

## ***INFORMATION PACKET***

**Public Notice of Proposed Disposition by Public Auction for  
.946 Acre (1,187 Square Feet)  
Intensive Industrial (I-2) Parcel  
Located at Shafter Flats Industrial Development,  
650 Kakoi Street, TMK: 1<sup>st</sup> Division 1-1- 64:010  
Moanalua, Honolulu, Oahu, State of Hawaii**

Requesting Agency

**State of Hawaii  
Department of Hawaiian Home Lands**

91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

**May 11, 2012**

**INFORMATION PACKET**  
**For Intensive Industrial-Use (I-2 District)**  
**Property Location: Shafter Flats, Moanalua, Honolulu, Oahu**

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**APPENDICES:**

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Exhibit "B" – Tax Map

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Exhibit "D" – Sublease Rent Participation Policy and Acknowledgement

Exhibit "E" – Memorandum of Lease

**LIST OF ITEM(S) AVAILABLE FOR REVIEW IN DHHL OFFICE:**

- 1) Appraisal Report Dated July 27, 2011

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**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 OF PROPOSED DISPOSITION  
BY NEGOTIATION OF A GENERAL (GROUND) LEASE  
For Intensive Industrial-Use (I-2 District)  
At Shafter Flats, Moanalua, Honolulu, Oahu, Hawaii**

The Department of Hawaiian Home Lands (DHHL) is seeking applications from qualified individuals or entities to enter into a general (ground) lease agreement for the use of an industrial lot and improvements on Hawaiian home lands further described in the Information Packet. 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 LEGAL PUBLIC NOTICE is first published, that date being **Friday, May 11th, 2012**, in which to submit completed applications for DHHL consideration.

Interested applicants may obtain an **Information Packet** which describes the details of this disposition beginning on **Friday, May 11<sup>th</sup>, 2012**. All completed applications received no later than **4:00 p.m. (HST), Monday, June 25, 2012** will be reviewed, and only those applicants that meet DHHL's objectives and criteria will be notified in writing as being "eligible" for further consideration of their proposals. Eligible applicants will then be required to submit detailed information regarding their planned use, renovation, or re-development of the site, meet certain DHHL criteria as explained in the Information Packet, and submit an **Earnest Money Deposit** to DHHL by no later than **4:00 p.m. (HST), Thursday, August 9, 2012**. DHHL will then review all information submitted. Those eligible applicants who meet DHHL's objectives and criteria will be deemed "qualified" and will receive written notice of such. Qualified applicants will then be invited to attend the voice bid auction conducted at DHHL's Kapolei Office at the location as described below:

<b>DATE &amp; TIME:</b>	<b>10:00 a.m. (HST), Thursday, August 23, 2012</b>
<b>LOCATION:</b>	<b>Department of Hawaiian Home Lands Hale Kalaniana'ole 91-5420 Kapolei Parkway Kapolei, Hawaii 96707</b>
<b>LAND TO BE DISPOSED:</b>	<b>The subject property is located at 650 Kakoi Street, in the Shafter Flats Industrial Development, Moanalua, Honolulu, Oahu</b>

An **Information Packet** containing an application form, land use form, property information, auction guidelines and other instructions and requirements for completing the application process are available through the internet or for mail-out or pick-up by prospective applicants during regular state business hours at DHHL's Main Office in Kapolei, 91-5420 Kapolei Parkway, Kapolei, Oahu.

**Land to be disposed:** The property to be disposed is located at 650 Kakoi Street, Honolulu, identified as Tax Map Key (1) 1-1-64 parcel 010, further described as Lot 8 of the Shafter Flats Industrial Development, containing approximately 0.946 acres (41,187 square feet) of land with building improvements, at Moanalua, Honolulu, Island of Oahu.. The two (2) existing structures must be purchased in the amounts as stated in the Information Packet.

**Purpose/Use:** The property is being offered for Intensive Industrial Use (I-2) under the City and County of Honolulu Zoning Code and all applicable permit requirements consistent with I-2 zoning requirements.

**Lease Term:** The qualified applicant may propose a minimum twenty-five (25) year lease term up to a maximum fifty-five (55) year lease term.

**Rent/Minimum Upset Rent:** The bidding will start at the Minimum Upset Rent for the first year of the lease. The minimum upset rent is \$208,000.00. The highest bid equal to or greater than the Minimum Upset Rent will be the determining factor in selecting the Successful Bidder who will be offered the opportunity to negotiate a lease with DHHL. The Minimum upset rent has been set by appraisal as follows:

Term	Minimum Upset Rent Per Annum
Years 1-10	\$ 208, 000.00
Years 11-15	\$266,260.00
Years 16-20	\$301,250.00
Years 20-25	\$340,830.00

After determining the highest bidder for the first year of the lease, rent for the first twenty-five years of the lease will be determined as follows:

Years 1-10	Highest Bid (equal to or greater than \$208,000.00)
Years 11-15	Year 10 multiplied by 1.2801
Years 16- 20	Year 15 multiplied by 1.1314
Years 21 – 25	Year 20 multiplied by 1.131

**Rent Step-ups:** After the initial ten (10) year lease period, rent step-ups are at each five (5) year intervals for the first twenty-five (25) years of the lease.

