Licensee must seal all abandoned wells on the property prior to expiration of license. (p. 20)
- **Polihale Flood Diversion**: Licensee acknowledges that flood water diversion causes road washouts. (p. 21)
- **Agricultural Preservation Easement**: Licensee must be in full compliance with the easement.
- **Land Swapping**: Licensee can swap land with other licensees or revocable permit holders. (p. 21)
- **UNTITLED**: Licensee at own expense must obtain all permits and clearances for construction of Hydro Power Project; permits listed. (p. 22)
- **UNTITLED**: Licensee must adhere to water allocation agreements with state agencies and not have negative impact on other agricultural tenants. (p. 22)
HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 1

ADMINISTRATION

CHAPTER 1

BOARD OF AGRICULTURE

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Historical Note: This chapter is based substantially upon State of Hawaii Board of Agriculture Rules of Practice and Procedure. [Eff 6/14/62; am 8/31/74; R Sep 20 1986]

SUBCHAPTER 1

GENERAL PROVISIONS

§4-1-1 Purpose; construction. This chapter governs practice and procedure before the state board of agriculture and shall be construed to secure the just and efficient determination of every proceeding. [Eff Sep 20 1986] (Auth: HRS §§91-2, 141-2, 142-2, 144-11, 145-15, 147-4, 148-2, 149A-19, 149A-33, 150-22, 150A-9, 152-2, 153-4, 155-4, 157-13, 159-7, 161-7, 163-4) (Imp: HRS §91-2)

§4-1-2 Definitions. As used in this chapter unless the context otherwise requires:
"Board" means the state board of agriculture.
"Chairperson" means the chairperson of the state board of agriculture.
"Complainant" means a person, an agency, or an officer upon whose complaint a proceeding is instituted.
"Department" means the state department of agriculture.
"Deputy" means the deputy to the chairperson of the state board of agriculture.
"Hearing officer" means a person duly appointed by the board to hold a hearing to take evidence or oral argument, and to make a recommended decision in any case or controversy within the jurisdiction of the board.
"Party" means the department, if named, permitted or entitled as of right to participate in a proceeding, each person named in a proceeding, or any interested or aggrieved person permitted or entitled as of right to participate in a proceeding before the board in the capacity of a petitioner, respondent, intervenor, or in a capacity other than that of a witness.
"Person" means individuals, partnerships, corporations, associations, or public or private organizations of any character other than the board or department.
"Petitioner" means a person on whose behalf petitions are made in proceedings involving declaratory rulings or the adopting, repealing, or amending of any rule of the board.
"Proceeding" means the board's consideration of the relevant facts and applicable law and action thereupon, with respect to a particular subject within the board's jurisdiction, initiated by a filing, a submittal, a request, or the board's notice or order. It shall include, but not be limited to, the following:

1. Contested cases involving the denial, suspension, or revocation of, or refusal to renew, any license, permit, or certificate issued by the board;
2. Proceedings involving petitions for declaratory rulings;
3. An investigation or review instituted or requested to be instituted by the board; and
4. Proceedings involving the adoption, amendment, or repeal of any rule of the board, whether initiated by board order or by petition of a person with a legal interest.

"Respondent" means a party in a contested case against whom an order to show cause has been issued by the board on its own initiative or a notice of hearing has been issued on the basis of a complaint filed with the board. [Eff SEP 22 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-3  Grammatical usage; meaning of terms.  (a) Unless otherwise required by the context, the singular includes the plural and vice-versa.
(b) Unless specifically stated, the terms used in rules adopted by the board pursuant to powers granted by statute shall have the meaning defined by that statute.
(c) A rule which defines a term without express reference to the statute or to this chapter, or to a portion thereof, defines the term for all purposes as used both in the statute and in this chapter, unless otherwise specifically required by the context. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-4  Office.  (a) The principal office of the board is located at 1428 South King Street, Honolulu, Hawaii.
(b) All communications to the board shall be addressed to the state board of agriculture, P. O. Box 22159, Honolulu, Hawaii 96823. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: §91-2)

§4-1-5  Hours. The offices of the board shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order. [Eff Sep 20 1986] (Auth: HRS §§80-1, 91-2) (Imp: HRS §§80-1, 91-2)

§4-1-6  Meetings; conduct of meetings.  (a) The board may meet and exercise its powers in any part of the State.
(b) Board meetings shall be held in accordance with sections 92-3, 92-4, 92-5, 92-7, 92-8, and 92-9, HRS, as applicable. [Eff Sep 20 1986] (Auth: HRS §§91-2, 92-4, 92-5, 92-7, 92-8, 92-9) (Imp: HRS §§91-2, 92-3, 92-4, 92-5, 92-7, 92-8, 92-9)
§4-1-7  Quorum; votes necessary for a decision. The constitution of a quorum and the number of votes necessary to validate any act of the board shall be in accordance with section 92-15, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-15)

§4-1-8  Records; annual report. (a) The chairperson shall have charge of the board's official records and shall be responsible for the maintenance and custody of the files and records of the board, including:
   (1) The transcripts of testimony and exhibits;
   (2) All papers and requests filed in proceedings;
   (3) The minutes of all board meetings and hearings; and
   (4) All findings, determinations, reports, opinions, orders, rules, and approved forms.
(b) The chairperson shall prepare for submission by the board an annual report of the department's activities and accomplishments to the governor and the legislature. [Eff Sep 20 1986] (Auth: HRS §§91-2, 141-1) (Imp: HRS §§91-2, 141-1)

§4-1-9  Authentication of board actions. All orders and other actions of the board shall be signed by the chairperson or, in his absence, by another member of the board designated by the chairperson. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-10  Public records; requests for public records; fees. (a) All public records of the board shall be available for inspection by any person during office hours except as otherwise provided by section 92-51, HRS.
   (b) All requests for inspection or copies of public records shall be submitted to the board in writing. The request shall:
      (1) State the name, address, and phone number of the requestor;
      (2) Give the reason for the request;
      (3) Properly designate documents requested; and
      (4) Give the date of the request.
   (c) The fee to be charged for copies of public records shall be in accordance with section 92-21, HRS.
   (d) As used in this section, "public records" do not include "personal records" as defined in section 92E-1(3), HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-21, 92-51, 92E-1(3))

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§4-1-11  General rule. All persons and parties shall comply with these rules of practice
§4-1-12 Appearances before the board. (a) A person may be represented by or with counsel in any proceedings under this chapter.

(b) When a person acting in a representative capacity appears in person or signs any document or paper submitted to the board, the personal appearance or signature of that individual shall constitute a representation to the board that the individual is authorized and qualified to represent that person. The individual, at any time, may be required to furnish proof of authority and qualification to act.

(c) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before, or passed by, the board during the time of the person's association unless the person shall first have obtained the written consent of the board upon a verified showing that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-13 Filing of papers. (a) All papers or documents required to be filed with the board shall be filed with the chairperson.

(b) Such papers may be mailed or hand-carried to any office of the department in the State within the time limit, if any, for filing.

(c) The date on which the papers or documents are actually received by any office of the department shall be deemed to be the date of filing.

(d) All papers or documents shall be written legibly or typed and signed in black ink by the party or the party's duly authorized agent or attorney. The signer's name shall be printed legibly below the signature.

(e) The signature on any paper or document constitutes a certification that the person has read the document, that to the best of that person's knowledge, information, and belief, every statement in the paper or document is true, not misleading, and not interposed for delay.

(f) The initial document filed by any person in any proceeding shall include on the first page the name and address of the person who may be served with any documents filed in the proceeding. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-14 Retention of papers. All papers filed with the board shall be retained by the board in its files. However, the chairperson may permit the withdrawal of the original documents upon submission of properly authenticated copies to replace the original papers. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)
§4-1-15  Computation of time. Computation of time shall be as provided under section 1-29, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§1-29, 91-2)

§4-1-16  Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter, by notice given under this chapter, or by an order, the board may:
   (1) With or without notice, extend the period before expiration of the prescribed period; or
   (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act is clearly shown to be the result of excusable neglect.

§4-1-17  Striking or amendment of papers. If any paper filed with the board is not in substantial conformity with the applicable rules, the board, on its own motion or the motion of any party, may strike the document or require that it be amended. If amended, the document shall be effective as of the date of the original filing. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-18  Board decision. (a) Certified copies of all final orders, opinions, or rulings entered by the board in any proceeding shall be served upon the parties or persons participating in the proceedings by first class mail or personal delivery by the board.
   (b) All final orders, opinions, or rulings may be released for general publication.
   (c) Copies of materials released for general publication shall be available for public inspection in the office of the board or may be obtained upon request and upon payment of a reasonable charge in accordance with section 92-21, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-21)

§4-1-19  Counsel for the board. The attorney general, as counsel for the board, shall be a participant in all proceedings governed by this chapter. The attorney general or a representative of the attorney general shall be designated as "counsel for the board", and shall be served with copies of all papers, pleadings, maps, and documents as are all other parties to the same proceeding. [Eff Sep 20 1986] (Auth: HRS §§ 28-4, 91-2) (Imp: HRS §§ 28-4, 91-2)

§4-1-20  Substitution of parties. Upon motion and for good cause shown, the board may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)
§4-1-21 Consolidation. The board may consolidate for hearing or other purposes or contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-22 Default. When a party, against whom an order to show cause has been issued, fails to plead or defend that action and this fact is made to appear by affidavit or otherwise, the board may enter the party's default. No order for default shall be entered against an infant or an incompetent person unless represented in a hearing by a guardian or other representative. For good cause shown, the board may set aside a default order. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 3
RULEMAKING PROCEEDINGS

§4-1-23 Initiation of rulemaking. (a) The adoption, amendment, or repeal of any rule of the board may be made by the board on its own motion, or by petition of any interested person or agency. Petitions for rulemaking filed with the board shall be matters of public record.
(b) Petitions shall conform to and be filed in accordance with section 4-1-12 and shall contain:
   (1) The name, address, and telephone number of each petitioner;
   (2) The signature of each petitioner;
   (3) A draft or the substance of the proposed rule or amendment or a designation of the provisions of the rule to be repealed;
   (4) A statement of the petitioner's interest in the subject matter; and
   (5) A statement of the reasons in support of the proposed rule, amendment, or repeal.
(c) Within thirty days after the filing of a petition for rulemaking, the board shall either deny the petition or initiate rulemaking proceedings. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-2, 91-6)

§4-1-24 Denial of petition. Any petition that fails to comply in any material respect with the requirements of this chapter or fails to disclose sufficient reason to justify conducting rulemaking proceedings shall not be considered by the board. The board shall promptly notify the petitioner in writing of such denial, stating the reasons therefor. Denial of a petition shall not prevent the board from acting, on its own motion, upon any matter disclosed in the petition. The petitioner may seek judicial review of denial. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-6, 91-14)
§4-1-25  Acceptance of petition. If the board determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the conduct of rulemaking proceedings, the procedures to be followed shall be as set forth in this chapter and applicable statutes. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-6)

§4-1-26  Notice of rulemaking. Whenever pursuant to a petition or upon its own motion the board proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published in accordance with sections 91-3, 91-6, and 92-41, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-3, 91-6, 92-41)

§4-1-27  Conduct of rulemaking hearings. (a) Each hearing shall be held before the board or presided over by a hearing officer.

(b) The board or hearing officer shall be authorized to take all actions necessary for the orderly conduct of the hearing.

(c) Each hearing shall be held at the time and place set in the notice of hearing, but may be continued by the board or hearing officer from day to day or adjourned to a later date or to a different place without notice other than an announcement at the hearing.

(d) The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to offer evidence on the matters specified in the notice of hearing and to obtain a clear and orderly record. However, in order to avoid unnecessary, cumulative evidence, the board or hearing officer may limit the number of witnesses or the time allowed for testimony.

(e) At the commencement of the hearing, the notice of hearing shall be read and the procedure to be followed shall be outlined briefly. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the board or hearing officer prescribes.

(f) All interested persons and agencies shall be afforded an opportunity to submit orally or in writing data, views, or arguments that are relevant to the matters specified in the notice of hearing. The board or hearing officer may require the filing of an original and eight copies of all written comments, recommendations, or replies.

(g) Before proceeding to testify, all interested persons shall:

(1) State their name, address, and whom they represent; and

(2) Give any information respecting their appearance as the board or hearing officer may request.

(h) Witnesses shall be subject to questioning by members of the board or by any other representative of the board. Cross examination by other persons or agencies shall be permitted only at the discretion of the board or hearing officer.

(i) The board or hearing officer shall confine the evidence to the questions before the hearing, but need not apply the technical rules of evidence.

(j) Unless otherwise ordered by the board or hearing officer, testimony given at the public hearing shall not be reported verbatim.

(k) All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the board or hearing officer to be authentic and
§4-1-28  Recommendation; submissions; board decision. (a) At the close of a public hearing presided over by a hearing officer, the hearing officer shall announce either:
   (1) What recommendation will be made to the board on the proposed adoption, amendment or repeal; or
   (2) The date by which such recommendation will be made.
   (b) If no recommendation is made at the close of the public hearing, the hearing officer, within five calendar days of the close of the public hearing, may request or allow filing of additional written submissions in support of or in opposition to the proposed rulemaking.
   (c) The hearing officer's recommendation shall be filed with the board not later than ten calendar days after the close of the public hearing or the expiration of any period for filing additional written submissions.
   (d) At the close of a public hearing before the board, the board shall announce its decision or the date by which such decision will be made. The board's decision on the adoption, amendment, or repeal of any rule shall be rendered in accordance with section 92-3(a)(2), HRS. [Eff Sep 20 1996] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-3)

§4-1-29  Board action. (a) In rulemaking proceedings before the board, the board shall take final action either at the close of the public hearing or on the date previously announced for decision making.
   (b) In rulemaking proceedings presided over by a hearing officer, the board shall take final action within forty-five calendar days after the filing of the hearing officer's recommendation. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3)

§4-1-30  Emergency rulemaking. The board may adopt emergency rules in accordance with section 91-3(b) and 91-4(b)(2), HRS. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3(b), 91-4(b)(2)) (Imp: HRS §§91-2, 91-3(b), 91-4(b)(2))

SUBCHAPTER 4

APPLICATION FOR ISSUANCE OR RENEWAL OF LICENSE, PERMIT, OR CERTIFICATE

§4-1-31  Forms and instructions. An application for the issuance or renewal of a license, permit, or certificate shall be filed with the board. Application shall be made by completing a form furnished by the department. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)
§4-1-32 Denial of application. In the event an application for the issuance or renewal of a license, permit, or certificate is denied, the chairperson or the chairperson's designated representative shall promptly notify the applicant of the board's action by letter which shall include a concise statement of the reasons therefor and of the applicant's right to a hearing if the applicant so desires. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9) (Imp: HRS §§91-2, 91-9)

§4-1-33 Request for hearing. Any person whose application for the issuance or renewal of a license, permit, or certificate has been denied by the board, shall be entitled to a hearing after notice, provided that a request for a hearing is filed with the board within thirty days of the date of mailing of the letter informing the applicant of the denial of the application. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-34 Proceedings upon request for hearing. If a request for hearing is filed within the time prescribed, the board shall order a hearing upon reasonable notice, which shall be conducted in accordance with subchapter 5 and all applicable laws on contested cases. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 5
CONTESTED CASE PROCEEDINGS

§4-1-35 Initiation of contested case. (a) A contested case is initiated with the filing of
(1) A request for a contested case hearing;
(2) A citation issued by the department;
(3) A complaint; or
(4) An order to show cause issued by the board.
(b) Upon the filing of a document initiating a contested case, a docket number shall be assigned consisting of a two-digit year identifier, a two-letter division or branch identifier, and a numerical case identifier, with each identifier separated by a dash. Docket numbers shall be assigned chronologically on a calendar year basis. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-36 Request for contested case hearing. (a) A hearing on a contested matter may be requested by the board on its own motion, by any government agency upon filing of a written petition, or by any person aggrieved by a decision or ruling of the board or against whom a citation has been issued by department employees for a violation of state law or rule.
(b) A person aggrieved by a decision or ruling of the board shall file a request for hearing within ten calendar days after mailing of written notice of board action.
(c) A cited person desiring a hearing shall file a request for hearing within twenty days
after mailing of the citation, notice of violation, or similar document.

