

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 231

THIS INDENTURE OF LEASE, made this 2nd day of September 1991, by and between the STATE OF HAWAII, by its Department of Hawaiian Home Lands, whose principal place of business is 335 Merchant Street, Honolulu, Hawaii, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called the "LESSOR," and the United States of America, by its National Park Service-Western Regional Office, Department of the Interior, whose mailing address is 600 Harrison Street, Suite 600, San Francisco, California 94107-1372, hereinafter called "LESSEE":

W I T N E S S E T H :

THAT, the LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed, and performed, does hereby demise and lease unto the LESSEE, and the LESSEE does hereby lease and hire from the LESSOR that certain parcel of Hawaiian home lands, comprising 1,247 acres more or less, situate at Kalaupapa, County of Kalawao, State of Hawaii, Tax Map Key No. 6-1-01:01, more particularly described in Exhibit "A," and shown on Exhibits "B" and "C," outlined in yellow, all such exhibits attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto the LESSEE for the term of FIFTY (50) years, commencing on the 15th day of July, 1991 up to and including the 14th day of July, 2041, unless sooner terminated as hereinafter provided, the LESSOR reserving and the LESSEE yielding and paying to the

LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, the rental as provided hereinbelow.

1. Rental. The lease rental for the first five (5) years shall be the lump sum of ONE MILLION FOUR HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,491,500.00) based on the annual rental of three hundred twenty-five thousand dollars (\$325,000.00) discounted to present value. The lump sum payment shall be due and payable on or before October 15, 1992. Thereafter, beginning with the sixth year of the lease, the lease rental shall be due and payable in quarterly installments on or before the 15th day of January, April, July and October, each and every year during said term.
2. Contracts subject to consent. LESSEE shall not enter into concession contracts, permits, or commercial licenses, without the prior written consent of the LESSOR.
3. Reopening of term. The rental hereinabove reserved shall be reopened and redetermined at the expiration of the fifth (5th), tenth (10th), ^{10/02} fifteenth (15th), ^{10/07} twentieth (20th), twenty-fifth (25th), thirtieth (30th), thirty-fifth (35th), fortieth (40th), and forty-fifth (45th) years of the lease term, in accordance with the procedure prescribed in paragraph 4 below.
4. Determination of rental upon reopening of the annual rental. The rental for each period to be reopened and redetermined shall be the fair market rental based on the highest and best use at the time of reopening without regard to the provisions of Public Law 96-565, as amended. At least six months prior to the time of reopening, the fair market rental shall be determined by an independent appraiser whose services shall be contracted for by the LESSOR at LESSEE'S cost; provided, that should the LESSEE fail to agree upon the fair market rental as determined by the LESSOR'S appraiser, the LESSEE shall promptly appoint its own appraiser and give written notice thereof to the LESSOR, and in case the LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental as determined by the LESSOR'S appraiser, the

LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure to do so within thirty (30) days after appointment of the second appraiser, either party may have the third appraiser appointed by such judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised Statutes. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the sixtieth (60th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of the LESSOR and the LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by the LESSOR and the LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. The LESSEE shall pay for its own appraiser, the LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the LESSEE and the LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of the LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the LESSEE shall continue to pay the rent effective for the previous rental period, but the LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

5. Non-waiver. Nothing herein contained shall be construed as being a waiver of any rights, duties, or obligations belonging unto the

LESSOR relating to any accrued back rentals due from the use of the demised premises.

6. Special provisions.

- a. Any future appraisal conducted for the purpose of a land exchange authorized by Section 104 of Public Law 96-565, shall be based on the demised premises being vacant and available for development to its highest and best use, without regard to the provisions of Public Law 96-565, as amended.
- b. If there is no longer a patient residing at said premises, the fair market rental shall be reopened and redetermined based on the demised premises being vacant and available for development to its highest and best use, without regard to the provisions of Public Law 96-565, as amended.
- c. The parties understand and agree that if funds are not appropriated by the date lease rental is due, any outstanding balance owed the LESSOR shall accrue interest at the rate allowed by federal law, which interest will be payable when authorized by Congress.

ARTICLE ONE

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

- a. All minerals as hereinafter defined, in, on, or under the demised premises, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of

aluminum and, without limitation thereon, all other minerals substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in road construction in furtherance of the LESSEE's permitted activities on the demised premises and not for sale to others.

- b. All surface waters, ground waters, and water systems appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.
 - c. As a condition precedent to the exercise by the LESSOR of any rights reserved in this paragraph 1, just compensation shall be paid to the LESSEE for any of the LESSEE's improvements taken which amount is to be determined in the manner set forth in paragraph 3, and, if only a portion of the land leased is withdrawn, the rental will be reduced in proportion to the rental value of the land withdrawn.
2. Prehistoric and historic remains. All prehistoric and historic remains found on the demised premises.
 3. Withdrawal. Pursuant to Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended, the LESSOR shall have the right to withdraw from the operation of this lease all or any portion of the demised land for the purposes of the Hawaiian Homes Commission Act. The LESSEE shall not be entitled to any compensation for improvements, if any, already erected on the lands hereby demised. The LESSEE shall be entitled to compensation for those improvements hereafter made by the LESSEE which have been approved by the LESSOR, in accordance with Article Two, Paragraph 7, titled Improvements, of this agreement on any land withdrawn, in an amount equal to the proportionate value of the LESSEE'S improvements so withdrawn in the proportion that it bears to the unexpired term of the lease; provided, that the LESSEE may, in the alternative,

remove or relocate its improvements to the remainder of the demised premises occupied by the LESSEE. The LESSOR shall give LESSEE five (5) years withdrawal notice prior to any withdrawal. Prior to issuing the notice of withdrawal, the State of Hawaii, Department of Health and the patients of Kalaupapa shall be provided an opportunity to submit their concerns within thirty (30) days. Final decision to withdraw lies with the Hawaiian Homes Commission. No further improvements shall be allowed to be constructed upon any lands for which withdrawal notice has been given. If only a portion of the demised land is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the land withdrawn. Such withdrawal shall be subject to the provision of Section 105(b)(2) of Public Law 96-565.

