

## **INFORMATION PACKET**

### **Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu and Maui**

Leasing Agency

**State of Hawaii**  
**Department of Hawaiian Home Lands**  
**Land Management Division**  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

December 21, 2018

**INFORMATION PACKET**  
**for the Disposition of Hawaiian Home Lands by General Leases**  
**for Renewable Energy Projects on Oahu and Maui**

**LISTING OF ITEMS CONTAINED IN INFORMATION PACKET:**

- I. Public Notice –Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu and Maui
- II. Introduction, Objectives, and General Information
- III. Application Requirements and Guidelines; Evaluation Criteria
- IV. Application and Qualifications Form
- V. General Property Information, Appendices, and Exhibits

**KEY TO ABBREVIATIONS:**

DHHL	Department of Hawaiian Home Lands
HCDA	Hawaii Community Development Authority
HECO	Hawaiian Electric Company
HRS	Hawaii Revised Statutes
MECO	Maui Electric Company
MW	Megawatt
PPA	Power Purchase Agreement
PUC	Public Utilities Commission
RFP	Request for Proposals

**LIST OF ITEMS AVAILABLE FOR REVIEW ON DHHL’S WEBSITE:**

Oahu Island Plan (2014) at  
<http://dhhl.hawaii.gov/wp-content/uploads/2013/04/DHHL-OIP-Final-140708.pdf>  
Kapolei Regional Plan (2010) at  
<http://dhhl.hawaii.gov/wp-content/uploads/2011/06/Kapolei-Regional-Plan.pdf>  
  
Maui Island Plan (2004) at  
[http://dhhl.hawaii.gov/wp-content/uploads/2012/05/Island\\_Plan\\_Maui\\_2004.pdf](http://dhhl.hawaii.gov/wp-content/uploads/2012/05/Island_Plan_Maui_2004.pdf)  
Kahikinui Regional Plan (2011) at  
[http://dhhl.hawaii.gov/wp-content/uploads/2011/06/Kahikinui\\_RP\\_110711.pdf](http://dhhl.hawaii.gov/wp-content/uploads/2011/06/Kahikinui_RP_110711.pdf)



**I. PUBLIC NOTICE**  
**DISPOSITION OF HAWAIIAN HOME LANDS BY GENERAL LEASES**  
**FOR RENEWABLE ENERGY PROJECTS ON OAHU AND MAUI**

The Department of Hawaiian Home Lands (“DHHL”) intends to dispose of lands on the Islands of Oahu and Maui under general leases for renewable energy projects by way of direct negotiations pursuant to Section 171-95.3, HRS, as amended. Beneficiary consultations and public hearings will be a part of the leasing process, prior to the eventual execution of a general lease.

DHHL will consider renewable energy projects that would be appropriate for a site and its surroundings. Land to be disposed for renewable energy projects are the following Hawaiian home lands:

ISLAND	TAX MAP KEY NO.	ACRES*	LOCATION	NOTES
Oahu	9-1-013:038	98	Kalaeloa	
Oahu	9-1-013:040	49	Kalaeloa	
Maui	1-9-001:003 (portion)	15,620	Kahikinui	Up to 1000 acres for due diligence purposes; up to 500 acres under general lease

\*Approximate

Renewable energy producers, as defined in Section 171-95(c), HRS, interested in leasing property herein described shall have twenty-eight (28) days from the date this notice is published, that date being December 21, 2018, in which to submit a completed application to DHHL to be qualified for participation in the selection process to lease a specific site. The completed application must contain the information set forth below, in addition to the information and materials set forth in Sections III and IV of the Information Packet for each proposed renewable energy project:

- Description of the conceptual design of the project
- Timeline for the completion of the project
- Description of the financial plan for project financing
- Description of the business concept of the project
- Description of the landscape and acreage requirements, including public and private lands
- Why the project being proposed would be more advantageous for the site unless a solar facility is being solely proposed, and
- Any other qualifications that DHHL later deems necessary and required for the performance of the project.

Chapter 343, Environmental Assessment: Applicants selected to proceed through the leasing process shall be required to complete compliance with Chapter 343, HRS, as amended, prior to the start of any general lease for the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding community and environment.

An Information Packet containing what to include in an application, as well as property information, objectives and criteria, leasing process, schedule, and other requirements is available on DHHL's Procurement<sup>1</sup> webpage, under the "Public Notice" heading, at <http://dhhl.hawaii.gov/procurement/> or for pick-up by prospective developers during regular office hours at DHHL's headquarters located at 91-5420 Kapolei Parkway, in Kapolei, on the Island of Oahu.

All applications must be received by 2:00 pm HST on Friday, January 18, 2019, hand-delivered and addressed to the Department of Hawaiian Home Lands, Land Management Division, Attention: 2019 Renewable Energy Projects, at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707. Applications received by this deadline shall be reviewed to determine which applications have met DHHL's objectives and criteria to be qualified for participation in the selection process.

For additional information not in the Information Packet, contact Allen G. Yanos, Property Development Agent, in the Land Management Division, at (808) 620-9460 or via email at [allen.g.yanos@hawaii.gov](mailto:allen.g.yanos@hawaii.gov) no later than January 4, 2019 at 2:00 pm HST.

DHHL reserves the right to cancel or modify this proposed disposition at its sole discretion, including but not limited to, withdrawing some or all of the parcels from consideration for disposition.

Dated: Honolulu, Hawaii, December 21, 2018.

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS  
By Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Honolulu Star-Advertiser  
The Garden Island  
Hawaii Tribune-Herald  
West Hawaii Today  
The Maui News

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<sup>1</sup> Information is located on DHHL's procurement webpage for ease of reference only. The potential dispositions of Hawaiian home lands set forth herein are not governed by Chapter 103D, HRS.

## **II. INTRODUCTION, OBJECTIVES, AND GENERAL INFORMATION**

### **Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu and Maui**

#### **Introduction**

The State of Hawaii, Department of Hawaiian Home Lands (“DHHL”) is governed in large part by the Hawaiian Homes Commission Act of 1920, as amended, enacted by the U.S. Congress to rehabilitate the lives of native Hawaiians (“HHCA”). The Act created a Hawaiian Homes Commission to administer certain public lands, called Hawaiian home lands, for homesteads. Native Hawaiians are defined as individuals having at least 50 percent Hawaiian blood.

DHHL is authorized to lease lands not required for homestead leasing to the public, including native Hawaiians, on the same terms applicable to the disposition of public lands under chapter 171, HRS.

#### **General Objectives and Criteria:**

DHHL intends to lease parcels of Hawaiian home lands located on the Islands of Oahu and Maui to qualified renewable energy producers, as defined in Section 171-95, HRS, for renewable energy projects. Solar facilities are envisioned for Kalaeloa, Oahu while various types of renewable energy facilities may be proposed for the Kahikinui, Maui site. DHHL’s primary objectives are revenue generation from these lands and providing benefits for the impacted communities.

All qualified applicants will be subject to a selection process by DHHL prior to continuing with the leasing process. The leasing process will be conducted pursuant to DHHL’s requirements that incorporates compliance with Section 171-95.3, HRS. The leasing process will include consultation meetings with DHHL’s beneficiaries and public hearings for all selected applicants.

To be eligible for the selection process, an interested party must submit an application, including supporting documents that meet certain criteria described in more detail within this Information Packet, including payment of a non-refundable application review fee. An initial review of all completed applications received by the established deadline shall determine those applicants eligible for the selection process. An evaluation committee comprised of DHHL staff and DHHL’s energy consultants will then evaluate the applications and select the best qualified applicant that will proceed further in the leasing process for development of its renewable energy project on a specific site or sites (“selected applicant”).

If DHHL determines that there is more than one qualified final applicant for a site, then DHHL may require, at its sole discretion, further review of the qualified applicants that may include, but is not limited to, fulfillment of additional criteria and/or submission of additional information.

### **Other General Information and Necessary Qualifications:**

- This solicitation is not intended to be synchronized with the schedule under a future utility company RFP or HECO's anticipated Phase 2 RFP. The selected applicant is proceeding at its own risk.
- Applicants must qualify as a "renewable energy producer" as defined in Section 171-95(c), HRS and complete DHHL's leasing process that incorporates Section 171-95.3, HRS, if selected. Non-compliance will result in immediate rejection of an application.
- Applicants interested in being selected for the leasing process must meet the qualifications and furnish all the required information for each application covering a specific project as described in Sections III and IV to DHHL for its evaluation.
- More than one application may be submitted by an applicant, each proposing a specific renewable energy project. A renewable energy project may cover more than one DHHL parcel in Kalaeloa, on the Island of Oahu, with justification provided. For land in Kahikinui, Maui, up to the acreage shown in Section V may be proposed for use for renewable energy projects.
- DHHL will not accept an application where the proposed project includes non-DHHL lands unless the non-DHHL lands are for auxiliary purposes such as for access or utility easements.
- For consortium or joint ventures, DHHL expects the nature of the relationship between the parties will be fully explained, organizational charts, roles and responsibilities, and other information necessary provided for it to make an informed decision on the consortium or joint venture's qualifications. Further, DHHL will need to know in advance, which party(ies) will be providing the required credit and financial support for the execution of the General Lease since those party(ies) will be the entity(ies) that must sign the Application Form in Section IV as "Co-Applicant" on behalf of the consortium or joint venture if not already qualified as a renewable energy producer and signing as the "Applicant".
- The selected applicant shall be issued a letter confirming that DHHL will issue a non-exclusive Right-of-Entry permit ("ROE") with an option for a General Lease for the selected applicant to conduct due diligence activities for a renewable energy project on a specific site or sites ("selection letter") upon HHC approval.
- Within seven (7) working days of the issuance of DHHL's selection letter, a non-refundable deposit of \$10,000.00, shall be paid to DHHL and apply towards the non-refundable ROE fee for the first two years offered by the selected applicant.
- The non-exclusive ROE will be issued for an initial period of two years with the option to extend for three additional one-year periods. The ROE fee for the initial two-year period will be payable, in advance, upon execution of the ROE. All payments under the ROE will be non-refundable.

- The general leasing process and estimated schedule for renewable energy producers is shown in Appendix “A”.
- Appendix “B” contains a draft form of the ROE.
- DHHL reserves the right to co-locate multiple renewable energy projects of various technologies on the same site, such as a wind and a solar energy projects, subject to site limitations, and may issue multiple ROEs for a site to more than one selected applicant to conduct due diligence studies for different renewable energy projects. Should this event occur, DHHL will contact the selected applicants, in advance, to discuss the matter prior to the ROE process.
- DHHL seeks to provide applicants with the maximum flexibility possible in offering pricing and leasing terms for their projects. DHHL expects that each applicant will have a detailed understanding of the project economics and will provide an offer utilizing this understanding. Furthermore, DHHL seeks to minimize any form of operational or performance risk and maximize the monetary return on the lease rent. All lease rent structures will be considered and evaluated upon their own individual merits.
- The issuance of a general lease shall be subject to compliance with, and completion of, the environmental disclosure requirements under Chapter 343, HRS. All costs of compliance with Chapter 343, HRS, as well as any required mitigation measures, shall be the sole responsibility of the Lessee. All mitigation measures shall also be incorporated as material conditions of the general lease.
- All applicants shall be responsible for all the costs involved in preparing and submitting an application.
- Applicants shall propose a community benefits package that shall be in addition to lease rent.
- Applicants agree to cooperate with and support DHHL’s Homeownership Assistance and (financial) Literacy Education (HALE) program which currently provides: 1) homebuyers’ education classes and counseling; and 2) lease cancellation and foreclosure prevention services. Applicants also agree to include in their 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 where its project(s) are located.
- The selected applicant shall be responsible for obtaining all funds needed to develop its renewable energy project.
- Except for one hosted group tour of the DHHL Kalaeloa lands offered in this solicitation, no other hosted individual or group site tours are being offered. Requests to join the optional Kalaeloa lands tour scheduled for Thursday, January 3, 2019 at 9:30 am must be received by email by the Land Management Division contact person herein, no later than Tuesday, January 2, 2019 at 2:00 pm HST for further instructions. All participants will be required to

sign a liability waiver form. In most cases, it is possible to view the land from the street; however, where the land is vast, rugged or inhospitable making access difficult, viewing the property by helicopter or referring to aerial and topographical maps, for example, are alternatives.

- Questions regarding this solicitation may be emailed to the Land Management Division contact person herein no later than Friday, January 4, 2019 at 2:00 pm HST. Responses will be provided as soon as practical in an addendum to this solicitation on DHHL's Procurement webpage under the "Public Notice" heading.
- The contact person for this solicitation is:

Allen G. Yanos, Property Development Agent  
Land Management Division  
Department of Hawaiian Home Lands  
Email: [allen.g.yanos@hawaii.gov](mailto:allen.g.yanos@hawaii.gov)  
Phone: (808) 620-9460

**Applicants shall be responsible to check DHHL's Procurement webpage, under the "Public Notice" heading, regularly during the application period for any updates, changes or additional information regarding this solicitation. The potential dispositions of Hawaiian home lands set forth herein are not governed by Chapter 103D, HRS.**

### **III. APPLICATION REQUIREMENTS AND GUIDELINES; EVALUATION CRITERIA**

#### **Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu and Maui**

##### **Application Requirements and Guidelines**

All parties interested in being selected as a Lessee of one or more sites being offered herein for proposed renewable energy projects shall have until **2:00 p.m. HST on Friday, January 18, 2019** to deliver a completed application to the Department of Hawaiian Home Lands, Land Management Division, Attention: 2019 Renewable Energy Projects, at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.

Applications received by the aforementioned deadline will be reviewed to determine those applications that have met DHHL's objectives and criteria to be selected for further participation in the selection process.

A completed application shall consist of three (3) hard copies and a PDF copy of the same on a CD or USB flash drive, accompanied by a \$1,000.00 application review fee. Applicants must ensure that an accurate and complete PDF copy of its application will be retrievable by DHHL on the storage medium provided. Any applications received after the aforementioned deadline (including those sent by the United States Postal Service, or by private mail services, such as Federal Express) or delivered anywhere other than as specified, will not be considered.

Any person or entity may submit a completed application, except one that:

- 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; or
- c) Has had during the five (5) years preceding December 21, 2018, a previous sale, lease, license permit or easement covering public lands canceled for failure to satisfy the terms, conditions, and covenants thereof.

**A completed application shall consist of the following for a proposed specific renewable energy project:**

A. Qualifications and Experience Summary:

In submitting a completed application, an applicant must satisfy DHHL's following minimum qualifications and experience requirements to be a qualified applicant, eligible to be considered for selection to continue with DHHL's leasing process:

- Provide evidence that the applicant qualifies as a renewable energy producer as defined pursuant to Section 171-95 (c), HRS and has demonstrated the capability of designing, building, and operating renewable energy projects of solar and/or wind energy, in the commercial and industrial or utility sectors, which were

- materially similar in size and scope of the planned endeavor; and
- Satisfy ANY TWO of the following:
  - Total cost of renewable energy projects successfully completed and placed in service by applicant exceeds \$10,000,000
  - Total book value of applicant's company exceeds \$5,000,000
  - Written evidence of ample funding to develop and construct Applicant's proposed renewable energy project

Include a narrative and any supportive materials that provides information pertaining to the above documenting the applicant's ability to develop a renewable energy project on DHHL's properties. Attach any additional pages to the application.

**B. Additional Experience Information:**

Having satisfied the minimum qualification and experience requirements in A. above, the applicant shall also submit the following information:

1. A list and brief description of renewable energy projects developed and their sizes.
2. The role of the applicant in developing the listed renewable energy projects.
3. If applicable, a description of all the renewable energy projects or facilities owned and operated by the applicant.
4. Previous experience performing relevant work in the State of Hawaii, if any.

**C. Project Information:**

For the specific renewable energy project being proposed, an applicant shall further provide for DHHL's evaluation the following:

1. Description of the conceptual design of the project.
2. Timeline for completion of the project.
3. Description of the financial plan for project financing (financial information will be kept confidential to the extent allowed under Chapter 92F, HRS).
4. Description of the business concept for the project.
5. Description of the landscape and acreage requirements, including public and private lands.
6. Why the project being proposed would be advantageous for the site unless a solar facility is being solely proposed.
7. Any other qualifications that DHHL later deems necessary and required for the performance of the project.

**D. Proposal and other Qualifications Information:**

All applicants shall further include the following:

1. The proposed non-refundable annual ROE fee(s) during the period(s) to conduct due diligence activities.
2. The proposed lease rent(s) and other compensation under the general lease period(s), including the "Commercial Operation Date Fee".



3. The proposed fee to exercise the “option for a general lease” under the ROE.
4. The specific financial and/or tangible community benefits to be provided to beneficiaries of the Hawaiian Homes Commission Act in the impacted area.
5. A complete copy of the most recent audited financial statements; in lieu of audited financial statements, filed copies of the federal income tax returns for the past two years may be submitted.
6. A current Certificate of Good Standing from the State of Hawaii Department of Commerce and Consumer Affairs.
7. A current Tax Clearance Certificate from the State of Hawaii Department of Taxation and the United States Internal Revenue Service.
8. At least three (3) references from applicant’s past that may be contacted by DHHL as to applicant’s past and current project performance.
9. If applicable, a statement of the applicant’s past or current involvement with DHHL.

E. The completed application shall also include a statement that the applicant agrees to cooperate with and support DHHL’s Homeownership Assistance and (financial) Literacy Education (HALE) Program. Applicants must also agree 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 where the renewable energy project is located.

F. The completed application covering a specific proposed renewable energy project shall be accompanied by a completed Application and Qualification Form which is included in Section IV of this Information Packet or other written statements containing the same information as requested in the Application and Qualification Form, accompanied by the documentation and information requested in this Section III.

G. For consortium or joint venture applicants, explain the nature of the relationship between the parties; provide organizational charts; describe their roles and responsibilities; and provide other information necessary for DHHL to make an informed decision on the consortium or joint venture’s qualifications. Furnish information regarding which party(ies) will be providing the required credit and financial support for the execution of the General Lease as those party(ies) shall be the entity(ies) that must sign the Application Form in Section IV as “Co-Applicant” on behalf of the consortium or joint venture if they are not qualified as a renewable energy producer and signing as “Applicant”.

H. The completed application may also be accompanied by any other information that supports the applicant’s proposed qualifications and experience, such as correspondence with other government agencies, feasibility studies, survey reports, funding approvals, letters of community support, and agreements.

I. A non-refundable application review fee in the form of a Certified/Cashier’s Check or US Postal Money Order payable to “Department of Hawaiian Home Lands” in the amount of US \$1,000.00 must accompany each completed application submitted. A completed application can

cover only one proposed renewable energy project and must be submitted by the deadline and in the manner as specified in this Section III.

All prospective applicants are responsible for thoroughly reading and understanding the requirements and conditions of this solicitation by reviewing a copy of the Public Notice, all data contained in the Information Packet, and other informational items made available for review on DHHL's website at [www.dhhl.hawaii.gov](http://www.dhhl.hawaii.gov).

Applicants shall be responsible to check DHHL's Procurement webpage regularly during the application period for any updates, changes or additional information regarding this solicitation.

### **Evaluation Criteria**

Applicants that DHHL has determined satisfy the requirements of Section III and deemed eligible may proceed further in a selection process. The process includes a review and evaluation of an applicant's completed applications by an evaluation committee. The evaluation committee will rank qualifying applicants and initiate negotiations with the top-ranked applicant(s). Only upon DHHL's written acceptance of an acceptable offer will the applicant proceed with the leasing process. DHHL is seeking ROE and lease terms mutually acceptable to both parties and reserves the right, at its sole discretion, to exit negotiations if it believes a transaction is not in the best interest of DHHL. If DHHL is unable to reach agreement with such applicant, DHHL may enter into negotiations with the next-ranked applicant(s). During this process, DHHL may request additional information from any applicant to assist in its decision process.

The criteria upon which the evaluation committee will use to rank and select applicants are:

- Qualifications and Experience (25 points)
- Project Information and the Project's Viability (25 points)
- ROE Fees, Lease Terms, and Community Benefits Offered (35 points)
- Unique Qualities and Past Performance (10 points)
- How well Applicant's proposal in its entirety meets DHHL's objectives (5 points)

Applicants will be ranked by the evaluation committee according to the sum of their scores, not to exceed 100 points, for each of the above criteria.

**DHHL reserves the right, in its opinion and sole discretion, to select the best qualified applicant for each site to proceed with the leasing process.**

**IV. APPLICATION & QUALIFICATIONS FORM**  
**Disposition of Hawaiian Home Lands by General Leases**  
**For Renewable Energy Projects on Oahu and Maui**

Please attach additional pages to the Application & Qualifications Form in this Section if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes. A complete application must be submitted for each proposed renewable energy project and accompanied by an application review fee.

Attach all documentation and information requested in Section III to the Form as a transmittal. Other written statements containing the same information as requested in the Form may be used, accompanied by the documentation and information requested, and provided the identical certification language at the end of the Form is included and executed by the Applicant.

**APPLICATION FORM  
DEPARTMENT OF HAWAIIAN HOME LANDS  
2019 RENEWABLE ENERGY PROJECTS SOLICITATION**

Proposed Project Type (Check one):   ☐ Solar   ☐ Wind   ☐ Biomass   ☐ Other

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

**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:\_\_\_\_\_

THE UNDERSIGNED APPLICANT understands that DHHL is relying on the information provided herein to qualify the undersigned to proceed further in DHHL's leasing process under its 2019 Solicitation for Renewable Energy Projects, the Hawaiian Homes Commission Act, 1920, as amended, and pursuant to Hawaii Revised Statutes Sections 171-95 and 171-95.3, 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 any other information that DHHL deems necessary to determine the qualifications of the Applicant.

\_\_\_\_\_  
**Name of Company**

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

\_\_\_\_\_  
**Title**

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

**APPLICANT**

Important Note: Applicants must be qualified as a renewable energy producer. For consortiums or joint ventures, the entity(ies) providing the required credit and financial support for the execution of the Right-of-Entry and the General Lease must sign this application form as "Co-Applicant" on behalf of the consortium or joint venture, unless it/they are also qualified as a renewable energy producer. Submit additional copies of this application form as needed for execution by the Co-Applicant (s).

**V. GENERAL PROPERTY INFORMATION,  
APPENDICES, AND EXHIBITS**  
**Disposition of Hawaiian Home Lands by General Leases for  
Renewable Energy Projects on Oahu and Maui**

The general property information provided in the appendices and exhibits herein to prospective applicants have been obtained by DHHL from reputable and reliable sources; however, they are NOT GUARANTEED OR INTENDED TO BE COMPLETE. Applicants are advised to make their own independent study to verify the accuracy of the information and determine its usefulness to the Applicant's project.