(d) A request for hearing filed after the expiration of the time limits set forth in subsections (b) and (c) shall be deemed untimely, and the board need not grant such a request.


§4-1-37 Filing of complaint.  (a) Any person or agency of the State or its political subdivisions, or any officer thereof, may file a complaint against a person holding a license, permit, or certificate issued by the board charging a violation of any law over which the board has jurisdiction or of any rule of the board.

(b) The complaint shall be in writing, signed by the complainant, and shall contain:

(1) A short and simple statement of the facts constituting the alleged violation;

(2) The name and address of the complainant; and

(3) The name and address of the respondent.

(c) Upon receipt of a complaint, the chairperson shall:

(1) Transmit a copy of the complaint to the person against whom the complaint has been filed;

(2) Direct the department staff to investigate the matter contained in the complaint if it has not already done so, and to make an appropriate report and recommendations.

(d) Upon receipt of the staff investigative report, the chairperson shall present the complaint, together with the staff report and recommendations, to the board at its next meeting.

(e) The board shall determine whether or not the complaint should be set for a contested case hearing.  The board need not order a hearing where the matters complained of:

(1) Involve a private controversy redressable in the courts and the public interest is not involved; or

(2) Concern a situation where it is clear on the face of the complaint that there has been no violation of law or rule.


§4-1-38 Order to show cause.  (a) Whenever the board has reason to believe that a law over which it has jurisdiction or one of its rules has been violated by a person holding a license, permit, or certificate issued by the board, the board shall issue and serve upon that person an order to show cause.

(b) The order shall set forth the particular sections of the law or rule involved, and the nature of the alleged violation or subject matter of inquiry.  [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9, 91-9.5, 92-17) (Imp: HRS §§91-2, 91-9, 91-9.5, 92-17)

§4-1-39 Notice of hearing.  Upon filing of a petition or request for hearing under section 4-1-36, board determination that a contested case hearing is required under section 4-1-37(e), or service of an order to show cause under section 4-1-38, a written notice of hearing shall be served on the parties in accordance with section 91-9.5, HRS.  [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)
§4-1-40 Prehearing conferences; briefs. (a) The board or hearing officer may hold prehearing conferences with the parties for the purpose of:

(1) Formulating, simplifying, or narrowing the issues;
(2) Arranging for the exchange of proposed exhibits or proposed written testimony, the setting of schedules, the exchange of names of witnesses, and the limitation of the number of witnesses; and
(3) Such other matters as may expedite the orderly conduct and disposition of the proceedings.

(b) The board or hearing officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely, and may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and a table of authorities. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-9)

§4-1-41 Conduct of contested case hearings. (a) Each hearing shall be held before the board or presided over by a hearing officer.

(b) The board or hearing officer shall be authorized to administer oaths or affirmations and to take all actions necessary for the orderly conduct of the hearing.

(c) Each hearing shall be held at the time and place set in the notice of hearing, but may be continued by the board or hearing officer from day to day or adjourned to a later date or to a different place without notice other than an announcement at the hearing.

(d) The hearing shall be conducted in such a way as to afford each party a reasonable opportunity to offer evidence on the matters specified in the notice of hearing and to obtain a clear and orderly record. However, in order to avoid unnecessary, cumulative evidence, the board or hearing officer may limit the number of witnesses or the time allowed for testimony.

(e) At the commencement of the hearing, the notice of hearing shall be read and the procedure to be followed briefly outlined. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the board or hearing officer prescribes.

(f) The petitioner or complainant shall make the first opening statement and the last closing argument unless the board or hearing officer directs otherwise. Other parties shall be heard in such order as the board or the hearing officer directs.

(g) Each party shall be afforded an opportunity to submit orally or in writing data, views, or arguments that are relevant to the matters specified in the notice of hearing. The board or hearing officer may require the filing of an original and eight copies of all written comments, recommendations, or replies.

(h) All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the board or hearing officer to be authentic and relevant, shall be received in evidence and made a part of the record.

(i) Each party shall have the right to call or have subpoenaed witnesses to testify at the hearing.

(j) Each party shall have the right to conduct such examination or cross examination of the witnesses as may be necessary for a full and true disclosure of the relevant facts and shall have
the right to submit rebuttal evidence, subject to limitation of repetitive questions or cumulative evidence by the board or hearing officer.

(k) Witnesses shall also be subject to questioning by members of the board, the hearing officer, or any other representative of the board.

(l) Before proceeding to testify, all witnesses shall:
   (1) Swear or affirm to tell the truth;
   (2) State their name and address; and
   (3) Give any information respecting their appearance as the board or hearing officer may request.

(m) Where a party is represented by more than one counsel, the counsel may allocate direct or cross examination of witnesses between them, but only one counsel shall be permitted to cross examine a witness, to state any objections, or to make opening and closing arguments.

(n) Any procedure may be modified or waived by stipulation of the parties, and informal disposition may be made by stipulation, agreed settlement, consent order, or default.

(o) The board or hearing officer shall confine the evidence to the questions before the hearing, but need not apply the technical rules of evidence.

(p) At the close of the reception of evidence or within a reasonable time thereafter and prior to the filing of the hearing officer's recommended decision, the parties shall be permitted to file proposed findings of fact and conclusions of law together with reasons therefor. Proposals shall be in writing and shall contain references to the record and authorities relied upon. The original and eight copies shall be filed with the board and copies shall be furnished to all parties concerned.

(q) Prior to the filing of a recommended decision, the hearing officer, for good cause shown, may reopen the case for the reception of further evidence. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-42 Recommended decision; exceptions. (a) The hearing officer's recommended decision shall be filed as soon as practicable and not later than thirty calendar days after the close of the reception of evidence.

(b) The hearing officer's recommended decision shall become a part of the record and include separate findings of fact and conclusions of law as well as reasons therefor. The findings and conclusions shall be based upon the whole record and supported by reliable, probative, and substantial evidence, including facts of which the hearing officer may have taken official notice.

(c) If any party to the proceeding has filed proposed findings, the hearing officer shall incorporate in the recommended decision a ruling upon each proposed finding.

(d) A copy of the hearing officer's recommended decision shall be served upon each party or the party's counsel of record.

(e) Within ten calendar days after receipt of a copy of the hearing officer's recommended decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portions of the record and the authorities relied on to sustain each point. A copy of the exceptions and request for review shall be served upon each party or the party's counsel of record. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)
§4-1-43  Board action.  (a) Before taking final action in a contested case, the board, on its own motion, may order further proceedings to be held.
(b) In taking final action, the board shall consider the recommended decision of the hearing officer and all relevant evidence introduced in conjunction with the case.
(c) If timely exceptions and requests for review have been filed by a party adversely affected by the recommended decision, the board shall allow the party an opportunity to present argument and shall consider the whole record or such portions as may be cited by the party.
(d) The board shall take final action within forty-five calendar days:
(1) After filing of the recommended decision of the hearing officer if no timely exceptions and requests for review have been filed; or
(2) After the conclusion of further proceedings as provided in subsection (a) or review as provided in subsection (c). [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3, 91-11)

§4-1-44  Informal disposition; offers of settlement; satisfaction of complaint. (a) The complainant, respondent, counsel for the board, and any other party to the proceedings may meet at any time prior to or during hearings for the purpose of informal disposition of the proceedings.
(b) Unaccepted proposals or offers of settlement shall not be admissible in evidence.
(c) If a respondent satisfies a complaint either before or after the commencement of a hearing, a statement setting forth when and how the complaint has been satisfied shall be:
(1) Signed and verified by each party;
(2) Filed with the board; and
(3) Served upon all parties of record. Satisfied complaints may be dismissed at the discretion of the board. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9) (Imp: HRS §§91-2, 91-9)

§4-1-45  Service of papers. (a) The board or hearing officer shall serve all orders, notices, and other papers issued by the board or hearing officer, together with any other papers which the board or hearing officer is required by law to serve. All other papers shall be served by the party filing them.
(b) All papers, including notice of final board action, shall be served:
(1) On all counsel of record at the time of filing;
(2) Upon parties not represented by counsel; or
(3) Upon agents designated by parties or by law.
(c) Any counsel entering an appearance subsequent to the initiation of a proceeding shall notify all other counsel of record and all parties not represented by counsel of this fact.
(d) Service of papers shall be made personally or by first-class certified mail.
(e) A party shall be in default upon failure or refusal to adhere to papers served in accordance with this section. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)
§4-1-46 Depositions. (a) Upon application of a party to any proceeding, the board or hearing officer, at any time after the filing of a complaint, may order the taking of testimony by oral deposition or by deposition upon written interrogatories.

(b) Any party desiring to take the deposition of a witness shall make application in writing to the board or the hearing officer giving reasons why a deposition should be taken, together with the following:

1. The character of the deposition;
2. The time and place the deposition is to be taken;
3. The name and address of the person before whom the deposition will be taken;
4. The name and address of each witness; and
5. The subject matter upon which a witness is expected to testify.

(c) Upon approval of an application for the taking of testimony by deposition, a deposition may be taken before any person having power to administer oaths other than the person designated in the notice, provided written notice is given to all parties concerned.

(d) Each witness testifying shall be duly sworn. The adverse party shall have the right to cross-examine the witness.

(e) The questions propounded to the witness and the answers thereto shall be reduced to writing and, in the presence of the person taking the deposition, read to and subscribed by the witness and certified in the usual form by the person taking the deposition. The person taking the deposition shall forward the original and two copies of the deposition to the board at its office in Honolulu, Hawaii.

(f) A deposition ordered and taken in accordance with this section may be used in any proceedings if the board or the hearing officer finds that the evidence is otherwise admissible and that:

1. The witness is dead; or
2. The witness is outside the State, unless it appears that the absence of the witness is procured by the party offering the deposition; or
3. The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
4. The party offering the deposition has endeavored and been unable to procure the attendance of the witness by subpoena; or
5. Exceptional circumstances exist to make it desirable to allow the deposition to be used.

(g) If any part of a deposition is put in evidence by a party, any other party may require the production of the remainder or any other portion of the deposition. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-47 Subpoenas. (a) The issuance of subpoenas by the board shall be in accordance with section 92-16, HRS.

(b) Application for subpoenas for the production of documentary evidence shall be made in writing to the board or to the hearing officer. The application shall be reasonable in scope and specify as exactly as possible the documents desired, showing their general relevancy. [Eff Sep 20 1986] (Auth: HRS §§91-2, 92-16) (Imp: HRS §§91-2, 92-16)
§4-1-48 Ex parte communications. (a) No party or other person representing or on behalf of a party shall communicate privately on the merits of a case to any member of the board, the department staff, or the hearing officer designated to hear and decide a matter.

(b) The following types of ex parte communications are permitted:
(1) Requests for information as to the status of a proceeding; and
(2) Those which all parties to the contested case have agreed upon or which the board or hearing officer has formally ruled may be made on an ex parte basis.

(c) Statements may be made to any news media to inform the public of the status or progress of the contested case or the testimony presented or the evidence produced. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-49 Record of hearing. Contested case hearings shall be reported verbatim or recorded on electronic devices. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)
§4-1-50  Petition for declaratory ruling. (a) On petition of an interested person, the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board. Petitions for the issuance of a declaratory order shall:

(1) State clearly and concisely the controversy of uncertainty;
(2) Cite the statutory authority involved;
(3) Include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest; and
(4) Conform to the requirements of section 4-1-12.

(b) The board, upon receipt of a petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) The board, without notice or hearing, may dismiss a petition for declaratory ruling which fails in any material respect to comply with the requirements of this section.

(d) Although no formal hearing will ordinarily be held on a petition for a declaratory ruling, the board may order a hearing.

(e) Any petitioner or interested party who requests a hearing on a petition for declaratory ruling shall:

(1) Set forth in writing the reasons why the information filed will not permit a fair and expeditious disposition of the petition; and
(2) If the hearing is dependent upon factual assertions, submit affidavits establishing those facts.

(f) In the event a hearing is ordered by the board, the proceedings shall be in accordance with subchapter 5.  [Eff  Sep 20 1986]  (Auth:  HRS §§91-2, 91-8)  (Imp:  HRS §§91-2, 91-8)

SUBCHAPTER 7

SEVERABILITY

§4-1-51  Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety.  [Eff  Sep 20 1986]  (Auth:  HRS §91-2)  (Imp:  HRS §91-2)
DEPARTMENT OF AGRICULTURE

The repeal of State of Hawaii Board of Agriculture Rules of Practice and Procedure and all rules and regulations adopted by the Board of Agriculture in effect on July 1, 1980 and subsequently not converted to the Hawaii Administrative Rules format in accordance with section 91-4.2 and 91-5, Hawaii Revised Statutes, and the adoption of Chapter 4-1, Hawaii Administrative Rules, on the Summary Page dated August 28, 1986, were approved by the Board of Agriculture on August 28, 1986 following a public hearing held on August 11, 1986 after public notice was given in The Sunday Star-Bulletin & Advertiser, The Maui News, Hawaii Tribune-Herald, and The Garden Island on July 20, 22, 23, and 23, 1986, respectively.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

__________________________
Jack K. Suwa, Chairperson
Board of Agriculture

APPROVED AS TO FORM:

Gerald Y.Y. Chang
Deputy Attorney General

__________________________
George R. Ariyoshi
Governor, State of Hawaii

Date:  Sept. 9, 1986

__________________________
Filed

C-536
SUMMARY

1. §§4-153-1 to 4-153-4 are amended.
2. §4-153-8 is amended.
3. §§4-153-11 to 4-153-13 are amended.
4. §§4-153-16 to 4-153-18 are amended.
5. §4-153-29 is amended.
6. Chapter 153 is compiled.
HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 153

AGRICULTURAL PARK PROGRAM RULES

Subchapter 1  Administration

§4-153-1  Definitions
§4-153-2  Administration of agricultural park program
§4-153-3  Powers
§4-153-4  Right to inspect
§4-153-5  Application for leases
§4-153-6  Fees and charges
§4-153-7  Report on all dispositions

Subchapter 2  Planning and Development

§4-153-8  Planning
§4-153-9  Development

Subchapter 3  Joint Ventures

§4-153-10  Development of joint ventures
§4-153-11  Planning; joint ventures
§4-153-12  Terms of joint venture

Subchapter 4  Eligibility Requirements

§4-153-13  General eligibility requirements for agricultural park lands
§4-153-14  Permanent register for agricultural park lands
§4-153

Subchapter 5 Qualifications of Applicants
§4-153-15 All applicants

Subchapter 6 Preference Rights
§4-153-16 Preference right
§4-153-17 Proof of preference status

Subchapter 7 Appraisals and setting of lease rents
§4-153-18 Appraisals and setting of lease rents

Subchapter 8 Disposition of Leases
§4-153-19 Negotiation
§4-153-20 Drawing of lot
§4-153-21 Public auction
§4-153-22 Notices
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Subchapter 9 Lease Provisions
§4-153-24 Lease provisions; generally
§4-153-25 Consent to mortgage
§4-153-26 Irrigation projects
§4-153-27 Taxes
§4-153-28 Condemnation of leases
§4-153-29 Re-purchase right, first offer to board; limitation on re-purchase price
§4-153-30 Disposition of abandoned or seized property
§4-153-31 Covenants against discrimination
§4-153-32 Additional terms and conditions

Subchapter 10 Lease Restrictions
§4-153-33 Lease restrictions; generally
§4-153-1

Subchapter 11  Breach or Default

§4-153-34  Notice of breach or default
§4-153-35  Rights of holder of security interest
§4-153-36  Leases; forfeiture

Subchapter 12  Severability

§4-153-37  Severability

Historical Note:  Chapter 4-153, Hawaii Administrative Rules, is based substantially upon Chapter 4-2, Hawaii Administrative Rules, (Department of Agriculture) (Eff 1/28/88; R 3/6/92]

SUBCHAPTER 1

ADMINISTRATION

§4-153-1  Definitions.  As used in this chapter:

"Abandoned property" means any and all property including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that have been left unattended on land owned or controlled by the State without authority for a continuous period of more than twenty-four hours.