**Rent Reopenings:** If the term of the lease extends beyond 25 years, the rent will be re-determined by an independent fair market appraisal prior to commencement of the 26<sup>th</sup>, 36<sup>th</sup> and 46<sup>th</sup> year of the lease with rent step-ups at each five-year interval.

**Utilities:** All public utilities, including water, sewer, electricity, and gas are available to the property within the surrounding public roadways. Connection to all utilities and related services are the responsibility of the successful bidder.

**Telecommunication Service:** Sandwich Isles Communications, Inc. will provide telephone and broadband services to the site at the time these services are needed.

**Existing Structures:** The lot has two existing buildings that must be purchased in their "as is" condition for the amounts as stated in the Information Packet. The purchase of these improvements by the successful bidder is **mandatory** and shall be considered a separate financial commitment from the annual ground lease rent. A lump sum payment for the two building improvements is due within ninety (90) days from the date lease negotiations are complete and the lease is fully executed. Upon payment, the new lessee will then own the improvements located on the leasehold property.

**Chapter 343, Environmental Assessment:** Section 11-200-8(a)(1), Exempt Classes of Action of the Environmental Impact Statement Rules of the Hawaii Administrative Rules: This section exempts "operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible, or no expansion or change of use beyond that previously existing". The successful bidder may be required to comply with Chapter 343, Hawaii Revised Statutes, as amended, if planned uses differ from existing uses.

**Additional Information:** To receive an Information Packet, view the Appraisal Report used to determine the Upset Rent, and answers to any questions, please contact: Carolyn Darr, Land Agent at Department of Hawaiian Home Lands, Land Management Division, (808) 620-9457 or at [carolyn.i.darr@hawaii.gov](mailto:carolyn.i.darr@hawaii.gov).

This 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 the Chairman of the Hawaiian Homes Commission.

Date: Honolulu, Hawaii \_\_\_\_\_

Honolulu Star Advertiser  
(Local Newspaper)

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

Date: 5/11/2012  
5/18/2012  
5/25/2012

By \_\_\_\_\_  
Albert "Alapaki" Nahale-a, Chairman  
Hawaiian Homes Commission

**Utilities:** All public utilities, including water, sewer, electricity, and gas are available to the property within the surrounding public roadways. Connection to all utilities and related services are the responsibility of the successful bidder.

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This 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 the Chairman of the Hawaiian Homes Commission.

Date: Honolulu, Hawaii May 8, 2012

Honolulu Star Advertiser  
(Local Newspaper)

Date: 5/11/2012

5/18/2012

5/25/2012

State of Hawaii

DEPARTMENT OF HAWAIIAN HOME LANDS

By



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Albert "Alapaki" Nahale-a, Chairman  
Hawaiian Homes Commission

**I. INTRODUCTION, OBJECTIVES AND GENERAL INFORMATION**  
**For Intensive Industrial-Use (I-2 District) At**  
**650 Kakoi Street, Shafter Flats, Moanalua, Honolulu, Oahu**

**Introduction:**

The Department of Hawaiian Home Lands (DHHL) is soliciting proposals from interested parties (applicants) who are interested in entering a long term general (ground) lease for a parcel of Hawaiian home lands with existing building improvements situated at 650 Kakoi Street in the Shafter Flats Industrial Development, Lot No. 8, Moanalua, Honolulu, Oahu, State of Hawaii. DHHL will be conducting a public auction for the parcel identified in the City and County of Honolulu, Tax Map (1) 1-1-64:010, Lot 8. The lot is .946 acres (41,187 square feet). The term of the lease is set at a minimum of twenty-five (25) years and negotiable to a maximum of fifty-five (55) years.

Applicants are required to submit details regarding their planned use, renovation or re-development of the site, meet certain DHHL criteria, and submit rent proposals, as further described in this Information Packet.

The applicant that best meets DHHL's objectives and criteria, and whoever makes the highest rent proposal, which meets or exceeds the Minimum Upset Rent for the first twenty-five (25) years of the lease, and is willing and financially able to purchase the improvements at the stated price of \$150,100.00, shall be declared the Successful Bidder and have the opportunity to negotiate a lease for the property.

**Objectives:**

DHHL wishes to lease the parcel for existing use, renovation or re-development at its highest and best use, which has been designated as intensive industrial (I-2) zoning under the City and County of Honolulu's zoning requirements. Proposed uses that are controversial and/or incompatible with the character of the surrounding neighborhood, or create significant negative impacts on the land or community may be denied. DHHL has deemed that residential use on the site is not compatible with its objectives.

**General Information:**

- The qualified applicant who proposes the highest rent that is equal to or exceeds the Minimum Upset Rent for the first year of the lease, as stated in the legal notice, will determine (by stepped increases) the rent for the first twenty-five (25) years of the lease, and will be offered the opportunity to negotiate a lease for the property.

- Prior to commencement of any demolition or construction on the site, the lessee may be required to comply with Chapter 343, Hawaii Revised Statutes, as amended. This requires an assessment be made to determine the impacts the development may have on the surrounding environment, if lessee's use, renovation, or re-development is significantly different than the existing use of the property. If compliance is required, such compliance shall be considered completed upon issuance of a Finding of no Significant Impact (FONSI) or final approval and acceptance of an Environmental Impact Statement, whichever is applicable. The Hawaiian Homes Commission is the Accepting Authority for Environmental Assessments and Environmental Impact Statements on Hawaiian home lands.
- Telecommunications for the site shall be provided by Sandwich Isles Communications, Inc. (SIC). A small portion of the parcel is planned for use as a telecommunications equipment site. A site plan for the proposed installation of this equipment site is available at DHHL.