4. Relocation of trail/trail head. The right to relocate the trail and/or trail head at no cost to the LESSEE, providing that if the relocated trail/trail head lies wholly on Hawaiian Home Lands, the public and the LESSEE shall be guaranteed free access to the National Historical Park via said trail.

ARTICLE TWO

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That the LESSEE shall pay said rent to the LESSOR, at the time, in the manner and form aforesaid, and at the place specified above, or to such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.
2. Utility services. That the LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the LESSOR or the LESSEE in respect thereof may during the term become liable, whether assessed to or payable by the LESSOR or the LESSEE.

3. Sanitation, etc. That the LESSEE shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.
4. Waste and unlawful, improper, or offensive use of premises. That the LESSEE shall not strip or commit, suffer or permit to be committed any waste, or nuisance, or unlawful, improper or offensive use of the demised premises, or any part thereof.
5. Compliance with laws. That the LESSEE shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the premises, now in force or which may hereinafter be in force.
6. Inspection of premises. That the LESSEE will permit the LESSOR and its agents, at all reasonable times during the term, to enter the demised premises and all improvements thereon and examine the state of repair and condition thereof.
7. Improvements. That the LESSEE shall not at anytime during the term, construct, place, and install on the demised premises any building, structure or improvement of any kind and description whatsoever except with the prior written consent of the LESSOR and upon such conditions as the LESSOR may impose, unless otherwise provided herein. The LESSEE may make minor nonstructural alterations without the LESSOR's consent.
8. Repairs to improvements. That, subject to the availability of funds in future year's appropriations, the LESSEE shall keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted. State of Hawaii, by its Department of Health, may repair or expand all existing improvements as deemed necessary for the continuation of the existing uses of such improvements for the care and treatment of persons affected with Hansen's disease.
9. Liens. That the LESSEE will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or

the estate of the LESSEE therein shall at anytime during the term become subject to any judgment, attachment, lien, charge, or encumbrance whatsoever, except as hereinafter provided.

10. Character of use. That the LESSEE shall use the premises hereby demised solely as an integral part of the Kalaupapa National Historical Park established by Public Law 96-565 and for the purposes expressed therein.
11. Other Uses. Native Hawaiians, hereafter, will be given preference (second right of refusal) in the use of the premises to provide revenue-producing visitor services after patients have exercised their first right of refusal. The LESSEE may permit the continual use of the demised premises by State of Hawaii agencies, religious organizations, and others currently occupying said premises.
12. Assignments, etc. Except as hereinafter provided, the LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the LESSOR. The LESSEE may sublease, assign, or permit other persons to occupy or use the said premises or any portion thereof in order to carry out the purposes and provisions of Public Law 96-565 which established Kalaupapa National Historical Park and other laws relating to the administration and management of U.S. National Parks; provided that preference shall be given to Native Hawaiians in the use of said premises to provide revenue-producing visitor services after patients have exercised their first right of refusal.
13. Mortgage. That, except as provided herein, the LESSEE shall not mortgage, hypothecate, or pledge the demised premises or any portion thereof of this lease or any interest therein without the prior written approval of the LESSOR and any such mortgage, hypothecation, or pledge without such approval shall be null and void.
14. Indemnity. Pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671, et seq.), the LESSEE will diligently process all

claims for compensatory money damages for damage to, or loss of, property or personal injury or death occurring on the lands covered by this agreement caused by the negligent or wrongful act or omission of any employee of the LESSEE while acting within the scope of his office or employment under circumstances where the LESSEE, if a private person, would be liable in accordance with the laws of the place where the act or omission occurred.

Where a suit arising out of any aforesaid damage to, or loss of, property or injury or death is filed against the LESSOR in State Court, the LESSEE when requested by the LESSOR, will cooperate by requesting that the U. S. Attorney seek removal of said suit to the U. S. District Court and defend said suit. The LESSEE will pay any damage where it is determined that the damage to, or loss of, property or personal injury or death occurring on the lands covered by this agreement was caused by the negligent or wrongful act or omission of any employee of the LESSEE while acting within the scope of his office or employment under circumstances where the LESSEE, if a private person, would be liable in accordance with the laws of the place where the act or omission occurred, as provided in the Federal Tort Claims Act.

Further, the LESSEE agrees that the use of the land by its employees and volunteers in the park shall be effected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel of the LESSOR (see 28 U.S.C. 1491).

15. Termination.

- a. That upon the natural expiration of this lease, the LESSEE shall peaceably deliver unto the LESSOR possession of the demised premises, and the improvements thereon shall become the property of LESSOR unless LESSEE desires to remove such capital improvements and restore the property to its natural state within a reasonable time.
- b. Should LESSOR, for any reason other than for breach of the condition of this lease, terminate this lease prior to its natural expiration, LESSOR shall be liable to the LESSEE in

an amount equal to the fair market value of any capital improvements made to or placed upon the demised land, consented to by the LESSOR, such value to be determined as of the date of such termination, or, at the election of the Secretary of the Interior, that the Secretary be permitted to remove such capital improvements within a reasonable time of such termination. As to any other improvements made to or placed upon the demised land the construction of which was consented to by the LESSOR, the LESSEE shall be compensated in an amount equal to the proportionate value of the LESSEE'S improvements in the proportion that it bears to the unexpired term of the lease.

c. The LESSEE may terminate this lease, in whole or in part, at any time by giving a one (1) year termination notice in writing to the LESSOR, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of the mailing. As a condition of termination under this paragraph, LESSEE agrees it will continue to pay proportional annual rent until such time as it removes all capital improvements owned by the LESSEE or after a six (6) month period following such termination, the LESSOR takes ownership of the improvements.