"Administrator" means the head of the division of agricultural resource management, department of agriculture, or any officer or employee to whom authority has been duly designated.

"Agricultural or aquacultural activity" has the same meaning as defined in section 166-2, Hawaii Revised Statutes.

"Agricultural park" has the same meaning as defined in section 166-2, Hawaii Revised Statutes.

"Agricultural processing" means the processing of agricultural produce or products, including dairying, grown, raised or produced in Hawaii.

"Applicant" means any person, association, partnership, or corporation, other than a holder of record having a security interest, which acts to acquire or obtain an agricultural park lease or any interest therein, including a sublease, or an interest in an association or a partnership which holds the
lease or stock in a corporation which holds the lease.

"Board" means the board of agriculture.

"Bona fide farmer" means a person who:

(1) Was an owner-operator of an established farm conducting a substantial farming operation and for a substantial period of the person's life resided on a farm or depended on farm income for livelihood; or

(2) Has not less than two years' experience as a full-time farmer or four years' experience as a part-time farmer and who, in the administrator's judgment, is likely to successfully operate a farm by reason of ability, experience, and training as a vocational trainee.

The term "bona fide farmer" includes agricultural cooperatives organized under chapter 421, Hawaii Revised Statutes, or other agricultural associations or partnerships, at least seventy-five per cent of the members of which would qualify individually as bona fide farmers. It also includes corporations incorporated primarily for agricultural production purposes where at least seventy-five per cent of the stock issued by the corporation is owned by persons who qualify individually as bona fide farmers. For the purposes of this chapter, "bona fide farmer" also includes "qualified aquaculturalist" as defined in section 219-2, Hawaii Revised Statutes.

"Chairperson" means the chairperson of the board of agriculture.

"Corporate successor" means a solely-owned corporation which, through assignment of lease, succeeds an agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Department" means the department of agriculture.

"Displaced farmer" means a person who is or will be displaced from land that was condemned, taken, or repossessed by a governmental authority or private person.

"Division" means the agricultural resource management division of the department of agriculture.

"Economic unit" means the minimum size land area that is economically suitable for the operation of a farm.

"Farm" also means "ranch" and "farmer" also means "rancher."
"Farm dwelling" means a single-family dwelling or employee dwelling located on a farm and used in connection with agricultural or aquacultural activities.

"Holder of record having a security interest" means a person who is the owner or possessor of a security interest in any land covered in section 4-153-35 and who has filed a copy of the interest with the department and the bureau of conveyances of the State.

"New farmer" means a person who is:

(1) A college or community college graduate in agriculture or aquaculture who has less than two years' experience as a full-time farmer or less than four years' experience as a part-time farmer; or

(2) A person who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm, as determined by the administrator.

"Non-conforming use" means a use formerly permitted but presently incompatible with the permitted land use in a zoning district.

"Person" means an individual, or partnership, corporation, association, or agricultural cooperative organized under chapter 421, Hawaii Revised Statutes, except as otherwise defined in this chapter.

"Public purpose", as used in this chapter, unless the context clearly indicates otherwise, means all public uses, including but not limited to the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of holdings of public lands and the development of agricultural parks and residential, commercial, industrial, or resort projects on public lands.

"Qualified aquaculturalist" means a person who:

(1) Is actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities; and

(2) Is a bona fide farmer or new farmer as defined in this chapter.

§4-153-2  Administration of agricultural park program. Responsibility for the administration of the agricultural park program shall be placed within the agricultural resource management division, under the direction of the administrator. [Eff 3/6/92; am and comp ] (Auth: HRS §166-3) (Imp: HRS §166-3)

§4-153-3  Powers. (a) The administrator shall have the power to:

(1) Accept and process applications for agricultural park leases;
(2) Disapprove agricultural park lease applications when the prospective applicant is unable to meet the requirements of the agricultural park program or the criteria for the particular lease disposition;
(3) Recommend for board action the disposition of agricultural park lands to qualified applicants;
(4) Collect rents, assessments, and other fees and charges;
(5) Recommend for board action cancellation of leases where due notice of breach or default has been provided;
(6) Issue non-renewable dispositions granting easements, permits and rights of entry for a period not in excess of fourteen days for use consistent with the purposes of this chapter;
(7) Administer and manage the agricultural park special fund; and
(8) Recommend for board action lease rentals as provided in section 4-153-18.

(b) The board shall have the power to:

(1) Approve of plans to develop agricultural parks;
(2) Establish, operate, maintain, and improve agricultural park infrastructure;
(3) Award and cancel leases, issue revocable permits, easements, and rights of entry covering agricultural park lands for use consistent with agricultural park purposes;
(4) Approve the transfer, assignment, or sublease of an agricultural park lease or any interest therein, including the transfer.
§4-153-4  Right to inspect.  The administrator or the administrator's authorized representative has the right to inspect, at reasonable hours, the leased

of stock of a corporation holding the lease, or the interest in an association or partnership holding the lease. To the extent the board reserves such a right in the lease, upon the transfer, assignment, or sublease of an agricultural park lease or any interest therein, the board may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands;

(5) Establish additional criteria for the selection of lessees not inconsistent with those prescribed in this chapter, relating to the intended use of particular land being disposed of, the financial feasibility of lot development, or the terms of the lease, the criteria to be included in the public notice of lease disposition;

(6) Establish conditions of award which must be met to the satisfaction of the administrator prior to lease execution, the conditions to be included in the public notice of lease disposition;

(7) Establish reasonable fees for services rendered by the division and for preparation of documents to be issued;

(8) Waive rental payments due to natural catastrophes and other external factors beyond the lessee's control and determine the period for the waiver;

(9) Delegate to the chairperson or the administrator, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of functions vested in the board; and

(10) Establish lease rentals as provided in section 4-153-18. [Eff 3/6/92; am and comp ] (Auth: HRS §166-9) (Imp: HRS §§166-3, 166-5, 166-6, 166-7, 166-10, 171-11)
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property in an agricultural park, and the improvements, crops, livestock, equipment, chattels, books, and records of the lessee in connection with the administration of the lease.  [Eff 3/6/92; am and comp ] (Auth:  HRS §166-9)  (Imp:  HRS §166-6)

§4-153-5  Application for leases.  (a) Unless otherwise provided in a public notice of disposition of agricultural park lands, the applicant shall file an application with the department at the following location:

Agricultural Resource Management Division
State Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96814
Mailing address:  P. O. Box 22159
Honolulu, HI 96823-2159

(b) The applicant shall file an application on forms furnished by the department, together with any supporting documentation required to verify qualification.  Financial statements in a format acceptable to the department are required as part of the application.

(c) The department shall require a completed application for review and shall notify the applicant of a deficient application.  If the applicant fails to provide the necessary documentation or correction within ten (10) days of notification of deficiency, the application shall be deemed incomplete and disapproved.

(d) Each applicant shall authorize the department in writing to verify the applicant's qualifications and any other information submitted.  [Eff 3/6/92; comp ] (Auth:  HRS §166-9)  (Imp:  HRS §166-7)

§4-153-6  Fees and charges.  (a) Fees for the processing of public documents and records shall be charged as follows:

(1) Lease, Assignment of Lease, Sublease, Consent to Mortgage, Collateral Agreement, and all other documents:  $30.00/document

(2) Copy of public document:  $.50/page
(b) The cost of appraisals, surveys, public notices, lease closing and other services relating to lot disposal, reopening or assignment which are incurred by the department shall be charged to the lessee upon completion of the relevant lease transaction.

(c) When a notice of lease disposition covers more than one lot or parcel, each lessee shall bear a pro-rata share of the cost of the services referenced in subsection (b) and the share shall be determined by the administrator. [Eff 3/6/92; comp ] (Auth: HRS §166-9) (Imp: HRS §166-6)

§4-153-7 Report on all dispositions. The department shall submit, as part of its annual report required by section 141-1(7), Hawaii Revised Statutes, a report on all dispositions made in the preceding year, the persons to whom made, the size of each disposition, the use, the tax map key number, the base rental and any additional rental, and method of disposition. [Eff 3/6/92; comp ] (Auth: HRS §166-9) (Imp: HRS §141-1(7))

SUBCHAPTER 2
PLANNING AND DEVELOPMENT

§4-153-8 Planning. (a) The division from time to time shall:

(1) Reassess the agricultural park program and define new directions and priorities for the program;

(2) Identify and analyze potential agricultural parks required to support the development of agricultural industries in the State; and

(3) Select and recommend suitable sites for future agricultural park projects to meet the needs of agricultural commodity industries.

(b) Prior to the development of an agricultural park project, and subject to section 166-4, Hawaii Revised Statutes, the division shall prepare or cause to be prepared plans and specifications as a package for board action, including but not limited to:
§4-153-8

(1) Site selection analysis, including preliminary site inspection and boundary mapping, sufficient to establish the suitability of the land for its intended uses;

(2) Development plan and preliminary engineering report, including alternative land use plans and infrastructure requirements, configurations, and costs required to service the project area, and schedule of governmental permits and approvals required to implement the project;

(3) Agricultural feasibility analysis, including agronomic suitability and production capability of the project area, identification of potential markets, costs and economic returns to farm production at the site, and recommended lot sizes;

(4) Environmental impact statement prepared in accordance with chapter 11-200, Hawaii Administrative Rules (Department of Health);

(5) Land use district boundary amendment and county plan and zoning amendments as required for the project;

(6) Survey and cadastral work, including topographic and feature map, profile and cross section survey, preliminary and final subdivision map, parcel descriptions, and installation of property pins for individual lots;

(7) Design of project improvements (such as roads and irrigation facilities), including construction drawings and specifications, cost estimates, soils and drainage reports, quantity takeoffs, approval signatures from permitting agencies, and arrangements for utilities installations; and

(8) Consultation and advice during construction phase, including resolution of problems due to unforeseen conditions, approval of substitutions by the contractor, and as-built drawings.

(c) If the agricultural park improvements are to be developed exempt from county zoning and subdivision requirements pursuant to section 166-4, Hawaii Revised Statutes, the project plans and specifications shall include detailed information on the method and costs.
§4-153-11

Planning; joint ventures. (a) Prior to entering into a partnership agreement, the board shall:

(1) Determine:
(A) Whether the lands shall be developed by disposition or contract;
(B) The location, area, and size of the lands to be developed;
(C) The use or uses to which the lands shall be put;
(D) The estimated period of time to construct and complete the development;
(E) Minimum requirements for on-site and

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Development. The division shall cause agricultural park infrastructure improvements approved by the board to be established, improved, operated, and maintained. [Eff 3/6/92; comp ] (Auth: HRS §§166-9) (Imp: HRS §§166-3, 166-4, 166-9)
off-site improvement, if any; and

(F) Such other terms and conditions as shall be deemed necessary by the board;

(2) Set the minimum or upset rental and additional rental, if any, on the basis of an appraisal report prepared by an appraiser for the board, determining the rental value of the lands for the use or uses for which they are to be developed using generally accepted appraisal methods; the appraised value may be adjusted as provided in section 4-153-18;

(3) Give notice of the proposed partnership agreement by publication at least once in each of three successive weeks in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by the department, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by interested persons;

(4) Require each interested person to include a financial statement, and performance and experience records in agricultural or related development; provided that the board may also, in its discretion, require the interested person to submit answers, under oath, to questions contained in a questionnaire prepared by the department;

(5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as
possible including but not limited to the following: the interested person's proposal as to how and when the person intends to develop the land in partnership with the board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person's costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;

(6) Establish reasonable criteria for the selection of a private party or parties as a partner; and

(7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board's determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board then may enter into a partnership agreement with the partner; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that met the criteria, select the person who submitted the best proposal. The board then may negotiate the details of the partnership agreement;
provided that the terms of the agreement shall not be less than those proposed by the partner in the application. [Eff 3/6/92; am and comp] (Auth: HRS §§166-5, 166-9) (Imp: HRS §§166-3, 166-4, 166-5)

§4-153-12 Terms of joint venture. Any partnership agreement for a joint venture shall be approved by the board and shall be in conformity with section 166-5, Hawaii Revised Statutes. The terms of a partnership agreement for joint venture shall include the following, wherever appropriate:

1. The development and subdivision shall comply with appropriate state and county zoning and subdivision requirements; provided that, pursuant to section 166-4, Hawaii Revised Statutes, the development and subdivision may be exempt from the requirements.

2. The partners shall file with the department a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the partnership agreement.

3. The dates on which the partner must submit to the board for approval the preliminary plans and final plans and specifications for the total development. No construction shall commence until the board has approved the final plans and specifications, provided that with board approval, construction on an incremental basis may be permitted.

4. The date of completion of the total development, including the date of completion of any permitted incremental development.

5. The minimum requirements for off-site and on-site improvements that the partner must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development.

6. A partnership agreement may provide that the
§4-153-13

board shall issue a lease to the nominees of the partner, including the partner, pursuant to the terms previously negotiated and agreed upon between the partner and the board, including lease rent to the lessee and method of recoupment of expenses by the partner.

(7) In the event of a lease the partner may be permitted, after he has completed construction of any required offsite improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any offsite improvement has been completed to an assignee or sublessee who shall assume the obligations of the partner relative to the parcel being assigned or subleased, including the construction of any onsite improvement. The board may permit a partner to share in the lease rent for a fixed period in order to recover costs and profit.

(8) The board may include in any partnership agreement or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in this chapter.

(9) Other terms and conditions set by the board.
[Eff 3/6/92; am and comp ]
(Auth: HRS §§166-5, 166-9) (Imp: HRS §§166-3, 166-4, 166-5)

SUBCHAPTER 4

ELIGIBILITY REQUIREMENTS

§4-153-13 General eligibility requirements for agricultural park lands. (a) Any person shall be eligible to apply for an agricultural park lease if the person:

(1) Is a citizen of the United States who has resided in the State for at least three years or is a permanent status alien who has resided in the State for at least five years; and

(2) Is a bona fide farmer or new farmer as defined in this chapter;
 §4-153-13

(b) In the case of agricultural cooperatives, associations, partnerships and corporations, the residence requirement must be met by seventy-five percent of the members, partners or stockholders who are bona fide farmers, new farmers or qualified aquaculturalists.

(c) No person shall be eligible to lease agricultural park lands who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.