## II.

### **APPLICANT QUALIFICATION CRITERIA For Intensive Industrial-Use (I-2 District) Shafter Flats, 650 Kakoi Street, Moanalua, Honolulu, Oahu**

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 a general (ground) lease of the property described as 650 Kakoi Street, in the Moanalua, Shafter Flats Development and further identified as Tax Map Key (1) 1-1-64 parcel 010 (hereinafter the “Property”);and

2) determine those Eligible Bidders who, at the time of the auction are “qualified” to bid; and

3) select the Successful Bidder who declares the highest offer to rent the Property from among all qualified bidders.

Prior to the Public Voice Bid Auction, a two step process will be used to determine an applicant’s eligibility and qualify the applicant to enter into a general (ground) lease for the Property.

#### **COMPLETED APPLICATIONS (Step One)**

All persons or entities interested in obtaining a lease for the Property must submit a “completed application” by no later than 4:00 p.m. (HST) Monday, June 25, 2012. A completed application must include the following:

1. Completed “Application and Qualification Form (see Section IV of this Information Packet) or other printed material that provides the same information as that requested in the Application and Qualification form;

2. A conceptual plan with enough detail to describe the type, size, and use of the existing improvements, renovation, or re-development envisioned on the site;

3. Information describing applicant’s experience and capacity for completing a development (if re-developing) and/or describing applicant’s business as envisioned, together with supporting documents;

4. Information showing a) preliminary or estimated renovation or re-development budget; b) planned funding sources for the renovation or re-development; and c) demonstration of 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 or demonstrates the applicant's ability to use, renovate or re-develop the property as envisioned.

### **EARNEST MONEY DEPOSIT**

**IS NOT TO BE SUBMITTED DURING THE "STEP ONE" PROCESS.**

DHHL is the sole entity that will evaluate the information provided above. The information will be reviewed to determine if the applicant's conceptual use, renovation, or re-development plans meet DHHL's objectives.

By no later than **June 28, 2012**, DHHL will mail out written notices to all persons or entities who have submitted complete applications on or before the deadline. Those applicants who have met DHHL's objectives and eligibility criteria will be informed that they are "eligible" to bid and move on to "Step Two". Those who have not met DHHL's objectives and eligibility criteria will be informed that they are not eligible to bid.

### **BID QUALIFICATION (Step Two)**

Those who have submitted a completed application and have received DHHL's written confirmation declaring them eligible to bid, the "Eligible Bidders" will have until **4:00 p.m. (HST) Thursday, August 9, 2012** to submit the following information:

1. Current Certificate of Good Standing (business entities) issued by the State of Hawaii, Department of Commerce and Consumer Affairs. If the business is not yet registered to operate in the State of Hawaii then the applicant must provide a written statement that it is the applicant's intent to register to do business in the State of Hawaii and that the applicant, if selected as the Successful Bidder, will provide evidence of such registration, prior to execution of a lease for the Property.

2. Current (less than 60-days) Tax Clearance from the IRS and State of Hawaii, Department of Taxation, indicating that the applicant is not delinquent in taxes. If the business is not yet registered in the State of Hawaii, the applicant must provide a federal tax clearance and a written statement that the applicant, if selected as the Successful Bidder, will provide evidence of receipt of a Hawaii Taxpayer Identification Number, prior to the execution of a lease for the Property.

3. A detailed planned use, renovation, or re-development of the Property that must include:

a) A narrative of the Eligible Bidder's plans for the use, renovation or re-development of the Property including phasing of the development, if any. Intended uses and purposes for development or renovation must be described including any space that is intended for sub-leasing;

b) A site development plan (if renovating or re-developing) indicating what and where new improvements are planned, the estimated square footage of all structures, 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, if required, governmental permits, site preparation, construction and occupancy, etc; and

d) Letters of commitment or interest from potential tenants, sub-tenants or occupants, if intended.

4. Demonstration of the financial capacity to complete the proposed project as envisioned by submitting the following:

a) A refined construction budget/estimate including contractors or sub-contractor's 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 **\$52,000.00**. The Earnest Money Deposit will be held uncashed by DHHL, until the Successful Bidder has been determined. Earnest Money Deposits submitted by unsuccessful bidders will be returned, uncashed;

d) A prequalification letter from a financial institution or other type of funding commitment that indicates the Eligible Bidder's financial capacity to purchase the improvements on the property for the stated price of \$150,100.00; and

e) A written statement acknowledging that the Eligible Bidder understands that the purchase of the existing improvements is mandatory and a separate cost from the cost of the ground rent, as determined by the voice bid auction.

DHHL is the sole entity that will evaluate the information received from the Eligible Bidders. DHHL's evaluation will be based on the ability for the Eligible Bidder to meet DHHL's objectives and criteria. DHHL reserves the right to disqualify any proposal that lacks sufficient information to clearly define the use, renovation, or re-development concept or occupancy plans. Information submitted after the deadlines as established in the Legal Public Notice and the Information Packet will not be accepted.

Only those proposals that include an **Earnest Money Deposit**, in the amount of \$52,000.00, a letter **acknowledging and agreeing to purchase the improvements**, and the other information requested in "Step Two" will qualify for the opportunity to bid at the voice bid auction scheduled at 10:00 a.m. (HST) on Thursday, August 23, 2012.