16. Non-warranty. The LESSOR does not warrant the conditions of the leased premises, as the same is being leased as is; and further, LESSOR does not warrant access to the demised premises, except as heretofore provided in Article One, paragraph four.

ARTICLE THREE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Breach. That time is of the essence of this agreement and if the LESSEE shall fail to yield to pay such rent or any part thereof at the times and in the manner aforesaid, or shall abandon the said premises, or if this lease and the premises shall be attached or

otherwise be taken by operation of law, or shall fail to observe and perform any of the covenants, terms and conditions therein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the LESSOR of a written notice of such breach or default by service, as provided by Sections 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to the LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the demised premises, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the demised premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrearage of rental and interest at the legal rate allowed by federal law, or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the LESSOR.

2. Right to enter. The LESSOR or the county and the agents or representatives thereof shall have the right to enter and cross any portion of the demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the LESSOR or the county shall not interfere unreasonably with the LESSEE or the LESSEE's use and enjoyment of the premises.
3. Acceptance of rent not a waiver. That the acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant, or condition of this lease, nor of the LESSOR's right to re-entry for breach of covenant, nor of the LESSOR's right to declare and enforce a forfeiture for any such breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

4. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply, observe, and perform any of the terms, conditions, and covenants contained herein.
5. Quiet enjoyment. The LESSOR hereby covenants and agrees with the LESSEE that upon payment of the rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms, and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold, possess, and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the LESSOR and as against the lawful acts of third parties and as against the acts of all other parties claiming title to, or a right to possession of the leased premises, except that the use of the demised premises by the LESSEE shall be limited and restricted by the continuation of the existing uses of the premises as a facility for the care and treatment of persons affected with Hansen's disease under the full and complete governance of the Director of Health pursuant to Chapter 326, Hawaii Revised Statutes; and further limited by the present ownership and/or use of all buildings and improvements by parties other than either the LESSOR or the LESSEE.
6. Severability. If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remaining provisions of this lease or the application of such terms or provisions to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and such other terms or provisions of the lease not affected by the decision or order shall be valid and shall be enforced to the fullest extent permitted by law.
7. Definitions. As used herein, unless clearly repugnant to the context:

- a. "Chairman" shall mean the Chairman of the Hawaiian Homes Commission, Department of Hawaiian Home Lands of the State of Hawaii or his successor.
 - b. "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of such interest.
 - c. "Lessee" shall mean and include the LESSEE herein, successors, or permitted assigns, according to the context hereof.
 - d. "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.
 - e. "Native Hawaiian" shall mean any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.
 - f. "Patient" shall mean any person affected with Hansen's disease whose name is on the Kalaupapa registry and who is still on the registry maintained by the Department of Health.
 - g. The use of any gender shall include all genders, and if there be more than one, 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 the LESSOR and the LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
8. Contingent fee. The LESSOR warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the LESSOR for the purpose of securing business. For breach or violation of this warranty, the LESSEE shall have the right to annul this lease without liability, or in its discretion to deduct

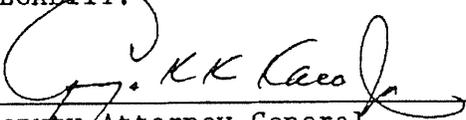
from amounts otherwise due under this lease or other consideration, the full amount of such commission, brokerage, percentage, or contingent fee.

9. Benefit. No member of Congress or Resident Commission shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

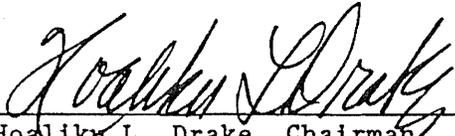
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM AND
LEGALITY:

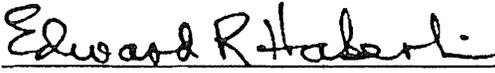

Deputy Attorney General
State of Hawaii

Dated 9/8/92

By 
Hoalika L. Drake, Chairman
Hawaiian Homes Commission

LESSOR

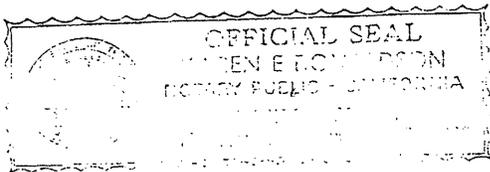
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

By 
Edward R. Haberlin, Chief
Division of Land Resources
Western Region

LESSEE

STATE OF CALIFORNIA)
)
) : SS
COUNTY OF SAN FRANCISCO)

On this 31 day of AUGUST, 19 92, before me personally appeared Edward R. Haberlin, to me personally known, who, being by me duly sworn, did say that he is the Chief, Division of Land Resources of the National Park Service, Western Region, United States of America, Department of the Interior, and the person described in and who executed the foregoing instrument and acknowledged that he executed the same freely and voluntarily for the use and purposes therein set forth.