**AVAILABLE DHHL LAND FOR RENEWABLE ENERGY PROJECTS**

APPENDIX	ISLAND	TMK	LOCATION	NOTES
See Appendix "C"	Oahu	9-1-013:038	Kalaeloa	
See Appendix "D"	Oahu	9-1-013:040	Kalaeloa	
See Appendix "E"	Maui	1-9-001:003 (portion)	Kahikinui	Up to 1000 acres for due diligence purposes; up to 500 acres under general lease

## **APPENDICES**

APPENDIX “A” – General Leasing Process and Schedule

APPENDIX “B” – Draft Right-of-Entry Form

APPENDIX “C” – Kalaeloa, Oahu Parcel 38

APPENDIX “D” – Kalaeloa, Oahu Parcel 40

APPENDIX “E” – Kahikinui, Maui Parcel

## **APPENDIX “A”**

### **GENERAL LEASING PROCESS AND SCHEDULE**

<b>ACTION/TASK</b>	<b>DEADLINES/ TIMEFRAME</b>
1. Issue Public Notice of solicitation; post solicitation Information Packet on DHHL’s website	December 21, 2018
2. Solicitation questions due	January 4, 2019 at 2:00 pm HST
3. Post solicitation addendum on DHHL’s website, compiling all solicitation questions and responses	January 8, 2019
4. Applications due	January 18, 2019 at 2:00 pm HST
5. Evaluate, score and rank applications	Two weeks after application deadline*
6. Issue application status letters; select applicants for negotiations on draft lease terms	Five days after selection of applicants*
7. Negotiate draft lease terms <ul style="list-style-type: none"> <li>• Upon agreement, staff prepares request for Hawaiian Homes Commission (HHC) approval to proceed with Beneficiary Consultation (BC) meetings for selected applicants</li> <li>• If agreement not reached, negotiations are terminated; DHHL begins negotiations with next-ranked applicant</li> </ul>	Upon selection of applicants* February 1-15, 2019
8. Issue selection status letters; selected applicants to proceed with leasing process; \$10,000 Right-of Entry permit deposit due	Upon completion of negotiations for acceptable lease terms* February 15, 2019
9. Provide solicitation status to HHC; request approval to conduct BC meetings	February 19-20, 2019 HHC Meeting
10. Mail notices to affected beneficiaries inviting participation in the BC meetings and attend the public hearings	One week after HHC Meeting* February 27, 2019
11. Conduct BC meetings	Two weeks following mail-out* March 13, 2019
12. Negotiate final lease terms, as necessary, to address beneficiary issues and concerns	Two weeks after BC meeting* March 27, 2019
13. BC comments due	30 days after BC meeting* April 13, 2019



ACTION/TASK	DEADLINES/ TIMEFRAME
14. Submit BC report to HHC for acceptance as official record of comments	April 15-16, 2019 HHC Meeting
15. Publish public hearings notice in newspapers	Three days after HHC meeting* April 19, 2019
16. HHC conducts two (2) public hearings followed by decision-making to issue Right-of-Entry permit with option for General Lease (ROE)	Two weeks after public hearing notice published* May 3, 2019
17. Issue approval letter to selected applicants confirming issuance of ROE	Four days after HHC approval* May 7, 2019
18. Issue ROE for execution; balance of ROE fees due, in advance, under initial two-year term	One week after approval letter issued* May 14, 2019
19. Permittee completes due diligence work, technical studies and secures Chapter 343, HRS compliance, and other conditions	Within ROE term: initial two years with three one-year options
20. Issue General Lease for execution	Upon payment of Option Fee and satisfaction of all conditions

*\*DHHL may extend or accelerate the timeframes shown at any time, at its sole discretion. Any dates shown following these timeframes are provided for reference purposes only and are subject to change.*

**APPENDIX “B”**

**DRAFT RIGHT-OF-ENTRY FORM**

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

**RIGHT-OF-ENTRY NO. \_\_\_\_\_**

This RIGHT-OF-ENTRY NO. \_\_\_\_\_ (“ROE”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, (“PERMITTOR” or “DHHL”), and \_\_\_\_\_, a [jurisdiction] [entity], whose place of business is \_\_\_\_\_ (“PERMITTEE”).

1. **RIGHT OF ENTRY.** PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, “Permittee Representatives”), a revocable, non-exclusive right to enter upon the portion of that certain parcel of Hawaiian home lands, located at \_\_\_\_\_, Island of \_\_\_\_\_, identified by Tax Map Key No(s). (\_\_\_\_) \_\_\_\_\_, delineated by the area outlined on the map attached hereto as Exhibit “A”, and incorporated herein by reference, comprising approximately \_\_\_\_\_ acres, and all improvements or fixtures permitted thereon (the “Premises”), only for the Permitted Uses (defined below) and in connection with assessing the feasibility for PERMITTEE to develop a renewable energy project (“Project”).

2. **TERM.** The initial term of this ROE shall be for two (2) years, commencing on the Effective Date and expiring on \_\_\_\_\_. PERMITTEE may extend the term of this ROE for up to three additional one-year periods (each an “extension”) by providing PERMITTOR with prior written notice at least 180 days’ prior to the expiration of the initial term or any subsequent extension. Notwithstanding the foregoing, this ROE shall automatically terminate upon the effective date of a general lease PERMITTOR may enter into with PERMITTEE (*see* Paragraph 14 below).

Notwithstanding the foregoing, PERMITTEE in its sole and absolute discretion, may immediately terminate this ROE upon at least 30 days’ prior written notice thereof to PERMITTOR and this ROE shall immediately terminate upon PERMITTOR’s receipt of such notice.

3. **PERMITTED USE.** The Premises (further defined below) shall be used only for due diligence activities and investigation related to the development of the Project and for no other purpose(s), which due diligence activities shall include only those exempt classes of action under Hawai’i Revised Statutes Chapter 343.

4. **FEE.** Within thirty (30) days after the Effective Date of this ROE, PERMITTEE shall pay PERMITTOR a non-refundable fee, for the first two years, in the amount of \_\_\_\_\_ DOLLARS and XX/100 (\$\_\_\_\_\_). This fee shall be inclusive of PERMITTEE’s initial deposit of TEN

THOUSAND DOLLARS (\$10,000.00). For any extension, PERMITTEE shall pay PERMITTOR a non-refundable fee in the amount of \_\_\_\_\_ and XX/100 DOLLARS (\$\_\_\_\_\_), to be paid in advance on or prior to the start of any such extension.

5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper or offensive use of the Premises. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.
6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittor Representatives") may access and inspect the Premises at all reasonable times to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties; provided, however, that in the exercise of such rights, PERMITTOR and Permittor Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.
7. BREACH. It is expressly agreed that the PERMITTOR may terminate this ROE following written notice to the PERMITTEE of its failure to comply with the specified term(s) of the ROE and the failure of the PERMITTEE to cure its breach within thirty (30) days of receipt of the notice of breach. If PERMITTOR, in its discretion, determines that PERMITTEE has abandoned the Premises, PERMITTOR shall immediately terminate this ROE and thereupon take immediate possession of the Premises without prejudice to any additional remedy or right of action PERMITTOR may have under the law.
8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is non-transferrable. PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-owned subsidiary of PERMITTEE with PERMITTOR's prior written consent.
9. EXPIRATION. Upon the expiration of this ROE, or its sooner termination, PERMITTEE shall peaceably and quietly surrender and deliver up to PERMITTOR possession of the Premises as provided in and subject to Paragraph 15D (below).
10. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE, all interests granted by this ROE and any permitted improvement constructed by PERMITTEE on the Premises, and which PERMITTOR expressly accepts, shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE's control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.



11. INSURANCE. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the term of this ROE, the following minimum insurance coverages:

- A. Comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; (b) \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year.
- B. Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.
- C. Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE or Permittee Representatives in connection with PERMITTEE'S use or occupancy of the Premises.

PERMITTEE shall insure during the term of this ROE the entire Premises, including all buildings now existing and hereafter built or located on the Premises, improvements and grounds, and all roadways and sidewalks on or adjacent to the Premises in the control or use of the PERMITTEE. The insurance shall cover loss or damage by fire and other hazards, casualties and contingencies, including vandalism and malicious mischief. The insurance shall be for the full insurable value of such improvements.

PERMITTEE shall furnish to PERMITTOR upon the execution of this Permit, certificates showing such insurance policy or policies to be in favor of PERMITTOR and to be in force, and shall furnish like certificates upon each renewal thereof. In the event of loss, damage or destruction, PERMITTOR shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the improvements and the balance of such proceeds, if any, shall be delivered to PERMITTEE. Failure of PERMITTEE to provide and keep in force such insurance shall be regarded as material default under this ROE. PERMITTOR shall be entitled to exercise any or all of the remedies provided in this ROE for default of PERMITTEE.

The procuring of such required insurance coverages shall not be construed to limit PERMITTEE'S obligation to indemnify PERMITTOR under this ROE, nor limit, restrict, release, or relieve PERMITTEE of any liability arising under this ROE.

PERMITTEE'S insurance shall be primary. Any insurance maintained by PERMITTOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by PERMITTEE.

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

PERMITTEE agrees to indemnify, defend, and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands therefore, directly arising out of, or resulting from, any use or release of hazardous materials on the Premises or adjacent property by PERMITTEE or PERMITTEE's agents, and occurring while PERMITTEE is in possession of the Premises. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. These covenants shall survive the expiration or earlier termination of this ROE.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment.



Prior to the termination of this ROE (except where termination is due to the issuance and execution of the General Lease), PERMITTEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and PERMITTOR; provided however, that this provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, below.

13. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE'S officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.
14. GENERAL LEASE. PERMITTOR may lease to PERMITTEE the Premises or a portion of the Premises upon such terms and conditions of a general lease, which shall be substantially in the form attached as Exhibit "B" (the "General Lease"), and provided that PERMITTOR determines, in its sole discretion, that: (a) PERMITTEE is not in default under this ROE; and (b) PERMITTEE has satisfied (or PERMITTOR has expressly waived in writing) all of the conditions below or which PERMITTOR may require. Upon the effective date of any such General Lease, this ROE shall automatically terminate.
  - A. PERMITTEE shall submit a written request to PERMITTOR for the issuance of a general lease ("Request for General Lease") no less than ninety (90) days prior to the expiration of this ROE, with a non-refundable payment of \_\_\_\_\_ DOLLARS and XX/100 (\$\_\_\_\_\_) (the "Option Fee").
  - B. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and specifically pursuant to Hawaii Revised Statutes Section 171-95.3 for renewable energy producers.
  - C. PERMITTOR's beneficiary consultation process for PERMITTEE has been completed.
  - D. PERMITTEE provides PERMITTOR written assurance from a utility company to purchase the energy that will be generated from the Project.

- E. All requirements of Hawaii Revised Statutes Chapter 343 have been met, including but not limited to, the preparation, at PERMITTEE's sole expense, of an environmental assessment and/or environmental impact statement, and the issuance of a Finding of No Significant Impact or an acceptance of final environmental impact statement, as the case may be. All mitigation measures prescribed pursuant to Chapter 343, if any, shall be included as material terms of the General Lease.
- F. PERMITTOR shall have approved a site plan depicting the locations within the Premises of any facilities, roads, and other infrastructure and improvements required for the Project.
- G. PERMITTEE shall prepare a metes and bounds survey of the portions of the Premises to be demised under the General Lease
- H. PERMITTEE shall submit the following documents to PERMITTOR:
  - i. A copy of PERMITTEE's Articles of Incorporation.
  - ii. Evidence reasonably acceptable to PERMITTOR of PERMITTEE's financial ability to develop, operate, and maintain the Project, and to make rent payments as required under the General Lease.

15. SPECIAL CONDITIONS.

- A. PERMITTEE shall keep and maintain the Premises and any and all equipment and personal property of PERMITTEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris, and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises.
- B. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there are no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.
- C. PERMITTEE may grub and clear the existing vegetation on the Premises only to the extent needed for the Permitted Uses, provided further that Permittee has obtained all necessary permits or approvals to conduct such activities.
- D. RESTORATION OF PREMISES. Upon surrender or abandonment of the Premises, Permittee shall restore, at its own cost and risk, the Premises to a condition as good as or better than that which existed before the Effective Date, reasonable and ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to PERMITTOR. This includes the



removal of any Improvements that PERMITTOR elects to not accept. If PERMITTEE fails to restore the Premises, PERMITTOR may undertake all work it deems necessary or appropriate to restore the Premises on Permittee's behalf and expense, whether by its own employee or contractor(s), and may charge all such costs and expenses to PERMITTEE. PERMITTEE shall remit payment for all such costs and expenses to PERMITTOR within thirty (30) days. This provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, above.

- E. All associated construction costs under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR.
- F. PERMITTEE shall take all precautions to minimize disturbance to the areas surrounding the site of an activity being undertaken for study or exploration and to avoid spreading the seeds of invasive species when entering areas of native vegetation.
- G. Should any activity involve substantial construction, or extensive excavation or drilling during the term of this ROE, PERMITTEE will contact PERMITTOR in advance for written approval to proceed.
- H. PERMITTEE shall provide copies of all reports or studies performed to evaluate the Project to PERMITTOR, including data collected, archaeological and environmental surveys, and biological studies.
- I. 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 PERMITTEE:

\_\_\_\_\_

\_\_\_\_\_

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

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If to PERMITTOR:

Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to:

Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

- J. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.
- K. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and PERMITTEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first above written.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON \_\_\_\_\_

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
State of Hawai'i

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

PERMITTOR

By \_\_\_\_\_  
Its \_\_\_\_\_

PERMITTEE

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

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

DRAFT



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Printed Name of Notary Public

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at time of notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: First Circuit  
(in which notarial act is performed)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

**EXHIBIT “A”**

[MAP OUTLINING THE PARCEL OR A PORTION  
OF THE PARCEL AS THE PREMISES]

DRAFT

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

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

THIS GENERAL LEASE NO. \_\_\_\_ (the "Lease"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date"), by and between THE STATE OF HAWAII, by its \_\_\_\_\_ DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei (hereinafter called "LESSOR") and \_\_\_\_\_, a \_\_\_\_\_ whose principal place of business is \_\_\_\_\_ (hereinafter called "LESSEE").

**W I T N E S S E T H:**

WHEREAS, LESSOR, under Section 204(a)(2) of the Hawaiian Homes Commission Act of 1920, as amended (the "HHCA"), is authorized to grant leases for the use of Hawaiian home lands that are not required for leasing under HHCA section 207, subject to the requirements of Chapter 171 of the Hawaii Revised Statutes;

WHEREAS, LESSOR, under Sections 171-95 and 171-95.3 of the Hawaii Revised Statutes ("HRS"), is authorized to dispose of its lands to renewable energy producers and public utilities without public auction through direct negotiation;

WHEREAS, LESSOR desires to lease the Premises (defined below) to Lessee in pursuing objective 2 (Ko'o) of its *Ho'omalūō Energy Policy*, approved by the Hawaiian Homes Commission on January 27, 2009, which calls for facilitating the use of diverse renewable energy resources and leasing lands suitable for such renewable energy projects, like the "Project" contemplated under this Lease; and

WHEREAS, LESSEE was chosen to develop, construct, operate, manage, and maintain the Project through a public and competitive solicitation and negotiation process, as required by law;

NOW, THEREFORE, LESSOR, in consideration of the rent to be paid and the terms, covenants, and conditions herein contained to be kept, observed, and performed on the part of LESSEE, its successors and permitted assigns, hereby grants and conveys unto LESSEE:



## ARTICLE ONE PREMISES

1. Premises. LESSOR leases to LESSEE, and LESSEE leases from LESSOR, the real property (and all Project Improvements, defined below) located at \_\_\_\_\_, Island of \_\_\_\_\_, State of Hawaii, totaling approximately \_\_\_\_\_ (\_\_\_\_) acres of Hawaiian home lands, identified as [a portion of] Tax Map Key No. (\_\_\_\_) \_\_\_\_\_, and more particularly described in Exhibit "A" and as shown in Exhibit "B", attached hereto and made a part hereof (the "Premises").

2. Permitted Uses. The Premises will be used only for: the development, operation, management, and necessary maintenance of renewable energy facility (or facilities) consistent with the purposes described or defined in the Final Environmental Assessment for which a finding of no significant impact has been issued ("EA") or the Final Environmental Impact Statement ("EIS") which has been accepted, as published in the Bulletin of the Office of Environmental Quality Control dated \_\_\_\_\_ (collectively the "Project").

3. Security and Personal Property. LESSEE shall be responsible for the security of the Premises and all of the personal property of the LESSEE thereon. LESSEE may install a security system or systems, including, but not limited to, fencing of the Premises or portions thereof, subject to review and approval by LESSOR.

4. Non-Exclusive Licenses or Easements (Access and Transmission). [Reserved].

## ARTICLE TWO TERM

1. Term. The initial term (the "Construction Period") of this Lease shall be from the Effective Date and expire on \_\_\_\_\_, 20\_\_\_\_, unless earlier cancelled, terminated, or extended, as provided in this Lease. The initial term shall be extended for \_\_\_\_\_ (\_\_\_\_) years (the "Commercial Operation Period") on the earlier of: (i) the date on which LESSOR receives written notice from LESSEE that at least one \_\_\_\_\_ production facility (defined below) installed on the Premises generates and delivers energy for sale to an electric utility company; or (ii) the date on which Lessor receives written notice from Lessee that Lessee elects to extend the Construction Period (the "Commercial Operation Date").

2. Renewal Term. [Reserved].

3. Lessee's Right to Surrender. LESSEE may terminate this Lease on or before the end of the Construction Period, by giving LESSOR at least one-hundred eighty (180) days prior written notice (the "Surrender Notice"), and provided that LESSEE is not then in Default under this Lease. LESSEE shall pay to LESSOR an "Early Surrender Fee" of \_\_\_\_\_ and XX/00 DOLLARS (\$\_\_\_\_\_), delivered with the Surrender Notice. The date that is one-hundred eighty days (180) from the date of the Surrender Notice shall be the "Surrender Date", which in no event shall be later than the end of



the Construction Period, except by mutual written agreement of the parties. On or before the Surrender Date, LESSEE shall peaceably deliver the Premises to LESSOR in accordance with the surrender provisions of Article \_\_\_\_, Section \_\_\_\_ (below).

(a) LESSEE shall make available for inspection by LESSOR all improvements, and maintenance and other records pertaining to the improvements, no later than thirty (30) days prior to the Surrender Date. Upon the Surrender Date, LESSEE shall, at LESSOR's sole election and in accordance with Article Four, Section 7(e) herein, either: (1) 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; or (2) at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, remove promptly improvements belonging to LESSEE or portions thereof in accordance with applicable law and restore the Premises to a clean and orderly condition free of all debris, substantially the same as or better than existing on the Effective Date, reasonable wear and tear excepted. In the event LESSOR requires LESSEE to remove the improvements under subsection (a)(2) herein, LESSEE shall, prior to the Surrender Date, provide a bond, letter of credit, or other financial assurance reasonably acceptable to LESSOR covering the cost of removal.

4. Termination. This Lease will terminate upon the occurrence of:

- (a) The expiration of the Construction Period, Commercial Operation Period [or any Renewal Term];
- (b) By mutual written agreement between the parties;
- (c) On the Surrender Date (provided above);
- (d) Pursuant to a Default (defined below)

### **ARTICLE THREE** **LESSOR'S RESERVED RIGHTS**

LESSOR reserves the following rights:

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, HRS.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises.

2. Prehistoric and Historic Remains. 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 shall be exercised only after not less than five (5) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Three, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE's improvements so withdrawn or rendered unsuitable for LESSEE's intended use, which amount is to be determined in the manner set forth in Section \_\_\_\_\_ of Article \_\_\_\_\_, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section \_\_\_\_\_ of this Article \_\_\_\_\_.

4. Grant and Relocate Easements. LESSOR hereby reserves the right 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, and access for the ingress and egress of pedestrians and vehicles, across through, under or over the Premises, provided that (a) such easements do not cross through, under, or over 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 to not unreasonably interfere with LESSEE's operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be reasonably returned, at LESSOR's sole cost and expense, to the condition as it was prior to installation of any underground utility.

5. Access and Licenses. Lessor may grant, license, or permit third parties access to, over, across or under the Premises. Moreover, LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not unreasonably interfere with LESSEE or LESSEE's use and enjoyment of the Premises. If LESSEE is a regulated public utility, LESSOR's right to enter the Premises for purposes aforesaid shall be subject to the requirement that LESSOR shall give LESSEE prior written notice of at least seventy-two (72) hours of any such entry, and such entry shall be in accordance with such reasonable guidelines as LESSEE shall provide to protect the security and integrity of such regulated electric public utility activities.



## ARTICLE FOUR RENT

1. Payments; Generally. LESSEE shall pay all rent and additional rent to LESSOR at the office of the Department of Hawaiian Home Lands, Kapolei, O'ahu, State of Hawai'i, as provided herein below, in advance, without notice or demand and without any set-off or deduction, in United States dollars, as follows:

(a) Minimum Base Rental. LESSEE shall pay to LESSOR minimum, annual base rent, in equal monthly installments, for each of the periods shown below, on the first day of each calendar month, beginning on the Effective Date:

Period	Annual Base Rent	Monthly Installment
Effective Date -		
Commercial Operation Date -		

[INSERT PERIODS AND RENT INFORMATION]

(b) Commercial Operation Date Fee. Within thirty (30) days of the Commercial Operation Date (defined above), LESSEE shall pay to LESSOR and XX/100 DOLLARS (\$ ) (the "Commercial Operation Date Fee").

(c) Royalty; Audit Requirements. [Reserved]

(d) Community Benefits. [Reserved]

2. Security. On or before the Effective Date, LESSEE will pay to and deposit with LESSOR and XX/100 DOLLARS (\$ ) as security for the performance of the Lease.

3. Other Expenses. In addition to any rent required to be paid under this Lease, LESSEE shall pay:

(a) Utilities. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings incurred by or related to the Project, 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.

(b) 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 pay any and all conveyance and transfer taxes payable with respect to this Lease, or with respect to any document to which LESSEE is a party, or 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.

4. No Abatement, Counterclaim or Setoff. Rent, additional rent, and all other sums payable by LESSEE under this Lease shall be paid without notice, demand, counterclaim, setoff, deduction, defense, or abatement for any reason.

#### **ARTICLE FIVE** **CONDEMNATION.**

If all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawai'i, 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 Hawai'i under its power of eminent domain, the amount of such just compensation to be determined.

If a portion, but not all, of the Premises should be condemned, 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 the Project 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, as determined by LESSOR, LESSEE may surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, in accordance with Article \_\_\_\_ (below), 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.

## **ARTICLE SIX**

### **LESSEE'S COVENANTS**

LESSEE covenants, represents, and warrants to LESSOR as follows:

1. Lessee Improvements. LESSEE shall build, place, and install those fixtures, facilities, buildings, signs, fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or in connection with the Project or for the use of the Premises by the LESSEE or any part thereof (collectively, the "Project Improvements"). Except as otherwise provided in this Lease or as the parties may mutually agree in writing, all Project Improvements shall be owned by LESSEE as its sole personal property until the termination of this Lease. LESSEE shall keep all Project Improvements in good condition, order, and repair, ordinary wear and tear excepted, and shall maintain, replace, or repair any Project Improvement at its sole cost and expense.