III.

**PUBLIC AUCTION GUIDELINES**  
**For Intensive Industrial-Use (I-2 District)**  
**Shafter Flats, 650 Kakoi Street, Moanalua, Honolulu, Oahu**

The public auction shall be held on THURSDAY, August 23, 2012 at 10:00 a.m. (HST), at DHHL's Main Office, Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Honolulu, Oahu, Hawaii 96707.

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 I. D. and having on hand, upon demand of the Chairman of the Hawaiian Homes Commission or his agent, at the public auction, an Earnest Money Deposit in the form of a certified, or cashiers check, (payable to the Department of Hawaiian Home Lands) an amount equal to one-fourth of the minimum upset annual rental as listed below:

<u>Annual Rent</u>	<u>Earnest Money Deposit</u>
\$ 208,000.00	\$52,000.00

- e) And, 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 Public Notice of Proposed Disposition, all data contained in the Information Packet, and other informational items available for review electronically at [carolyn.i.darr@hawaii.gov](mailto:carolyn.i.darr@hawaii.gov), or at DHHL's Main Office.

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 must make an

appointment for a site inspection by contacting Carolyn Darr, Land Agent, Land Management Division, Department of Hawaiian Home Lands at (808) 620-9457.

**Appraisal Report:** The Appraisal Report Dated July 27, 2011 that was used to determine the upset rent for the property is available for viewing at DHHL's Main Office between 7:45 a.m. – 4:30 p.m.

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 earnest money 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 Notice of Proposed Disposition and the qualified bidder making the highest bid (equal to or greater than \$208,000.00) at the fall of the gavel shall be the successful bidder of the lease. The annual rent for the 11<sup>th</sup> through the 25<sup>th</sup> year will be increased as follows:**

Years 11-15	Year 10 multiplied by 1.2801
Years 16- 20	Year 15 multiplied by 1.1314
Years 21 – 25	Year 20 multiplied by 1.131

If the term of the lease extends beyond 25 years, the rent shall be re-determined by an independent fair market appraisal prior to commencement of the twenty-six (26<sup>th</sup>), thirty-six (36<sup>th</sup>) and forty-six (46<sup>th</sup>) years of the lease.

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.

The proposed rent for each of the first twenty-five (25) years cannot be less than the minimum upset rent as stated in the Legal Public Notice. Any proposal not meeting or exceeding the minimum upset rent as described in the Information Packet will be immediately disqualified. DHHL reserves the right to negotiate with the qualified applicant with the next highest offer, should the Successful Bidder fail to conclude negotiation with respect to the lease.

A minimum reasonable time may be proposed for the completion of due diligence and/or construction of improvements if renovating or re-developing the site during which the Eligible Bidder would pay no rent or reduced rent. DHHL reserves the right to negotiate the terms as appropriate to the proposal submitted.

## **Information Packet and Consultant's Reports**

The data in the Information Packet, the Appraisal Report, Legal Description and Survey, Property Information, and all other reports or information provided to prospective applicants have been obtained from reputable and reliable sources however, they are 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.

**IV. APPLICATION AND QUALIFICATION FORM**  
**For Intensive Industrial-Use (I-2 District)**  
**Shafter Flats, 650 Kakoi Street, Moanalua, Honolulu, Oahu**

_____ <b>Name of Applicant</b>	_____ <b>Person to Contact / Title</b>
_____ <b>Applicant's Address</b>	_____ <b>Contact Person's Address</b>
_____ <b>City, State, Zip Code</b>	_____ <b>City, State, Zip Code</b>
_____ <b>Applicant's Telephone No.</b>	_____ <b>Contact Person's Telephone No.</b>
_____ <b>Applicant's Facsimile No.</b>	_____ <b>Contact Person's Facsimile No.</b>

**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 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:

TMK Lot No. \_\_\_\_\_ Location \_\_\_\_\_

Intended Use \_\_\_\_\_

\_\_\_\_\_

Project Description:

Include a narrative and any supportive materials that will provide information pertaining of the proposed use or development at the subject property. Attach additional pages to this application. See Applicant Qualification Criteria for list of requested information.

Project Development Team

	Company / Address	Contact/Person Telephone No./email address
Developer		
Architect		
Civil Engineer		
Site Contractor		
Contractor		
Financing		

### 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, if any;
- (b) The role of the applicant in developing the listed industrial/commercial Projects, if any;

- (c) A brief description of the industrial/commercial projects developed or occupied;
- (d) If applicable, a description of all industrial /commercial projects or facilities owned and/or operated by the applicants;
- (e) If applicable, a statement of the applicant's past or current involvement with the State of Hawaii, 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 occupant or 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 the above and any other information that DHHL deems necessary to determine the qualifications of the applicant.

---

**Name of Company**

**By:** \_\_\_\_\_  
**Signature**

---

**Title**

---

**Date**

**V. Request for Trust Lands from the Hawaiian Home Lands Trust**  
**Department of Hawaiian Home Lands**

This application is completed by an interested party in requesting lands designated as Hawaiian home lands under the Hawaiian Homes Commission Act (HHCA). HHCA lands are to be used for homesteading purposes for beneficiary native Hawaiians (residential, agricultural or pastoral), and when necessary, in the best interest of the trust and its beneficiaries, for public purpose, commercial and multipurpose use.