Karen E. Donaldson
Notary Public

My Commission expires: 3-5-93

EXHIBIT "A"

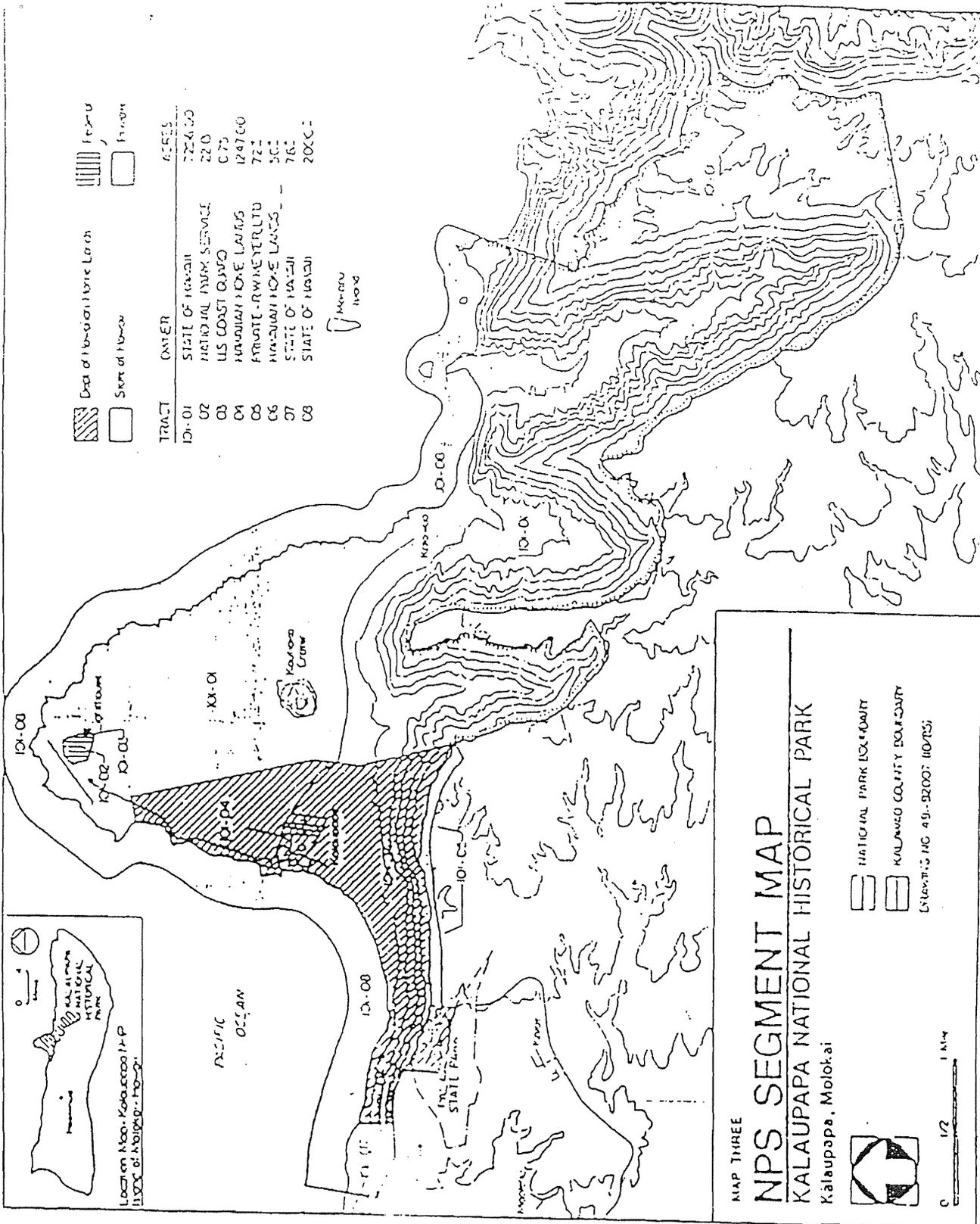
Until such time as more precisely described by a modern metes and bounds survey, the leased parcel is agreed to consist of:

All of that certain parcel of land (being all of the land described in and covered by Land Commission Award Number 6450, Apana 3 to Kaunuohua, comprising all of the Ahupuaa of Kalaupapa) situate, lying and being at Kalaupapa, District of Kalawao, Island of Molokai, County of Maui, bearing Tax Key Description 6-1-01-01 (2), and containing an area of 1,247.0 acres, more or less, shown outlined on the map attached hereto marked Exhibit "B" and made a part hereof.

LESS and EXCEPT that portion of the above described property lying seaward of the upper reaches of the waves, excluding storm and tidal waves, often evidenced by the line of vegetation along the shore of the Pacific Ocean.

EXHIBIT "A"

0012I



Dept of Hawaiian Historic Landmark
 State of Hawaii
 National Historic Landmark
 State of Hawaii

TRACT	OWNER	ACRES
10-01	STATE OF HAWAII	7224.00
02	NATIONAL PARK SERVICE	22.0
03	US COAST GUARD	0.75
04	HAWAIIAN HOME LANDS	1247.00
05	ARMY - RUMKELTUN	72.2
06	HAWAIIAN HOME LANDS	36.2
07	STATE OF HAWAII	76.2
08	STATE OF HAWAII	2000.0

Location Map - Kalaupapa NHP
 State of Hawaii - Dept. of Land and Natural Resources

MAP THREE
NPS SEGMENT MAP
 KALAUPAPA NATIONAL HISTORICAL PARK
 Kalaupapa, Molokai

NATIONAL PARK PROPERTY
 KALAUPAPA COUNTY PROPERTY
 EXEMPTING DEC 48-92007 (NPS)

0 1/2 1 MILE

**July 25, 1989,
Agenda Item No. C-4**



MINUTES OF July 25, 1989, Meeting held in Anahola, Kauai

ITEM C-4

SUBJECT: Issuance of General Lease to National Park Service, Kalaupapa, Molokai

COMMISSIONERS	MOTION	SECOND	AYES	NAYS	ABSTAIN
Piianaia			X		
Apana		X	X		
Brandt	X		X		
Kauahi			X		
Keomaka			X		
Park			X		
Robertson			X		
Smith					
TOTAL			7		
Action Approved	X			Deferred	
Denied				Tabled	

DISCUSSION

Mr. Yagodich presented changes to part 3 of the recommended motion. Mr. Al Baldwin of the National Park Service noted that they needed a general lease document for their appraisal; a finalized document is required so that the appraiser can conduct his appraisal and the Department of the Interior would come back to the commission for their approval.