(d) No person shall be eligible to lease agricultural park land who is in arrears in the payment of taxes or other obligations to the State or any of its counties. [Eff 3/6/92; am and comp] (Auth: HRS §§166-7, 166-9) (Imp: HRS §§166-7, 166-9)

§4-153-14 Permanent register for agricultural park lands. The administrator shall establish and maintain a register in which all persons desiring to acquire agricultural park lands may register. The administrator shall determine the information required from each registrant and may establish a criteria for registration. [Eff 3/6/92; comp] (Auth: HRS §166-9) (Imp: HRS §§166-3, 166-9)

SUBCHAPTER 5

QUALIFICATIONS OF APPLICANTS

§4-153-15 All applicants. (a) In addition to satisfying the general eligibility requirements of section 4-153-13, all agricultural park applicants shall qualify as bona fide farmers or new farmers, as defined, and shall demonstrate ability to perform the lease terms and shall provide the following information, at a minimum, to the department:

(1) A resume with periods of farming experience identified by month and year;

(2) A preliminary plan of utilization and development of agricultural park land, including a financial projection of the estimated cost of the development;
(3) State and county tax clearances including general excise tax;

(4) An affidavit that the applicant is not delinquent in any obligation to the State or any of its political subdivisions and that the applicant has not had a sale, lease, license, permit or easement covering public land canceled for failure to satisfy any terms or conditions thereof;

(5) A financial statement, in the format outlined in the application instructions, including a balance sheet current within six months; and

(6) Copies of state income tax returns for the last five years.

(b) Additionally, applicants which are partnerships, corporations, associations or agricultural cooperatives shall provide the following information:

(1) In the case of a corporation, a copy of articles of incorporation reflecting date of filing, purpose of the corporation, and disclosure of all directors and officers.

(2) In the case of an association, partnership, corporation, or agricultural cooperative, a resume of associates, partners, directors and officers, and members, with periods of farming experience identified by months and years.

(c) Whenever the board establishes additional criteria for the selection of lessees, pursuant to section 4-153-3(b)(5), in support of qualification, each applicant shall provide documentation to the satisfaction of the department. [Eff 3/6/92; comp ] (Auth: HRS §§166-7, 166-9) (Imp: HRS §§166-7, 166-9)

SUBCHAPTER 6

PREFERENCE RIGHTS

§4-153-16 Preference right. Any person otherwise qualified to take an agricultural park lot shall have preference in any disposition of agricultural park lots if the person:

(1) Is a veteran who served in the military
§4-153-16
forces of the United States and who was honorably discharged therefrom;
(2) Is a displaced farmer who within a five-year period preceding the application is the former owner or lessee of farm premises that were condemned, taken, or repossessed by a governmental authority or private person;
(3) Is an owner or lessee in possession of farm premises that will be condemned, taken, or repossessed by a governmental authority or private person, for any reason, and will be a displaced farmer within ten years following the application date for an agricultural park lot;
(4) Operates a farm located in a zoning district where agricultural use is a nonconforming use; or
(5) Is a new farmer as defined in section 4-153-1.  [Eff 3/6/92; am and comp  ]
(Auth:  HRS §§166-8, 166-9)  (Imp:  HRS §166-8)

§4-153-17  Proof of preference status.  (a) Any applicant claiming preference status shall furnish proof of veteran status, displacement or potential displacement, nonconformance to zoning, or new farmer qualification as called for in the instructions to applicants and which shall be submitted together with the application.
(b) Willful sale or surrender of a farm shall disqualify an applicant as a displaced farmer.  [Eff 3/6/92; am and comp  ]  (Auth:  HRS §§166-8, 166-9)  (Imp:  HRS §166-8)

SUBCHAPTER 7

APPRAISALS AND SETTING OF LEASE RENTS

§4-153-18  Appraisals and setting of lease rents.  
(a) Public auction.  The appraisal of agricultural park lands for the determination of the upset lease rental at public auction may be made by an employee of the department qualified to appraise lands, or by one but not more than three disinterested appraisers contracted for by the administrator;
provided that the upset lease rental shall be determined by disinterested appraisal when prudent management so dictates. Except as otherwise provided in this subchapter, no such lands shall be leased for a sum less than the rental value fixed by appraisal; provided that for any lease at public auction, the board may establish the upset lease rental at less than the appraisal value set by an employee of the department and the land may be leased at that price. The department shall be reimbursed by the lessee for the cost of any appraisal made by a disinterested appraiser or appraisers contracted for by the department.

(b) Drawing or negotiation. The base rental and additional rental of agricultural park lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal, and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) Reopening. In the case of reopenings of the rental for an agricultural park lease, the base rental and additional rental for any ensuing period shall be the rental value at the time of reopening determined in accordance with generally accepted appraisal methods. At least six months prior to the time of reopening, the rental value of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the administrator, and the lessee shall be promptly notified of the determination; provided that should the lessee disagree with the appraised rental, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the appraised rental shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In that case the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the department.

Automatic escalation of the appraised rental at reopening may be permitted. The increase shall be
based on the "Consumer Price Index for all Urban Consumers, U.S. City Average", published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor, labeled as "CPI". The calculation of the escalated value shall be based on a base index and a reopening period index, both of which are arithmetic averages over a set period of time. The quotient of these two indexes will set the rate of increase, which is then multiplied by the existing rental, giving the rental for the ensuing period.

In the event publication of the CPI is discontinued or not available, any comparable statistics, equivalent to the CPI, published by an agency of the United States or by a responsible financial periodical of recognized authority, shall be used to calculate the indexes as described in the preceding paragraph.

The CPI computation shall be conclusive and binding, but shall not preclude any adjustment in the event of a published amendment to the CPI or an error in the computation; provided the lessee, within thirty days after receipt of notice, shall notify the lessor of the claimed error or dispute therein.

(d) Assignment of lease. In the event of an assignment of lease, the base rental and additional rental for any ensuing period may be redetermined by the board pursuant to appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator; provided that the base rental and additional rental shall be the rental value at the time of assignment determined by generally accepted appraisal methods. The cost of redetermining the base rental and additional rental shall be borne by the lessee.

(e) When more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for review by the public.

(f) Notwithstanding anything to the contrary contained in this chapter 4-153, the administrator may recommend to the board for approval an adjustment of an appraised value. The administrator may recommend using any of the following adjustments.

(1) An adjustment of the fee simple value determined through appraisal as necessary to maintain equitable fee simple values between, among, or throughout the
department's agricultural park system for parks having the same designated use and which are put out to lease within twelve months of each other.

(2) An adjustment of the rental value determined through appraisal by:

(A) Applying a percentage of the rate of return used in the appraisal instead of the appraisal's rate of return. An adjusted rate of return may be applied in the following cases:

(i) For those uses which require extensive or large capital expenditures to meet lease terms and conditions;

(ii) For those uses involving a crop of low yield value; and

(iii) For those uses involving a crop or product which does not generate revenues for a substantial period of time after award of the lease, provided that the adjusted rate of return shall apply only for the period of time in which revenues are not generated.

(B) Factoring in an agricultural park lot's unproductive acreage, e.g., drainageways, wastelands, restricted easements, common usage, and uncontributory land areas, for those agricultural park lots for which the specified use is for crops to be grown "in the soil or ground."

(C) Factoring in extraordinary start-up costs for those crops or uses which require heavy initial capital investments before any returns are realized, e.g., shadehouse crops, wetland crops, etc., or those crops or uses which have unusually little or no return during the initial years of the lease.

(D) Delaying collection of the rental for those crops or specific uses where no income is realized during the first five to seven years. Generally, this adjustment would apply to orchard type
crops where a plant must reach a certain maturity before bearing fruit, e.g., macadamia nut trees and guava and other tropical fruit plants. The proposed rental structure may factor in the no revenue years with low rent and the revenue years with a "catch-up" rent, making a multi-tier rental structure during the initial rental period.

(3) An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:
   (A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the agricultural use value of the leasehold since commencement of the lease.
   (B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time. [Eff 3/6/92; am and comp]

SUBCHAPTER 8

DISPOSITION OF LEASES

§4-153-19 Negotiation. (a) A lease of agricultural park land may be disposed of through negotiation upon a finding by the board that the public interest demands it.

(b) After a determination is made to negotiate the disposition of a lease, the administrator shall:
   (1) Give public notice in accordance with the procedure set forth in section 4-153-22(b), of the department's intention to lease agricultural park land through negotiation, setting forth the minimum conditions thereunder, and the uses for which the land will be leased. Any person interested in securing the lease shall file an application with the administrator not later than
forty-five days after the first publication of the notice;

(2) Determine the applicants who meet the criteria for selection set by the board and notify all applicants of the administrator's determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.

(c) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in subsection (b)(2), dispose of the lease by negotiation.

(d) If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the administrator.

(e) Disposition of agricultural park lands set aside for common use or for the processing of agricultural products may be negotiated without regard to the limitations set forth in this section and section 4-153-22; provided that the disposition encourages competition within the agricultural processing industry and shall not exceed a maximum term of thirty-five years.

(f) The lease shall be issued when conditions of the award of lease are fulfilled. (g) Notwithstanding the provisions of this section and section 4-153-22, the board may renegotiate leases as provided in section 4-153-3. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §166-6)
notice inviting applications for the drawing as provided in section 4-153-22, with such details concerning the drawing as it deems necessary and desirable. Applications to participate in the drawing shall be filed with the department within two weeks after the last publication date of the notice. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. The date of the drawing shall be published as set forth in section 4-153-22. All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled. [Eff 3/6/92; comp ]

§4-153-21 Public auction. (a) Disposition of agricultural park lands may be made at public auction after public notice as provided in section 4-153-22. All public auctions shall be held at the department or at any other convenient place in the district in which the land is located, and shall be conducted by the administrator or by an authorized employee of the division under the direction of the administrator, who shall perform this service without extra compensation.

(b) To be eligible to bid in an auction for an agricultural park lease, a bidder shall qualify as a bona fide farmer or new farmer as defined in this chapter. [Eff 3/6/92; comp ]

§4-153-22 Notices. (a) Each notice of proposed lease disposition shall contain the following information:

(1) General information regarding all the parcels or lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualification of applicants, procedure for filing application, conditions of award, if any, and time and place at which more detailed
§4-153-22

information regarding the lease disposition may be obtained; and

(2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset rental, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and

(3) The lessee's responsibility for applicable lease disposition costs pursuant to section 4-153-6.

(b) Negotiation. Notice of a proposed disposition by negotiation shall be published at least once in each of three successive weeks in a newspaper of general circulation in the State and in addition in a newspaper of general circulation in the appropriate county. The notice shall invite proposals and state in general terms the size, location, and minimum rental of lots to be leased, the terms of lease, and the last date on which application shall be received by the department, which date shall be not less than thirty days after the last date of publication of the notice.

(c) Drawings. Whenever a disposition by drawing by lots is proposed, notice inviting applications to participate in the drawing shall be published once a week for three successive weeks in a newspaper of general circulation published in the State and, in addition, in a newspaper of general circulation in the appropriate county. The notice shall contain:

(1) The qualifications required of applicants;
(2) A general description of the land, including the location and tax map key;
(3) The specific use for which the disposition is intended;
(4) Base rental to be charged, and basis for additional rent, if any; and
(5) The date by which all applications shall be filed, which date shall be not less than fourteen days after the last publication date.

Within not more than one hundred twenty days after the closing date for applications, the administrator shall select those qualified to participate in the drawing,
§4-153-22

notify all applicants as to whether or not they qualified, and conduct the drawing. The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant in fact qualified. The notice of the drawing shall state the time and place of the drawing. In addition to the notice to each applicant, the administrator shall publish the notice of drawing at least three times within a period of ten days in a newspaper of general circulation in the State and, in addition, in a newspaper of general circulation in the appropriate county, each publication to be not more often than once in two successive days. Upon completion of the drawing, the award of leases shall be announced at the next regularly scheduled meeting of the board and the lease issued when conditions of the award are fulfilled.

(d) Auctions. Notice of any proposed disposition by public auction shall be published at least once in each of three successive weeks in a newspaper of general circulation in the State and, in addition, in a newspaper of general circulation in the appropriate county. The last publication shall be not less than ten days before the date of the auction. Notice of the auction shall contain the following:

(1) Time and place of the auction;
(2) General description of the land, including the location and tax map key;
(3) Specific use for which the disposition is intended;
(4) Upset rental to be charged and basis for additional rent, if any; and
(5) The date by which applications for qualification shall be filed.

The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the department and shall be open for inspection at all reasonable hours. [Eff 3/6/92; comp ] (Auth: HRS §§166–6, 166–9, 171–16) (Imp: HRS §166–6)

§4-153-23 Conduct of drawing. (a) Qualified applicants shall be present in person or shall be represented by an agent with appropriate credentials authorizing representation. Applicants who are not
present or arrive late at the drawing shall be disqualified.

(b) All qualified applicants shall be placed in the following groups:

(1) Group I, All persons given preference pursuant to section 4-153-16; or

(2) Group II, Bona fide farmers as defined in this chapter.

(c) The department may determine the order of lot selection as follows:

(1) Within Group I, by prioritizing in any sequence the different preference categories identified in section 4-153-16(1) through 4-153-16(5).

(2) Within the Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for agricultural park lots intended for restricted use. The department may also reserve or limit the number of intended restricted use lots designated to a subgroup and may determine the order in which lots for different restricted uses shall be drawn. If there is an insufficient number of qualified applicants for the first intended restricted use, the remaining lots may be made available for selection for an alternate intended restricted use, and thereafter for selection for non-restrictive permitted use until all lots are selected.

(d) Within each group or subgroup, the applicant whose name is first drawn shall be the first to select a lot and the drawing of names shall continue until all lots are selected or all applicants have selected, whichever occurs first. When subgroups have been established for intended restricted use lots, names of applicants from Group I subgroups shall be drawn first, in the sequence established pursuant to subsection (c), followed by Group II subgroups, then remaining Group I applicants, followed by remaining Group II applicants. When no such subgroups have been established, names of applicants from Group I shall be drawn before those from Group II, in the sequence established pursuant to subsection (c).

(e) After all lots have been selected, five additional names each may be drawn as alternates from Group I and Group II remaining applicants. In the
event awards are canceled for failure to satisfy conditions of award or other reason, the lots made available shall be offered for award to the alternates, first from Group I and then from Group II in the order in which their names were drawn.

(f) The public notice of lease disposition shall identify intended restricted uses, if any, and the priority of the preference categories in Group I. "Restricted use" as used in this section means limited to use for a crop or agricultural product determined by the board to be the most appropriate use for the particular lot, based on consideration of the site selection analysis, development plan and preliminary engineering report and agricultural feasibility analysis. [Eff 3/6/92; comp] (Auth: HRS §§166-6, 166-9) (Imp: HRS §166-6)

SUBCHAPTER 9

LEASE PROVISIONS

§4-153-24 Lease provisions; generally. Every agricultural park lease issued by the board shall contain:

(1) The specific use or uses to which the land is to be employed, provided that the use or uses shall be for agricultural or aquacultural activities only;

(2) The improvements required, provided that a minimum reasonable time shall be allowed for the completion of the improvements, and provided further that the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental;

(3) Restrictions against alienation as set forth in section 4-153-33;

(4) The rent as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;

(5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas; reservation of rights-of-way and access to other public lands, public
§4-153-25 Consent to mortgage. (a) Whenever under this chapter or under any agricultural park lease issued by the board, consent of the State is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business in the State of Hawaii, the consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified under this chapter to lease and hold the land or any interest therein.

(b) The holder of record having a security interest includes any insurer or guarantor of the obligation or condition of the mortgage, including any federal mortgage lending agency and its respective successors and assigns or any lending institution authorized to do business in the State of Hawaii; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any federal mortgage lending agency. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)

§4-153-26 Irrigation projects. In any agricultural park lease a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor, and making the land subject to assessments made or to be made for the project, the assessments constituting a first lien
§4-153-26

upon the land which, if not paid, shall result in the forfeiture of the land subject to notice of default as provided in section 4-153-34. [Eff 3/6/92; comp] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9, 167-19)

§4-153-27 Taxes. Agricultural park leases shall be subject to real property taxes. Upon notice by the appropriate agency, the administrator shall notify the lessee and each holder of record having a security interest as provided in section 4-153-35 of any default in the payment of the taxes, and upon failure to remedy the default within sixty days after receipt of notice of default, the board may cancel and terminate the lease without prejudice to any other remedies the State may have against the lessee. [Eff 3/6/92; comp] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)

§4-153-28 Condemnation of leases. The agricultural park lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, a county, or any other governmental agency, the base rental shall be reduced in proportion to the value of the portion of the premises condemned. The lessee shall be entitled to receive from the condemning authority:

(1) The value of growing crops, if any, which the lessee is not permitted to harvest; and
(2) The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease;

provided that the lessee may, in the alternative, remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee. The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lease and be discharged from any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within such reasonable period allowed by the State. [Eff 3/6/92;
§4-153-29  Re-purchase right, first offer to board; limitation on re-purchase price. An agricultural park lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the board, as follows:

(1) The board shall have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this subsection, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises. If the board does not exercise its option, the provisions of section 4-153-33(a)(6) shall apply.