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**Section I: Name of Applicant Requesting Trust Lands**

**Name of Requesting Organization:**

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**Address of Organization:**

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**Officers and/or Principal Representatives:**

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**Mission of Organization:**

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**Date Incorporated:** \_\_\_\_\_ **State of Incorporation:** \_\_\_\_\_

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**Section II: Type of Organization**

☐ **Requesting Organization – Non-Profit**

**Type of Non-Profit:** ☐ Private Nonprofit – governed by self appointed board  
☐ Member Nonprofit – governed by voting members  
☐ \*Homestead Organization – governed by HHCA beneficiary

members

\*Non-profit is Democratically Elected by and for HHCA Beneficiaries or a Subsidiary thereof

**Capacity Assessed by DHHL Kulia Ika Nuu Program:** ☐ Yes ☐ No

**Current Capacity and Service to HHCA Beneficiary Community:**

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☐ **Requesting Organization – Individual or Business**

☐ Individual ☐ Sole Proprietorship ☐ Partnership  
☐ Corporation ☐ Limited Liability Corporation ☐ Other

Is an Individual HHCA Beneficiary/is Owned by an HHCA Beneficiary ☐ Yes ☐ No

☐ Requesting Organization – Government Agency

☐ Federal

☐ State

☐ County

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**Section III: Land Request Instrument, Terms & Purpose**

Applicant requests the following land transaction instrument:

☐ Right of Entry

☐ Revocable Permit

☐ Easement:

☐ License

☐ General Lease

☐ Other:

**Land Description:** \_\_\_\_\_

**Island:** \_\_\_\_\_ **Tax Map Key:** \_\_\_\_\_

**Term:** \_\_\_\_\_ **Payment Amount:** ☐ Undetermined ☐ Market value land rents  
☐ Gratis/or Less than Market value land rents ☐ \$ \_\_\_\_\_

\*If Gratis or Less than Market – Explain Why the Trust Should Not be Compensated:

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**Land Use or Purpose:**

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**Land Use Benefit to the Trust and/or its Beneficiaries:**

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**If Applicant is Not a Homestead Beneficiary Organization or a Subsidiary Thereof,  
Describe How the Applicant is Partnered with Such Organizations:**

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**Section IV. Relevant HHCA Sections to Non-Homesteading Trust Land Disposition**

The HHCA addresses non-homesteading public purpose licenses, such as community facilities, commercial or multi-purpose functions, when such purpose supports the overall mission and well-being of the trust and its HHCA beneficiaries.

**Section 207(c)** – This application relates to which of the following four categories under Section 207(c) of the Hawaiian Homes Commission Act wherein a License may be issued:

☐ Section 207(c)(1) – Railroads, Telephone Lines, Electric/Utility Lines, Gas Mains, etc;  
OR

- ☐ Section 207(c)(1)(A) – Churches, hospitals, public schools, post offices and other improvements for public purposes; OR
- ☐ Section 207(c)(1)(B) – Theatres, garages, service stations, markets, stores and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians); OR
- ☐ Section 207(c)(2) – Reservations, roads and other right of way, water storage and distribution facilities and practice target ranges of the United States;
- ☐ None of the Above

**Section 204(a)(1)** – Lands not required for leasing under 207(a) (homesteading), DHHL may issue a general lease for public, commercial or multipurpose use. This application is a commercial or multipurpose use:

- ☐ Land use or improvements will generate commercial profit to the applicant
- ☐ Land use or improvements will not generate commercial profit to the applicant

**Section 204(a)(2)/220.5**– Lands not required for leasing under 207(a) (homesteading), DHHL 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 to section 171HRS.

- ☐ This Land Request IS made by an \*HHCA Homestead Beneficiary Organization.
- ☐ This Land Request IS NOT made by an \*HHCA Homestead Beneficiary Organization or individual or business owned and controlled by HHCA Beneficiaries.

## **Section V. Beneficiary Consultation, Applicant Capacity and Land Use Benefit Analysis**

Trust Lands represent a finite amount of land, with thousands of HHCA eligible beneficiaries awaiting an award under the Residential, Agricultural or Pastoral Homesteading program, as well as dozens of Homestead Associations controlled by HHCA Beneficiaries working on homestead based development projects.

As a result, the applicant acknowledges that part of the process of considering applications for trust lands should include the following:

### **1. Beneficiary Consultation**

- a. A Notice of All Land Requests to License/Lease Hawaiian Home Lands for non-homesteading purposes should be sent to all Homestead Associations with an opportunity for beneficiaries of the trust to comment and provide input.
- b. All input received should be provided to the Hawaiian Homes Commission.

### **2. Applicant Capacity**

- a. If a Nonprofit Organization – should be assessed by DHHL Kulia i ka Nuu capacity program to determine financial, programmatic, governance and leadership capacity and determine legal structure. Additional information may be required to be submitted to DHHL.

- b. If an Individual/Business – should be assessed by DHHL to determine financial and leadership capacity and legal structure. Additional information may be required to be submitted to DHHL.

### 3. Land Use Benefit Analysis

- a. The land requested should have a direct or significant indirect benefit to the trust or to the beneficiaries of the trust. Additional information may be required to be submitted to DHHL.
- b. The land requested should comply with the spirit and intent of Section 207(c) and Section 204(a)(2)/220.5 of the Hawaiian Homes Commission Act, as amended, by engaging beneficiary organizations. Additional information may be required to be submitted to DHHL to determine how Beneficiary Organizations are directly connected to the land request use.