(a) Governmental Approvals and Permits. Before LESSEE builds, places, or installs any Project Improvement, 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 (defined below). LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) Lessor's Approval. LESSEE shall not build, place, or install any Project Improvement or other improvements or additions, modifications, or alterations thereto costing more than Fifty Thousand Dollars (\$50,000), 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 or engineer, first submitted by LESSEE and approved in writing by LESSOR. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications therefor are not acceptable to LESSOR. LESSOR's approval of any plans or suggestions for the revision thereof shall not be construed or deemed to be an agreement or representation on LESSOR's part of the adequacy or suitability of the alterations, additions or improvements for their intended purposes, or of their compliance with applicable building codes or other governmental requirements.

(c) Performance Guaranty and Financial Information. LESSEE will, before commencing construction of any improvements, provide (i) 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 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 (ii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR, 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 such improvements. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably request 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. 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").

(e) Subdivision. [Reserved].

2. Compliance with Chapter 343, Hawaii Revised Statutes. At its sole cost and expense, LESSEE shall develop, operate, and maintain the Project in conformance with the EA or EIS, whichever is applicable, and shall perform all mitigation measures set forth therein. Failure to conform with the EA or EIS, whichever is applicable, or to perform the required mitigation measures shall be considered a material breach of the Lease.

3. 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. Pursuant to Article \_\_\_\_\_, Section \_\_\_\_\_, certain specified portions of the Premises may remain accessible and available to LESSOR's invitees for uses not related to the Project. LESSEE's obligation under this provision shall be limited to conditions necessary for the purposes of the Project and LESSEE's other obligations as specifically provided under this Lease, and not such other uses as LESSOR or its invitees may make of the Premises.



4. Maintenance of Premises and Inspections

(a) Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the premises. All shrubbery and overgrowth within the Premises shall be kept neatly trimmed so as not to cause or suffer an encroachment, public or private nuisance, or dangerous condition.

(b) LESSOR and its agents may enter the Premises at all reasonable times during the term of this Lease to 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.

(c) In light of the nature of LESSEE's regulated electric public utility activities, LESSOR's right to have reasonable access to the Premises for purposes of inspecting the same shall be subject to the requirement that LESSOR shall give LESSEE prior written notice of at least seventy-two (72) hours of any such inspection, and LESSOR shall conduct such inspections in accordance with such reasonable guidelines as LESSEE shall provide to protect the security and integrity of such regulated electric public utility activities. [Note: This subsection (b) will be included for a public utility.]

(i) Responsibility for Compliance. Notwithstanding LESSOR's reviews or approvals of any drawings or specifications for any improvements, LESSEE, and not LESSOR, shall be responsible to ensure that any improvements comply 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.

5. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE's sole expense, the following insurance coverages and in the amounts not less than specified below, or such other amounts as LESSOR may from time to time reasonably request or require. All such insurance coverages required under this Lease shall be under policies of insurance issued by insurance companies and on forms reasonably satisfactory to LESSOR. [Note: the insurance limits in this Section may be different, depending on the type of project.]

(a) Property Insurance. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all Project Improvements, furniture, fixtures, machinery, equipment, stock and any other personal property owned or used in LESSEE's operation of the Project, on a probable maximum loss basis. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form, 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 shall not have a deductible amount in excess of \$\_\_\_\_\_ for any one occurrence.

(b) 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; Medical Expense. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent. 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 Injury — \$1,000,000 per person/organization per policy year, subject to \$3,000,000 general aggregate per policy year; Fire Legal Liability — \$100,000 per fire, subject to \$3,000,000 general aggregate per policy year; and Medical Expense — \$5,000 each injury. Limits may be evidenced utilizing primary and excess insurance policies.

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



(d) Business Automobile Liability 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.

(e) 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 occurrence.

(f) Builder's All-Risk. Builder's all-risk insurance while the Premises or any part thereof are under construction, written on a probably maximum loss basis, including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(g) General Policy Terms. All policies of insurance required to be maintained pursuant to this section 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 certificates of insurance thereof. All policies required hereunder shall name LESSOR, and LESSEE's mortgagee(s) (if any), as their respective interests may appear, as additional insureds. 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 liability and property damage policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry, where applicable.

(h) Periodic Review of Insurance Coverages. LESSOR may, at any time and from time-to-time, but not more frequently than once every year, review the coverages, policies, forms, 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 the prevailing practices under leases of similar properties in the State of Hawai'i, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection (to the extent such coverage is available at commercially reasonable cost). LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.

(i) Trust. If the 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.

(j) 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 Article \_\_\_\_\_ (below) 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.

6. No 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, subject to the provisions of Article \_\_\_\_\_ of this agreement any 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 at LESSEE's request is filed against the Premises, LESSEE shall cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR within sixty (60) days from the date of receiving notice of such lien. 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 \_\_\_\_\_ shall survive the termination of this Lease.

7. 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 notify LESSOR in writing of any of the following which LESSEE receives actual or constructive notice: (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.

(a) To the extent Hazardous Materials are released on the Premises by LESSEE, LESSEE shall cause any such 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.

(b) 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 its, successors and assigns from and against any loss, damage, cost, expense or liability directly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or placing of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, and those released after such commencement by LESSOR or its agents or any other person that is not LESSEE), 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.

(c) 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.

8. Indemnification. LESSEE will, during the term of this Lease, indemnify, defend and hold LESSOR harmless from and against all liens, claims and demands for property damage, personal injury and wrongful death, to the extent caused by the negligence or willful misconduct of LESSEE, its employees, contractors, subcontractors and/or agents (i) to the extent arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon claiming by, through, or under LESSEE, including, but not limited to, damage to the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) to the extent arising from the activities by LESSEE or those claiming by though or under LESSEE, which cause the Premises and/or sidewalks and roadways on the Premises and Licensed Area to be in an unsafe or dangerous condition. LESSEE will hold all of

Lessee's 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 other than the negligence or willful misconduct of LESSOR, its employees, contractors, subcontractors and those claiming through LESSOR.

(a) LESSEE shall give written notice to LESSOR immediately upon the tender of, discovery, or reasonable belief of any claims, action, or causes of action concerning the Premises or which may otherwise subject LESSOR to liability, risk, of loss or binding adjudication of rights.

(b) The selection of counsel by LESSEE or its insurer to represent and defend LESSOR shall be subject to the prior written approval of LESSOR.

(c) LESSEE and its insurer shall not, without the prior written consent of LESSOR, enter into the settlement or compromise of any claim brought against LESSOR which is the subject of the indemnification under this Lease.

(d) The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such indemnified 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.

(e) LESSEE's obligations under this section for events arising during the Term of this Lease (as such Term may be extended or earlier terminated as set forth herein) shall survive the termination or expiration of this Lease and shall continue in full force and effect for the benefit of LESSOR.

## **ARTICLE SEVEN**

### **DEFAULTS**

1. Events of Default. Each of the following will constitute a "Default" under this Lease, permitting the non-defaulting party the right to terminate this Lease to pursue any and all remedies as provided at law or in equity:

(a) Time is of the essence with respect to all deadlines and dates for Lessee's performance, as defined or contemplated under this Lease, including the payment of rents, additional rent, or any amounts due as the same become due and payable.

(b) 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 a creditor, 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.

2. Notice. If there is a Default, the non-defaulting party shall deliver a written notice to the defaulting party by service, as provided by Section 634-35, or 634-36, HRS, or by registered



mail, or certified mail at the non-defaulting party's last known address, and if to LESSEE, to each Mortgagee or holder of record having a security interest in the Premises (defined below), making demand upon the defaulting party to cure or remedy the Default within sixty (60) days from the date 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 the defaulting party a reasonable opportunity to cure the Default, provided that the defaulting party within said period commences and thereafter diligently proceeds to cure such Default without interruption until such cure is completed; except that where the Default is LESSEE's failure to timely make any payments under this Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after LESSEE's receipt of the notice.

3. Right of Re-Entry. Subject to the requirements of Section 171-21, HRS, and as otherwise provided in this Lease, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, may:

(a) 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.

4. 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, HRS, or within any additional period allowed herein, 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, HRS, 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.

## **ARTICLE EIGHT**

### **LEASEHOLD MORTGAGES**

1. Lessor Consent Required. Notwithstanding the generality of Article \_\_\_\_\_, Section \_\_\_\_\_ (above), LESSEE may mortgage this Lease, or any interest therein, upon due application and with the written consent of LESSOR. Any mortgage secured by LESSEE shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease. The interest of the Mortgagee or holder shall be freely assignable. The term "holder" shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the United States of America through the Administrator of the Rural Utilities Service, 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. The holder shall not have greater rights or interests in the Premises than does LESSEE.



(a) The mortgagee of an Approved Mortgage 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:

2. Mortgagee Protections

(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 (collectively "notices", and each 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.

3. 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.

4. Bankruptcy. If a bankruptcy proceeding is commenced 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 the Lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain an extension of the period during which the Lease may be assumed or rejected; or 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 an assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

(a) 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:

(b) 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;

(c) 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.

## **ARTICLE NINE**

### **ASSIGNMENT AND SUBLETTING**

1. Assignment. LESSEE shall not assign this Lease without the prior written consent of LESSOR. Any assignment without LESSOR's prior express written consent shall be void. Any assignment of this Lease shall be subject to the following additional terms and conditions:

(a) 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.

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

(c) "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 COD 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.

(d) Subletting. LESSEE shall not sublease all or any portion of the Premises.

## **ARTICLE TEN**

### **SURRENDER**

1. Surrender. Upon the expiration or sooner termination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the Premises and any Improvements thereon, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; except for those Project Improvements LESSOR may require LESSEE to raze or remove in accordance with applicable law.

2. Restoration and Repair. LESSEE shall restore the Premises to a clean and orderly condition free of all debris, substantially the same as or better than existing on the date of this Lease.



3. Notice. No later than three (3) years prior to the end of the term of this Lease, LESSEE shall make available for inspection by LESSOR or its agents or representatives the Premises (and any Improvements) and all records of LESSEE that LESSOR may reasonably request. In light of the nature of LESSEE's regulated electric public utility activities LESSOR shall give LESSEE prior written notice of at least seventy-two (72) hours of any such inspection, and LESSOR shall conduct such inspections in accordance with such reasonable guidelines as LESSEE shall provide to protect the security and integrity of such regulated electric public utility activities.

4. Records. LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable laws 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 \_\_\_\_\_ of Article \_\_\_\_\_ 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.

5. Government Inspections. 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.

6. Lessor's Right to Remove Project Improvements. If LESSEE fails or refuses to remove or raze any of the Project Improvements that LESSOR has not expressly agreed to assume by the Surrender Date or expiration or sooner termination of this Lease, such property shall be deemed abandoned by LESSEE and LESSOR, and LESSOR may immediately remove such property from the Premises and dispose of such as LESSOR shall in its sole discretion determine without notice or liability to LESSEE. LESSEE shall reimburse LESSOR for all costs and expenses LESSOR may incur in removing and disposing of such property within thirty (30) days of receipt of an invoice from LESSOR.

7. Security for Removal. On or before the Commercial Operation Date, LESSEE shall pay to and deposit with LESSOR a "Restoration Security" in the amount of \_\_\_\_\_ and XX/00 DOLLARS (\$\_\_\_\_\_) (as

additional security) to cover LESSEE's obligations under this section. [The amount of the Restoration Security will be equal to the Net Removal Cost (as defined below), which will be determined by the parties in good faith; provided, however, if the parties cannot agree upon the Net Removal Cost within sixty (60) days, then the Net Removal Cost will be determined by an independent engineer mutually selected by the parties.] Such Restoration Security shall be in addition to any other security deposit, letters of credit, guaranty or other security required under this Lease. LESSOR may combine with and maintain such Restoration Security together with any other security or deposit held under this Lease and may be applied towards and to the same extent as any other security deposit held under this Lease.

LESSEE shall not be relieved of its obligations under this Lease until it has complied with all of the conditions of surrender required hereunder, to LESSOR's sole satisfaction. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR for damages or injuries or death arising during the term of the Lease as it may be extended, which by its specific terms survives termination.

#### **ARTICLE ELEVEN** **MISCELLANEOUS**

1. Interest, Costs and Fees. 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. The interest rate on any and all unpaid or delinquent rents or additional rent 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.

2. Administrative Fees. LESSEE shall pay LESSOR's standard fees for commercial tenants then in effect, and as LESSOR may determine or amend from time to time, for LESSOR to process any consents or other documents required or authorized by the terms, covenants, and conditions of this Lease.

3. 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.

4. Any and all costs incurred by LESSOR under this Lease shall constitute additional rent.

5. No 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.

6. Survival. The covenants of Article \_\_\_\_, Section \_\_\_\_, shall survive the cancellation, expiration, or termination of this Lease.

7. Further Assurances. Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments and other assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

8. Reporting Requirements.

(a) Pre-construction and construction progress report that provides a description of pre-construction and construction milestones completed in the respective years of the Annual Progress Report. LESSEE shall also provide LESSOR with an anticipated schedule of completion of pre-construction and construction milestones for the following year;

(b) On or before the Commercial Operation Date, and within a reasonable time after the completion or construction of any improvement to the Premises, LESSEE shall provide to LESSOR GIS/GPS shape files, survey information, and "As-Built" plans detailing the locations of improvements constructed and of infrastructure existing on the Premises.

(c) Upon completion of the improvements to the Premises, a narrative program report that describes LESSEE'S progress on achieving operational status shall be included in the Annual Progress Report. LESSEE shall work with LESSOR to identify specific reporting requirements and applicable metrics to monitor this progress. Minimum reporting requirements shall include number of beneficiaries served and a description of how LESSEE has been serving beneficiaries of the Hawaiian Homes Commission Act of 1920, as amended.

(d) As a part of LESSOR'S regular review of LESSEE'S activities, LESSEE shall submit an Annual Progress Report to LESSOR each year on the anniversary date of the lease Effective Date. The annual Progress Report shall document the LESSEE'S activities of the previous year and shall include, but not be limited to the following:

(e) A financial report that includes standard annual financial statements and the LESSEE'S IRS 990 Form for the preceding fiscal year, as well as a budget for the following year, shall be included in the Annual Progress Report.

(f) Annual meetings in \_\_\_\_\_, on the Island of \_\_\_\_\_ with beneficiaries to share project updates during the pre-construction and construction phases of the Project.

(g) LESSEE shall further provide reports to LESSOR demonstrating compliance with the EA or EIS, whichever is applicable, and mitigation measures as follows: (a) during the first three (3) years of the term of the Lease, LESSOR shall provide annual reports to LESSOR; and (b) from the fourth year through the end of the term of the lease, LESSEE shall provide reports to LESSOR upon LESSOR's written request.

9. 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.

10. Extension of Time for Force Majeure. 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.

11. 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.

12. Governing Law and Venue. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii, without regard of application of the rules concerning conflicts of laws. LESSEE submits to the jurisdiction of the State of Hawai'i. Any dispute arising under or in connection with this Lease shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawai'i, and LESSEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as lessee shall furnish to LESSOR in writing.

13. No Recordation. This Lease shall not be recorded; provided, however, that the parties may execute and file with the Bureau of Conveyances a memorandum or short form of this Lease, which shall be substantially in the form and content of the form attached as Exhibit "C".



14. Publicity. [Reserved]

15. 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.

16. Notice. Except as otherwise required by Chapter 171, HRS, 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:

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

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to LESSOR:

Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to:

Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

17. Counterpart Signatures. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.

18. 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.

[REMAINDER BLANK; SIGNATURE PAGE FOLLOWS]

DRAFT

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

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

Deputy Attorney General  
State of Hawaii

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

LESSOR

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

By \_\_\_\_\_  
Its

LESSEE



**EXHIBIT "A"**

**[METES AND BOUNDS DESCRIPTION]**

DRAFT

**EXHIBIT “B”**

**[SURVEY/PROJECT MAP TO BE PROVIDED SHOWING PREMISES]**

DRAFT



**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 \_\_\_\_\_, 201\_\_, by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and \_\_\_\_\_, a \_\_\_\_\_ corporation, whose business and mailing address is \_\_\_\_\_, hereinafter called "LESSEE.

1. **TERM AND PREMISES.** For a lease term commencing on \_\_\_\_\_, and ending as of midnight on \_\_\_\_\_, upon the provisions set forth in that certain written lease dated \_\_\_\_\_ 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 in \_\_\_\_\_, Island of \_\_\_\_\_, State of Hawaii, comprising approximately \_\_\_\_\_ 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 buildings to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

**USE.** LESSEE is granted the right to use the Premises for the development, operation, management and maintenance of a \_\_\_\_\_ production facility.

**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.

**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

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

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

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

LESSOR

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

By \_\_\_\_\_  
Its \_\_\_\_\_

LESSEE

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

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at time of notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_ Circuit  
(in which notarial act is performed)

Signature of Notary \_\_\_\_\_

Date of Notarization and  
Certification Statement

Printed Name of Notary \_\_\_\_\_



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he/she executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Printed Name of Notary Public

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ☐ Undated at time of notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_ Circuit  
(in which notarial act is performed)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

**EXHIBIT "A"**

**[LEGAL DESCRIPTION ATTACHED TO MEMORANDUM OF LEASE]**

DRAFT

## **APPENDIX “C”**

### **KALAELOA, OAHU PARCEL 38:**

Land Area. This parcel is identified by Tax Map Key No. 1st/ 9-1-013:038, Lot 13058-C, and contains approximately 97.538 acres located in East Kalaehloa. See Exhibit “1” for a map of its location. Up to the entire 97.538 acres may be utilized for a renewable energy project, subject to the covenants, conditions, and restrictions of record or limitations disclosed in the Quitclaim Deed from the federal government as part of its divestment of lands of the former Naval Air Station Barbers Point attached in Exhibit “2”.

Property Description. The property is located on the dry leeward side of Oahu in an area lacking infrastructure which has been deemed unsuitable for homestead development for the next twenty years. A substantial portion of the property contains revetments, which are concrete dome-shaped structures used to park aircraft during World War II and are subject to an historic preservation covenant that the Lessee will need to comply with and is more fully described in the Quitclaim Deed from the federal government. The property is also heavily overgrown with trees and dense vegetation. In addition to the historic preservation covenant, the property is subject to Federal Aviation Administration and hazardous substance activity covenants.

County Zoning. DHHL is not subject to county zoning. However, under DHHL’s Oahu Island Plan, the land has been designated for industrial use preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The City and County of Honolulu tax records currently reflect the property class for the parcel as “Residential”.

Utilities. Public utilities are unavailable which include water, sewer, electricity, and telephone service. The Lessee shall be responsible for obtaining the necessary utility services for its project and any required upgrades, infrastructure, improvements and connections at its sole expense.

Access. The property has access from Coral Sea Road onto Roadway Lot 13083 and Easement 6771. Roadway Lot 13083 extends further North and joins with Lot 13076 to connect with Coral Sea Road and Roosevelt Avenue, but these roads have not yet been improved and do not currently exist. The Lessee will be responsible for properly surveying and improving the correct location of the access into the property from Coral Sea Road.

Existing roadways that lead to the property from Coral Sea Road are traversing land that does not belong to DHHL. A formal request for an easement from the Navy for the portion needed to travel across 13059-B, which is pending conveyance to the City and County of Honolulu Parks Department, may be pursued as an alternative. A legal description will need to be prepared and accompany the request for easement in that case.

Chapter 343, Environmental Assessment. The Lessee shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the start of any general



lease for the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding community and environment.

Other Information.

The property is subject to the existing HCDA Kalaeloa Master Plan and the Kalaeloa Community Development District rules. The Kalaeloa Master Plan reflects a proposed extension of Kualakai Parkway running through the eastern portion of the parcel as shown in Exhibit "3".

## **APPENDIX “D”**

### **KALAELOA, OAHU PARCEL 40:**

Land Area. This parcel is identified by Tax Map Key No. 1st/ 9-1-013:040, Lot 13058-E, and contains approximately 49.177 acres located in East Kalaehoa. See Exhibit “1” for a map of its location. Up to the entire 49.177 acres may be utilized for a renewable energy project, subject to the covenants, conditions, and restrictions of record or limitations disclosed in the Quitclaim Deed from the federal government as part of its divestment of lands of the former Naval Air Station Barbers Point attached as Exhibit “4”.

Property Description. The property is located on the dry leeward side of Oahu in an area lacking infrastructure which has been deemed unsuitable for homestead development for the next twenty years. A portion of the property contains historic structures which are subject to an historic preservation covenant that the selected Lessee will need to comply with and is more fully described in the Quitclaim Deed from the federal government. The southern portion of the property is heavily overgrown with trees and dense vegetation. The middle portion of the land was formerly the site of the Kalaehoa Raceway Park. Mauka portions of the land are currently occupied under short-term right-of-entry permits for stabling and storage use. The parcel is subject to a hazardous substance activity covenant and features a sinkhole complex that is also subject to the historic preservation covenant.

County Zoning. DHHL is not subject to county zoning. However, under DHHL’s Oahu Island Plan, the land has been designated for industrial use preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The City and County of Honolulu tax records currently reflect the property class for the parcel as “Commercial”.

Utilities. Public utilities are unavailable which include water, sewer, electricity, and telephone service. The Lessee shall be responsible for obtaining the necessary utility services for its project and any required upgrades, infrastructure, improvements and connections at its sole expense.

Access. The property currently has access from Coral Sea Road.

Chapter 343, Environmental Assessment. The Lessee shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the start of any general lease for the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding community and environment.

### Other Information.

Hazardous waste abatement was conducted on this property several years ago following the cancellation of a prior tenant’s ROE due to unauthorized storage of hazardous materials stored

on the property and other violations of its permit. The property is subject to the existing HCDA Kalaeloa Master Plan and the Kalaeloa Community Development District Rules.



## **APPENDIX “E”**

### **KAHIKINUI, MAUI PARCEL:**

Land Area. Up to 1000 acres for due diligence purposes and scouting project sites is available in the parcel identified by Tax Map Key No. 2<sup>nd</sup>/1-9-001:003 of 15,620 acres located in Kahikinui. See Exhibit “5” for a map of its location. Eventually, no more than 500 acres under a general lease shall be utilized for a renewable energy project.

Property Description. Kahikinui is in an isolated region, far from population centers with a low resident population density, a lack of infrastructure, and under-developed natural resources. A small homestead community resides on lots ranging between 10 to 20 acres in size at the mid-elevation. Due to its expansiveness, Kahikinui has wide ranges in elevation and temperature from sea level to the upper regions. It is rich in Hawaiian historic sites, archaeology, and cultural resources. Endangered species are found in the region and portions of the region contain critical habitat.