(2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value.

(3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the department; provided that should the lessee disagree with the values, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658, Hawaii Revised Statutes. In this event, the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the
third appraiser shall be borne equally by the lessee and the department.

(4) The board may re-purchase the lease and improvements with funds from the agricultural park special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the board; provided that the purchase by a qualified applicant shall be subject to sections 4-153-19 and 4-153-22.

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) above shall not be less than the total of all encumbrances that have been approved by the State at the time of the re-purchase.

(6) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-153-35. [Eff 3/6/92; am and comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)

§4-153-30 Disposition of abandoned or seized property. The department may sell, donate, or otherwise dispose of property abandoned or seized on land managed by the department upon compliance with the requirements of section 171-31.5, Hawaii Revised Statutes. [Eff 3/6/92; comp ] (Auth: HRS §166-9) (Imp: HRS §171-31.5)

§4-153-31 Covenants against discrimination. The board shall provide in every agricultural park lease that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex, or physical handicap. As used in this section "physical handicap" means a physical impairment which substantially limits
one or more of a person's major life activities. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 171-64)

§4-153-32 Additional terms and conditions. (a) The agricultural park lessee, within a reasonable period of time and in accordance with the plan of development and utilization provided for in subsection (d), shall derive the major portion of the lessee's annual income from the production of livestock, poultry, crops or products for which the land is granted to the lessee; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted. The lessee shall promptly provide information and documents requested by the administrator, including but not limited to copies of income tax returns, to verify that the income requirement is being met.

(b) The lessee shall furnish the department, prior to the issuance of the executed lease, the following:

(1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the department and approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and

(2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with lease terms and the lessee's lot is substantially developed according to plans approved by the department; provided further that the department may reinstate the waived bond at any time during the term
of the lease.

(c) The board, at its discretion, may permit a farm dwelling or dwellings on an agricultural park lot if the need is clearly demonstrated. The farm dwelling or dwellings shall be used in connection with agricultural or aquacultural activities on the lot and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the board may require, including, but not limited to, adjustment of the base rental to reflect residential use.

(d) The lessee shall utilize the agricultural park land only for the purposes specified in the lease, in accordance with a plan of development and utilization which, in the case of original lessees of agricultural park lots, shall be submitted for the administrator's approval prior to the issuance of the lease. The lessee shall not modify or deviate from the plan without the approval of the department and any unapproved modification or deviation from the plan may be cause for the termination of the lease.

(e) All construction on the agricultural park lot shall be in accordance with plans approved by the administrator and shall be in accordance with all applicable federal, State and county laws, ordinances, and rules, including but not limited to laws regarding environmental quality control.

(f) Mineral and metallic rights and surface and ground water shall be reserved to the State.

(g) The State shall retain the rights to all prehistoric and historic remains found on agricultural park lands. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)
§4-153-33

years, including any extension granted for mortgage lending or guarantee purposes;

(3) No lease shall be made for any land under a lease which has more than two years to run;

(4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any of its political subdivisions; or to any person who, during the five years preceding the date of disposition, has had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof;

(5) Any transferee, assignee, or sublessee of an agricultural park lease shall first qualify as an applicant under this chapter. No lease or any interest therein, including corporate stock or interest in a partnership or association, shall be transferred or assigned without the consent of the board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty percent of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender the lease and improvements, or any interest therein, to the board pursuant to section 4-153-29;

(6) With the approval of the board, and subject to the provisions of section 4-153-29, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

(A) The lease contains the principal residence of the lessee;

(B) The lessee becomes mentally or physically disabled;

(C) Extreme economic hardship is demonstrated to the satisfaction of the board; or

(D) The assignment is to the corporate successor of the lessee; provided that
prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-153-18(d);

(7) The lessee shall not sublet the whole or any part of the demised premises without the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the lessee by the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent and percentage rental, if applicable, of the demised premises based upon the rental rate charged to the sublessee; and provided further that the rent and percentage rental may not be revised downward;

(8) The lease shall be for a specific use or uses, and shall not include wastelands unless it is impractical to provide otherwise.

(b) The board may extend the term of the lease to qualify the lease for mortgage lending or guaranty
purposes with any federal mortgage lending agency and its respective successors and assigns or to any lending institution authorized to do business in the State; provided further that the approval of any extension shall be subject to the following:

(1) The demised premises are developed and utilized according to a plan of utilization and development approved by the department;

(2) The lessee is otherwise in compliance with lease terms;

(3) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;

(4) The board may increase the rent and adjust the rental period; and

(5) Additional restrictions, terms and conditions to insure and promote the purposes of the demised lands, to the extent the board has reserved this right in the lease.

(c) The board at any time during the term of any agricultural park lease and when justified by sound agricultural practices and economic or other circumstances, may permit an alternative agricultural or aquacultural use or uses for any portion or portions of the land demised under the lease. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease, as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

(1) The application of the lessee;

(2) Consent of each holder of record having a security interest in the leasehold; and

(3) A finding by the board that the alternative use or uses are in the public interest.

(d) The land leased under this chapter, or any portion thereof, shall be subject to withdrawal by the State at any time during the term of the lease with reasonable notice and without compensation, except as provided in this section, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the State to remove soil, rock, or gravel as may be necessary for the construction of roads and
rights-of-way within or without the demised premises; provided that upon the withdrawal, or upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base rent shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the State pays to the lessee the value of the crops; and provided further that upon withdrawal any lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee of the leased land being withdrawn. In the case of tree crops, the State shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also. [Eff 3/6/92; comp §166-6, 166-9] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)

SUBCHAPTER 11

BREACH OR DEFAULT

§4-153-34 Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any agricultural park lease issued under this chapter, the board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease, making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including the payment of additional rents due, pursuant to the lease
issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided in this section or within such additional period as the board may allow for good cause, the board may, subject to section 4-153-35, exercise the rights it may have at law or as set forth in the lease. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9, 171-20)

§4-153-35 Rights of holder of security interest. (a) Whenever any notice of breach or default is given to any party under section 4-153-34, or under the terms of any lease or other instrument issued under this chapter, a copy of the notice shall be delivered by the administrator to all holders of record having a security interest in any land or interest covered by an agricultural park lease or other instrument whose security interest has been recorded with the department and the bureau of conveyances of the State. Should the board seek to forfeit the privilege, interest, or estate created by the lease, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all the terms, covenants, restrictions, or conditions of the lease capable of performance by the holder, as determined by the board, within the time period provided in section 4-153-34 or within such additional period as the board may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may:

(1) Pay to the holder from any moneys at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder; or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof, the board shall be entitled to a conveyance of the interest
or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

(2) If the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when the delay serves to assist the board in resolving the problems created by the breach or default involved.

(b) The proceeds of any redisposition effected under this section shall be applied: first, to reimburse the department for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid lease rental or other indebtedness owing the State in connection with the privilege, interest, or estate terminated; and the balance, if any, to the owner of the privilege, interest, or estate. Nothing in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date of this section.

[Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §166-6)

§4-153-36 Leases; forfeiture. Upon the violation of any condition or term of any agricultural park lease to be observed or performed by the lessee,
including but not limited to failure of a prospective lessee to execute the lease within thirty days after presentation thereof, the board, after due notice of default as provided in section 4-153-34, and subject to the rights of each holder of record having a security interest as provided in section 4-153-35, shall terminate the lease or tenancy and take possession of the leased land together with all improvements placed thereon, without demand or previous entry and without legal process, and shall retain all rent paid in advance as damages for the violations. The retention of advance rent as liquidated damages shall be in addition to any other rights and remedies available to the department under section 4-153-34. [Eff 3/6/92; comp ] (Auth: HRS §§166-6, 166-9) (Imp: HRS §§166-6, 166-9)

SUBCHAPTER 12

SEVERABILITY

§4-153-37 Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety. [Eff 3/6/92; comp ] (Auth: HRS §91-2) (Imp: HRS §91-2)

These amendments to and compilation of chapter 4-153, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

__________________________
JAMES J. NAKATANI
Chairperson,
Board of Agriculture

APPROVED:

__________________________
BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: ______________________

__________________________
Filed

APPROVED AS TO FORM:

__________________________
Deputy Attorney General
DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-158
Hawaii Administrative Rules

October 23, 2007

SUMMARY

Chapter 4-158, Hawaii Administrative Rules, entitled "Non-Agricultural Park Lands Program Rules", is adopted.
HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 8

DIVISION OF AGRICULTURAL RESOURCE MANAGEMENT

CHAPTER 158

NON-AGRICULTURAL PARK LANDS PROGRAM RULES

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§4-158-1 Definitions. As used in this chapter:

"Abandoned property" means any and all property, unless the context clearly indicates otherwise, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that have been left unattended on land owned or controlled by the State without authority for a continuous period of more than twenty-four hours.

"Administrator" means the head of the division of agricultural resource management, department of agriculture, or any officer or employee to whom authority has been duly designated.

"Agricultural activities" means the care and production of livestock, livestock products, poultry, or poultry products, or apiary, horticultural, or floricultural products, or the planting, cultivating, and harvesting of crops or trees; has the same meaning as defined in section 165E-2, HRS.

"Agricultural commodity" means any agricultural product, including but not limited to, horticultural (including floriculture), nuts, coffee, whether cherry, parchment, or green beans, fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice, whether produced in the State or imported, products, livestock and livestock products, bees and honey, poultry and poultry products, egg and egg products, timber and Christmas trees, fish and fish products either in their natural state or as processed by the producer thereof or by a processor, as defined in this section.

"Agricultural processing" means the processing of agricultural produce or products, including dairying, grown, raised, or produced in Hawaii.

"Agriculture or agricultural" means the planting, cultivating, harvesting, and processing of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, or forestry
purposes, and including aquatic life farmed or ranched.

"Animal unit" means one mature cow or horse; two yearling steers or heifers; five mature sheep; twelve weaned lambs; or two colts.

"Applicant" means any person or entity, which acts to acquire or obtain a lease or any interest therein, including a sublease, or an interest in an association or a partnership which either holds the lease or owns the stock in a corporation which holds the lease.

"Aquacultural activities" means the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that such farm or ranch is on or directly adjacent to land; has the same meaning as defined in section 166-2, HRS.

"Board" means the board of agriculture or its designated representative.

"Bona fide farmer" means a person who:

(1) Was an owner-operator of an established farm conducting a substantial farming operation and for a substantial period of the person's life resided on a farm or depended on farm income for livelihood;

(2) Has at least two years' experience as a full-time farmer or four years' experience as a part-time farmer and who, in the administrator's judgment, is likely to successfully operate a farm by reason of ability, experience, and training as a vocational trainee;

(3) Has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act, as amended, or as may hereafter be amended, for the acquisition of a farm; or

(4) Is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects.

The term "bona fide farmer" includes agricultural cooperatives organized under chapter 421, HRS, or other agricultural associations or partnerships, at
least seventy-five per cent of the members of which would qualify individually as bona fide farmers. It also includes corporations incorporated primarily for agricultural production purposes where at least seventy-five per cent of its trustees, officers, stockholders, and members qualify individually, excluding a holder of record having a security interest. For the purposes of this chapter, “bona fide farmer” also includes “beekeeper”, and “qualified aquaculturalist” as defined in section 219-2, HRS.

“Carrying capacity” means the maximum number of animal units which an area will support over a period of years without injury to the soil, forage resources, tree growth, watershed, or unwarranted interference with other services of the land.

“Chairperson” means the chairperson of the board of agriculture.

“Commercial exporter” means any person who is engaged in the business of exporting fresh or processed agricultural commodities to points outside the State.

“Consumer” means any person or firm purchasing agricultural commodities for human consumption or animal consumption.

“Conversion” means the extinguishing of an existing encumbrance and the issuance of a new long-term lease to the existing lessee.

“Corporate successor” means a solely-owned corporation which, through assignment of lease, succeeds to the interest of a lessee and who shall own all of the stock issued by, and be the principal officer of, the corporation.

“Department” means the department of agriculture.

“Displaced farmer” means a person who is or will be displaced from land that was condemned, taken, or repossessed by a governmental authority or private person within five years of application date.

“Division” means the agricultural resource management division of the department of agriculture.

“Economic unit” means the minimum size land area that is economically suitable for the operation of a farm.

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"Encumbrance" means any instrument issued including but not limited to lease, permit, license, easement, grant, contract, or authorization to occupy and use non-agricultural park lands under terms and conditions of this chapter.

"Established date of operation" means the date on which the original farming operation first commenced operation. If the physical facilities of the farming operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original operation, provided that this does not violate existing state law or county ordinances.

"Farm" also means "ranch" and "farmer" also means "rancher".

"Farm dwelling" means a single- or multiple-family dwelling or employee dwelling located on a farm and used in connection with agricultural or aquacultural activities.

"Farming operation" means a commercial agricultural or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, and apiary, horticultural, or floricultural products; the planting, cultivating, and harvesting and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" also includes, but shall not be limited to marketed produce at roadside stands or farm markets; noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor. A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other non-agricultural use
shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

“Holder of record having a security interest” means a person who is the owner or possessor of a security interest in any land covered in section 4-158-36 and who has filed a copy of the interest with the department and the bureau of conveyances of the State.

“Land” includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided.

“Land agent” means the land agent of the public lands of the district where the land is situated, and is interchangeable with “property manager”.

“Land license” means a privilege granted to enter land for a certain special purpose such as the removal of timber, soil, sand, gravel, stone, haupu, and plants. “Land licensee” does not include ground or surface water rights, or removal of minerals.

“Land patent” means a government grant of real estate in fee simple.

“Lease” means the right to possess and use land for a term of years.

“New farmer” means a person who is:
(1) A college or community college graduate in agriculture, aquaculture, or beekeeping who has less than two years' experience as a full-time farmer or less than four years' experience as a part-time farmer; or
(2) A person who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm, as determined by the administrator.

“Non-conforming use” means a use formerly permitted but presently incompatible with the permitted land use in a zoning district.

“Offgrade” is a descriptive term applicable to agricultural commodities which have a market value,
and designates a quality lower than the lowest applicable grade in Hawaii, or other states in the Union for each agricultural commodity.

"Partner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for agricultural or aquacultural uses and has the financial ability satisfactory to the board to develop and subdivide land and enter into a joint venture as provided in this section.

"Processed" means canned, preserved, frozen, pickled, dried, or otherwise prepared with or without any ingredients added thereto.

"Processor" means any person engaged within this State in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural commodity for the purposes of marketing such product, in the intrastate commerce, but excludes a person engaged in manufacturing from an agricultural commodity, so changed in form, to another and different product. Examples: wine maker, kukui nut oil extractor, taro flour maker, etc.

"Produce dealer" means any person other than a producer who is engaged in the selling, marketing, or distributing of any agricultural commodity or in the business of soliciting.

"Producer" means any person engaged within this State in the growing or producing for market of any agricultural commodity, or any cooperative association of such persons.

"Product" means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, distributor, or handler.