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The following authorized representative, submits this request for Hawaiian home lands:

\_\_\_\_\_  
**Print Individual or Organization Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Authorized Representative Name & Title**

\_\_\_\_\_  
**Signature**

## VI.

### CONDUCT OF DISPOSITION

#### For Intensive Industrial-Use (I-2 District)

#### Shafter Flats, 650 Kakoi Street, Moanalua, Honolulu, Oahu

The following procedures, terms and conditions are applicable to dispositions of commercial leases on Hawaiian home lands by public auction.

Any proposed disposition of a lease may be cancelled, postponed or continued by order of the Chairman of the Hawaiian Homes Commission.

#### A. PRE-SELECTION/ELIGIBLE TO BID

1. A completed application, as defined in the Applicant Qualification Criteria, Section II, (Step One) of the Information Packet must be submitted to DHHL by no later than 4:00 p.m. (HST), Monday, June 25, 2012.
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 inaccurate statements are made on the completed application;
  - c. If the applicant fails to submit any of the information requested in the Applicant Qualification Criteria, Section II of the Information Packet;
  - d. Is declared ineligible for reasons cited in the Public Auction Guidelines, Section III of the Information Packet; or
  - e. If the submitted proposal does not meet the objectives or is not in the best interest of the Hawaiian Home Lands Trust and/or its beneficiaries.
3. By June 28th, 2012 DHHL will inform each prospective applicant, in writing, as to the applicant's eligibility or non-eligibility to bid at the auction.



B. QUALIFIED TO BID

1. Persons or entities that receive notices that they are eligible to bid have until **4:00 p.m. (HST) Thursday, August 9, 2012** to submit additional detailed information and meet the requirements described in the Applicant Qualification Criteria, Bid Qualification, Section II (Step Two) of this Information packet.

2. An Eligible Bidder may be disqualified from bidding for any of the following reasons:

- a. If the application is submitted to DHHL past the deadlines, is incomplete, lacks sufficient detail or does not adhere to the format and instructions;
- b. If it is shown that inaccurate statements were made in the completed application;
- c. Failure to provide an Earnest Money Deposit in the form of a certified or cashier's check payable to the Department of Hawaiian Home Lands in the amount of \$52,000.00;
- d. Failure to include a letter acknowledging and agreeing to purchase the improvements together with evidence of financial capacity to do so;
- e. If its proposal does not meet the objectives or is not in the best interest of the Hawaiian Home Lands Trust and/or its beneficiaries.

3. By, **August 15, 2012**, DHHL will inform each prospective applicant, in writing, as to the applicant's qualification or non-qualification to bid at the auction scheduled for **10:00 a.m. (HST) on Thursday, August 23, 2012** at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.

C. DETERMINATION AND DUTIES OF SUCCESSFUL BIDDER

All qualified bidders or authorized corporate representative must be present in person at the auction. All qualified bidders must bring a photo identification card and the Earnest Money Deposit funds pursuant to section "d" of the Public Auction Guidelines. Bidding will commence at the upset minimum annual rent for the first ten (10) years of the lease as stated in the Notice of Proposed Disposition by Public Auction. The qualified bidder stating the highest bid at the fall of the gavel shall become the successful bidder of the lease.

The annual rental for the eleventh (11<sup>th</sup>) through the 25<sup>th</sup> year will be escalated as follows:

Years 11-15	Year 10 multiplied by 1.2801
Years 16- 20	Year 15 multiplied by 1.1314
Years 21 – 25	Year 20 multiplied by 1.131

Notwithstanding the above, 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.

Upon the fall of the hammer, the successful bidder must:

1. Execute a Memorandum of Lease (Exhibit “E” of the Information Packet);
2. Pay in certified or cashier’s check, the required Earnest Money Deposit, refer to Public Auction Guidelines, Section III (d), which will be deposited and will then be non-refundable;
3. Within five (5) working day 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 Earnest Money Deposit 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, printing, advertising, travel expenses, conveyance tax, and all other costs incurred by DHHL;
5. Within ninety (90) days of signing the lease purchase, the new lessee must purchase the existing improvements on the Property for the amount of \$150,100.00, to be paid to DHHL. The improvements will be conveyed in “as is” condition. Thereafter, the improvements are owned by the lessee throughout the term of the lease; and

6. Upon signing the lease, lessee will pay all outstanding legal and 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 ninety (90) 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 with approval of the Chairman of the 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: May 8, 2012

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By   
 Albert "Alapaki" Nahale-a, Chairman  
Hawaiian Homes Commission

VII.

**GENERAL PROPERTY INFORMATION**  
**For Intensive Industrial-Use (I-2 District)**  
**650 Kakoi Street, Shafter Flats, Moanalua, Honolulu, Oahu**

The parcel of land (the "Property") being offered for general (ground) lease is located in the Shafter Flats Industrial Subdivision, Moanalua, Honolulu, Island of Oahu. The Property is currently identified by Tax Key No. (1) 1-1-64:010, Lot 8. The address is 650 Kakoi Street, Honolulu, Hawaii 96819. The Property is designated as intensive industrial (I-2), consistent with the surrounding uses. The site is generally rectangle-shaped and contains sewer/storm drain easements that are approximately 5,000 square feet. The Property is located in an area of Honolulu where there is a high demand for industrial uses.