County Zoning. Maui County’s zoning for Kahikinui is Conservation and Agricultural; however, DHHL is not subject to county zoning. Under DHHL’s Maui Island Plan, the land has been designated as Special District with special opportunities such as natural, cultural or historic resources and preserving it for possible other future uses such as for farming and ranching, including for renewable energy projects.

Utilities. Public utilities are unavailable which include water, sewer, and electricity. Existing homesteaders use independent living techniques, including trucking in water, using gas stoves, and using solar energy for electricity. The selected Lessee shall be responsible for obtaining the necessary utility services for its project and any required upgrades, infrastructure, improvements and connections at its sole expense.

Access. Access to portions of Kahikinui are limited consisting of mainly partially-improved dirt roads and accessible by four-wheel drive or by foot from Piilani Highway.

Chapter 343, Environmental Assessment. The Lessee shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the start of any general lease for the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding community and environment.

Other Information. The existing homestead community has previously favored renewable energy projects that do not mar the residents’ views from their mid-elevation location and have shown a preference for projects situated below Piilani Highway, in the southeast portion of the parcel.

## **EXHIBITS**

Exhibit “1” – Plat Map of the Kalaeloa Parcels

Exhibit “2” – Quitclaim Deed dated July 2, 2008 recorded as Land Court Document  
No. 3782592

Exhibit “3” – Thoroughfare Plan showing the proposed extension of Kualakai Parkway

Exhibit "4" -- Quitclaim Deed dated December 30, 2002 recorded as Land Court Document  
No. 2879817

Exhibit “5” – Plat Map of the Kahikinui Parcel

LOCATION OF KALAELOA  
LANDS AVAILABLE

Tax Parcel 38:  
97.538 acres

Tax Parcel 40:  
49.177 acres

DHHL = 555.351 Acres

PACIFIC OCEAN  
**KALAELOA**

EXHIBIT "1"

LCAPP: 1069, US NAVAL RESERVATION, BARBERS POINT AIRPORT, HONOLULU, EWA, HAWAII

COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2015  
FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGAL SUBDIVIDED LOTS - SUBJECT TO CHANGE

NOTE: SCALE DOES NOT PERMIT  
SHOWING ALL LOTS ON TAX MAP.  
SEE L AND/OR E MAPS FOR  
DESCRIPTORS, LOCATIONS AND  
MEAS OF LOTS AND LOTS NOT SHOWN.

DROPPED PARCELS: 5, 6, 8, 11-13, 15,  
17, 19, 24, 35, 36, 47, 60, 64, 90, 92,  
100, 108

CITY & COUNTY OF HONOLULU  
TAX MAP  
TAX MAPS BRANCH

ZONE	SECTION	PLAT
9	1	013

SCALE: 1 INCH = 800 FEET



NC  
Issue



L-548 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

AUG 22, 2008 03:29 PM

Doc No(s) 3782592  
on Cert(s) 266,962 & 529,664  
Issuance of Cert(s) 920,259



23 1/1 Z13

/s/ NICKI ANN THOMPSON  
ASSISTANT REGISTRAR  
CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By Mail (X)

Pick Up ( )

Lots 3802-A, 13068 and 13058-C  
Former Naval Air Station Barbers Point  
Kalaheo, Oahu, Hawaii  
GSA Control No. 9-N-HI-472D

Department of Hawaiian Home Lands  
State of Hawaii  
Attn: Mr. Micah A. Kane  
Chairman, Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, HI 96707

Tax Map Key Nos: 9-1-13: 1, 28 and 38


Total Pages: 23  
21

QUITCLAIM DEED

EXHIBIT "2"

## QUITCLAIM DEED

**Lots 3802-A, 13068 and 13058-C  
Former Naval Air Station Barbers Point  
Kalaeloa, Oahu, Hawaii  
GSA Control No. 9-N-HI-472D**

**THIS INDENTURE**, made this 2nd day of July, 2008, by and between the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services (hereinafter referred to as "GRANTOR"); under and pursuant to the powers and authority contained in the provisions of the Hawaiian Home Lands Recovery Act, P.L. 104-42 (1995), and the DEPARTMENT OF HAWAIIAN HOME LANDS of the STATE OF HAWAII (hereinafter referred to as "GRANTEE"), 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707. 

**WITNESSETH**, that the said GRANTOR, for valuable consideration, the receipt of which is hereby acknowledged, by these presents does remise, release and quitclaim unto said GRANTEE, its successors and assigns all of its right, title, and interest in that certain real property, and improvements located thereon, situated at Barbers Point, Kalaeloa, City and County of Honolulu, Island of Oahu, State of Hawaii, described as Lots 3802-A, 13068 and 13058-C, as more particularly described on the attached Exhibit "A" ("the PROPERTY").

### THE CONVEYANCE IS SUBJECT TO THE FOLLOWING:

**ALL** covenants, reservations, easements, restrictions, and rights, recorded or unrecorded, for public roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and other rights-of-way, including but not limited to the specific easements, reservations, rights and covenants described herein, and to any facts which a physical inspection or accurate survey of the property may disclose.

**EXCEPTING AND RESERVING, HOWEVER**, unto GRANTOR and its successors and assigns, all of the following utility facilities, easements, rights-of-way and other rights and entitlements:

- (A) Those certain water transmission and control facilities located within the PROPERTY, that are utilized to provide water service for lots other than the PROPERTY, the location of said water facilities being within:
- (1) Easements 7468, 7469, 7471 and 7473, affecting Lot 13058-C, as shown on Map 1071, as set forth in Land Court Order No. 142,226, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; and
  - (2) Easement 7311, affecting said Lot 13068, as shown on Map 1062, as set forth in Land Court Order No. 141,594, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the PROPERTY covered by Certificate of Title No. 529664, issued to GRANTOR.

Together with perpetual easements and rights-of-way over, across, under, and through said Easements for the operation, maintenance, repair, replacement, and removal of all water facilities herein reserved (hereinafter referred to collectively as the "Existing Water Facilities"); and further reserving to GRANTOR the right to transfer such easements to any governmental agency, or to any public, quasi-public or private utility service company, upon notice to, but without the requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following terms and conditions:

(a) In the event the easement areas shall be abandoned or shall remain unused for the construction, excavation, repair, maintenance, alteration, operation and use of the Existing Water Transmission Facilities for a continuous period of one (1) year, the easement rights shall terminate, and the easement holder shall remove any existing water meters, fire hydrants, and all other above-ground structures and appurtenances that were installed within the easement area, and restore the easement area as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, provided however, nothing herein contained shall require the easement holder to remove any underground pipeline and appurtenances located within the easement area.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights granted in the easement document constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area.

Attached Exhibit A-1 is provided to depict the location of existing water facilities within Parcel 13058-C. Those certain water facilities identified as "TRANSFERED" on Exhibit "A-1" are being abandoned in place by the GRANTOR and the GRANTEE shall hereinafter own said water facilities.

(B) Those certain wastewater transmission and control facilities located within the PROPERTY, that are utilized to provide wastewater service for lots other than the PROPERTY, the location of said wastewater facilities being within:

(1) Easements "7081" and "7083", affecting Lot 13058-C, as shown on Map 1025, as set forth in Land Court Order No. 139015, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; and

(2) Easement "6990", affecting said Lot 13068, as shown on Map 1009, as set forth in Land Court Order No. 138404, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the PROPERTY covered by Certificate of Title No. 529664, issued to GRANTOR.

Together with perpetual easements and rights-of-way over, across, under, and through said Easements "7081", "7083", and "6990" for the operation, maintenance, repair, replacement, and removal of all wastewater facilities herein reserved (hereinafter referred to collectively as the "Existing Wastewater Facilities"); and further reserving to GRANTOR the right to transfer such easements to any governmental agency, or to any public, quasi-public or private utility service company, upon notice to, but without the requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following terms and conditions:

(i) Such transfer documents for the conveyance of Existing Wastewater Facilities shall include the following terms and conditions:



(a) In the event the easement holder shall at any time completely remove its sewer pipeline or pipelines or related appurtenances from any parcel or parcels of land comprising the easement area and shall, for a period of two (2) or more consecutive years, fail to reinstall any sewer pipeline or appurtenances over, across, under and through such parcel or parcels, then the rights granted in the easement document and the obligations therein imposed shall terminate as to such parcel or parcels of land without any actions on the part of the easement holder or the fee owner of the easement area, save and except that nothing contained in the easement document shall be deemed to be an abandonment of the rights and obligations insofar as they affect other parcels of land within the easement area which have not been abandoned; provided however, that upon such abandonment, nothing contained in the easement document shall require the fee owner of the easement area to remove there from any structure or equipment constructed or placed within the easement area or to do any work therein.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area. Relocation costs to be borne by the fee owner include, but are not limited to, engineering studies, design, construction, inspection, administration and management of the project and contracts, costs of cleanup and plugging of abandoned utilities, costs associated with preserving line capacity and service to utility customers, and costs to mitigate negative impacts to the utility and its customers. Plans for relocation shall be submitted to the owner of the utility for review and approval. The utility owner's approval shall be obtained prior to the start of relocation work, or termination of existing easements.

- (C) Those certain electrical transformers (excluding transformer pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and such other appliances and equipment located within the PROPERTY, providing service to GRANTEE, which extend from the boundaries of the PROPERTY up to the appropriate electrical metering point of each building located on the PROPERTY, as said "metering point" is defined in the Hawaiian Electric Company, Inc. ("HECO") "Electric Service Installation Manual" effective on the date of this conveyance and regardless of whether or not those meters have actually been installed; together with perpetual easements and right-of-way over, across, under, and through the PROPERTY for the operation, maintenance, repair, replacement, and/or removal of such electric utility facilities located on the PROPERTY. GRANTOR reserves the right to unilaterally cancel said perpetual easements.

(a) In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one (1) year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement

area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area. Relocation costs to be borne by the fee owner include, but are not limited to, engineering studies, design, construction, inspection, administration and management of the project and contracts, costs of cleanup and plugging of abandoned utilities, costs associated with preserving line capacity and service to utility customers, and costs to mitigate negative impacts to the utility and its customers. Plans for relocation shall be submitted to the owner of the utility for review and approval. The utility owner's approval shall be obtained prior to the start of relocation work, or termination of existing easements.

- (D) Those certain electrical transformers (excluding transformer pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and such other appliances and equipment located within the PROPERTY that are utilized to provide electrical service for lots other than the PROPERTY, (hereinafter referred to collectively as "Existing Electrical Utility Facilities"), the locations of which are approximately shown on HECO Drawing Nos. C4630 and C4635, dated July 7, 1999, entitled "Barbers Point NAS Electrical Easements, Quads 1 through 11, 46KV, 12KV & 4KV Lines", and HECO Drawing No. C4636 (Rev. 1), dated February 13, 2001, entitled "Barbers Point NAS Electrical Easements Quad 10, 46KV, 12KV & 4KV Lines", both on file at HECO's office at 900 Richards Street, Honolulu, Hawaii 96813, or at such address or addresses as may be designated by time to time by HECO or its successors, and identified as "Easements for Existing Electrical Facilities" on said HECO drawings; together with perpetual easements and rights-of-way over, across, under and through the PROPERTY, for the operation, maintenance, repair, replacement, and/or removal of said Existing Electrical Utility Facilities located on the PROPERTY; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, including HECO, the right to survey the PROPERTY areas beneath said Existing Electrical Utility Facilities as may be considered by GRANTOR to be necessary for the transmission and distribution of electricity for light, power and/or communications and control circuits for the use of occupants of the PROPERTY or other lots. GRANTOR's right to survey said PROPERTY areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court Map(s) over, across, under and through the PROPERTY for electric utility purposes, upon notice to, but without the requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and right-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to HECO or any other entity, upon notice to but without the requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the PROPERTY, GRANTEE and each person holding under or through GRANTEE agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned, or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time, not to exceed forty-five (45) days, GRANTEE and such persons holding under or through

GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

(1) GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights-of-way and said new specifically delineated easements:

(a) In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one (1) year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area.

- (E) Those certain telecommunication facilities located within the PROPERTY, the location of said telecommunication facilities being approximately shown on NCTAMS PAC BCO BPT-001 Drawing entitled "Communications Infrastructure", dated June 11, 1999, which is on file at the Naval Computer and Telecommunications Area Master Station, Pacific, Base Communications Office, P.O. Box 450, Pearl Harbor, Hawaii 96860-5450, or at such address or addresses as may be designated by time to time by the Department of the Navy or its successors, (hereinafter collectively referred to as the "Existing Telecommunications Facilities"); together with perpetual easements and rights-of-way over, across, under and through the PROPERTY for the operation, maintenance, repair, replacement, and/or removal of the Existing Telecommunications Facilities located on the PROPERTY; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, the right to survey the PROPERTY areas beneath said Existing Telecommunications Facilities as may be considered by GRANTOR to be necessary for the provision of communication service to occupants of the PROPERTY or other lots. GRANTOR's right to survey said PROPERTY areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court Map(s) over, across, under and through the PROPERTY for electric utility purposes, upon notice to, but without the requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and right-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to any other entity, upon notice to but without the requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the PROPERTY, GRANTEE and each person holding under or through GRANTEE agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested

by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned, or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time, not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

(1) GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights-of-way and said new specifically delineated easements:

(a) In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one (1) year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area.

(F) Those certain underground communication cable facilities that are located within the PROPERTY, together with perpetual easements and rights-of-way over, across, under and through Easement "6772", affecting Lot 13058-C, as shown on said Map 962, for the operation, maintenance, repair, replacement and removal of said communication cable facilities. The placement of any structure (other than roads, walks, or curbs) and trees is prohibited within Easement "6772" unless the plans and specifications are first approved in writing by the Department of the Navy. Prior to any excavation within the easement area, the communication cable facilities shall be located and excavation within the immediate vicinity of the communication cable facilities shall be done by hand.

(a) In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one (1) year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements.

(b) If the fee owner of the easement area determines that the continued exercise of the easement rights constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided however, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document, and provided further, that the easement holder agrees to the new location. All



costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area. Relocation costs to be borne by the fee owner include, but are not limited to, engineering studies, design, construction, inspection, administration and management of the project and contracts, costs of cleanup and plugging of abandoned utilities, costs associated with preserving line capacity and service to utility customers, and costs to mitigate negative impacts to the utility and its customers. Plans for relocation shall be submitted to the owner of the utility for review and approval. The utility owner's approval shall be obtained prior to the start of relocation work, or termination of existing easements.

**FURTHER EXPRESSLY RESERVING AND EXCEPTING, HOWEVER,** all right, title, and interest in and to the following items, including without limitation, the exclusive right to transfer, sell, convey, grant, modify, cancel or terminate the same. Notwithstanding anything herein to the contrary, the following items are expressly excluded from any conveyance effected under this instrument, and the GRANTEE shall have no right to own, use or enjoy any of the following items:

- (A) Easement "3697", affecting Lot 2488-A-2, as shown on Map 632 of Land Court Application No. 1069, and as set forth by Land Court Order No. 110870, filed March 9, 1993, designated for the purpose of a runway safety clear zone, and granted to the United States of America, acting through the Department of the Navy, as set forth in that certain Grant dated April 30, 1993, filed as Land Court Document No. 2020854, and noted on Certificate of Title No. 504038.
- (B) Easement "1360", affecting Lots 425-C-1, 2488-A, 2489-A, 2529, and 3168, as shown on Map 373 of Land Court Application No. 1069, and as set forth by Land Court Order No. 72368, filed January 11, 1985, designated for the purpose of a flight clearance glide plane, and as set forth in that certain Declaration of Taking, dated August 23, 1979, filed as Land Court Document No. 1270954, and noted on Certificate of Title No. 504038.
- (C) Easement "540", affecting Lots 1136-D-1 and Lot 1909, and Easement "541", affecting Lots 1136-D-1, 247, 1170, 1172, and Lot 1909, as shown on Map 185 of Land Court Application No. 1069, and as set forth by Land Court Order No. 27855, filed December 6, 1967, designated for the purpose of aircraft flight clearance purposes, and granted to the United States of America, as set forth in that certain Grant dated May 7, 1968, filed as Land Court Document No. 449065, and noted on Certificate of Title No. 85671.
- (D) Easement "2263", affecting Lots 1909-B and 3805-A, as shown on Map 487 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95131, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685726, and noted on Certificate of Title No. 85671.
- (E) Easement "2277", affecting Lots 220-A, 221, and 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685727, and noted on Certificate of Title No. 15790.
- (F) Easement "2280", affecting Lot 298, as shown on Map 496, and Easement "2281", affecting Lots 178, 316, 317, 318, and 319, as shown on Map 496, of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685728, and noted on Certificate of Title No. 15790.
- (G) Easement "2279", affecting Lot 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted

to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685737, and noted on Certificate of Title No. 15790.

- (H) Easement "2262", affecting Lots 237-A and 2695, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95159, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685738, and noted on Certificate of Title No. 15790.
- (I) Easement "2278", affecting Lot 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685739, and noted on Certificate of Title No. 15790.
- (J) Easement "6779", affecting Lots 13068 and 13084, as shown on Map 967, as set forth in Land Court Order No. 135090, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of Transfer Certificate of Title No. 529664, issued to the GRANTOR, adjacent to the end of Runway 11 at the Airport.
- (K) Perpetual Flight Clearance Easement, in, over, and above Lot 204-A-2-A-2, as shown on Map 217 of Land Court Application 1069, as set forth by Land Court Order No. 35554, filed July 19, 1972, and Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.
- (L) Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along the existing road in Lot 208, as shown on Map 34 of Land Court Application No. 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, together with the right to control public and private vehicular traffic on said road during these aircraft transport operations, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.
- (M) Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along Easement "1095", affecting Lot 204-A-2-A-2, as shown on Map 295 of Land Court Application No. 1069, as set forth by Land Court Order No. 51328, filed September 22, 1978, and noted on Certificate of Title No. 170393, together with the right to control public and private vehicular traffic on said easement during these aircraft transport operations, granted to the United States of America in that certain Grant and Relinquishment of Easements dated April 20, 1979, filed as Land Court Document No. 946598, and noted on Certificate of Title No. 170393.

**SUBJECT, HOWEVER,** to the following:

- (A) Easements "1356", "1358", and "1359", as shown on said Map 373, affecting said Lot 3802-A, as set forth in Land Court Order No. 72368, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Certificate of Title No. 266962, granted to the Trustees Under the Will and of the Estate of James Campbell, Deceased, by Grant of Easements dated August 23, 1985, Land Court Document No. 1320616 for storm drain purposes.

- (B) Grant of Easement dated November 29, 1966 to the Hawaiian Electric Company, Inc. and Hawaiian Telephone Company for utility purposes, filed in the Office of the Assistant Registrar of the Land Court as Document No. 410125; subject to Assignment of Security filed in Document Nos. 410128 and 410129, affecting said Lot 3802-A.
- (C) Declaration of Taking filed in Land Court as Document No. 1270954, affecting said Lot 3802-A.
- (D) Reservation as contained in Declaration of Taking filed as Land Court Document No. 87883, affecting said Lot 13058-C.
- (E) All licenses and easements, whether recorded or unrecorded, across over, along or under the PROPERTY.

### COVENANTS

**FAA COVENANT.** GRANTEE hereby covenants and agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled "Objects Affecting Navigable Airspace," or otherwise under the authority of the Federal Aviation Act of 1958, as amended.

**HISTORIC PRESERVATION COVENANT.** GRANTEE hereby covenants on behalf of itself, its successors or assigns and every successor in interest to the PROPERTY hereby conveyed, to protect and maintain the historic properties, specifically the archeological sites listed in the attached Exhibit "B" and depicted in the map attached as Exhibit "B-1", located on the PROPERTY, and the buildings, structures, and improvements listed in Section "C" below, in a manner that preserves the attributes that contribute to the eligibility of said historic properties for the National Register of Historic Places. Such attributes include information potential, construction type, interior and exterior features, design, setting, materials, workmanship, feeling, association, and views from, to, and across the PROPERTY. GRANTEE, its successors or assigns further agrees to the following:

- (A) Disturbance of the ground surface shall be undertaken or permitted to be undertaken on and in the immediate vicinity of the sites listed in Exhibit "B" which would affect the physical integrity of the archeological sites **only after consultation with** the Hawaii State Historic Preservation Officer ("SHPO") as provided by Hawaii Revised Statutes Chapter 6E (§6E-8). Actions that would affect views that contribute to the historical character of the site, including adding new structure site elements such as towers, fences, and obtrusive signs would also be considered to materially affect the PROPERTY. Plans that are submitted in accordance with this provision shall be prepared to conform with the *Secretary of the Interior's Standards and Guidelines for Archeological documentation* (48 FR 44734-37) and such standards and guidelines as the Hawaii SHPO may recommend, including but not limited to, standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with native Hawaiian organizations, and re-interment of human remains. Should the SHPO recommend that the GRANTEE or its successors or assigns conduct archeological data recovery operations or other activities designed to minimize or mitigate the adverse effect of the proposed activity on the sites, the GRANTEE or its successors or assigns may, at its own expense, conduct such activities.

- (B) GRANTEE, its successors or assigns shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the archeological sites listed in Exhibit "B" and shall promptly report any such disturbance to the Hawaii SHPO.
- (C) The following buildings located on Parcel 13058-C have been identified as historic structures: Building 87 (portable Air Raid Shelter, constructed in 1944, distinctive construction type); Buildings 1248-1286, 1288-1290, and 1301 (aircraft revetments, constructed in 1942, half-dome reinforced concrete structures associated with change in aircraft parking policies at NAS Barbers Point after December 7, 1941); Buildings 1506 and 1523 (quonset huts, constructed in 1944, distinctive construction type); and Building 1525 (ARMCO hut/magazine, constructed in 1944, distinctive construction type). The following conditions shall apply:
- (1) Construction, alteration, rehabilitation, remodeling, demolition, disturbance of the ground surface, or other action shall be undertaken or permitted to be undertaken on Parcel 13058-C that would materially affect the integrity or the appearance of the attributes of the Buildings described above **only after consultation** with the Hawaii SHPO. Plans that are submitted in accordance Hawaii Revised Statutes Chapter 6E (§6E-8) shall be prepared to conform with the *Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings (1992)*, a copy of which can be obtained from the Hawaii SHPO.
- (2) The Hawaii SHPO shall provide comments on proposed actions or comments with suggested modification within thirty (30) days of receipt of the action proposed by the GRANTEE or its successors or assigns. If no written response is received from the Hawaii SHPO after thirty (30) days, the GRANTEE or its successors or assigns can proceed with the proposed action.
- (3) The GRANTEE or its successors or assigns shall allow the Hawaii SHPO at all reasonable times and upon reasonable notice to the GRANTEE or its successors or assigns, to inspect the said historic Buildings in order to ascertain whether the GRANTEE or its successors or assigns is complying with these conditions.
- (4) The GRANTEE or its successors or assigns shall provide the Hawaii SHPO with a written summary of actions taken to implement these provisions within one (1) year after the date of this quitclaim deed.
- (D) Failure of the United States of America to exercise any right of remedy granted under this historic preservation covenant shall not have the effect of waiving or limiting the exercise by the United States of America of any other right or remedy or the invocation of such right or remedy at any other time.
- (E) In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States of America or the Hawaii SHPO may, following reasonable notice to the GRANTEE or its successors or assigns, institute any action to enjoin said violation or to require the restoration of the historic properties.
- (F) This covenant is binding on the GRANTEE its successors or assigns, in perpetuity. The restriction, stipulations, conditions, and covenants contained herein shall be inserted by GRANTEE or its successors or assigns, verbatim or by express reference in any deed or other legal instrument by which it conveys a fee simple title or any lesser estate in said historic properties or any part thereof.