"Public lands" means all lands which have been given the status of public lands under chapter 171, HRS, and excluded by section 171-2, HRS; including all of the transferred non-agricultural park lands collectively and individually under chapter 166E, HRS,
and to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167.

“Public purpose” as used in this chapter, unless the context clearly indicates otherwise, includes but shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial parks.

“Qualified aquaculturalist” means a person who:

1. Is actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities; and

2. Is a bona fide farmer or new farmer as defined in this chapter.

“Seized property” or “property seized” means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that has been seized by the State as the result of an unauthorized use of or encroachment on land owned or controlled by the State.

“State” means the State of Hawaii.

“Unencumbered public lands” means any lands defined as public lands by section 171-2, HRS, and which have not been:

1. Set aside for any purpose, by statute, executive order, or other means to a governmental agency; or

2. Encumbered by lease, license, permit, easement, or other document issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous nonforest reserve, wildlife, or park areas. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: HRS §§166E-2, 166E-6)
§4-158-2 Powers and general duties. (a) In addition to the powers and function granted to the board under chapter 26, HRS, the board shall have the power to:

(1) Prescribe forms of instruments and documents;

(2) Establish restrictions, requirements, or conditions, not inconsistent with those prescribed in chapter 166E, HRS, and this chapter, relating to the use of particular land being disposed of, the terms of lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;

(3) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use;

(4) Delegate to the chairperson or employees of the department, subject to the board’s control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;

(5) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving an agricultural purpose;

(6) Appoint hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;

(7) Approve of plans to develop public lands;

(8) Award and cancel leases, issue revocable permits, easements, and rights of entry
covering lands for use consistent with its purposes;

(9) Approve the transfer, assignment, or sublease of a lease or any interest therein, including the transfer of stock of a corporation including a limited liability corporation holding the lease, or the interest in an association or partnership including a limited partnership holding the lease. To the extent the board reserves such a right in the lease, upon the transfer, assignment, or sublease of a lease or any interest therein, the board may establish additional restrictions, terms, or conditions not inconsistent with this chapter to insure and promote the purposes of the demised lands;

(10) Waive rental payments due to natural catastrophes and other external factors beyond the lessee's control and determine the period for the waiver;

(11) Establish lease rentals as provided in section 4-158-21;

(12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands; and

(13) Do any and all things necessary to carry out its purposes and exercise the powers granted in Chapter 165E, HRS, and this chapter.

(b) Except as provided by law, the board through the chairperson shall:

(1) Enter into joint venture agreements or development contracts for development and infrastructure improvements of non-agricultural park lands; or contract for subdivision, and installation of infrastructure improvement as provided for in this chapter;

(2) Prevent illegal activities on, unlawful occupation of, or trespassing on public lands;

(3) Cause all trespassers and persons unlawfully
occupying public lands, and their effects, and all animals trespassing on the lands to be removed therefrom and to impound the seized effects and animals according to law;

(4) Enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, default, forfeiture, or escheat; and

(5) Recover money due the State for damage done to any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property or asset.

(c) The administrator shall have the power to:

(1) Fine any person causing an encroachment upon public land as allowed by law and the person shall be liable for administrative costs incurred by the department and for payment of damages;

(2) Approve other lands for development pursuant to section 166E-10, HRS, and section 4-158-15, HAR, and lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(12), HRS;

(3) Accept and process applications for leases;

(4) Disapprove lease applications when the prospective applicant is unable to meet the requirements of the program or the criteria for the particular disposition;

(5) Recommend for board action the disposition of lands to qualified applicants;

(6) Collect rents, assessments, and other fees and charges;

(7) Recommend for board action cancellation of leases where due notice of breach or default has been provided;

(8) Issue non-renewable dispositions granting easements, permits, and rights of entry for a period not in excess for fourteen days for use consistent with the purposes of this chapter;

(9) Administer and manage the non-agricultural
park lands special fund;

(10) Recommend for board action lease rentals as provided in section 4-158-21;

(11) Set, charge, and collect interest and a service charge on delinquent payments due on leases, permits, or other accounts. The rate of interest shall not exceed one percent a month and the service charge shall not exceed $50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(12) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (11);

(13) Maintain an accurate inventory of transferred lands;

(14) Enforce contracts respecting leases, licenses, permits, or other disposition of public lands;

(15) Conduct all public auctions and drawings pertaining to the disposition of public lands and other property authorized by the board;

(16) Keep a record of all official transactions, relating to public lands within the chairperson's jurisdiction and such record shall be a public record;

(17) Establish, operate, maintain, and improve public lands infrastructure;

(18) Establish additional criteria for the selection of applicants not inconsistent with those prescribed in this chapter, relating to the intended use of particular
land being disposed of, the financial feasibility of lot development, or the terms of the disposition, the criteria to be included in the public notice of disposition; and

(19) Establish conditions of award which shall be met to the satisfaction of the administrator prior to document execution, the conditions to be included in the public notice of disposition. [Eff DEC 06 2007]

(Auth: HRS §166E-3) (Imp: HRS §166E-6)

§4-158-3 Fees and charges. Fees for the processing of lease or permit documents and records shall be charged as follows:

(1) Lease, permit, assignment of lease, sublease, consent to mortgage, collateral agreement, and all other documents: $30/document

(2) Copy of document: $.50/page

The cost of appraisals, surveys, public notices, lease closing and other services relating to lot disposition, reopening, or assignment which are incurred by the department shall be charged to the lessee upon completion of the relevant lease or permit transaction and any other fees or charges incurred by the department. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: §166E-8)

§4-158-4 Penalties. (a) The chairperson may set, charge, and collect administrative fines and costs, as allowed by law, or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of chapter 166E, HRS, or any rule adopted pursuant to chapter 166E, HRS.

(b) Any criminal action against a person for any
violation of chapter 166E, HRS, shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of chapter 166E, HRS, or any rule adopted pursuant to chapter 166E, HRS, shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense. [Eff DEC 06 2007] (Auth: HRS §166E-3) (Imp: HRS §166E-6)

§4-158-5 Covenant against discrimination. The board shall provide in every patent, deed, lease, agreement, license, or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or a physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex, or a physical handicap. As used in this section, "physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §171-64; §166E-8)

§4-158-6 Irrigation projects. In any encumbrance or similar agreement, a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 4-158-33. [Eff DEC 06 2007] (Auth: HRS §171-25) (Imp: HRS §166E-6)

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§4-158-7 Prohibitions. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits is prohibited with the following exceptions:

1. The taking of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;

2. For the replenishment or protection of public areas and adjacent public lands or construction or maintenance of state approved reservoirs, harbors, launching ramps, or drainage channels with a permit authorized under chapter 183C, HRS;

3. The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5, HRS; provided that the materials removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or

4. The cleaning of areas for state or county maintenance purposes including the purposes under section 46-12, HRS; provided that the materials removed shall be placed on adjacent areas unless such placement would result in significant turbidity. [Eff DEC 06 2007] (Auth: HRS §171-58.5) (Imp: HRS §166E-6)

SUBCHAPTER 2

TRANSFER OF NON-AGRICULTURAL PARK LANDS

§4-158-8 Conversion of qualified and encumbered lands. (a) The board may offer to convert an existing encumbrance on those lands transferred into new long-term leases. Prior to the board making an

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offer to convert an existing encumbrance to a long-term lease, the board shall determine that it is in the public interest to assist those holding encumbrances, who presently operate or operated a viable agricultural activity for a livelihood. Further, by allowing conversion of existing encumbrances into new long-term leases, the State would realize greater returns and reduce disruptions to current ongoing farming operations. The lessee may request conversion of the lease if the remaining term is less than ten years, but more than five years. For land with encumbrances, conversion shall be limited to those lands:

(1) Not needed by any state or county agencies for any other public purpose; and
(2) Zoned, classified, or leased for agricultural activity.

(b) The board may negotiate and enter into a new lease of not less than fifteen years and not more than sixty-five years. In issuing the new leases the department shall:

(1) Require appraisal of the parcel in accordance with section 4-158-21;
(2) Impose other lease terms, provisions, restrictions, and conditions as provided in this chapter as may be required to protect the State's interests;
(3) Recover from the new lessees the costs of subdividing the parcel as may be required;
(4) Require the payment of annual lease rent by appraisal and a premium computed at twenty-five per cent of annual base rent, with the premium to be added to the lease rent for each year of lease equal to the number of years that person occupied the land, but not to exceed seven years. For example, if land is occupied for ten years, the twenty-five per cent premium shall be paid for seven years, the maximum term; and
(5) Require those qualifying under subsection (a) to meet the bona fide farmer criteria as defined in section 4-158-1.
(c) The department may negotiate the conversion into the new lease without regard to section 4-158-30.  
[Eff DEC 06 2007 ] (Auth: HRS §166E-4) (Imp: HRS §166E-6)

§4-158-9 Extension of encumbered non-agricultural park lands. This section shall apply to those existing encumbrances that meet the following:

(1) The tenant must hold a current lease for use of lands transferred to the department;

(2) The holder of an encumbrance shall be satisfactorily performing in full compliance with the terms and conditions of the existing lease, permit, or license;

(3) The holder of an encumbrance shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county; and

(4) The holder of an encumbrance's agricultural activity or farming operation shall be fully and economically viable as specified in section 4-158-11.

Upon request, the administrator shall evaluate the existing encumbrance to determine whether the farming operation and the holder of encumbrance meets the qualification and eligibility requirements, as outlined in section 4-158-11. The department on a case-by-case basis may recommend to the board the option to renegotiate or amend for extension each existing encumbrance. The board may review the recommendation and shall approve a course of action. The encumbrances deemed not qualified shall continue unabated until the encumbrance termination date expires.  
[Eff DEC 06 2007 ] (Auth: HRS §166E-5) (Imp: HRS §166E-6)

§4-158-10 Term, rent, and condition of extension.

(a) Terms of extension shall not be for a longer term period than sixty-five years, that includes the aggregate of the existing term period with the
extension term period cumulatively summed.

(b) All extensions shall require the determination of the base rent and additional rents. The rental value of the existing lease shall be based on the appraisal conducted by a disinterested appraiser or appraisers contracted by the administrator. Should the lessee disagree with the rental value, the lessee may invoke provisions of section 4-158-21. In no case shall the base annual rent of the existing encumbrance be reduced from its current rate.

(c) Conditions of the lease extension shall remain the same or not less restrictive than those conditions specified in subchapters four and five. The board may impose certain lease requirements or condition the extension provisions to make whole any holders of security interest in order that any outstanding loan status shall not be jeopardized or foreclosed upon as a result of the extension.

(d) An extension may be granted to extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the administrator or an independent appraiser; provided that the approval of any extension shall be subject to the following:

(1) The demised premises are developed and utilized according to a plan of utilization and development approved by the department;

(2) The lessee is otherwise in compliance with lease terms;

(3) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
(4) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;

(5) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled;

(6) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands;

(7) The board may increase the rent and adjust the rental period; and

(8) Additional restrictions, terms, and conditions to insure and promote the purposes of the demised lands, to the extent the board has reserved this right in the lease. [Eff DEC 06 2007] (Auth: HRS §166E-5) (Imp: HRS §166E-6)

§4-158-11 Eligibility for extension. (a) The existing agricultural activity or farming operation shall meet at least three of the following criteria to qualify for extensions under this section:

(1) Conforms with provisions of the Hawaii State Plan or the State Functional Plan for Agriculture;

(2) Supports enhancement or expansion of locally grown replacement crops for sugar;

(3) Protects and conserves suitable agricultural lands within the land district;

(4) Promotes diversified agriculture industry and development of new crops;

(5) Increases the State's self-sufficiency of agricultural commodities and products;

(6) Produces an agricultural commodity that contributes to reducing imported produce;

(7) Ensures the continued availability of suitable agricultural lands in the land district; or
(8) Conforms with any other agricultural uses that the board may deem worthwhile for the preservation of the diversified agricultural industry for the land district. Upon request, the administrator shall evaluate each encumbrance and determine whether or not a recommendation to the board for permission to negotiate a lease extension is justified.

(b) Eligibility requirements. Holders of existing encumbrances shall meet at least four of the following requirements:

(1) Has filed a general excise tax (state) G-49 form for the past seven years either with the state tax department or the Internal Revenue Service showing farming revenues;

(2) Possesses an general excise tax license from the state tax department and has filed tax returns on it;

(3) Has maintained a viable farming operation or produced an agricultural commodity for the past seven years in the land district;

(4) Has operated a family farming operation or employs a minimum of two unrelated farm workers;

(5) Has not filed for bankruptcy during the term of the existing lease or not in default of more than six months rent or cited to be in violation of any lease terms, conditions, or covenants;

(6) Possesses a farm business financial plan or conservation plan, or both; or

(7) Is an approved co-operator with the state soil and water conservation district program under chapter 180, HRS.

The administrator shall request each lessee or permittee to file an affidavit showing that existing holders of encumbrance meet the above criteria or submit proof, whichever is acceptable. Any wilful violation of this requirement shall be cause for the cancellation of the existing encumbrance and forfeiture of the land to the department without due course. [Eff DEC 06 2007] (Auth: HRS §166E-5)

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§4-158-12 Extension restrictions. The board may impose the following restrictions on any lease extensions:

(1) No aggregate term period shall be less than fifteen years nor exceed sixty-five years;

(2) The purpose of the extension shall be for a specific agricultural activity(ies) and may include waste or unusable lands for preservation of the surrounding environment and continuity of farming operations; and

(3) The lease shall not be in violation of existing lease terms or conditions or be in arrears of rents due at the date of extension. [Eff DEC 06 2007] (Auth: HRS §166E-5) (Imp: HRS §166E-6)

SUBCHAPTER 3

POLICY, PLANNING, AND DEVELOPMENT

§4-158-13 Planning. (a) The division from time to time shall:

(1) Reassess the non-agricultural park lands program and define new directions and priorities for the program;

(2) Identify and analyze potential non-agricultural park lands required to support the development of agricultural industries in the State; and

(3) Select and recommend suitable sites for future non-agricultural park lands projects to meet the needs of agricultural commodity industries.

(b) Prior to the development of a non-agricultural park lands project, and subject to section 166E-10, HRS, the administrator shall prepare or cause to be prepared plans and specifications as a
package for board action, including but not limited to:

1. Site selection analysis, including preliminary site inspection and boundary mapping, sufficient to establish the suitability of the land for its intended uses;

2. Development plan and preliminary engineering report, including alternative land use plans and infrastructure requirements, configurations, and costs required to service the project area, and schedule of governmental permits and approvals required to implement the project;

3. Agricultural feasibility analysis, including agronomic suitability and production capability of the project area, identification of potential markets, costs and economic returns to farm production at the site, and recommended lot sizes;

4. Environmental impact statement prepared in accordance with chapter 11-200 (Department of Health);

5. Land use district boundary amendment and county plan and zoning amendments as required for the project;

6. Survey and cadastral work, including topographic and feature map, profile and cross section survey, preliminary and final subdivision map, parcel descriptions, and installation of property pins for individual lots;

7. Design of project improvements (such as roads and irrigation facilities), including construction drawings and specifications, cost estimates, soils and drainage reports, quantity takeoffs, approval signatures from permitting agencies, and arrangements for utilities installations; and

8. Consultation and advice during construction phase, including resolution of problems due to unforeseen conditions, approval of
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substitutions by the contractor, and as-built drawings.