MOTION/ACTION

To approve the following:

1. Issuance of a 50-year general lease to the United States of America, Department of the Interior, National Park Service, for an area of about 1,247 acres of Hawaiian home lands, identified by Tax Map Key No. 6-1-01:01 and situate at Kalaupapa, Island of Molokai, for a National Historical park, subject to the following:
 - (a) Review and approval of the general lease document by a deputy attorney general from the Department of the Attorney General; and
 - (b) Section 171-95 (a)(2), Hawaii Revised Statutes, as amended, allows the disposition of lands, without public auction, by way of lease to government agencies for up to 65 years at such terms and conditions as the commission may determine.
2. Authorize the department to engage the services of appraisers to appraise the subject parcel for the purpose of establishing its annual lease rental; and

MINUTES OF July 25, 1989, Meeting held in Anahola, Kauai

ITEM C-4 (continued)

3. The general lease shall include a provision that should a land exchange be proposed in the future, the appraisal for such a land exchange would be based on the highest and best use as determined at that time as if there are no encumbrances existing on that parcel. The appraisal report establishing the lease rents and percentage rents shall be provided to the commission for their review and approval.

Motion carried unanimously.



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

JULY 25, 1989

TO: Chairman and Members, Hawaiian Homes Commission
FROM: Darrell Yagodich, Administrator
Income Property Division *Darrell Yagodich*
SUBJECT: Issuance of General Lease to National Park Service
Kalaupapa, Molokai

RECOMMENDATED MOTION/ACTION

That the commission approve the following motion:

1. Issuance of a 50-year general lease to the United States of America, Department of the Interior, National Park Service, for an area of about 1,247 acres of Hawaiian home lands, identified by Tax Map Key No. 6-1-01:01 and situate at Kalaupapa, Island of Molokai, for a National Historical Park, subject to the following:
 - (a) Review and approval of the general lease document by a deputy attorney general from the Department of the Attorney General; and
 - (b) Section 171-95 (a)(2), Hawaii Revised Statutes, as amended, allows the disposition of lands, without public auction, by way of lease to government agencies for up to 65 years at such terms and conditions as the commission may determine.
2. Authorize the department to engage the services of appraisers to appraise the subject parcel for the purpose of establishing its annual lease rental; and
3. Authorize the Chairman to approve/disapprove the appraisal report.

DISCUSSION

Hawaiian Homes Commission Act, 1920

The Hawaiian Homes Commission Act, 1920, as amended, had set aside a class of land called Hawaiian home lands, separate and distinct from other public lands in that they are held in trust, to be utilized solely in the rehabilitation of native Hawaiians. The Hawaiian Homes Commission acts as trustee to hold and protect these lands under the provisions of the Act for the benefit of native Hawaiians.

The Department of Hawaiian Home Lands is prohibited from allowing its lands to be used without benefit or compensation. However, the Department of Hawaiian Home Lands can enter into revenue producing long-term leases with other government agencies for public purposes or may exchange title to its lands for public or private lands of equal value. The level of compensation is based on the proposed use of the land. If

the use is directly beneficial to the department or native Hawaiians, the lease rent may be nominal; in all other instances, the lease rental shall be not less than the value determined in accordance with Section 171-17(b), Hawaii Revised Statutes, as amended.

The Land at Kalaupapa, Island of Molokai

Molokai covers an area of 261 square-miles (4% of the state's total area), and is the fifth largest island in the Hawaiian Chain. Located 26 miles southeast of Oahu and 9 miles northwest of Maui, it has a maximum width of 10 miles and a maximum length of 38 miles. (See Exhibit "A")

Land ownership on Molokai is dominated by a small number of large landowners. Of the total land area, 88% are held by the ten largest owners with Molokai Ranch owning 41%, Department of Hawaiian Home Lands (DHHL) 16%, and the State of Hawaii 13%. Most of the agricultural land in the central plain and on the west end are controlled by the DHHL and Molokai Ranch Limited.

Kalaupapa is a peninsula on the north-central portion of Molokai, jutting into the sea from the foot of a steep pali and relatively isolated from the main part of the island. A trail exists near the Kalaupapa Lookout which provides the only connection with the rest of Molokai on foot. The area is relatively flat and barren. There is a small harbor located along the western border and a small landing strip is available for light planes. Supplies are periodically shipped in by barge. The area has an adequate water supply from the nearby Waikolu Valley. Limited electricity is available.

Due to the isolation and inaccessibility of this area, the Department of Hawaiian Home Lands General Plan has designated the land at Kalaupapa for placement in the Land Bank Reserve category. It is judged that capital investment requirements to provide access, utilities, and community services to homesteaders there would be enormously high, mainly due to its location. Possible national or state park use of Kalaupapa has been suggested, with provisions that would guarantee certain rights to existing remaining patients of the Department of Health facilities on the peninsula.

Kalaupapa is part of the Kalawao County. By Act 39 of the Territorial Legislature, otherwise known as the County Act of 1905, the County of Kalawao was created which included the ahupuaas of Kalaupapa, Kalawao and Makanalua and commonly known or designated as the Leper Settlement and placed it under the jurisdiction and control of the Territorial Board of Health.