**HAZARDOUS SUBSTANCE ACTIVITY COVENANT.**

(A) NOTICE. Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that the attached Exhibit "C" provides an index of environmental conditions and investigative and cleanup actions taken with respect to the PROPERTY and that the attached Exhibit "D" contains a table with (to the extent such information is available): (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the PROPERTY; (2) the time such storage, release or disposal took place; and (3) a description of the remedial action taken, if any.

(B) CERCLA COVENANT. In accordance with CERCLA Section 120(h)(A)(ii), GRANTOR hereby warrants to the GRANTEE that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken prior to the date of this conveyance. GRANTOR warrants that it shall conduct any additional remedial actions found to be necessary after the date of this conveyance regarding hazardous substances remaining on the Property as of the date of this conveyance.

This covenant shall not apply:

(1) in any case in which GRANTEE, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; **OR**

(2) to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the GRANTEE, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; **OR**

(ii) causes or exacerbates the release or threatened release of a hazardous substance located on the Property as of the date of this conveyance.

(C) ACCESS. GRANTOR reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to GRANTOR. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

**NOTICE OF THE PRESENCE OF ASBESTOS.** (a) GRANTEE, its successors and assigns, are warned that the PROPERTY contains asbestos-containing materials that are believed to be non-friable; (b) GRANTEE, its successors and assigns, shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the PROPERTY, including any asbestos hazards or concerns; (c) No warranties, either expressed or implied, are given with regard to the condition of the

PROPERTY including, without limitation, whether the PROPERTY does or does not contain asbestos or is or is not safe for a particular use. The failure of GRANTEE, its successors and assigns, to inspect or to be fully informed as to the condition of all or any portion of the PROPERTY shall not constitute grounds for any claim or demand against GRANTOR; (d) The legal description of the PROPERTY set forth, and any other information provided herein with respect to said PROPERTY was based on the best information available to GSA's Property Disposal Division and is believed to be correct, but any error or omission, including, but not limited to, the agency having custody over the PROPERTY and/or any other Federal agency, shall not constitute grounds or reason for any claim by GRANTEE, its successors and assigns against GRANTOR, including, without limitation, any claim for allowance, refund, or deduction from the purchase price; (e) GRANTOR assumes no liability for damages for personal injury, illness, disability or death to GRANTEE or to GRANTEE's successors, assigns, employees, invitees, or any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the PROPERTY, whether GRANTEE, its successors or assigns has properly warned or failed to properly warn the individual(s) injured; (f) GRANTEE further agrees by acceptance of this instrument of conveyance for itself, its successors and assigns, and each successor in interest to the PROPERTY, or any portion thereof, that in its use and occupancy of the PROPERTY, it will comply with all Federal, State, and local laws relating to asbestos.

**NOTICE OF THE PRESENCE OF LEAD-BASED PAINT.** (a) GRANTEE hereby acknowledges the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d (Title X), of the presence of any known lead-based paint and/or lead-based paint hazards in buildings constructed prior to 1978 on the PROPERTY; (b) GRANTEE covenants and agrees that in any improvements on the PROPERTY defined as target housing by Title X and constructed prior to 1978, lead-based paint hazards will be disclosed to potential occupants in accordance with Title X before any use of such improvements as a residential dwelling. Moreover, GRANTEE covenants and agrees, for itself and its assigns, that in any improvements on the PROPERTY, lead-based paint hazards will be abated in accordance with Title X before use and occupancy of such improvements as residential dwellings; (c) GRANTEE covenants and agrees that in its use and occupancy of the PROPERTY it will comply with Title X and all applicable Federal, State and local laws relating to lead-based paint; and that GRANTOR assumes no liability for damages for personal injury, illness, disability or death to the GRANTEE, its successors or assigns, or any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the PROPERTY described in the deed, whether GRANTEE, its successors or assigns has properly warned or failed to properly warn the individual(s) injured. GRANTEE further agrees to indemnify, defend and hold harmless the GRANTOR from any and all loss, judgment, claims, demands, expenses or damages, of whatever nature which might arise or be made against the United States of America, due to, or relating to the presence of lead-based paint hazards on the PROPERTY; (d) GRANTEE covenants and agrees that it will comply with all Federal, State, local, and any other applicable law(s) regarding the lead-based paint hazards with respect to the PROPERTY.

**NOTICE OF THE PRESENCE OF PESTICIDES.** GRANTEE is notified that the PROPERTY may contain the presence of pesticides that have been applied in the management of the PROPERTY. The United States knows of no use of any registered pesticide in a manner inconsistent with its labeling, and believes that all applications were made in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA -- 7 U.S.C. Sec. 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. Furthermore, that in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA -- 42 U.S.C. Sec. 9601, et seq.), the use of such substances is not a "release" (as defined in CERCLA, 42 U.S.C. Sec. 9601 (22)), but instead the use of a consumer product in consumer use (42 U.S.C. Sec. 9601(9)), and the application of a pesticide product registered under FIFRA for which recovery for response costs is not allowed (42 U.S.C. Sec. 9607(i)).

QUITCLAIM DEED – Page 13 of 20  
Lots 3802-A, 13068 and 13058-C  
Former Naval Air Station Barbers Point  
Kalaheo, Oahu, Hawaii  
GSA Control No. 9-N-HI-472D

**COVENANTS RUN WITH THE LAND.** The covenants, conditions and restrictions contained herein shall run with the land and shall bind and inure to the benefit of GRANTOR and GRANTEE and their respective successors and assigns.

**SAID PROPERTY** transferred hereby totaling 277.497 +/- acres in accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100-526, as amended, and was assigned to the General Services Administration for disposal pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and pursuant to the Hawaiian Home Lands Recovery Act, Public Law 104-42 (1995), and applicable regulations, rules and orders promulgated thereunder.

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**IN WITNESS WHEREOF**, the GRANTOR has caused these presents to be executed as of the day and year first above written.

UNITED STATES OF AMERICA  
Acting by and through the  
ADMINISTRATOR OF GENERAL SERVICES

By: 

Carol Arnold  
General Services Administration  
Deputy Director, Property Disposal Division (9PR)  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94102-3434

## CERTIFICATE OF ACKNOWLEDGEMENT

My commission expires March 18, 2011



**ACCEPTANCE of QUITCLAIM DEED**

**Lots 3802-A, 13068 and 13058-C  
Former Naval Air Station Barbers Point  
Kalaeloa, Oahu, Hawaii  
GSA Control No. 9-N-HI-472D**

**GRANTEE**, through its authorized representative, hereby accepts title to the conveyed PROPERTY and accepts and agrees to all of the terms, conditions, and restrictions contained in the QUITCLAIM DEED set forth above. Executed on behalf of the GRANTEE this 6<sup>th</sup> day of August, 2008, at Honolulu County.

**STATE OF HAWAII  
Acting by and through the  
DEPARTMENT OF HAWAIIAN HOME LANDS**

By: 


Title: Chairman, Hawaiian Homes Commission

**ATTEST**

By: 

Title: Land Management Division  
Administrator

**APPROVED AS TO FORM:**



DEPUTY ATTORNEY GENERAL

Dated: 7/8/2008

STATE OF HAWAII

3

) 22:

CITY AND COUNTY OF HONOLULU )

ABIGAIL L. TUBERA  
NOTARY  
04-888  
PUBLIC  
STATE OF HAWAII

April 1, 1961

**ABIGAIL L. TUBERA**

My commission expires: 11/21/08

Doc. Date: 7/2/08 # Pages: 23  
Notary Name: Abigail L. Tubera First Circuit  
Doc. Description: Quitclaim Deed  
lots 3802-A, 13068 and 13058-C  
Former Naval Air Station Barbours Pt., Kalaheon  
Abigail L. Tubera 8/7/08  
Notary Signature Date

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

- A. That certain real property lying and being in the State of Hawaii, formerly known as the Naval Air Station, Barbers Point, consisting of:
- (1) Lot 3802-A, consisting of 43.021 acres, more or less, as shown on Map 974, as set forth in Land Court Order No. 135472, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 266962 issued to the GRANTOR;
  - (2) Lot 13068, consisting of 136.938 acres, more or less, as shown on Map 957, as set forth in Land Court Order No. 134783, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR; and
  - (3) Lot 13058-C, consisting of 97.538 acres, more or less, as shown on Map 962, as set forth in Land Court Order No. 135066, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR.
- The above-mentioned lots are hereinafter referred to as the "PROPERTY" for the uses stated in the quitclaim deed to which this Exhibit "A" is attached.
- TOGETHER WITH rights of access to said Lot 13058-C over Easement "6771", affecting Lot 13058-D, as shown on said Map 962.
- B. Those certain facilities and rights consisting of all improvements located on the Land, except for the improvements that are specifically excepted and reserved in the quitclaim deed to which this Exhibit "A" is attached.
- C. Those certain water facilities, approximately shown on the attached Exhibit "A-1" and identified as "TRANSFERRED", located within a lot adjacent to Parcel 13058-C, identified as Lot 13058-B, as shown on Map 1049, as set forth in Land Court Order No. 140019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; TOGETHER WITH rights in, over, under, and across said Lot to operate, maintain, repair, replace, and remove said water facilities.
- D. All personal property located on the Land.

**EXHIBIT A-1**

**WATER LINES TO BE TRANSFERRED WITH LOT 13058-C**

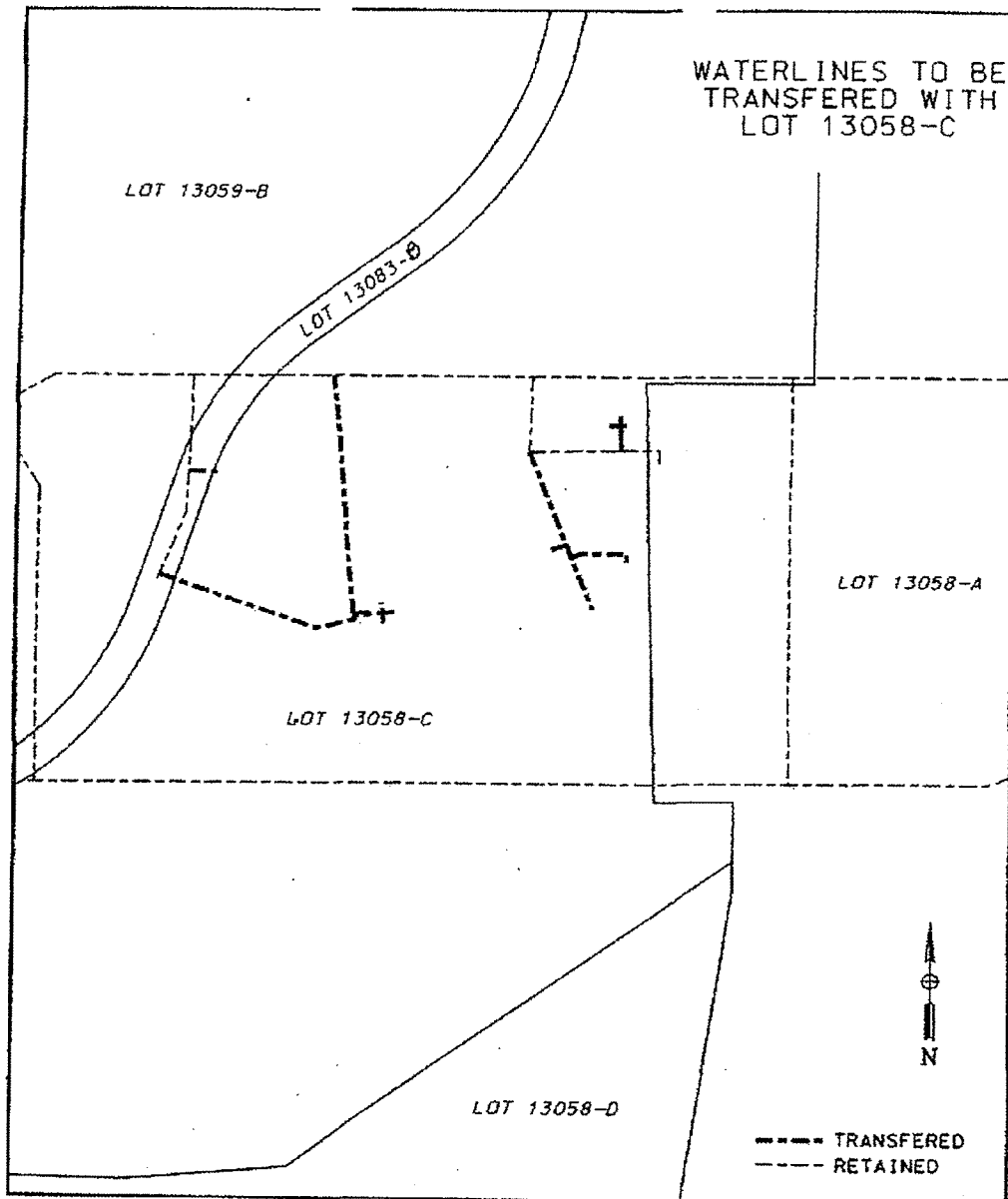


Exhibit "A-1"



## EXHIBIT B

### LISTING OF HISTORIC PROPERTY

#### LISTING OF HISTORIC PROPERTIES

Lot 3802-A

Site/Building No.	# of Features	Description	National Register Eligibility Criteria	Report Reference
NL-25	1+	Early to Mid 20 <sup>th</sup> Century Homestead Remnants	Not Evaluated	1
1725	17	Hawaiian Habitation Complex; one feature contains human remains	D	2

1 Tuggle, H. David and M.J. Tomson-Tuggle

1997 A Cultural Resource Inventory of Naval Air Station Barbers Point, Oahu: Part I, Phase I Survey and Inventory Summary. Prepared by International Archaeological Research Institute, Inc., Honolulu.

2 Beardsley, Felicia

2001 Phase II Intensive Survey and Testing, Naval Air Station Barbers Point. Prepared by Paul H. Rosendahl, Ph.D., Inc., Hilo.

Lot 13068

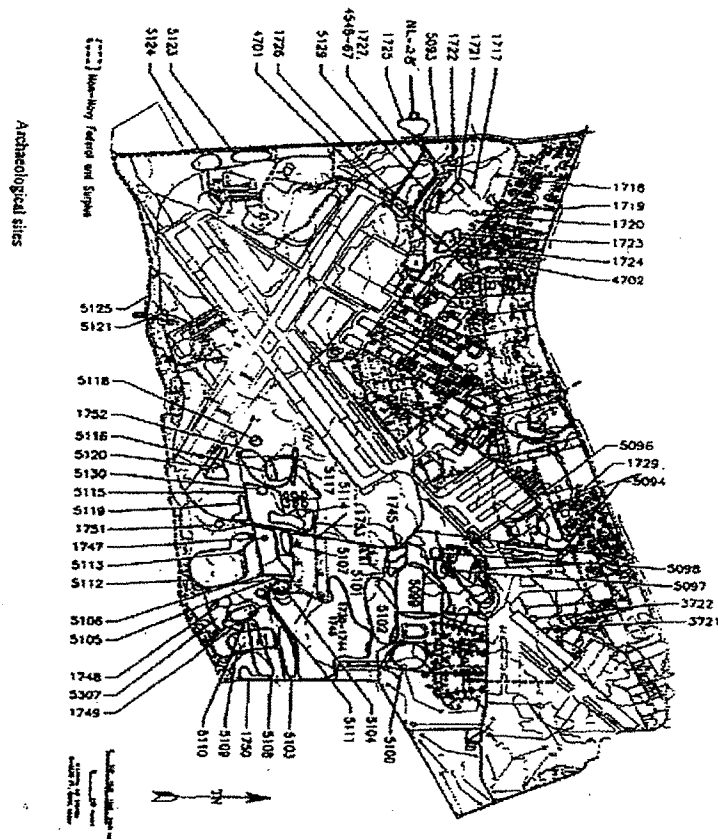
Site/Building No.	# of Features	Description	National Register Eligibility Criteria	Report Reference
1717	6	Hawaiian Habitation Complex	D	2
1718	5	Hawaiian Habitation Complex	D	2
1719	5	Hawaiian Habitation Complex	D	2
1720	2	Hawaiian Habitation Complex	D	2
1721	8	Hawaiian Habitation Complex	D	2
1722	12	Hawaiian Habitation Complex	D	2
1723	8	Hawaiian Habitation Complex; one feature contains human remains	C, D	3
1724	9+	Hawaiian Habitation Complex; two features contain human remains	C, D	3
1726	5+	Hawaiian Habitation Complex; one feature contains human remains	D	3
1727	2	Modified Sinkholes	D	4
4550-67	62	Hawaiian Agricultural Complex	D	4
4701	1+	Early 20 <sup>th</sup> Century Storage	D	3
4702	152	Hawaiian Agricultural Complex	D	3
5093	6+	WWII-era Features; portable pillbox, roads, pads	D	1, 5
5129	29	Hawaiian Habitation Complex	D	1, 2, 5

2 Beardsley, Felicia

2001 Phase II Intensive Survey and Testing, Naval Air Station Barbers Point. Prepared by Paul H. Rosendahl, Ph.D., Inc., Hilo.

EXHIBIT B-1

ARCHEOLOGICAL SITE MAP



## EXHIBIT C

### LISTING OF ENVIRONMENTAL DOCUMENTS

1. "Environmental baseline Survey (EBS) Report, Naval Air Station Barbers Point, Oahu, Hawaii." Ogden Environmental and Energy Services Co., Inc. (Ogden). June 1994
2. "Base Realignment and Closure (BRAC) Cleanup Plan (BCP) (Draft) for Naval Air Station Barbers Point, Oahu, Hawaii." Navy. January 1998.
3. "Asbestos Inspection Report (Final) for Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. February 1998.
4. "Lead-Based Paint Inspection Report (Final) for Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. August 1998.
5. "Asbestos Reinspection Report (Final) for Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. February 1999.
6. "Historical Radiological Assessment and Survey Plan, Final Status Survey, Naval Air Station Barbers Point, Oahu, Hawaii." Naval Sea Systems Command Detachment Radiological Affairs Support Office. March 1999.
7. "Record of Decision for No Action and Restricted Land Use Sites, Naval Air Station Barbers Point, Oahu, Hawaii." Navy. April 1999.
8. "Remedial Investigation Report for BRAC-Related Activities, Regional Groundwater System, Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. April 1999.
9. "Remedial Investigation Report for BRAC-Related Activities, Coral Pit 3, Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. April 1999.
10. "Remedial Investigation Report for BRAC-Related Activities, Runway 11 Clear Zone, Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. April 1999.
11. "Dry Well Network Investigation Report for BRAC-Related Activities, Naval Air Station Barbers Point, Oahu, Hawaii." Ogden. April 1999.
12. "Survey and Sampling of Miscellaneous units Report, Naval Air Station Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech EM Inc. July 1999.
13. "Finding of Suitability to Transfer, Property to be Transferred to the Department of the Interior for Conveyance to the Department of Hawaiian Home Lands, Naval Air Station Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech. August 1999.
14. "Record of Decision Amendment for Coral Pit 3 and the NEX Service Station- Building 129 AST, former Naval Air Station Barbers Point, Oahu, Hawaii." Navy. August 1999.
15. "Final Record of Closure, Closure of Airfield Hydrant Fueling System, Naval Air Station Barbers Point, Oahu, Hawaii." IT Corporation. May 2000.
16. "Finding of Suitability to Transfer Addendum, Lots 3802-A, 13058-C, and 13068 (Property to be Transferred to the Department of Hawaiian Home Lands), former Naval Air Station Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech EM Inc. October 2007.