(c) If the non-agricultural park land improvements are to be developed exempt from county zoning and subdivision requirements pursuant to section 166E-10, the project plans and specifications shall include detailed information on the method and costs of maintaining the exempt improvements. [Eff DEC 06 2007] (Auth: HRS §§141-1, 166E-6) (Imp: HRS $166E-6; §§166E-9, 166E-10)

§4-158-14 Development. The division shall cause non-agricultural park lands infrastructure improvements approved by the board to be established, improved, operated, and maintained. [Eff DEC 06 2007] (Auth: HRS §§141-1, 166E-6) (Imp: HRS $166E-6; §§166E-9, 166E-10)

§4-158-15 Development by joint ventures. Any non-agricultural park lands developed by the department in partnership with a federal agency, a county, or a private party shall be subject to a partnership agreement approved by the board of agriculture, which agreement shall provide, at a minimum:

(1) A determination by the board that it is in the public interest to enter into the partnership agreement;

(2) Long-term assurance that the land will be utilized for agricultural or aquacultural purposes;

(3) Board approval of the non-agricultural park lands development plans and specifications;

(4) Selection and management of lessees in a manner approved by the board; and

(5) Conditions to ensure a public benefit from any state funds expended for the project. [Eff DEC 06 2007] (Auth: HRS §§141-1, §§166E-9) (Imp: HRS $166E-6)
§4-158-16 Planning; joint ventures. (a) Prior to entering into a partnership agreement, the board shall:

(1) Determine:
(A) Whether the lands shall be developed by disposition or contract;
(B) The location, area, and size of the lands to be developed;
(C) The use or uses to which the lands shall be put;
(D) The estimated period of time to construct and complete the development;
(E) Minimum requirements for on-site and off-site improvement, if any; and
(F) Such other terms and conditions as shall be deemed necessary by the board;

(2) Set the minimum or upset rental and additional rental, if any, on the basis of an appraisal report prepared by an appraiser for the board, determining the rental value of the lands for the use or uses for which they are to be developed using generally accepted appraisal methods; the appraised value may be adjusted as provided in section 4-158-21;

(3) Give notice of the proposed partnership agreement by publication at least once in each of three successive weeks in a newspaper of general circulation in the State. The notice shall invite interested persons to submit applications to be selected as the partner for the project. The notice shall also state in general terms the size, location, the minimum rental and additional rent, if any, of the area to be developed, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which such lands shall be put, the last date on which applications will be received by the
department, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the partnership agreement may be secured by interested persons;

(4) Require each interested person to include a financial statement, and performance and experience records in agricultural or related development; provided that the board may also, in its discretion, require the interested person to submit answers, under oath, to questions contained in a questionnaire prepared by the department;

(5) Require each interested person to submit a sealed bid, which shall include a development plan in as much detail as possible including but not limited to the following: the interested person's proposal as to how and when the person intends to develop the land in partnership with the board, including any permitted incremental development, the amount of money the person intends to commit to the total project, the method of recovery of the interested person's costs and profits, the amount the person agrees to pay to develop the land, and the income the board will receive from leases;

(6) Establish reasonable criteria for the selection of a private party or parties as a partner; and

(7) Determine within forty-five days of the last day for filing applications the person or persons who meet the criteria for selection set by the board, and notify all persons who submitted applications of the board's determination within seven days of such determination. Any person may examine the basis of the determination, which shall be in writing, to ascertain whether or not the
conditions and criteria established by the board were followed; provided that if any person does not notify the board of any objections and the grounds therefore, in writing, within ten days of such notice, the person shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

(b) If only one person meets the criteria for selection as the partner, the board then may enter into a partnership agreement with that person; provided that the terms of the partnership agreement shall not be less than those proposed by the partner in the application. If two or more persons meet the criteria for selection, the board shall consider all of the relevant facts of the partnership agreement, the proposals submitted by each person, the experience and financial capability of each person, and shall within forty-five days from the date of selection of the persons that met the criteria, select the person who submitted the best proposal. The board then may negotiate the details of the partnership agreement; provided that the terms of the agreement shall not be less than those proposed by the partner in the application. [Eff DEC 06 2007] (Auth: HRS §141-1; §166E-9) (Imp: HRS §166E-6)

§4-158-17 Terms of joint venture. Any partnership agreement for a joint venture shall be approved by the board and shall be in conformity with section 4-158-15. The terms of a partnership agreement for joint venture shall include the following, wherever appropriate:

(1) The development and subdivision shall comply with appropriate state and county zoning and subdivision requirements; provided that, pursuant to section 166E-10, the development and subdivision may be exempt from the requirements;

(2) The partners shall file with the department
a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the partnership agreement;

(3) The dates on which the partner must submit to the board for approval the preliminary plans and final plans and specifications for the total development. No construction shall commence until the board has approved the final plans and specifications, provided that with board approval, construction on an incremental basis may be permitted;

(4) The date of completion of the total development, including the date of completion of any permitted incremental development;

(5) The minimum requirements for off-site and onsite improvements that the partner must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for offsite and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development;

(6) A partnership agreement may provide that the board shall issue a lease to the nominees of the partner, including the partner, pursuant to the terms previously negotiated and agreed upon between the partner and the board, including lease rent to the lessee and method of recoupment of expenses by the partner;

(7) In the event of a lease, the partner may be permitted, after the partner has completed construction of any required offsite improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any offsite improvement has been completed to an assignee or sublessee who shall assume the
obligations of the partner relative to the parcel being assigned or subleased, including the construction of any onsite improvement. The board may permit a partner to share in the lease rent for a fixed period in order to recover costs and profit;

(8) The board may include in any partnership agreement or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in this chapter; and

(9) Other terms and conditions set by the board.  

[Eff DEC 06 2007]  (Auth:  HRS §141-1; §166E-9)  (Imp:  HRS §166E-6)

SUBCHAPTER 4

DISPOSITION OF NON-AGRICULTURAL PARK LANDS

§4-158-18 Lease provisions, generally. Every lease issued by the board shall contain:

(1) The specific use or uses to which the land is to be employed, provided that the use or uses shall be for agricultural or aquacultural activities only;

(2) The improvements required, provided that a minimum reasonable time shall be allowed for the completion of the improvements, and provided further that the board may permit the lessee to offset the cost of any improvements to the leasehold against not more than two years of lease rental. This provision shall not apply to lease conversions as defined in section 4-158-8;

(3) Restrictions against alienation as set forth in section 4-158-5;

(4) The rent as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly,
quarterly, semiannual, or annual payments;

(5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas; reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches; and prevention of nuisance and waste; and

(6) Such other terms and conditions as the board deems necessary to preserve and protect non-agricultural park lands and to effectuate the purposes of the state constitution and chapter 166E, HRS. [Eff DEC 06 2007]

§4-158-19 Lease restrictions, generally. (a) Except as otherwise provided, the following restrictions shall apply to all leases:

1. No lease shall be for a term of less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes;

2. No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or to any person who, during the five years preceding the date of disposition, has had a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof;

3. Any transferee, assignee, or sublessee of a non-agricultural park land lease shall first qualify as an applicant under this chapter. No lease or any interest therein, including corporate stock or interest in a partnership or association, shall be transferred or assigned without the consent of the board, except by devise, bequest, or intestate

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succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent of the devisee's or heir's income is derived from the productive use of the property. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender the lease and improvements, or any interest therein, to the board pursuant to section 4-158-35;

(4) With the approval of the board, and subject to the provisions of section 4-158-35, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:
(A) The lessee becomes mentally or physically disabled;
(B) Extreme economic hardship is demonstrated to the satisfaction of the board; or
(C) The assignment is to the corporate successor of the lessee;

(5) Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional
rental pursuant to the method outlined in section 4-15-21;

(6) The lessee shall not sublet the whole or any part of the demised premises without the approval of the board; provided that:
(A) Prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee;
(B) In the case where the lessee is required to pay rent based on a percentage of its gross receipts, the rents paid by the sublessee shall be included as part of the lessee's gross receipts; and
(C) The board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward; and

(7) The lease shall be for a specific use or uses, and shall not include wastelands unless it is impractical to provide otherwise.

(b) The board may allow commercial agricultural operations for the processing, marketing, and displaying of agricultural crops or commodities, which may include any product created through value-added processes. The commercial activity may sell to the general public provided that the operations shall be owned and operated by a lessee in good standing with the department, provided that:

(1) The demised premises shall be developed and utilized in accordance with the plan of utilization and development approved by the department;
(2) The lessee shall derive the majority of the lessee's annual gross income from the cultivation of agricultural commodities on
the demised premises; and

(3) All products for sale from the premises must have at least fifty per cent of its contents made from commodities cultivated, grown, or produced on the demised premises. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6; §166E-8)

§4-158-20 Additional terms and conditions. (a) The lessee, within a reasonable period of time and in accordance with the plan of development and utilization provided for in subsection (d), shall derive the major portion of the lessee's annual income from the production of livestock, poultry, crops or products for which the land is granted to the lessee; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted. The lessee shall promptly provide information and documents requested by the administrator, including but not limited to copies of income tax returns, to verify that the income requirement is being met.

(b) The lessee shall furnish the department, prior to the issuance of the executed lease, the following:

(1) A certificate of comprehensive liability insurance to be maintained throughout the term of the lease with coverage in an amount to be determined by the administrator and approved by the board, subject to periodic review and adjustment at intervals specified in the lease. The certificate of insurance shall name the department as an additional insured and shall require a thirty-day notice to the department of any policy change or cancellation; and

(2) A performance bond to be maintained throughout the term of the lease in an amount equal to two times the annual base
rental; provided that the bond requirement may be waived by the administrator upon evidence that the lessee is substantially in compliance with lease terms and the lessee's lot is substantially developed according to plans approved by the department; provided further that the department may reinstate the waived bond at any time during the term of the lease.

(c) The board, at its discretion, may permit a farm dwelling or dwellings on a leased lot if the need is clearly demonstrated. The farm dwelling or dwellings shall be used in connection with agricultural or aquacultural activities on the lot and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the board may require, including, but not limited to, adjustment of the base rental to reflect residential use.

(d) The lessee shall utilize the land only for the purposes specified in the lease, in accordance with a plan of development and utilization which shall be submitted for the administrator's approval prior to the issuance of the lease. The lessee shall not modify or deviate from the plan without the approval of the department and any unapproved modification or deviation from the plan may be cause for the termination of the lease.

(e) All construction on the leased lot shall be in accordance with plans approved by the administrator and shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules, including but not limited to laws regarding environmental quality control.

(f) When a notice of lease disposition covers more than one lot or parcel, each lessee shall bear a pro rata share of the cost of the services referenced in subsection (b) and the pro rata share shall be determined by the administrator.

(g) The administrator or the administrator's authorized representative has the right to inspect, at reasonable hours, the leased property and the
§4-158-21 Appraisals and setting of lease rents.

(a) Public auction. The appraisal of lands for the determination of the upset lease rental at public auction may be made by an employee of the department qualified to appraise lands, or by one but not more than three disinterested appraisers contracted for by the administrator; provided that the upset lease rental shall be determined by disinterested appraisal when prudent management so dictates. Except as otherwise provided in this subchapter, no such lands shall be leased for a sum less than the rental value fixed by appraisal; provided that for any lease at public auction, the board may establish the upset lease rental at less than the appraisal value set by an employee of the department and the land may be leased at that price. The department shall be reimbursed by the lessee for the cost of any appraisal made by a disinterested appraiser or appraisers contracted for by the department.

(b) Drawing or negotiation. The base rental and additional rental lands to be disposed of by drawing or by negotiation shall, except as otherwise provided in this subchapter, be no less than the rental value determined by a disinterested appraiser or appraisers contracted by the administrator, and such appraisal, and any further appraisal which is made at the request of the lessee and with the approval of the department, shall be reimbursed to the department by the lessee.

(c) Reopening. In the case of reopenings of the rental for a lease, the base rental and additional rental for any ensuing period shall be the rental value at the time of reopening determined in conformance with the uniform standards of professional appraisal practice as adopted by national professional appraisal organizations. At least six months prior to

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the time of reopening, the rental value of the land in
the specific use or uses for which the disposition was
made shall be determined by an appraiser whose
services shall be contracted for by the administrator,
and the lessee shall be promptly notified of the
determination; provided that should the lessee
disagree with the appraised rental, the lessee may
appoint the lessee's own appraiser who together with
the department's appraiser shall appoint a third
appraiser, and the appraised rental shall be
determined by arbitration as provided in chapter 658A,
HRS. In that case the lessee shall pay for the
lessee's own appraiser, the department shall pay for
its appraiser, and the cost of the third appraiser
shall be borne equally by the lessee and the
department.

(d) Assignment of lease. In the event of an
assignment of lease, the base rental and additional
rental for any ensuing period may be redetermined by
the board pursuant to appraisal conducted by a
disinterested appraiser or appraisers contracted by
the administrator; provided that the base rental and
additional rental shall be the rental value at the
time of assignment determined by generally accepted
appraisal methods. The cost of redetermining the base
rental and additional rental shall be borne by the
lessee.

(e) When more than one appraiser is appointed,
each shall prepare and submit an independent
appraisal. All appraisal reports shall be available
for review by the public.

(f) Notwithstanding anything to the contrary
contained in this chapter, the administrator may
recommend to the board for approval an adjustment of
an appraised value. The administrator may recommend
using any of the following adjustments:

(1) An adjustment of the fee simple value
determined through appraisal as necessary to
maintain equitable fee simple values
between, among, or throughout the
department's land lease system for lands
having the same designated use and which are

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put out to lease within twelve months of each other;

(2) An adjustment of the rental value determined through appraisal by:

(A) Applying a percentage of the rate of return used in the appraisal instead of the appraisal's rate of return. An adjusted rate of return may be applied in the following cases:

(i) For those uses which require extensive or large capital expenditures to meet lease terms and conditions;

(ii) For those uses involving a crop of low yield value; and

(iii) For those uses involving a crop or product which does not generate revenues for a substantial period of time after award of the lease, provided that the adjusted rate of return shall apply only for the period of time in which revenues are not generated;

(B) Factoring in a lot's unproductive acreage, e.g., drainageways, restricted easements, common usage, and uncontributory land areas, for those lots for which the specified use is for crops to be grown "in the soil or ground";

(C) Factoring in extraordinary start-up costs for those crops or uses which require heavy initial capital investments before any returns are realized, e.g., shadehouse crops, wetland crops, etc., or those crops or uses which have unusually little or no return during the initial years of the lease;

(D) Delaying collection of the rental for those crops or specific uses where no income is realized during the first
five to seven years. Generally, this adjustment would apply to orchard type crops where a tree must reach a certain maturity before bearing fruit, e.g., macadamia nut, guava, and other tropical fruit plants. The proposed rental structure may factor in the no revenue years with low rent and the revenue years with a "catch-up" rent, making a multi-tier rental structure during the initial rental period; or

(3) An adjustment of the rental determined through appraisal at the time of reopening or conversion, as the case may be, by:

(A) Factoring in the income for a particular lessee using a percentage increase that reflects the increase in the agricultural use value of the leasehold since commencement of the lease;

(B) Using an appropriate index (e.g., consumer price index, producers' price index, etc.) to calculate an escalation of the rental over a specified period of time. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-3) (Imp: HRS §166E-6)

§4-158-22 Negotiation. (a) A lease of non-agricultural park lands may be disposed of through negotiation upon a finding by the board that the public interest demands the disposition as provided by section 171-18, HRS.

(b) After a determination is made to negotiate the disposition of a lease, the administrator shall:

(1) Give public notice in accordance with the procedure set forth in section 4-158-30(d), of the department's intention to lease non-agricultural park lands through negotiation, setting forth the minimum conditions thereunder, and the uses for which the land

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will be leased. Any person interested in securing the lease shall file an application with the administrator not later than forty-five days after the first publication of the notice.

(2) Determine the applicants who meet the criteria for selection set by the board and notify all applicants of the administrator's determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the administrator of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the department to follow the conditions and criteria.

(c) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in subsection (b)(2), dispose of the lease by negotiation.

(d) If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the administrator.