The Hawaiian Homes Commission Act (HHCA), 1920, enacted by Congress on July 9, 1921, designated, in Section 203 (3) thereof, 5,000 acres, more or less, of Kalaupapa as Hawaiian homes lands (HHL) and placed the land under the jurisdiction of the Hawaiian Homes Commission (HHC). While the boundary of the ahupua'a of Kalaupapa is distinctly visible from the surrounding districts, the true and correct area of the whole ahupua'a has not been accurately established by means of technical (metes and bounds) descriptions based on actual survey. The present tax map, Tax Map Key No. 6-1-01:01, indicates the area to be 1,247 acres (See Exhibit "B"). This is believed to be an estimated or approximate area.

Section 203 (3) of the HHCA directly and expressly designated Kalaupapa as Hawaiian home lands. The Act superseded the designation under Act 39 and upon the effectivity of the HHCA on July 9, 1921, the Department of Health ceased to have jurisdiction over the land and the legal ownership belongs to the Hawaiian Homes Commission. The Department of Health retained management of the area and has jurisdiction over the existing improvements but the fee interest of Kalaupapa was transferred to the Department of Hawaiian Home Lands.

Further, a title status report dated April 23, 1984, by Title Guaranty of Hawaii, Inc. established that the present title is vested in the Department of Hawaiian Home Lands and the title is good and fully insurable. State archives revealed that King Kamehameha III granted the Ahupua'a of Kalaupapa to a Hawaiian woman named Kaunuohua in 1848 under Land Commission Award 6450, Apana 3. Upon the death of Kaunuohua in 1849, the property passed to her husband, William Luther Moehonua. In a warranty deed dated October 5, 1868, William Luther Moehonua conveyed the land to the Hawaiian government through the Minister of the Interior. This final grant establishes title in the Government of Hawaii which later set aside such lands as Hawaiian home lands pursuant to the provisions of the Hawaiian Homes Commission Act of 1920.

Kalaupapa National Historical Park

Kalaupapa National Historical Park was established on December 22, 1980, by Public Law 96-565 (See Exhibit "C"). Major provisions of Public Law 96-565 are to provide for the preservation of the unique nationally and internationally significant cultural, historic, educational, and scenic resources of the Kalaupapa settlement on the Island of Molokai. The major purposes of the park, as authorized by congress are:

1. To preserve and interpret the Kalaupapa settlement for the education and inspiration of present and future generations;
2. To provide a well-maintained community in which the Kalaupapa leprosy patients are guaranteed that they may remain at Kalaupapa as long as they wish; to protect the current lifestyle of these patients and their individual privacy; to research, preserve, and maintain the present character of the community; to research, preserve, and maintain important historical structures, traditional Hawaiian sites, cultural values, and natural features; and to provide for limited visitation by the general public; and
3. To provide that the preservation and interpretation of the settlement be managed and performed by patients and native Hawaiians to the extent practical, and that training opportunities be provided such persons in management and interpretation of the settlement's cultural, historical, educational, and scenic resources.

The main interpretive theme of Kalaupapa National Historical Park is its people's courage, faith, and perseverance despite affliction with the world's most dreaded disease and of their enforced separation from family and friends to Molokai for life. Further, as an internationally acclaimed Historical Park revealing knowledge and understanding of

leprosy patients, Kalaupapa will widely publicize that ordinary medical treatment - rather than exile in isolation - should be the standard use to deal with leprosy worldwide.

A major concern in the development of the Park was the future status of Hawaiian homes trust land. The National Park Service is prohibited from leasing land and the Department of Hawaiian Home Lands is barred from selling land. The Secretary of Interior was provided with the authority to acquire land held in trust for native Hawaiians under the Hawaiian Homes Commission Act of 1920 by exchanging for lands outside of the park, providing the land in exchange is of equal value. Until such exchange can be accomplished, special congressional legislation allowing the National Park to lease lands was successfully introduced in 1987. Public Law 96-565 is amended by adding the following at the end of Section 104(a):

"The Secretary may lease from Department of Hawaiian Home Lands said trust land until such time as said land maybe acquired by exchanged as set forth herein or otherwise acquired. The Secretary may enter into such a lease without regards to fiscal year limitations." (See Exhibit "D")

As established, the park differs radically from any others in the National Park system in that:

1. A community of people from the historical period still reside there; and
2. Nearly all the park land will remain in non-federal ownership, operated instead by a series of cooperative agreements and in the case of Hawaiian homes lands, a long-term lease.

Through a letter dated July 28, 1988 (See Exhibit "E"), Mr. Bryan Harry, Director, Pacific Area, of the United States Department of the Interior, National Park Service, requested a long-term lease covering the entire ahupua'a of Kalaupapa and the Northern portion of Palaaau State Park, a total land area of 1,297 acres, more or less (See Exhibit "E"). The 50 acres of land at the Northern portion of Palaaau State Park is part of the 233.68 acres of Hawaiian home lands granted to the State Parks Division of the Department of Land and Natural Resources under License Agreement No. 215 (TMK No. 5-2-13:06) for the continued operation and maintenance of the land as a State park.

The draft of a lease agreement was submitted by the National Park Service in December, 1988. Copies of the draft lease were sent to the Department of Health, Department of Transportation and Department of Land and Natural Resources requesting their input and concerns. A meeting with staff from these agencies resulted in suggested revisions and concerns that are incorporated into the lease document. One of the concerns regarding the 50 acres of land under license to the State Parks at the Palaaau State Park was addressed to the National Park representatives. It is agreed that the general lease will only cover the 1,247 acres of Hawaiian home lands at Kalaupapa.

The general lease will be for a term of fifty (50) years. A fixed annual rental for the initial fifteen (15) years will be determined by appraisal. Rental reopenings are at ten (10) year intervals for the remainder of the 50 years lease term, again to be determined by appraisal.