## EXHIBIT D

### HAZARDOUS SUBSTANCES NOTIFICATION

Hazardous Substances Notification

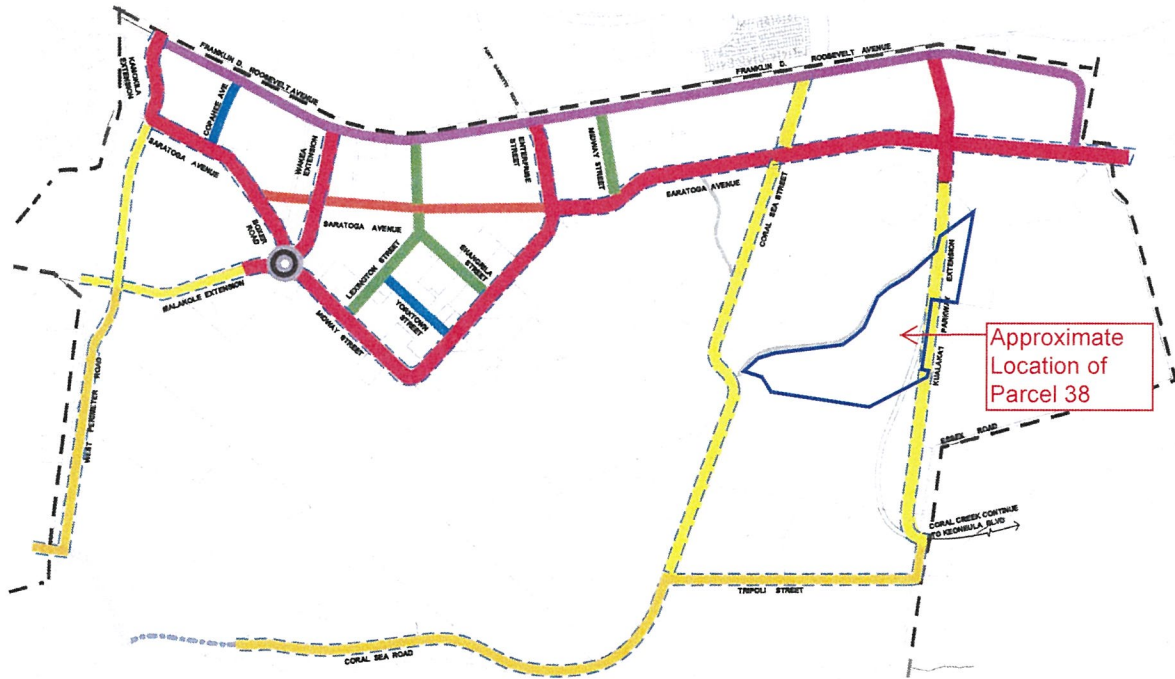
Building No.	Building Description	Material Name	Physical State	Maximum Quantity	Container	Secondary Containment	Action Taken
194	Magazine	High explosive propellant cartridges	Solid	Unknown	Metal ammunition	On concrete floor in locked storage	Removed prior to base closure
194	Magazine	Smoke bombs	Gas	Unknown	Unknown	On concrete floor in locked storage	Removed prior to base closure
194	Magazine	Percol flames (Dress, iron/iron)	Solid	Unknown	Unknown	On concrete floor in locked storage	Removed prior to base closure
195	Guided Missile Maintenance	Hypersonic liquid amine fuel	Liquid	Approx. 15 gallons	ACM target drone	On concrete floor in locked storage	Removed prior to base closure
344	NSL-3F Warehouse	JP-5	Liquid	200 ml	Fuel filling apparatus	None	Removed prior to base closure
345	Boy Scouts Pack 124	Acetylene	Gas	1 cylinder	Gas cylinder	Valve	Removed prior to base closure
345	VP-9 Warehouse	Asbestos	Solid	Actual quantity unknown	3' x 3-1/2' x 2' crate covered in torn plastic	None	Removed prior to base closure
4223	Warehouse	Lubricating oil	Liquid	55 gallon	55 gallon drum	In bkg on concrete pad	Removed prior to base closure

Source:

"Environmental Baseline Survey (EBS) Report, Naval Air Station, Oahu, Hawaii," Ogden, June 1994



FIGURE 1.4 THOROUGHFARE PLAN



**LEGEND**

- = A. 2-Lane Street with parking (ROW = 44')
- = B. 2-Lane Street with bicycle (ROW = 44')
- = C. 2-Lane Avenue with median and turn lanes (ROW = 60')
- = D. 2-Lane Avenue with median/turn lanes & parking (ROW = 60')
- = Bicycle lane
- = District Boundary
- = E. 2-Lane Avenue with median/turn and parking lanes (ROW = 56')
- = F. 2-Lane Avenue with median/turn and parking lanes (ROW = 80')
- = G. 2-Lane Street (ROW = 30')
- = H. 4-Lane Boulevard with median/turn and bicycle lanes (ROW = 80')
- ⋯ = Emergency Access Connection
- = Turnabout

Source: Kalaeloa Community Development District Rules (2012)

EXHIBIT "3"

NE  
Teane  
C



L-393 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

JAN 09, 2003 08:02 AM

Doc No(s) 2879817  
on Cert(s) 266,962 & 529,664  
Issuance of Cert(s) 633,738



/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

32 1/1 24

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By Mail (X) Pick Up ( )

To: ~~General Services Administration  
Property Disposal Division (9PR)  
Attn: Alfonso C. Mendez  
450 Golden Gate Avenue 4East  
San Francisco, CA 94102-3434~~

Department of Hawaiian Home Lands  
State of Hawaii  
Attn: Mr. Raynard C. Soon  
Chairman, Hawaiian Homes Commission  
P.O. Box 1879  
Honolulu, HI 96805

Tax Map Key No: 9-1-13:27, 29, 40, 48, 61, and portion of 9 Total Pages: 32  
17

QUITCLAIM DEED

EXHIBIT "4"

**QUITCLAIM DEED  
Barbers Point**

**THIS INDENTURE**, made this 30<sup>th</sup> day of December, 2002, by and between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior (hereinafter referred to as "GRANTOR"); under and pursuant to the powers and authority contained in the provisions of the Hawaiian Home Lands Recovery Act, Public Law 104-42 (1995), and the DEPARTMENT of HAWAIIAN HOME LANDS of the STATE of HAWAII (hereinafter referred to as "GRANTEE").

**WITNESSETH**, that the said GRANTOR, for valuable consideration, the receipt of which is hereby acknowledged, by these presents does remise, release and quitclaim unto the said GRANTEE, its successors and assigns all of its right, title, and interest in that certain real property and improvements located thereon, situated at Barbers Point, City and County of Honolulu, State of Hawaii, as more particularly described on the attached Exhibits "A", "A-1", "A-2", and "A-3" (the "Property").

**THE CONVEYANCE IS SUBJECT TO THE FOLLOWING:**

**ALL** covenants, reservations, easements, restrictions, and rights, recorded or unrecorded, for public roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and other rights-of-way, including but not limited to the specific easements, reservations, rights and covenants described herein, and to any facts which a physical inspection or accurate survey of the property may disclose.

**EXCEPTING AND RESERVING, HOWEVER**, unto the GRANTOR, all of the following utility facilities, easements, rights-of-way and other rights and entitlements.

1. Those certain existing water transmission facilities located above and below the Property, that are utilized to provide water service for lots other than the Property, the location of said existing water transmission facilities being within the following easements:
  - a. Easement 7095, as shown on Map 1027, as set forth in Land Court Order No. 139073, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.
  - b. Easements 7489 and 7490, as shown on Map 1073, as set forth in Land Court Order No. 142228, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.
  - c. Easements 7427, 7429, 7430, 7436, and 7443, as shown on Map 1069, as set forth in Land Court Order No. 142224, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the Grantor.

Together with perpetual easements and rights of way over, across, under, and through said Easements 7489, 7490, 7095, 7427, 7429, 7430, 7436, and 7443 for the operation, maintenance, repair, replacement, upgrade and removal of all water transmission facilities not conveyed hereunder (hereinafter referred to collectively as the "existing water facilities"); and further reserving to the GRANTOR the right to transfer such easements upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following conditions:

Such transfer documents for the conveyance of existing water transmission facilities shall include the following terms and conditions:

In the event the easement areas shall be abandoned or shall remain unused for the construction, excavation, repair, maintenance, alteration, operation or use of the water transmission facilities for a continuous period of one year, the easement rights shall terminate, and the easement holder shall remove any existing water meters, fire hydrants, and all other above ground structures and appurtenances that were installed within the easement area and restore the easement area as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, provided however, nothing herein contained shall require the easement holder to remove any underground pipeline and appurtenances located within the easement area, provided further that the easement holder caps any cut piping ends with concrete; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted in the easement document constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided, that it shall grant the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions in the easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent and if the easement holder does not respond within 45 calendar days of fee owner's notification of proposed relocation, consent to the relocation shall be deemed to have been given by the easement holder. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area including costs to mitigate negative impacts to the utility and its customers.

2. Those certain existing wastewater transmission and control facilities located within the Property, that are utilized to provide wastewater service for lots other than the Property, the location of said existing wastewater facilities being within Easements 7095 and 7108, as shown on Map 1027, as set forth in Land Court Order No. 139073, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, as to a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; together with perpetual easements and rights of way over, across, under, and through said Easements 7095 and 7108 for the operation, maintenance, repair, replacement, upgrade and removal of all wastewater facilities herein reserved (hereinafter referred to collectively as the "existing wastewater facilities"); and further reserving to the GRANTOR the right to transfer such easements upon notice to, but without requirement for



joinder or consent of GRANTEE or any person holding under or through GRANTEE, subject to the following conditions:

Such transfer documents for the conveyance of wastewater transmission and control facilities shall include the following terms and conditions:

In the event the easement holder shall at any time completely remove its sewer pipe line or pipe lines or related appurtenances from any parcel or parcels of land comprising the easement area and shall, for a period of two (2) or more consecutive years, fail to reinstall any sewer pipe line or appurtenances over, across, under and through such parcel or parcels, then the rights granted in the easement document and the obligations therein imposed shall terminate as to such parcel or parcels of land without any actions on the part of the easement holder or the fee owner of the easement area, save and except that nothing contained in the easement document shall be deemed to be an abandonment of the rights and obligations insofar as they affect other parcels of land within the easement area which have not been abandoned; provided, however, that upon such abandonment, nothing contained in the easement document shall require the easement holder to remove there from any structure or equipment constructed or placed within the easement area, provided further that the easement holder caps, grouts or otherwise makes safe any underground pipeline and appurtenances not removed; and

If the fee owner of the easement area determines that the continued exercise of the easement rights constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted in the easement document to the extent necessary to eliminate such interference; provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the fee owner of the easement area to effect the relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as contained in the easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area. Relocation costs to be borne by the fee owner include, but are not limited to, engineering studies, design, construction, inspection, administration and management of the project and contracts, costs of clean-up and plugging of relocated utilities, costs associated with preserving line capacity and service to utility customers, and costs to mitigate negative impacts to the utility and its customers. Plans for relocation shall be submitted to the owner of the utility for review and consent. The utility owner's consent shall be obtained prior to the start of relocation work, or termination of existing easements.

3. Those certain electrical transformers (excluding transformer pads, buildings and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and such other appliances and equipment located within the Property, providing service to the GRANTEE, which extend from the boundaries of the Property up to the appropriate electrical metering point of each building located on the Property, as said "metering point" is defined in the Hawaiian Electric Company, Inc. ("HECO") "Electric Service Installation Manual" effective on the date of this conveyance and regardless of whether or not those meters have actually been installed; together with perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair,

replacement, upgrade and/or removal of such electric utility facilities. GRANTOR reserves the right to transfer said perpetual easements and rights-of-way to HECO or any other entity, upon notice to but without requirement for joinder or consent of GRANTEE, provided that the following provisions are included in the transfer document:

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as those contained in the transfer of easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee holder of the easement area, including costs to mitigate negative impacts to the utility and its customers; and

Upon subdivision or development of the land over which the granted easement crosses, to the extent that said easement only serves Grantee's property, Grantee reserves the right to require the easement holder to remove its electrical transformers (excluding transformer pads, buildings and fencing) and its overhead lines and surface appliances and equipment and restore the Property as nearly as is reasonably possible to the condition existing immediately prior to the removal of said equipment, the Grantee hereby consenting to such removal and agreeing that the easement holder's underground lines, appliances and equipment may be abandoned in place. In the event of such removal and abandonment of said easement, or any portion thereof, the easement holder will at its own expense prepare, execute and record an appropriate instrument evidencing such abandonment.

4. Those certain existing electrical transformers (excluding transformer pads, buildings and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and other appliances and equipment located within the Property that are utilized to provide electrical service for lots other than the Property, (hereinafter referred to collectively as "existing electric utility facilities"), the locations of which are approximately shown on HECO Drawing No. C4631, dated July 7, 1999, entitled "Barbers Point NAS Electrical Easements, Quads 1 through 11, 46KV, 12KV & 4KV Lines", and HECO Drawing Nos. C4630 (Rev. 1), C4633 (Rev. 1), C4636 (Rev. 2), and C4637 (Rev. 2), dated June 25, 2002, entitled "Barbers Point NAS Electrical Easements Quads 1 through 11, 46KV, 12KV & 4KV Lines", all on file at HECO's office at 900 Richards Street, Honolulu, Hawaii 96813, and identified as "Easements for Existing Electrical Facilities" on said HECO drawings; together with perpetual easements and rights of way over, across, under, and through the Property, for the operation, maintenance, repair, replacement, upgrade and/or removal of said existing electric utility facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, including HECO, the right to survey the Property areas beneath said existing electric utility facilities as may be considered by GRANTOR to be necessary for the transmission and distribution of electricity for light, power and/or communications and control circuits for the use of occupants of the Property or other lots. GRANTOR's right to survey said Property areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to

designate said easements on Land Court Map(s) over, across, under and through the Property for electric utility purposes, upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to the HECO or any other entity, upon notice to but without requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the Property, GRANTEE and each person holding under or through GRANTEE agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights of way and said new specifically delineated easements:

In the event that the easement area shall be abandoned, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as those contained in the transfer of easement document and provided that the easement holder consents to the new location. The easement holder shall not unreasonably withhold consent. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee holder of the easement area, including costs to mitigate negative impacts to the utility and its customers.

5. Those certain existing telecommunication facilities located within the Property, the location of said existing telecommunication facilities being approximately shown on NCTAMS PAC BCO BPT-001 Drawing entitled "Communications Infrastructure", dated June 11, 1999, which is on file at the Naval Computer and Telecommunications Area Master Station, Pacific, Base Communications Office, P.O. Box 450, Pearl Harbor, Hawaii 96860-5450 (hereinafter collectively referred to as the "existing telecommunication facilities"); together

with perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair, replacement, and/or removal of the existing telecommunication facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, the right to survey the Property areas beneath said existing telecommunication facilities as may be considered by GRANTOR to be necessary for the provision of communication service to users. GRANTOR's right to survey said Property areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court Map(s) over, across, under and through the Property for telecommunication purposes, upon notice to, but without requirement for joinder or consent of GRANTEE or any person holding under or through GRANTEE. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way granted hereunder in this paragraph and to grant new specifically delineated easements to any other entity, through the execution of a grant of easement document, upon notice to, but without requirement for joinder or consent of GRANTEE.

In addition, if the Land Court or another court of competent jurisdiction, notwithstanding the rights above, still requires GRANTEE to execute a document in order for GRANTOR to file Land Court petitions to designate easements, to file such grant of easements or to otherwise effectuate said grant, then by acquiring any interest in the Property, GRANTEE and each person holding under or through GRANTEE, agrees to cooperate, join in and/or consent to the GRANTOR's exercise of its rights hereunder if so requested by GRANTOR, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Such persons further agree that if the requested cooperation, joinder or consent is not forthcoming within a reasonable period of time not to exceed forty-five (45) days, GRANTEE and such persons holding under or through GRANTEE shall be deemed to have irrevocably waived any right to consent to and/or join in the matter for which the consent or joinder was sought.

GRANTOR shall include the following terms and conditions in documents for the transfer of its rights in said perpetual easements and rights of way and said new specifically delineated easements:

In the event that the easement area shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, the fee owner of the easement area shall have the right to terminate said easement and require the easement holder to remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements; and

If the fee owner of the easement area determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the fee owner of the easement area shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the easement holder a substitute easement within the reasonable vicinity to permit the easement holder to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions contained in the easement document and provided that the easement holder consents to the new location. All costs associated with such relocation, as determined by the easement holder, shall be borne by the fee owner of the easement area, including costs to mitigate negative impacts to



the utility and its customers.

6. Those certain regional groundwater monitoring wells, as approximately shown on the attached Exhibit "B"; TOGETHER with a perpetual easement over the Property for the operation, maintenance, repair, and replacement of said groundwater-monitoring wells. Said easement and all rights appertaining thereto shall continue until said wells are closed by the GRANTOR. GRANTOR shall close said wells by cutting well casings flush with ground level and filling said wells with cement. Upon such closure, the GRANTEE agrees that said groundwater-monitoring wells will be left in place by the GRANTOR and that GRANTEE shall thereafter own said groundwater-monitoring wells. GRANTOR shall provide to GRANTEE a 60-day advance written notice of its intent to close any groundwater monitoring well located on GRANTEE'S Property.

**FURTHER EXPRESSLY RESERVING AND EXCEPTING, HOWEVER,** all right, title, and interest in and to the following items:

a. Easement "3697", affecting Lot 2488-A-2, as shown on Map 632 of Land Court Application No. 1069, and as set forth by Land Court Order No. 110870, filed March 9, 1993, designated for the purpose of a runway safety clear zone, and granted to the United States of America, acting through the Department of the Navy, as set forth in that certain Grant dated April 30, 1993, filed as Land Court Document No. 2020854, and noted on Certificate of Title No. 504038.

b. Easement "1360", affecting Lots 425-C-1, 2488-A, 2489-A, 2529, and 3168, as shown on Map 373 of Land Court Application No. 1069, and as set forth by Land Court Order No. 72368, filed January 11, 1985, designated for the purpose of flight clearance glide plane, and as set forth in that certain Declaration of Taking, dated August 23, 1979, filed as Land Court Document No. 1270954 and noted on Certificate of Title No. 504038.

c. Easement "540", affecting Lot 1136-D-1 and Lot 1909, and Easement "541", affecting Lots 1136-D-1, 247, 1170, 1172, and Lot 1909, as shown on Map 185 of Land Court Application No. 1069, and as set forth by Land Court Order No. 27855, filed December 6, 1967, designated for the purpose of aircraft flight clearance purposes, and granted to the United States of America, as set forth in that certain Grant dated May 7, 1968, filed as Land Court Document No. 449065 and noted on Certificate of Title No. 85671.

d. Easement "2263", affecting Lots 1909-B and 3805-A, as shown on Map 487 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95131, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685726 and noted on Certificate of Title No. 85671.

e. Easement "2277", affecting Lots 220-A, 221, and 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685727, and noted on Certificate of Title No. 15790.

f. Easement "2280", affecting Lot 298, as shown on Map 496, and Easement "2281", affecting Lots 178, 316, 317, 318, and 319, as shown on Map 496, of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and

granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685728, and noted on Certificate of Title No. 15790.

g. Easement "2279", affecting Lot 298, as shown on Map 496 of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685737, and noted on Certificate of Title No. 15790.

h. Easement "2262", affecting Lots 237-A and 2695, as shown on Map 486 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95159, filed September 18, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685738, and noted on Certificate of Title No. 15790.

i. Easement "2278", affecting Lot 298, as shown on Map 496 of Land Court Application No. 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to the United States of America, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685739, and noted on Certificate of Title No. 15790.

j. Perpetual flight clearance easement, in, over, and above Lot 204-A-2-A-2, as shown on Map 217 of Land Court Application 1069, as set forth by Land Court Order No. 35554, filed July 19, 1972, and Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.

k. Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along the existing road in Lot 208, as shown on Map 34 of Land Court Application No. 1069, as set forth by Land Court Order No. 5852, filed July 3, 1944, together with the right to control public and private vehicular traffic on said road during these aircraft transport operations, reserved to the United States of America in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393,

l. Right of access, including but not limited to, the right to transport, haul and tow aircraft over and along Easement "1095", affecting Lot 204-A-2-A-2, as shown on Map 295 of Land Court Application No. 1069, as set forth by Land Court Order No. 51328, filed September 22, 1978, and noted on Certificate of Title No. 170393, together with the right to control public and private vehicular traffic on said easement during these aircraft transport operations, granted to the United States of America in that certain Grant and Relinquishment of Easements dated April 20, 1979, filed as Land Court Document No. 946598, and noted on Certificate of Title No. 170393.

**SUBJECT, HOWEVER,** to the following:

1. Easements "6780" and "6781", as shown on said Map 968, affecting said Lots 13069-A and 13069-C, respectively, as set forth in Land Court Order No. 135090, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Certificate of Title No. 529664, granted to the State of Hawaii, Department of Transportation by Quitclaim Deed dated June 30, 1999, Land

Court Document No. 2557263 for avigation purposes.

2. Easement "3698", as shown on said Map 632, affecting said Lot 2488-B-1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Certificate Title No. 266962, granted to Moon & Hart by Grant of Easement dated April 30, 1993, Land Court Document No. 2020855, for drainage purposes and by Grant of Easement dated April 30, 1993, Land Court Document No. 2020856, for building setback and emergency vehicle access purposes.
3. Declaration of Taking filed in Land Court as Document No. 1270954 affecting Lot 2488-B-1.
4. Reservation as contained in Declaration of Taking filed as Land Court Document No. 87883.
5. All licenses and easements, whether recorded or unrecorded, across, over, along or under the Land.

### COVENANTS

**HISTORIC PRESERVATION COVENANT.** GRANTEE hereby covenants on behalf of itself, its successors or assigns to protect and maintain the historic properties listed in the attached Exhibit "C" and located on the Land as approximately shown on the attached Exhibit "C-1", in a manner that preserves the attributes that contribute to the eligibility of said historic properties for the National Register of Historic Places. Such attributes include information potential, construction type, interior and exterior features, design, setting, materials, workmanship, feeling, association, and views from, to, and across the Property.

1. Disturbance of the ground surface shall be undertaken or permitted to be undertaken on and in the immediate vicinity of the sites listed in Exhibit "C" which would affect the physical integrity of the archaeological sites only after consultation with the Hawaii State Historic Preservation Officer (SHPO) as provided by Hawaii Revised Statutes Chapter 6E (§ 6E-8). Actions that would affect views that contribute to the historical character of the site, including adding new structure site elements such as towers, fences, and obtrusive signs would also be considered to materially affect the property. Plans that are submitted in accordance with this provision shall be prepared to conform with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and such standards and guidelines as the Hawaii SHPO may recommend, including but not limited to, standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native Hawaiian organizations, and re-interment of human remains.

2. The GRANTEE or its successors or assigns shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the archaeological sites listed on Exhibit "C" and shall promptly report any such disturbance to the Hawaii SHPO.

3. The GRANTEE or its successors or assigns shall allow the Hawaii SHPO at all reasonable times and upon reasonable advance notice to GRANTEE or its successors or assigns, to inspect the said historic properties in order to ascertain whether the GRANTEE or its successor or assigns is complying with the conditions of this preservation covenant.

4. The GRANTEE or its successors or assigns shall provide the Hawaii SHPO with a written summary of actions taken to implement the provisions of this preservation covenant within one (1) year after recordation date of this deed.

5. Failure of the GRANTOR to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the GRANTOR of any other right or remedy or the invocation of such right or remedy at any other time.

6. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the GRANTOR may, following reasonable notice to the GRANTEE or its successors or assigns institute any action to enjoin said violation or to require the restoration of the historic properties.

7. This covenant is binding on the GRANTEE, its successors or assigns, in perpetuity. The restrictions, stipulations and covenants contained herein shall be inserted by GRANTEE, its successors or assigns, verbatim or by express reference in any deed or other legal instrument by which it conveys a fee simple title or any lesser estate in said historic properties or any part thereof.

#### **HAZARDOUS SUBSTANCE ACTIVITY COVENANT**

**(A) Notice.** Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the Department of the Navy (the "Navy") gives notice that the attached Exhibit "D" provides an index of environmental documents prepared by the Navy to document the existing environmental conditions and investigative and cleanup actions taken with respect to the Property and that the attached Exhibit "E" contains a table with (to the extent such information is available): (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; (2) the time such storage, release or disposal took place; and (3) a description of the remedial action taken, if any.

**(B) CERCLA Covenant.** In accordance with section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. 9620(h), the GRANTOR hereby warrants to the GRANTEE that:

- (1) All remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the Land, as of the date hereof, has been taken prior to the date of this conveyance; and
- (2) Any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Land as of the date of this conveyance shall be conducted by the GRANTOR.

The foregoing covenants shall not apply to any response action required on the Property as a result of an act or omission of the GRANTEE

**(C) Description of Remedial Action Taken.** In accordance with CERCLA, the GRANTOR has taken the cleanup actions reflected in the documents listed in Exhibit "D" and summarized in the attached Exhibit "F".