(e) Disposition of non-agricultural park lands set aside for common use or for the processing of agricultural products may be negotiated without regard to the limitations set forth in this section and section 4-158-29; provided that the disposition encourages competition within the agricultural processing industry and shall not exceed a maximum term of thirty-five years.

(f) The lease shall be issued when conditions of the award of lease are fulfilled.

(g) Notwithstanding the provisions of this section and section 4-158-29, the board may
renegotiate leases as provided in section 4-158-2.  
[Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8)  
(Imp: HRS §166E-6)

§4-158-23 Drawing of lot. When the board determines that non-agricultural park lands are to be leased by drawing, the administrator shall give public notice inviting applications for the drawing as provided in section 4-158-29, with such details concerning the drawing as it deems necessary and desirable. Applications to participate in the drawing shall be filed with the department within two weeks after the last publication date of the notice. Within not more than one hundred twenty days after the closing date for applications, the administrator shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection, and conduct a drawing. The date of the drawing shall be published as set forth in section 4-158-29. All applicants shall be notified of the results of the drawing, and the award of leases shall be made by the board at its next regularly scheduled meeting. The lease shall be issued when conditions of the award of lease are fulfilled.  
[Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8)  
(Imp: HRS §166E-6)

§4-158-24 Public auction. (a) Disposition of non-agricultural park lands may be made at public auction after public notice as provided in section 4-158-29. All public auctions shall be held at the department or at any other convenient place in the district in which the land is located, and shall be conducted by the administrator or by an authorized employee of the division under the direction of the administrator, who shall perform this service without extra compensation.

(b) To be eligible to bid in an auction for a non-agricultural park lands lease, a bidder shall qualify as a bona fide farmer or new farmer as defined

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in this chapter. [Eff DEC 06 2007 ] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §156E-6)

§4-158-25 Conduct of drawing. (a) Qualified applicants shall be present in person or shall be represented by an agent with appropriate credentials authorizing representation. Applicants who are not present or arrive late at the drawing shall be disqualified.

(b) All qualified applicants shall be placed in the following groups:

(1) Group I, All persons given preference pursuant to section 4-158-28; or

(2) Group II, Bona fide farmers as defined in this chapter.

(c) The department may determine the order of lot selection as follows:

(1) Within Group I, by prioritizing in any sequence the different preference categories identified in section 4-158-28(a)(1) through (a)(6).

(2) Within the Group I preference categories and within Group II, by establishing subgroups of priority based on qualification for non-agricultural park land lots intended for restricted use. The department may also reserve or limit the number of intended restricted use lots designated to a subgroup and may determine the order in which lots for different restricted uses shall be drawn. If there is an insufficient number of qualified applicants for the first intended restricted use, the remaining lots may be made available for selection for an alternate intended restricted use, and thereafter for selection for nonrestrictive permitted use until all lots are selected.

(d) Within each group or subgroup, the applicant whose name is first drawn shall be the first to select a lot and the drawing of names shall continue until all lots are selected or all applicants have selected,
whichever occurs first. When subgroups have been established for intended restricted use lots, names of applicants from Group I subgroups shall be drawn first, in the sequence established pursuant to subsection (c), followed by Group II subgroups, then remaining Group I applicants, followed by remaining Group II applicants. When no such subgroups have been established, names of applicants from Group I shall be drawn before those from Group II, in the sequence established pursuant to subsection (c).

(e) After all lots have been selected, five additional names each may be drawn as alternates from Group I and Group II remaining applicants. In the event awards are canceled for failure to satisfy conditions of award or other reason, the lots made available shall be offered for award to the alternates, first from Group I and then from Group II in the order in which their names were drawn.

(f) The public notice of lease disposition shall identify intended restricted uses, if any, and the priority of the preference categories in Group I. "Restricted use" as used in this section means limited to use for a crop or agricultural product determined by the board to be the most appropriate use for the particular lot, based on consideration of the site selection analysis, development plan and preliminary engineering report and agricultural feasibility analysis. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6)

§4-158-26 Disposition of abandoned or seized property. The department may sell, donate, or otherwise dispose of property abandoned or seized on public land upon compliance with the requirements of section 171-31.5, HRS. [Eff DEC 06 2007] (Auth: HRS §171-31.5) (Imp: HRS §166E-6)

§4-158-27 Application requirements. (a) An applicant shall meet one or more of the following qualifications:
(1) Qualifications as a bona fide farmer pursuant to section 4-158-1;
(2) Qualifications as new farmer pursuant to section 4-158-1;
(3) The person meets such other qualifications as the board may prescribe pursuant to 4-158-2; or
(4) Citizenship or permanent status alien. Any person shall be eligible to apply for a non-agricultural park lands lease if the person:
   (A) Is a citizen of the United States who has resided in the State for at least three years or is a permanent status alien who has resided in the State for at least five years; and
   (B) Is a bona fide farmer or new farmer as defined in this chapter.
(b) All applicants. In addition to satisfying the requirements of subsection (a), all applicants shall demonstrate the ability to perform the lease terms and shall provide the following information, at a minimum, to the administrator:
   (1) A resume with periods of farming experience identified by month and year;
   (2) A preliminary plan of utilization and development of the land including a financial projection of the estimated cost of the development;
   (3) State and county tax clearances including general excise tax;
   (4) An affidavit that the applicant is not delinquent in any obligation to the State or any of its political subdivisions; and that the applicant has not had a sale, lease, license, permit or easement covering public land canceled for failure to satisfy any terms or conditions thereof;
   (5) A financial statement, in the format outlined in the application instructions, including a balance sheet current within six months; and
   (6) Copies of state income tax returns for the
last five years.

(c) Additionally, applicants which are partnerships including limited partnerships, corporations including limited liability corporations, associations, trusts, or agricultural cooperatives shall provide the following information:

(1) In the case of a corporation, a copy of articles of incorporation reflecting date of filing, purpose of the corporation, and disclosure of all directors and officers;

(2) In the case of an association, partnership, corporation, or agricultural cooperative, a resume of associates, partners, trustees, directors and officers, and members, with periods of farming experience identified by months and years.

(d) Whenever the board establishes additional criteria for the selection of lessees, pursuant to section 4-158-2(a)(2), in support of qualification, each applicant shall provide documentation to the satisfaction of the administrator. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: HRS §166E-6)

§4-158-28 Preference right. (a) Any person otherwise qualified to take a lot shall have preference in any disposition by drawing of lots if the person:

(1) Is a veteran who served in the military forces of the United States and who was honorably discharged therefrom;

(2) Is a displaced farmer who within a five-year period preceding the application is the former owner or lessee of farm premises that were condemned, taken, or repossessed by a governmental authority or private person;

(3) Is an owner or lessee in possession of farm premises that will be condemned, taken, or repossessed by a governmental authority or private person, for any reason, and will be a displaced farmer within five years.

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following the application date for a lot;

(4) Operates a farm located in a zoning district where agricultural use is a nonconforming use;

(5) Is a new farmer as defined in this chapter that does not own fee simple or possesses a agricultural lease; or

(6) Has been displaced by reason of any natural disaster as defined in this chapter.

After the above preference, any person who is a citizen of the United States and who is otherwise qualified shall be given preference over non-citizens.

(b) Proof of preference status. Any applicant claiming preference status shall furnish proof of veteran status, displacement or potential displacement, nonconformance to zoning, or new farmer qualification as called for in the instructions to applicants and which shall be submitted together with the application.

(c) Wilful sale or surrender of a farm shall disqualify an applicant as a displaced farmer. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: HRS §166E-6)

§4-158-29 Notices. (a) Any disposition of public lands shall require public notices as prescribed in the following paragraphs. In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner, or on the department's website.

(b) Each notice of proposed lease disposition shall contain the following information:

(1) General information regarding all the parcels or lots offered for lease, such as time and place of disposition, terms and conditions of disposition, qualification of applicants, procedure for filing application, conditions of award, if any and time and place at which more detailed information regarding the lease disposition

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may be obtained;

(2) Specific information pertaining to the individual parcels or lots offered for lease such as the parcel or lot number, its description, location and area, minimum, base, or upset rental, basis for additional rent if any, method of payment, purpose for which leased, the term of lease, building requirement, and other such covenants and conditions; and

(3) The lessee's responsibility for applicable lease disposition costs pursuant to section 4-158-3.

(c) Auctions. Public notice of any proposed disposition by auction shall be given at least once in the land district where the land being disposed of is located. Notice of the auction shall contain in addition to information in subsection (a) the following:

(1) General description of the land, including the address and tax map key;

(2) Specific use for which the disposition is intended;

(3) Minimum upset price or rental; and

(4) The maps showing the metes and bounds description and the classification of the land shall be kept in the division or its land agent in the land district in which the land is situated, and shall be available for inspection at normal business hours.

(d) Drawings. Whenever a disposition by drawing by lots is proposed, notice inviting applications to participate in the drawing shall be given at least once in the land district where the land being disposed of is located. The notice shall contain, in addition to information in subsection (a):

(1) The qualifications required;

(2) A general location and tax map key;

(3) The specific use for which the disposition is intended;

(4) Base rental to be charged, and basis for additional rent, if any; and
(5) The date by which all applications shall be filed, which date shall be not less than fourteen days after the last publication date.

Within not more than one hundred twenty days after the closing date for applications, the administrator shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing. The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant in fact qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award of leases shall be announced at the next regularly scheduled meeting of the board and the lease issued when conditions of the award are fulfilled.

(e) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once in the land district where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general the terms and conditions that will be negotiable and those terms which shall be predetermined and the last date on which application will be received by the department which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested person. If more than one applicant qualifies then the administrator shall review and may recommend to the board for approval to negotiate the best terms. [Eff DEC 06 2007] (Auth: HRS §§166E-6, 171-16; §166E-8) (Imp: §166E-8)

§4-158-30 Ineligible applicants. (a) No person shall be eligible to lease public lands who has had during the five years preceding the date of

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disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.

(b) No person shall be eligible to lease public land who is in arrears in the payment of taxes or other obligations to the State or any of its counties.

(c) No person shall be eligible to become an applicant who is not of legal age. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: HRS §166E-6)

§4-158-31 Expired leases; holdover. Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term "cycle" as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

Upon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the department may issue a temporary permit to the lessee, subject to section 4-158-2 and the rent and such other terms and conditions as the board may prescribe. [Eff DEC 06 2007] (Auth: HRS §§166E-6, 171-40) (Imp: HRS §166E-6)

SUBCHAPTER 5

MANAGEMENT OF NON-AGRICULTURAL PARK LANDS

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§ 4-158-32 Consent to mortgage. (a) Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board, consent of the board is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, provided the purchaser shall be qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

(b) Notwithstanding any provision in this chapter to the contrary, in leases or sales for agricultural residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the federal agencies specified in subsection (a) or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided any such
waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the United States Department of Agriculture. [Eff Dec 6 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6; §166E-8)

§4-158-33 Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the administrator shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent issued under this chapter, the written notice shall include a demand to pay the rent with less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided or within such additional period as the board may allow for good cause, the board subject to section 4-158-34, may exercise such rights as it may have at law or as set forth in the lease or encumbrance. [Eff. Mar 6 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6; §166E-8)

§4-158-34 Rights of holder of security interest. (a) Whenever any notice of breach or default is given to any party under section 4-158-33 or under the terms of any lease, license, agreement, or other instrument issued or to be issued under this chapter, a copy of the notice shall be delivered by the department to all

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holders of record of any security interest in the land or interest covered by the lease, license, agreement, or other instrument whose security interest has been recorded with the department. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all the terms, covenants, restrictions, or conditions of any lease, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 4-158-33 or within such additional period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may:

(1) Pay to the holder from any moneys at its disposal, including the special fund, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

(2) If the property cannot be reasonably reassigned without loss to the department then terminate the outstanding privilege,
interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redisplay of the affected land to a qualified and responsible applicant free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still resolve the violation created by the breach or default involved.

(b) The proceeds of any redisplay under subsection (a)(2) shall be applied: first, to reimburse the department for costs and expenses in connection with the redisplay; second, to discharge in full any unpaid purchase price or other indebtedness owing the department in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the department upon redisplay which exceeds the fair market lease value of the land as previously determined by the department's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date of a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances. [Eff DEC 06 2007 ] (Auth: HRS §166E-6; §166E-13) (Imp: HRS §166E-6; §166E-13)

§4-158-35  Re-purchase right, first offer to
board; limitation on re-purchase price. (a) A lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the lease and improvements, or any interest therein, are first surrendered to the board, as follows:

(1) The board may have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this subsection, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises. If the board does not exercise its option, the provisions of section 4-158-19(a)(4) shall apply:

(2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value;

(3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the administrator; provided that should the lessee disagree with the values, the lessee may appoint the lessee's own appraiser who together with the department's appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the lessee shall pay for the lessee's own appraiser, the department shall pay for its appraiser, and the cost of the third
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appraiser shall be borne equally by the lessee and the department;

(4) The board may re-purchase the lease and improvements with funds from the special fund or may accept a surrender of lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the board;

(5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the board at the time of the re-purchase.

(b) This section shall not apply to a holder of record having a security interest upon foreclosure pursuant to section 4-158-34. [Eff DECEMBER 6, 2007]

(Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6; §166E-8)

§4-158-36 Condemnation of leases. The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, county, or any other governmental agency, the lease rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority:

(1) The value of growing crops, if any, which the lessee is not permitted to harvest; and

(2) The proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided that the lessee may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee.

The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be

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entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lease and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within such reasonable period allowed by the department. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §§166E-6, 171-38; §166E-8)

§4-158-37 Taxes. Any provision to the contrary notwithstanding, leases and licenses issued by the board and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee, or the permittee and the lessee's, licensee's, or permittee's successor in interest.

Upon notice from the appropriate tax agency, the administrator shall notify the lessee, licensee, or permittee and each holder of record having a security interest as provided in section 4-158-34 of any default in the payment of the taxes and upon failure to remedy the default within sixty days after receipt of notice of default, the board may cancel and terminate the lease, license, or permit without prejudice to any other remedies the department may have against the lessee, licensee, or permittee. [Eff DEC 06 2007] (Auth: HRS §166E-6; §166E-8) (Imp: HRS §166E-6; §166E-8)

§4-158-38 Lease forfeiture. (a) Upon the violation of any condition or term of any lease to be observed or performed by the lessee, the board shall, after the notice of default as provided in section 4-158-33, and subject to the rights of each holder of record having a security interest as provided in section 4-158-34, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together
with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.
(b) The board shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal the lessee shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops. [Eff 2007-12-06] (Auth: HRS §§166E-6, 171-39) (Imp: HRS §166E-6)
OTHER PROVISIONS

§4-158-39 Report on all dispositions. The department shall submit, as part of its annual report required by section 141-1(7), HRS, a report on all dispositions made in the preceding year, the persons to whom made, the size of each disposition, the use, the tax map key number, the base rental and any additional rental, and method of disposition. [Eff DEC 06 2007] (Auth: HRS §166E-6) (Imp: HRS §166E-6)

§4-158-40 Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety. [Eff DEC 06 2007] (Auth: HRS §91-2) (Imp: HRS §91-2)
DEPARTMENT OF AGRICULTURE

Chapter 4-158, Hawaii Administrative Rules, on the Summary Page dated October 23, 2007, was adopted on October 23, 2007, following public hearings held on October 1, 2, 3, and 4, 2007, after public notices were given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 30, 2007.

The adoption of chapter 4-158 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Sandra Lee Kunimoto
Chairperson
Board of Agriculture

APPROVED:

Linda Lingle
Governor
State of Hawaii
Dated: NOV 23 2007

APPROVED AS TO FORM:

Deputy Attorney General
Deputy Attorney General

Filed

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