**PROPERTY DATA**

Legal Description/Survey – See Exhibit "A"

Tax Map Key – See Exhibit "B"

Environs – The Property is situated along Kakoi Street within the Shafter Flats Industrial Development in Moanalua. This industrial subdivision consists of approximately 13 to 20 acres with lots ranging from 10,000 to 46,000 square feet. The immediate neighborhood is typically characterized by a mixture of building contractors, heavy equipment rental, trucking companies, storage facilities, and other lighter industrial uses. The Property has good access to urban Honolulu, the airport, Nimitz Highway, and H-1 freeway. Within a two to three mile radius are several industrial areas and parks including Iwilei and Kapalama industrial areas, the Airport industrial area, Mapunapuna, Moanalua, Kalihi-Kai and Sand Island. The major landowners of industrial property in the Shafter Flats and Mapunapuna areas are the State of Hawaii, TSM Properties and Kamehameha Schools.

Property History – The Property, including the structures, are currently owned by the State, Department of Hawaiian Home Lands. The property was leased under a long term ground lease that began in 1967 and ended in 2007. Currently, DHHL has three (3) month-to-month tenants on the property.

State Land Use/County Zoning – Urban District/I-2 Intensive Industrial zoning.

Flood Hazard Districts – Per the Appraisal Report, the property is located on Flood Insurance Rate Map Number 15003C0353 E, effective date September 30, 2004 within an area designated as Zone AO. Interested parties are advised to determine the extent of flooding that has occurred or may occur in the future at the site, as well as flood insurance requirements.

Utilities – All public utilities are available to the subject site. This includes water, sewer, gas, electricity and telephone. Water service is provided by way of a twelve-inch main located on Kakoi Street. Sanitary sewer is provided by way of a ten-inch main located on Kakoi Street. Gas service is available by way of a two-inch main located partially up Kakoi Street. Electricity is provided via connections to existing underground utility transmission lines.

Telephone – Currently provided by Hawaiian Telcom and will be provided by Sandwich Isles Communications (SIC) at a time when such service is required. Underground and aboveground easements for SIC will be installed at the site. A Communication Utility Easement site plan is available at DHHL.

The capacities of existing utility systems are considered adequate to satisfy the present and anticipated needs of the Property, however, all costs for connection and consumption of utilities are the sole responsibility and cost to the lessee.

Water service is provided by the City and County of Honolulu, Board of Water Supply and Electricity service is provided by Hawaiian Electric Company, Inc.

#### PROPERTY DESCRIPTION & CONDITION

Size and Shape - The Property is rectangular in shape and contains a gross land area of approximately 41,187 square feet or 0.946 acres. There is approximately 149 feet of street frontage along Kakoi Street.

Soils Condition – A detailed geotechnical study of soil and sub-soil of 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 improved with two industrial warehouse buildings and an attached two-story office building. The original structures were constructed in about 1969. The warehouse buildings consist of concrete slabs with steel frames and metal roofing with ceiling heights of between 15 feet – 18 feet. The two story office building is attached to the building on the south side of the property and is constructed of masonry.

The mauka building (Building A) has a gross square footage of approximately 8,600 square feet. The warehouse on the makai side of the Property (Building B) contains a gross floor area of approximately 7,125 square feet with an attached office building that is approximately 1,250 square feet on the 1<sup>st</sup> floor and 1,125 square feet on the 2<sup>nd</sup> floor (Building C) (See Exhibit “A”). The buildings are not ADA compliant. Please note that the tax records for this property differ from DHHL’s records of building square footage.

Building A (mauka building) has structural damage at the outside wall near the drainage easement. The successful bidder will be required to renovate/repair or rebuild this structural wall within six month of finalizing a general (ground) lease with DHHL.

Mandatory purchase price for the improvements on the Property is One hundred fifty thousand one hundred and no /100 dollars (\$150,100.00).

#### SITE INSPECTION

You must contact Carolyn Darr, Land Agent, Land Management Division, Department of Hawaiian Home Lands at 620-9457 to set-up an appointment to inspect the property. Please do not enter the property unescorted.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.P. No. OAHU FILE  
FOLDER 2

June 22, 1967

SHAFTER FLATS INDUSTRIAL DEVELOPMENT

UNIT I

LOT 8

Moanalua, Honolulu, Oahu, Hawaii

Being a portion of the filled land of Moanalua Fishery acquired by the Territory of Hawaii by Final Order of Condemnation Law No. 16653 dated July 18, 1946 and recorded in Liber 1981, Pages 81-94 (Land Office Deed 7993) and by Quit-Claim Deed by Samuel M. Damon Estate dated June 20, 1946 and recorded in Liber 2914, Page 438 (Land Office Deed 7993), set aside as Fort Shafter Military Reservation by Governor's Executive Order 1273 and subsequently Quit-Claimed to the State of Hawaii by the United States of America by deed dated March 15, 1963 and recorded in Liber 4485, Page 501 (Land Office Deed S-19997).