**(D) Access.** GRANTOR reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to GRANTOR. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

**NOTICE OF THE PRESENCE OF ASBESTOS.** (a) GRANTEE, its successors and assigns, are warned that the property contains asbestos-containing materials. That asbestos exists in floor tiles, roofing material, and interior paneling of the improvements; (b) GRANTEE, its successors and assigns, shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property, including any asbestos hazards or concerns; (c) No warranties, either express or implied, are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of GRANTEE, its successors and assigns to inspect or to be fully informed as to the condition of all or any portion of the property shall not constitute grounds for any claim or demand against GRANTOR; (d) The legal description of the property set forth, and any other information provided herein with respect to said property was based on the best information available to DOI and is believed to be correct, but any error or omission, including, but not limited to, the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for any claim by the GRANTEE, its successors and assigns against the GRANTOR, including, without limitation, any claim for allowance, refund, or deduction from the purchase price; (e) The GRANTOR assumes no liability for damages for personal injury, illness, disability or death to the GRANTEE or to the GRANTEE's successors, assigns, employees, invitees, or any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property, whether the GRANTEE, its successors or assigns has properly warned or failed to properly warn the individual(s) injured; (f) The GRANTEE further agrees by acceptance of this instrument of conveyance for itself, its successors and assigns, and each successor in interest to the property, or any portion thereof, that in its use and occupancy of the property, it will comply with all Federal, state, and local laws relating to asbestos.

**NOTICE OF THE PRESENCE OF LEAD-BASED PAINT.** (a) GRANTEE hereby acknowledges the presence of lead-based paint and/or lead-based paint hazards in improvements on the Property constructed prior to 1978; (b) GRANTEE covenants and agrees, for itself and its assigns, that in any improvements on the property, lead-based paint hazards will be abated before use and occupancy of such improvements as residential dwellings; (c) GRANTEE covenants and agrees that in its use and occupancy of the property it will comply with all applicable Federal, State and local laws relating to lead-based paint; and that GRANTOR assumes no liability for damages for personal injury, illness, disability, or death, to

GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the property described in this deed, whether GRANTEE, and its successors or assigns, have properly warned or failed properly to warn the individual(s) injured; (d) GRANTEE covenants and agrees that it will comply with all Federal, state, local, and any other applicable law(s) regarding the lead-based paint hazards with respect to the property.

**RADON.** GRANTEE is notified that radon is present in Building 278 on Lot 13069-C, as approximately shown on the attached Exhibit "G" and may be present in other buildings located on the Property. GRANTEE acknowledges that (a) radon, a naturally-occurring, radioactive inert gas formed by the radioactive decay of radium atoms in soil and rock, is or may be present on the Property, (b) radon can enter a building through cracks and openings in the ground and accumulate and distribute unevenly within a building until it reaches concentrations dangerous to the health of living organisms, and (c) radon is odorless, tasteless and colorless and can only be detected by proper instrumentation. GRANTEE further acknowledges that short-term and long-term exposure to radon and/or its decay products presents a significant health risk to living organisms, including but not limited to humans, which health risk may include but not be limited to lung damage and cancer.

**GROUNDWATER.** GRANTEE covenants and agrees that it will not extract groundwater from the Property for any purpose until regional groundwater monitoring activities are completed by the GRANTOR, unless GRANTEE notifies the GRANTOR before installing any well and performs sampling required under all applicable laws, regulations and standards, including the Safe Drinking Water Act, and the results show that chemical concentrations meet regulatory criteria.

**UNDERGROUND INJECTION CONTROL PERMITS.** GRANTEE covenants and agrees to apply with the State of Hawaii-Department of Health (State DOH), within ninety (90) days of the conveyance of the Property to the GRANTEE, for an Underground Injection Control (UIC) permit(s) for the existing dry wells located on the Property. After the conveyance of the Property, the GRANTOR shall no longer be the owner or actual operator of the drywells. In light of this, the GRANTOR reserves the right to terminate the GRANTOR'S UIC permit(s) with the State DOH if the GRANTEE does not submit an application to the State DOH within ninety (90) days. GRANTEE shall comply with all requirements of the UIC permits held by the GRANTOR until GRANTEE receives a new UIC permit(s) in its own name. GRANTEE acknowledges that it has received from GRANTOR copies of the UIC permits held by the GRANTOR. GRANTOR reserves a right of access to said dry wells for monitoring and inspection purposes until such time as new UIC permits are obtained by the GRANTEE. In the event that any sediment is removed from said dry wells, GRANTEE shall dispose of such sediment offsite in an appropriate facility in accordance with applicable laws and regulations.

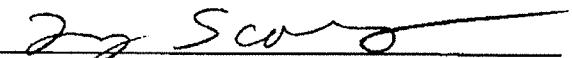
**FAA COVENANT.** The GRANTEE covenants for itself, its successors and assigns and every successor in interest to the property herein described, or any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14 Code of Federal Regulations, Part 77, entitled "Objects Affecting Navigable Airspace", or under the authority of the Federal Aviation Act of 1958, as amended.

**COVENANTS RUN WITH THE LAND.** The covenants, conditions and restrictions contained herein shall run with the land and shall bind and inure to the benefit of GRANTOR and its successors and assigns.

**SAID PROPERTY** was transferred hereby in accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100-526, as amended, and was assigned to the Secretary of the Interior for disposal pursuant to the Hawaiian Home Lands Recovery Act, Public Law 104-42 (1995), and applicable regulations, rules and orders promulgated thereunder.

**IN WITNESS WHEREOF**, the GRANTOR and GRANTEE have caused these presents to be executed and effective as of the 30<sup>th</sup> day of December, 2002.

UNITED STATES OF AMERICA  
Acting by and through the  
SECRETARY OF THE INTERIOR

  
By: Lynn Scarlett  
Its: Assistant Secretary for Policy Management and  
Budget  
1849 C Street NW  
Washington DC 20240

Barbers Point

State of Washington D.C.

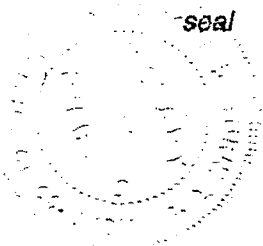
District of Columbia )  
 )ss:  
 )

City and County of

On this 30th day of December, 2002, before  
me, Lynn Scarlett, the undersigned  
Notary Public, personally appeared Lynn Scarlett  
personally known to me to be the person whose name is subscribed to the within  
instrument, and that the foregoing instrument was signed on behalf of the UNITED STATES OF  
AMERICA, acting by and through the Secretary of the Interior and said  
\_\_\_\_\_ acknowledged said instrument to be the  
free act and deed of the UNITED STATES OF AMERICA.

Witness my hand and official seal.

Name: Ramona D. Turner  
Notary Public, State of Washington D.C.  
My Commission expires May 31, 2004



**RAMONA D. TURNER**  
Notary Public District of Columbia  
My Commission Expires May 31, 2004

Grantee's Address is: 1099 Alakea St., Suite 2000  
Honolulu, HI 96813

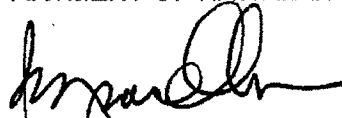
Mailing Address: P.O. Box 1879  
Honolulu, HI 96805



**ACCEPTANCE**

The DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, hereby accepts this Quitclaim Deed and Easements and hereby accepts and agrees to all the terms, easements, covenants, conditions, reservations, and restrictions contained therein.

STATE OF HAWAII  
Acting by and through the  
DEPARTMENT OF HAWAIIAN HOME LANDS



---

By: RAYNARD C. SOON  
Hawaiian Homes Commission  
Its: Chairman

LISTING OF EXHIBITS

Exhibit "A"-Legal Description of Property  
Exhibit "A-1"-Drawing Showing Waterlines to be Transferred with Lot 13067  
Exhibit "A-2"-Drawing Showing Wastewater Lines to be Transferred with Lot 13061-E  
Exhibit "A-3"-Drawing Showing Wastewater Lines to be Transferred with Lot 13067  
Exhibit "B"-Drawing Showing Location of Navy Monitoring Wells  
Exhibit "C"-Listing of Historic Properties  
Exhibit "C -1"-Map Showing Approximate Locations of Archaeological Sites  
Exhibit "D"-Listing of Environmental Documents  
Exhibit "E"-Hazardous Substance Notification  
Exhibit "F"-Description of Remedial Action Taken  
Exhibit "G"-Map Showing Location of Building 278

# EXHIBIT "A"

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY

#### A. PROPERTY DESCRIPTION

a. That certain real property lying and being in the State of Hawaii, formerly known as the former Naval Air Station, Barbers Point, consisting of:

(i) Lot 2488-B-1, consisting of 1.081 acres, more or less, as shown on Map 974, as set forth in Land Court Order No. 135472, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 266962 issued to the GRANTOR;

(ii) Lot 13058-E, consisting of 49.1777 acres, more or less, as shown on Map 962, as set forth in Land Court Order No. 135066, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR;

(iii) Lot 13061-E, consisting of 9.722 acres, more or less, as shown on Map 965, as set forth in Land Court Order No. 135081, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR;

(iv) Lot 13067, consisting of 28.724 acres, more or less, as shown on Map 957, as set forth in Land Court Order No. 134783, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR; and

(v) Lots 13069-A and 13069-C, consisting of 29.853 acres and 139.297 acres respectively, more or less, as shown on Map 968, as set forth in Land Court Order No. 135091, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664 issued to the GRANTOR.

The abovementioned lots are hereinafter referred to as the "Land" for the uses stated herein.

#### B. Those certain facilities and rights consisting of:

(i) All improvements located on the Land, except for the improvements that are specifically excepted and reserved in the deed to which this Exhibit "A" is attached.

(ii) Those certain water facilities, approximately shown on the attached Exhibit "A-1", and identified as "Transferred", located within a lot adjacent to the Land, identified as Lot 13077-A, as shown on Map 1049, as set forth in Land Court Order No. 140019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1069, being a portion of the property covered by Certificate of Title No. 529664, issued to the GRANTOR; TOGETHER WITH rights in, over, under, and across said Lot to operate, maintain, repair, replace, and remove said water facilities.

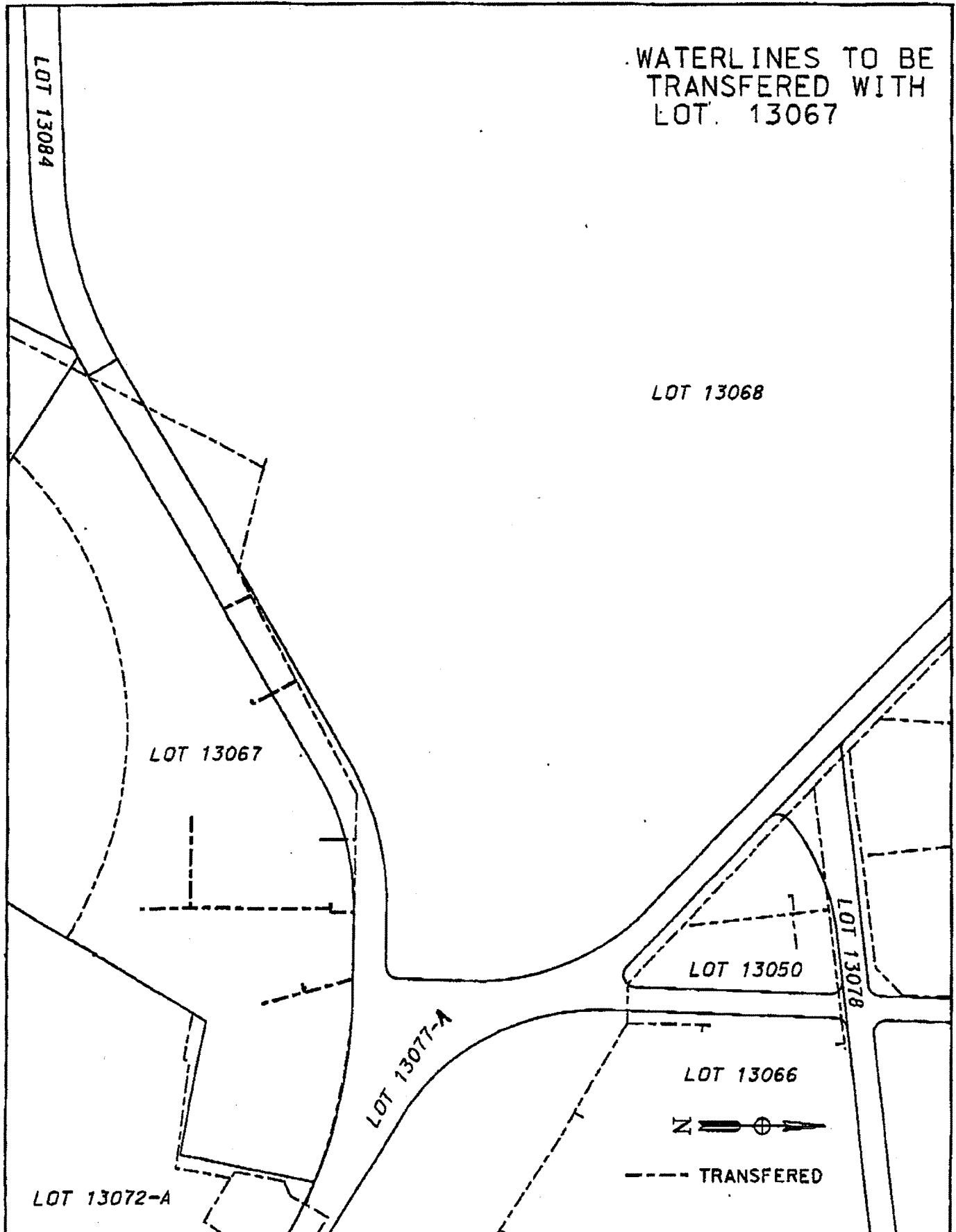
(iii) Those certain wastewater facilities, approximately shown on the attached Exhibit "A-2" and identified as "Transferred", located within a lot adjacent to the Land, identified as Lot 13080-B, as shown on said Map 1049; TOGETHER WITH rights in, over,

under, and across said Lot to operate, maintain, repair, replace, and remove said wastewater facilities.

- (iv) Those certain wastewater facilities, approximately shown on the attached Exhibit "A-3" and identified as "Transferred", located within lots adjacent to and in the vicinity of the Land, identified as Lots 13050 and 13068, as shown on said Map 957, and Lot 13077-A, as shown on said Map 1049; TOGETHER WITH rights in, over, under, and across said Lot to operate, maintain, repair, replace, and remove said wastewater facilities.

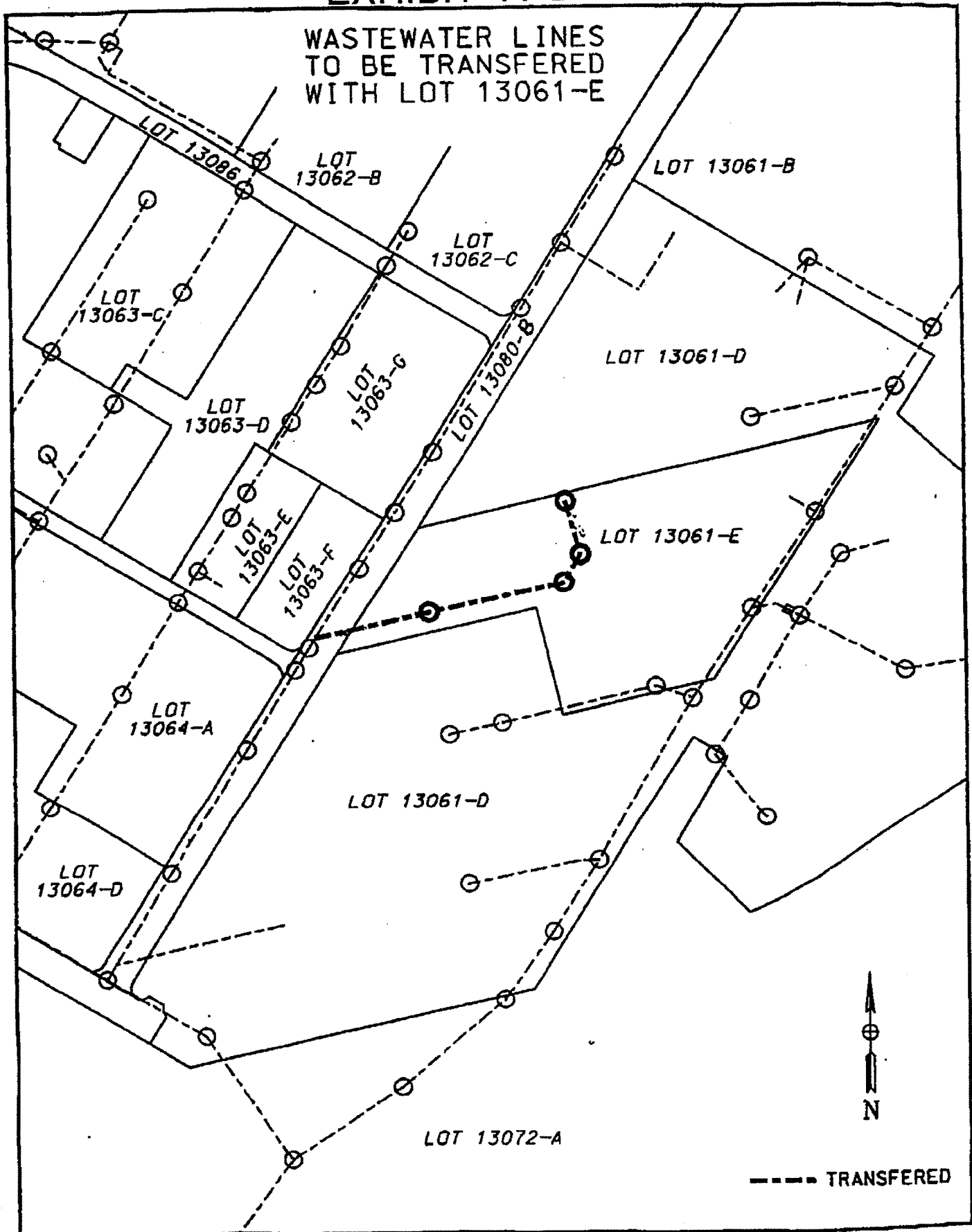
C. All personal property located on the Land.

# EXHIBIT "A-1"





# EXHIBIT "A-2"



# EXHIBIT "A-3"

WASTEWATER LINES  
TO BE TRANSFERED  
WITH LOT  
13067

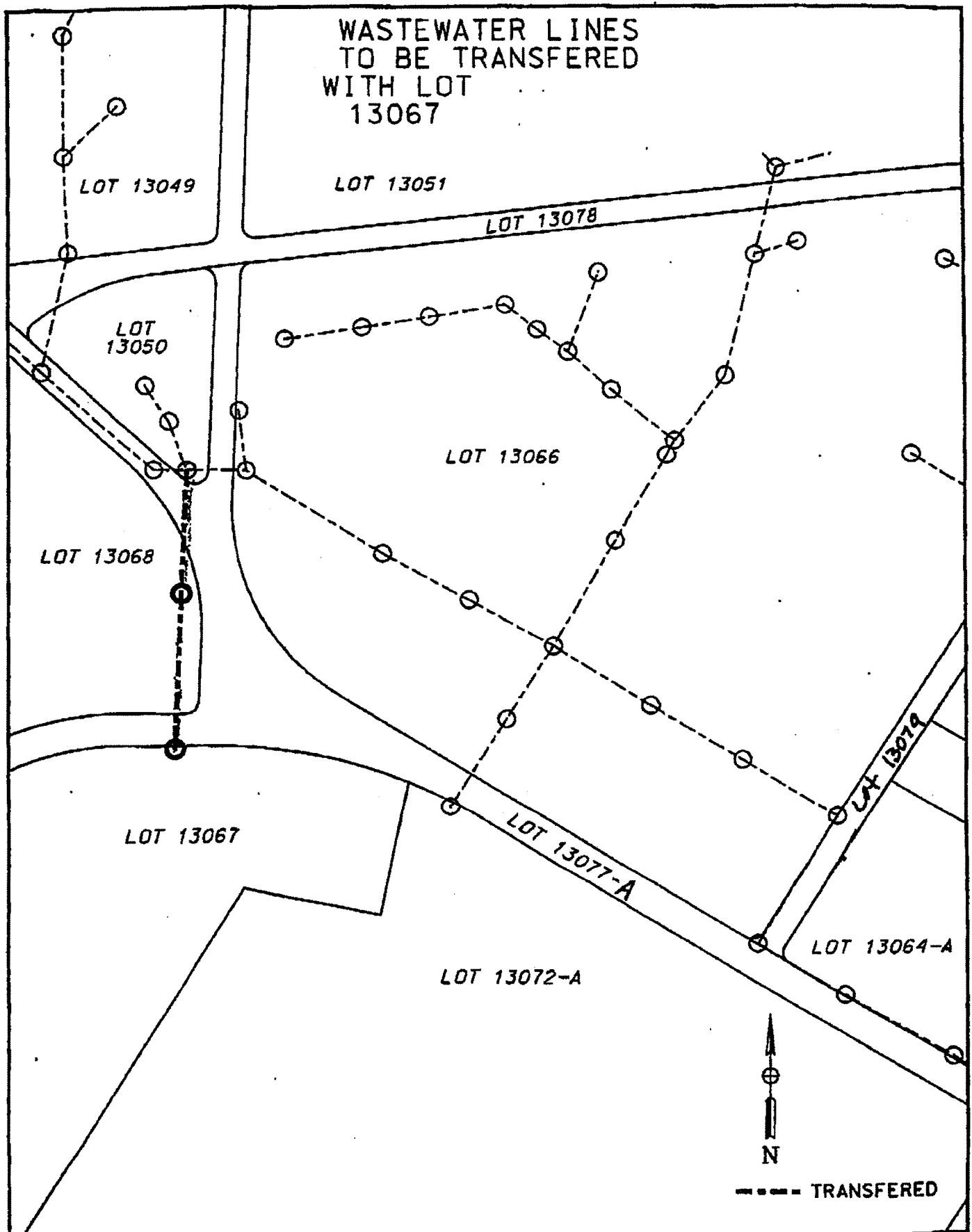
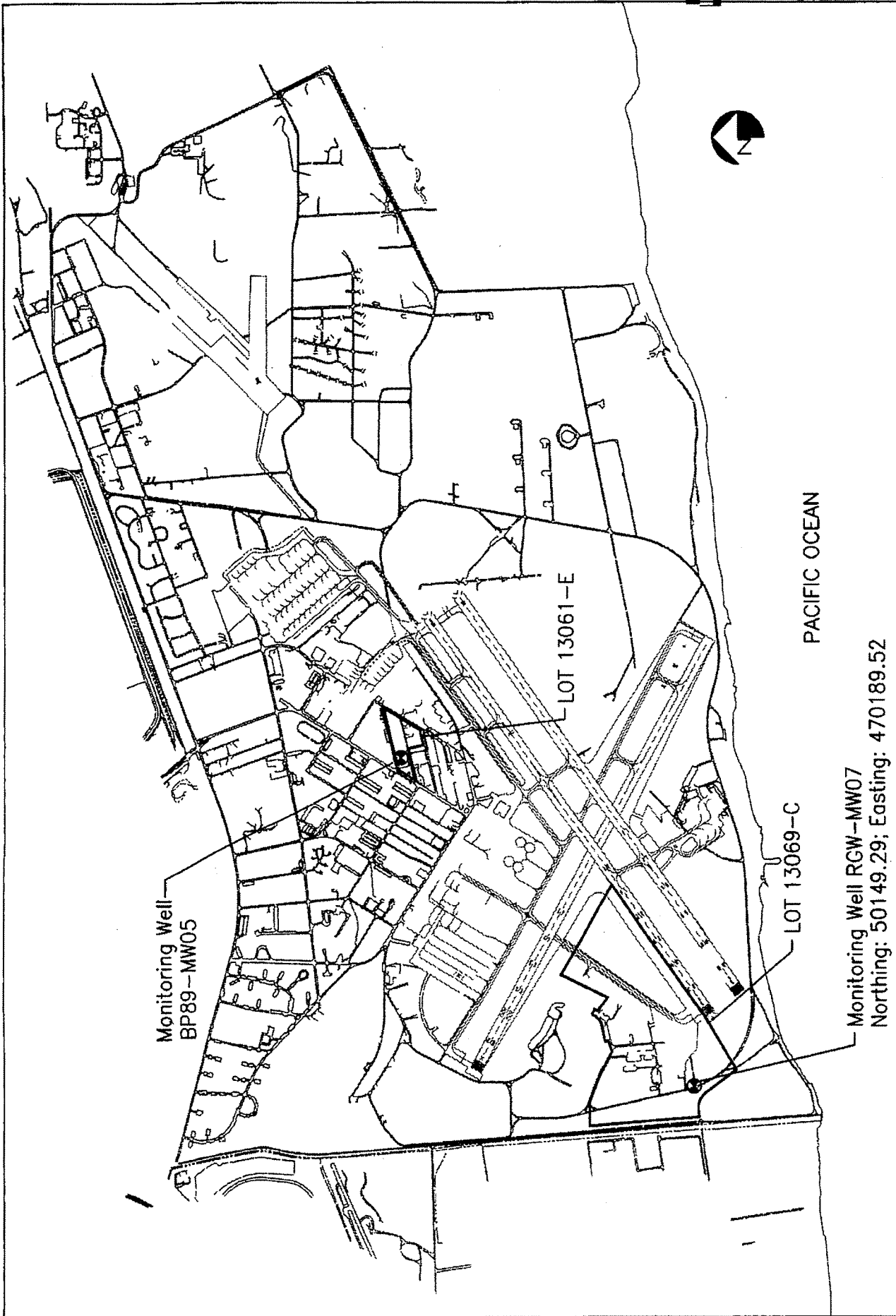


EXHIBIT "A-3"

# EXHIBIT "B"



## NAVY MONITORING WELLS

# EXHIBIT "C"

## LISTING OF HISTORIC PROPERTIES

### Lot 13067

Site/Building No.	# of Features	Description	National Register Eligibility Criteria	Report Reference
4548	12+	Hawaiian Agricultural Complex	D	4
4549	1	Hawaiian Agricultural Feature	D	4

4 Burgett, B. and P.H. Rosendahl

1992 Archaeological Inventory Survey, Contaminated Soil Stockpile/Remediation Facility. Prepared by Paul H. Rosendahl, Ph.D., Inc., Hilo.