There are several unique provisions in this general lease that differ from other general leases:

1. As provided by Public Law 96-565, native Hawaiians will be given preference in the use of the premises to provide revenue-producing visitor services after patients have exercised their first right of refusal.

COMMENT: Public Law 96-565 also provides that first preference be provided to qualified patients and native Hawaiians in making appointments to positions established for administration of the park without regard to federal civil service laws giving an employment preference to any other class of applicant. The law provides that the U. S. Department of the Interior will provide training opportunities for patients and native Hawaiians to develop skills to qualify for positions and the provision of visitor services. As used in the law, the term "native Hawaiian" means a descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands previous to the year 1778.

2. The continual use of the demised premises by the various State of Hawaii agencies, religious organizations, and others currently occupying the premises and providing services will be permitted by the Lessee.

COMMENT: The primary concern for inclusion of this provision was continuation of patient services and community activities, for example, through the State Department of Health and various religious organizations at Kalaupapa. Existing patient tour operations would be allowed to continue. The Molokai mule ride, which utilizes the Kalaupapa pali trail over Hawaiian home lands, will enter into an agreement with the National Park Service for this purpose.

3. The Lessor will be entitled, in addition to the annual lease rent, to a percentage of the gross receipts from the revenue-producing visitor services permitted on the premises.

COMMENT: It is expected that, after there are no longer any patients residing at Kalaupapa Settlement, the Kalaupapa National Historical Park may be more accessible to a larger number of visitors. The National Park Service may find the need to expand the types of visitor services available and may enter into agreements for this purpose. The appraiser to conduct the appraisal for the proposed general lease will be required to recommend an appropriate percentage rent of gross receipts from revenue-producing visitor services which should be paid to DHHL. As noted earlier, native Hawaiians will be given preference in the use of the premises to provide revenue-producing visitor services.

4. The Lessee will be given a five (5) year withdrawal notice for the purpose of the HHCA. Prior to the issuance of the notice, the patients at Kalaupapa and the Kalaupapa Historical Park Advisory Commission will be consulted and their concerns will be taken into consideration. The final decision to withdraw lies with the Hawaiian Homes Commission.

COMMENT: This provision was included in the proposed general lease because of patient concerns that the Hawaiian Homes Commission may withdraw lands from the Kalaupapa National Historical Park for homesteading purposes. They expressed concern that this would allow non-patients to reside there and disrupt the current patients' lifestyle. The provision maintains the right of the Hawaiian Homes Commission to make such a decision, however, it requires that the patients and the Kalaupapa Historical Park Advisory Commission be consulted prior to any decision.

5. The proposed general lease will include a provision that allows the Hawaiian Homes Commission the option, after December 28, 1991, and with one-year advanced written notice to the Lessee, to relocate the Kalaupapa Trail Head at the Lessor's expense.

COMMENT: The Kalaupapa pali trail head is located on adjacent lands which are under joint ownership of Alexander Trust, Sarah Benjamin Trust, and R. W. Meyer, Ltd. (See Exhibit "H") The trail itself is located on Hawaiian home lands to be encumbered under the proposed general lease. The Kalaupapa pali trail is the primary overland access from Upper Molokai to Kalaupapa and is used by Kalaupapa Settlement employees, hikers, and the Molokai mule ride.

Lands adjacent to the Kalaupapa pali trail head are Hawaiian home lands encumbered under License Agreement No. 215 to the Department of Land and Natural Resources for operation and maintenance of the Palaa State Park. This license will expire on December 28, 1991. A preliminary assessment of this area indicates that certain parcels within Palaa State Park, particularly those parcels near the Kalaupapa Lookout, are developable and may have revenue-producing potentials. (See Exhibit "I").

Given the location of the Kalaupapa pali trail head on Meyer Estate lands, Kalaupapa pali trail on Hawaiian home lands, and the preliminary assessment of Palaa Apana 3 for revenue-producing purposes, it is to the benefit of DHHL that the Kalaupapa pali trail head, at its option be altered and realigned so that overland access from Upper Molokai to Kalaupapa be by way of Hawaiian home lands at Palaa Apana 3. This will enhance the creation of revenue-producing uses on Hawaiian home lands at Palaa Apana 3.

This provision to be included in the proposed general lease allows the Lessor, at its expense and not at the Lessee's expense, the option to relocate portions of the Kalaupapa pali trail so that the Kalaupapa pali trail head would be located on Hawaiian home lands at Palaau Apana 3. This provision would be at the option of the Hawaiian Homes Commission, could be exercised after expiration of License Agreement No. 215 and with one-year advanced written notice.

A survey will be needed to establish the actual metes and bounds so that the boundaries can be established and the area accurately computed.

According to the National Park Service, cooperative agreements have already been signed with the State Department of Health, the Hawaii Conference Foundation (owners of the two Protestant churches), and the Catholic Church (owners of St. Philomena, Father Damien's Church and other churches within the settlement). A cooperative agreement with the State Department of Land and Natural Resources should be completed soon. Both the Catholic Church and the Hawaii Conference Foundation have no objection to the proposed lease. Also staff met with the Kalaupapa National Historical Park Advisory Commission on June 5, 1989, to review the proposed lease agreement. Their concerns were incorporated into the lease agreement. The draft version of the lease agreement is attached (Exhibit "G").

Justification

The cultural history of Kalaupapa is particularly rich. The park contains historic resources dating back to prehistoric times (prior to 1778). Also physical remains exist from the three historic periods at Kalaupapa: (1) Pioneer Kalawao Period (1866-1873) from the initial landing of leprosy patients to 1873 during King Lunalilo's reign; (2) Kalawao Settlement Period (1873-1911) including the development of Kalawao Settlement and the United States Leprosy Investigation Station; and (3) Kalaupapa Settlement Period (1911-present) during which the Kalawao Settlement was abandoned and Kalaupapa Settlement developed.