Beginning at the northeast corner of this lot, the southeast corner of Lot 9 of Shafter Flat Industrial Development, Unit I and on the westerly side of Kakoi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 9748.96 feet South and 3992.11 feet East, as shown on Government Survey Registered Map H.S.S. Plat 2146-2, thence running by azimuths measured clockwise from True South:-

1. Along the westerly side of Kakoi Street, on a curve to the left with a radius of 730.00 feet, the chord azimuth and distance being:  
18° 20' 47" 149.79 feet;
2. 99° 04' 244.50 feet along Lot 7 of Shafter Flats Industrial Development, Unit I;
3. 204° 24' 213.62 feet along Lots 93, 94, 95 and 96 of Land Court Consolidation 42 (Map 2);
4. 294° 24' 220.01 feet along Lot 9 of Shafter Flats Industrial Development, Unit I to the point of beginning and containing an Area of 41,187 Square Feet.

EXHIBIT "A"

Reserving to the State of Hawaii, its successors and assigns in perpetuity an Easement for sewer and storm drain over, under, upon and across the above-described Lot 8, together with rights of ingress and egress thereto for maintenance, inspection, reconstruction and repair of said sewer and storm drain; said Easement being shown on plan attached hereto and made a part hereof and more particularly described as follows:-

Beginning at the southwest corner of this easement, the southwest corner of the above-described Lot 8 and being the end of Course 2 of said Lot 8, thence running by azimuths measured clockwise from True South:-

1. 204° 24' 213.62 feet along Lots 93, 94, 95 and 96 of Land Court Consolidation 42 (Map 2);
2. 294° 24' 25.00 feet along Lot 9 of Shafter Flats Industrial Development, Unit I;
3. 24° 24' 206.77 feet;
4. 99° 04' 25.92 feet along Lot 7 of Shafter Flats Industrial Development, Unit I to the point of beginning and containing an AREA OF 5,255 SQUARE FEET.





DEPARTMENT OF TAXATION  
PROPERTY TECHNICAL OFFICE  
TAX MAPS BRANCH  
STATE OF HAWAII  
**TAX MAP**

FIRST TAXATION DISTRICT		
ZONE	SEC.	PLAT
1	1	64

SCALE: 1 IN. = 100 FT.

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. \_\_\_\_\_

between

STATE OF HAWAII

and

---

covering

HAWAIIAN HOME LANDS

situate at

---

Island of \_\_\_\_\_, Hawaii

EXHIBIT "C"

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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 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 \_\_\_\_\_, 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 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. Throughout the term of this Lease, LESSEE shall purchase all telecommunication services for the Premises from Sandwich Isles Communications, Inc. ("SIC").

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;

(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 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 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.

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.

(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 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 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 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 disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the 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 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 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: \_\_\_\_\_

And a copy to:

Attorney General's Office

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

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")

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-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) "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 \_\_\_\_\_  
\_\_\_\_\_, Chairman  
Hawaiian Homes Commission

LESSOR

\_\_\_\_\_  
a \_\_\_\_\_ corporation

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSEE



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PREMISES**

**EXHIBIT “B”**  
**SUBDIVISION MAP**

EXHIBIT "C"

MEMORANDUM OF LEASE

LAND COURT RETURN BY (X) MAIL ( ) PICK-UP	REGULAR SYSTEM
--	----------------

TMK No.: \_\_\_\_\_

This document contains \_\_\_\_\_ pages

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 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, 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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By \_\_\_\_\_

\_\_\_\_\_, Chairman

Hawaiian Homes Commission

LESSOR

\_\_\_\_\_,  
a \_\_\_\_\_ corporation

By \_\_\_\_\_

\_\_\_\_\_,

\_\_\_\_\_

LESSEE

## **EXHIBIT “A”**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

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: \_\_\_\_\_

**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 of Hawaiian Home Lands' (DHHL) participation to only the land. To adopt the sublease rent participation formula on pages 4 and 5 of the attached DHHL Sublease Rent Participation Policy.
2. In lieu of the 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 to 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 Attached Sublease Rent Participation Worksheet

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:	Amount of Increase in Lease Rent Due to Subleasing (if any)
X 50% EQUALS:	Amount Due to DHHL

**EXHIBIT "D"**

## DHHL SUBLEASE RENT PARTICIPATION POLICY

### 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 (Allotted Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.
- Line 8: ADDITIONAL RENT PAYABLE TO DHBL  
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: CROSS 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 ~ 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	\$ _____

#### 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: $6/24 = .25 \times \$8,000 = \$2,000$ Allocated Annual Base Lease Rent	
Effective Annual Sublease Rent:	\$3,000
Allocated Annual Base Lease Rent:	<u>- 2,000</u>
Indicated Additional Rent:	\$1,000
	Times 50% <u>.50</u>
SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL	\$ 500

SUBLEASE PARTICIPATION POLICY

To: Department of Hawaiian Home Lands  
Land Management Division

Subject: General Lease Subleasing Policy

The undersigned has reviewed, understands, and acknowledges the Sublease Rent Participation Policy approved by the Hawaiian Homes Commission on April 24, 1987.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

**SHORT FORM LEASE**

LAND COURT

REGULAR SYSTEM

RETURN BY (X) MAIL ( ) PICK-UP

TMK No.: \_\_\_\_\_

This document contains \_\_\_\_\_ pages

**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 \_\_\_\_\_, 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",

**EXHIBIT "E"**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By \_\_\_\_\_  
Chairman  
Hawaiian Homes Commission

LESSOR

\_\_\_\_\_,  
a \_\_\_\_\_ corporation

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSEE

## EXHIBIT "A"



STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

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: \_\_\_\_\_