### Lot 13069-C

Site/Building No.	# of Features	Description	National Register Eligibility Criteria	Report Reference
5123	N/A	Sinkhole Complex, No Cultural Component	Not Eligible	1, 5
5124 (por.)	3+	WWII Anti-aircraft battery, machine gun positions	A, D	1, 5

1 Tuggle, H. David and M.J. Tomonari-Tuggle

1997 A Cultural Resource Inventory of Naval Air Station Barbers Point, Oahu: Part I, Phase I Survey and Inventory Summary. Prepared by International Archaeological Research Institute, Inc., Honolulu.

5 Wickler, S.K. and H.D. Tuggle

1997 A Cultural Resource Inventory of Naval Air Station, Barbers Point, Oahu, Part II: Phase II Inventory Survey of Selected Sites. Prepared by International Archaeological Research Institute, Inc., Honolulu.

### Lot 13058-E

Site/Building No.	# of Features	Description	National Register Eligibility Criteria	Report Reference
5107	N/A	Sinkholes, No Cultural Component	Not Eligible	1
1747	1+	Sinkhole Complex	D	1, 5
5106	N/A	WWII Training Area	Not Eligible	1, 5

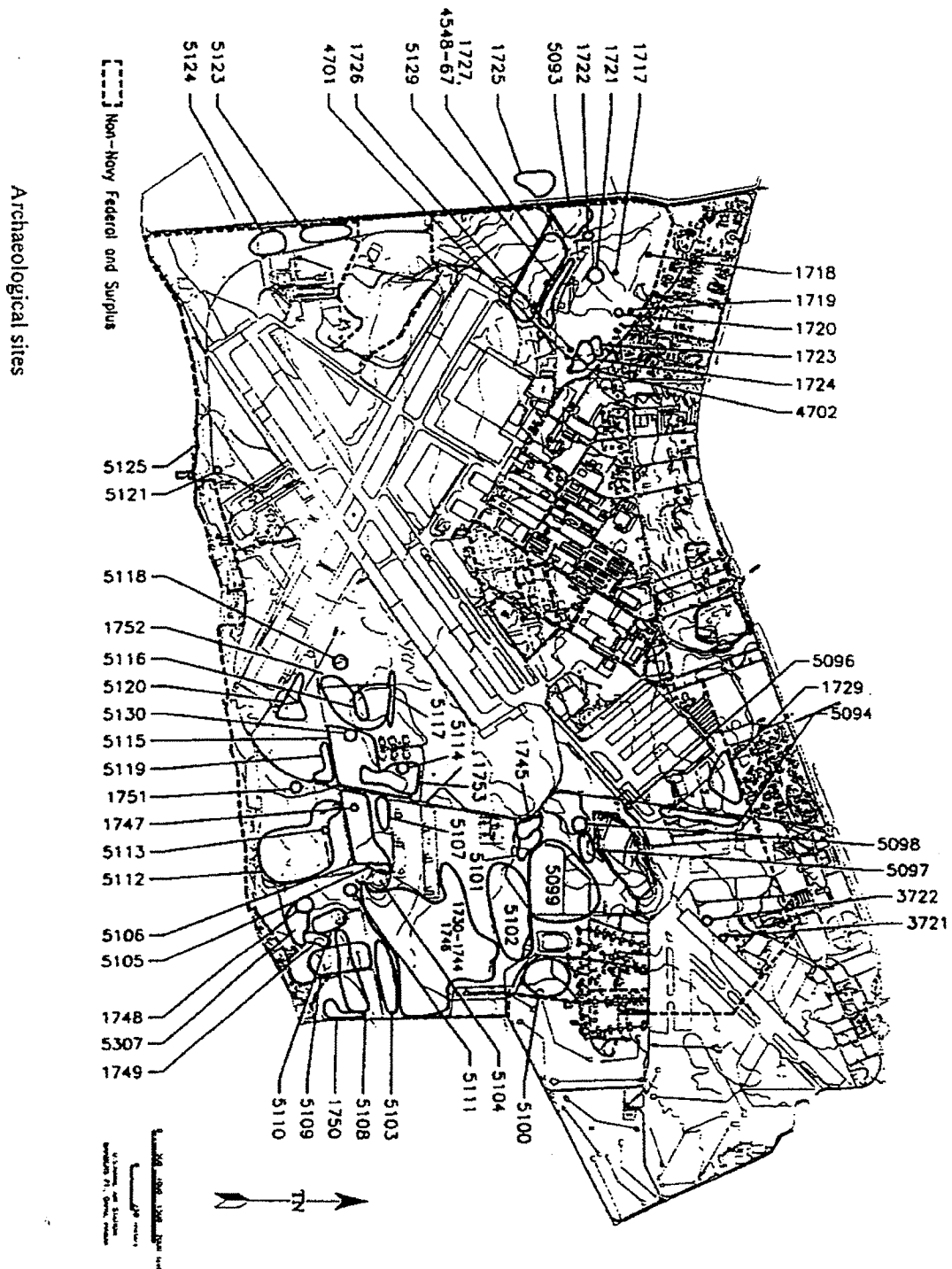
1 Tuggle, H. David and M.J. Tomonari-Tuggle

1997 A Cultural Resource Inventory of Naval Air Station Barbers Point, Oahu: Part I, Phase I Survey and Inventory Summary. Prepared by International Archaeological Research Institute, Inc., Honolulu.

5 Wickler, S.K. and H.D. Tuggle

1997 A Cultural Resource Inventory of Naval Air Station, Barbers Point, Oahu, Part II: Phase II Inventory Survey of Selected Sites. Prepared by International Archaeological Research Institute, Inc., Honolulu.

# EXHIBIT "C-1"





# EXHIBIT "D"

## LISTING OF ENVIRONMENTAL DOCUMENTS

1. "Environmental Baseline Survey (EBS) Report, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden Environmental and Energy Services Co., Inc. (Ogden). June 1994.
2. "Record of Closure, Removal of Underground Storage Tanks, Underground Storage Tank BP-15, BP-16, BP-17, BP-18, BP-29 through BP-40, BP-41, BP-42, BP-43, BP-44, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. April 1995.
3. "Record of Closure, Removal of Underground Storage Tanks, Underground Storage Tank BP-53, Naval Air Station, Barbers Point, Oahu, Hawaii." OHM. March 1997.
4. "Engineering Evaluation/Cost Analysis (Final) for Fourteen Transformer Substations at Naval Air Station, Barbers Point, Oahu, Hawaii." Earth Tech, Inc. (Earth Tech). October 1997.
5. "Base Realignment and Closure (BRAC) Cleanup Plan (BCP) (Draft) for Naval Air Station, Barbers Point, Oahu, Hawaii." Navy. January 1998.
6. "Action Memorandum, Removal Action for Thirteen Transformer Substations, Naval Air Station, Barbers Point, Oahu, Hawaii." Navy. 2 February 1998.
7. "Asbestos Inspection Report (Final) for Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. February 1998.
8. "Lead-Based Paint Inspection Report (Final) for Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. August 1998.
9. "Remedial Investigation Report for BRAC-Related Activities, Transformer Substation System, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. February 1999.
10. "Asbestos Reinspection Report (Final) for Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. February 1999.
11. "Final Summary Report, Removal and Restoration of Asbestos Materials, NAS Barbers Point, Oahu, Hawaii." OHM. March 1999.
12. "PCB Inventory: Equipment Database, Naval Air Station, Barbers Point." Earth Tech. March 1999.
13. "PCB Inventory: Substation Database, Naval Air Station, Barbers Point." Earth Tech. March 1999.
14. "Historical Radiological Assessment and Survey Plan, Final Status Survey, Naval Air Station, Barbers Point, Hawaii." Naval Sea Systems Command Detachment Radiological Affairs Support Office. March 1999.
15. "Record of Decision for No Action and Restricted Land Use Sites, Naval Air Station, Barbers Point, Oahu, Hawaii." Navy. April 1999.
16. "Remedial Investigation Report for BRAC-Related Activities, NEX Service Station

## EXHIBIT "D"(CONT.)

- Building 129 AST, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. April 1999.
17. "Remedial Investigation Report for BRAC-Related Activities, Regional Groundwater System, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. April 1999.
  18. "Dry Well Network Investigation Report for BRAC-Related Activities, Naval Air Station, Barbers Point, Oahu, Hawaii." Ogden. April 1999.
  19. "Remediation Verification Report, Transformer Sites, Naval Air Station, Barbers Point, Oahu, Hawaii." OHM. April 1999.
  20. "Record of Decision, Sixteen Transformer Substations, Naval Air Station, Barbers Point, Oahu, Hawaii." Navy. May 1999.
  21. "Survey and Sampling of Miscellaneous Units Report, Naval Air Station, Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech EM Inc. (Tetra Tech). July 1999.
  22. "Record of Decision Amendment for Coral Pit 3 and the NEX Service Station – Building 129 AST, Former Naval Air Station, Barbers Point, Oahu, Hawaii." Navy. August 1999.
  23. "Finding of Suitability to Transfer, Property to be Transferred to the Department of the Interior for Conveyance to the Department of Hawaiian Home Lands, Naval Air Station, Barbers Point, Oahu, Hawaii." Earth Tech and Tetra Tech. August 1999.
  24. UST Verification Study for Various Locations, NAS Barbers Point, Hawaii, July 1994.
  25. "Dry Well Sediment Removal Report, Well No. H13-03 (NW-0143-B), UIC Permit No. UO-1995, Permit Well No. 138, Removal of Sediment/Soil/Silt from Dry Wells at Naval Air Station, Barbers Point, Oahu, Hawaii. OHM. September 1998."
  26. "Dry Well Sediment Removal Report, Well No. H17-01 (O-166), UIC Permit No. UO-1995, Permit Well No. 154, Removal of Sediment/Soil/Silt from Dry Wells at Naval Air Station, Barbers Point, Oahu, Hawaii. OHM. October 1998."

# EXHIBIT "E" - PAGE 1 OF 3

## Hazardous Substances Notification

Building No.	Building Description	Material Name	Physical State	Maximum Quantity	Container	Secondary Containment	Action Taken
105	Dilapidated trailer, east of 105	Arctic-type antifreeze	Liquid	15-55 gallon drums	55 gallon drums	Palletized over asphalt	Drums removed
105	Quonset hut for Arresting gear	Grease, paint, rubberized weatherproofing coating, battery acid	Liquid/ Solid	Household quantities except battery acid (approx 20 gallons)	In Connex locker, raised off ground	Connex locker	Materials removed
129	Navy Exchange Gas Service Station	Stoddard Solvent	Liquid	2 tanks observed (<55 gallon each)	Tank/sink unit (Safety Kleen tanks)	Unknown	Solvent removed
129	Navy Exchange Gas Service Station	Acid batteries	Liquid	4 batteries observed (pickup twice weekly)	Plastic battery casings	Plastic secondary containment pallet	Batteries removed
129	Navy Exchange Gas Service Station	Waste oil (containing lead and solvents)	Liquid	250-gallon tank	250-gallon tank	Concrete berm	Tank removed; CERCLA remedial investigation for soil indicated that no action is required
144	Paint and Oil Storage. Formerly used by Basil, taken over by SCE	Sulfur hexafluoride, oxygen, carbon dioxide, chlorodifluoromethane, acetylene	Gases	Approx. 25 cylinders observed	Gas cylinders	Stored inside building	Materials removed
144	Paint and Oil Storage, (North ¾ of bldg)	Hundreds of hazardous spray paints, fluxes, solvents, paints, wet alkali batteries, silicone seals, lubricants, etc.	Liquid	5 rooms full	Individual containers	On wooden shelving. No spill control. Floor drains	Materials removed; Building floor cleaned
176	Magazine	500 lb. bombs, 250 lb. powdered explosive gel	Solid	Approx. 6	500 lb. bombs	Pallet on concrete floor	Munitions removed
176	Magazine	Pallets, approx. 4	Solid	Approx. 4	Torpedo casing	Pallet on	Munitions removed

# EXHIBIT "E" - PAGE 2 OF 3

Table 12: Hazardous Substances Notification (continued)

Building No.	Building Description	Material Name	Physical State	Maximum Quantity	Container	Secondary Containment	Action Taken
187	FASO TRAGRUPAC	torpedoes, approx. 1000 lb. explosive gel	Liquids	Household quantities	Connex locker	Connex locker	Materials removed
283	Centralized Haz Mat storage for Staff Civil Engineering	Paints, gasoline	Liquids	Warehouse full	Individual containers except for drummed PD680 (Type II), refrigerant, lubricating oil, and diesel	Sorbents, secondary containment (sometimes in drums). Warehouse entrances are bermed.	Materials removed; Building floor cleaned
286	Magazine Storage Locker No. 25	Solvents, paints, lubricating oils, refrigerants	Liquids	Quantity unknown	Rocket motors	Unknown	Fuel removed
1681	Electric Distribution Building / Shelter	Rocket fuel (poss. aniline)	Liquid	Quantity unknown	Transformer, released to soil and concrete	None	PCB-containing oil removed from transformer; CERCLA removal action performed to remove contaminated soil and concrete
1684	Electrical Substation	Polychlorinated biphenyls (PCBs)	Liquid	Quantity unknown	Transformer, released to soil and concrete	None	PCB-containing oil removed from transformer; CERCLA removal action performed to remove contaminated soil and concrete
1715	Magazine	Polychlorinated biphenyls	Liquid	Quantity unknown	Transformer, released to soil and concrete	None	PCB-containing oil removed from transformer; CERCLA removal action performed to remove contaminated soil and concrete
1716	Magazine	Powdered explosive gel	Solid	2 torpedoes = 500 lb.	Torpedo casings	Unknown	Munitions removed
1718	Magazine	Hypergolic amine fuel	Liquid	Quantity unknown	AQM fuel tanks	Unknown	Munitions removed
1732	Weapons Handling Bldg.	Lithium	Solid	Quantity unknown	Sonobuoy casings	Unknown	Materials removed
1732	Storage	Lithium	Solid	Unknown	Sonobuoy	Unknown	Materials removed

# EXHIBIT "E" – PAGE 3 OF 3

Table 12: Hazardous Substances Notification (continued)

Building No.	Building Description	Material Name	Physical State	Maximum Quantity	Container	Secondary Containment	Action Taken
HH36	Electrical vault	Polychlorinated biphenyls (PCBs)	Liquid	Quantity unknown	Transformer, released to concrete casings	None	PCB-containing oil removed from transformer. CERCLA remedial investigation concluded that no action is necessary for concrete

Source:

"Environmental Baseline Survey (EBS) Report, Naval Air Station, Oahu, Hawaii." Ogden, June 1994

"Record of Decision Amendment for Coral Pit 3 and NEX Service Station – Building 129 AST, Former Naval Air Station, Barbers Point, Oahu, Hawaii." August 1999.

"Record of Decision, Sixteen Transformer Substations, Naval Air Station, Barbers Point, Oahu, Hawaii." May 1999.



# EXHIBIT "F"

## DESCRIPTION OF REMEDIAL ACTION TAKEN

Transformer substations S1681 and S1684 located within said Lot 13069-C were determined to contain polychlorinated biphenyls (PCBs) in the concrete pads and surrounding soil. The concrete pads were cleaned using solvent extraction until concentrations of PCBs were below cleanup objectives for non restricted reuse defined by the Toxic Substances Control Act (TSCA) Spill Cleanup Policy (40 CFR 761 Subpart G (Parts 120-139)). PCB contaminated soil with concentrations above the State of Hawaii Department of Health Tier 1 Soil Action Levels for unrestricted reuse was removed from the Property. All response actions necessary to protect human health and the environment have been completed at substations S1681 and S1684. Cleanup activities were documented in the Remediation Verification Report dated April 1999. The CERCLA Record of Decision (ROD) for Sixteen Transformer sites (which includes substations 1681 and S1684) was signed in May 1999.

Drawing Depicting Location  
of Building 278 Within  
Lot 13069-C

EXHIBIT "G"

# **LOCATION OF THE KAHIKINUI, MAUI PARCEL**

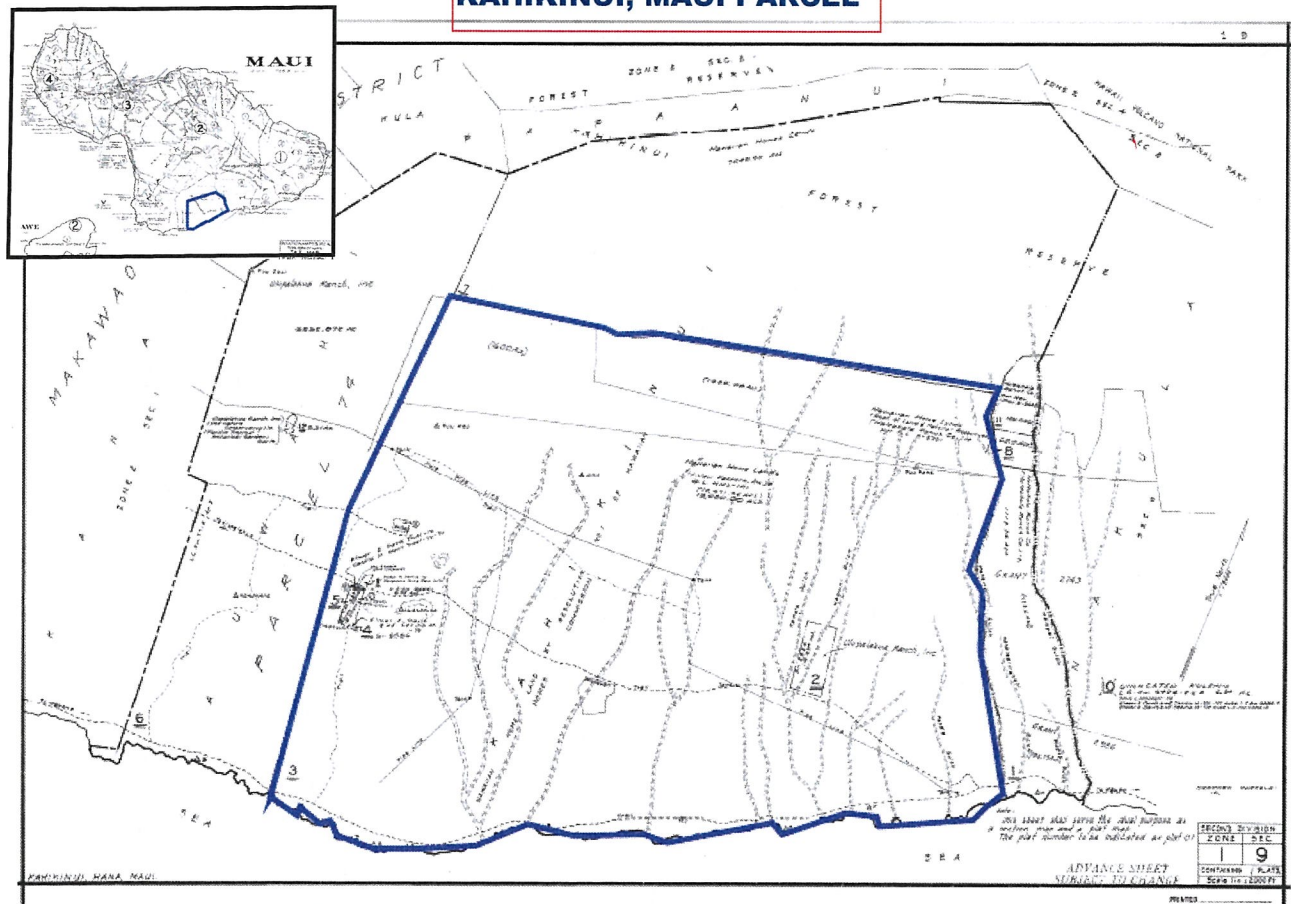


EXHIBIT "5"