Physical remains from all these periods, prehistoric and historic, exist within the park. These include hundreds of stone features, Molokai Lighthouse, two churches in Kalawao, approximately 400 structures in Kalaupapa Settlement, and numerous cemeteries, both marked and unmarked. About one-half of the structures within the settlement have been identified by the National Park Service for historic use and recommended for adaptive preservation. The National Park Service has undertaken extensive stabilization work on those structures of highest historical significance. This consisted of fumigation, exterior painting, and reroofing to prevent further damage by termites and moistures.

Since the department's general plan has placed Kalaupapa on the land bank reserved category, the highest and best use for the 1,247 acres of land at Kalaupapa will be a long-term lease to the National Park Service. Also, the department will be helping to preserve a historical era of the Hawaiian history.

RECOMMENDATION

Income Property Division requests that the commission approve the recommended motion:

1. The Hawaiian Home Lands at Kalaupapa are designated as Land Bank Reserve. There are no plans currently to develop the area. It appears that, due to its isolated location, development costs would be high relative to other areas on Molokai with substantial infrastructure investments in place and closer to employment opportunities.
2. There is an existing population of Hansen's Disease patients, many of whom are Hawaiian/native Hawaiian, who have resided at Kalaupapa, forming a community with its own unique character and life-style. National legislation creating the Kalaupapa National Historical Park recognizes the patient community at Kalaupapa, as well as the area's historical and cultural features.
3. The proposed general lease contains provisions that recognize the patient community and services provided there. Special provisions for native Hawaiian benefits related to employment and economic development are included.
4. The proposed general lease will result in additional revenues to the department.

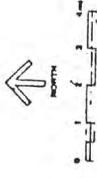
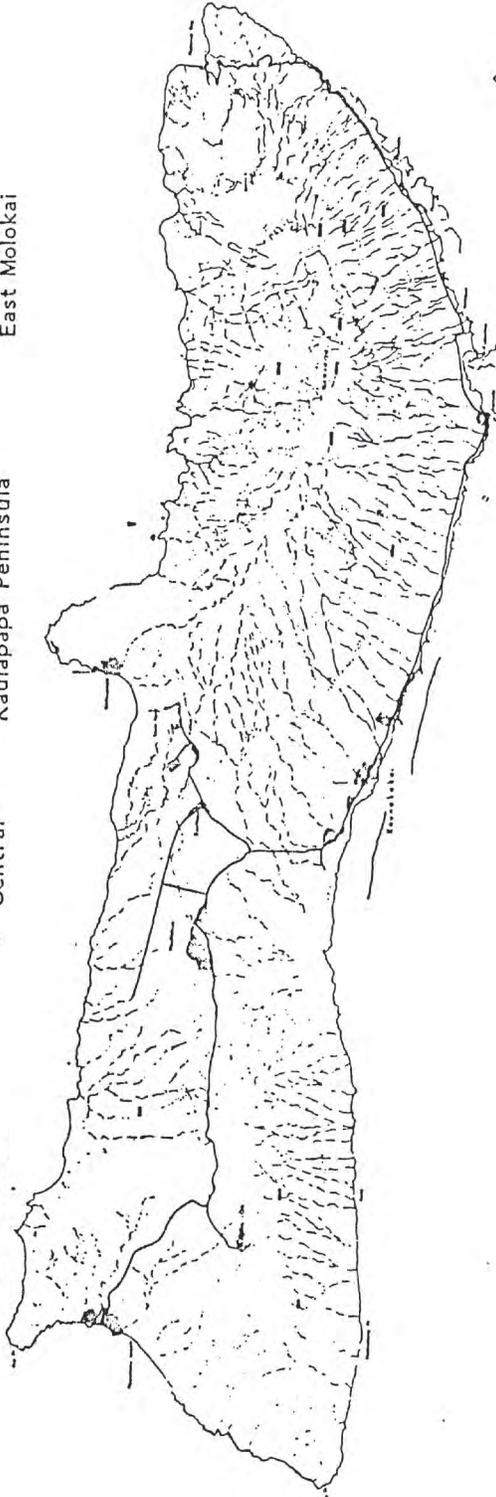
MOLOKAI

West Molokai

Central

Kaulapapa Peninsula

East Molokai



ITEM NO. C-4

EXHIBIT "A"

An Act

To establish the Kalaupapa National Historical Park in the State of Hawaii, and for other purposes.

Dec. 22, 1980
[H.R. 7217]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. In order to provide for the preservation of the unique nationally and internationally significant cultural, historic, educational, and scenic resources of the Kalaupapa settlement on the island of Molokai in the State of Hawaii, there is hereby established the Kalaupapa National Historical Park (hereinafter referred to as the "park").

Kalaupapa
National
Historical Park,
Hawaii.
Establishment.
16 USC 410jj.

SEC. 102. The Congress declares the following to constitute the principal purposes of the park:

Purposes.
16 USC 410jj-1.

(1) to preserve and interpret the Kalaupapa settlement for the education and inspiration of present and future generations;

(2) to provide a well-maintained community in which the Kalaupapa leprosy patients are guaranteed that they may remain at Kalaupapa as long as they wish; to protect the current lifestyle of these patients and their individual privacy; to research, preserve, and maintain the present character of the community; to research, preserve, and maintain important historic structures, traditional Hawaiian sites, cultural values, and natural features; and to provide for limited visitation by the general public; and

(3) to provide that the preservation and interpretation of the settlement be managed and performed by patients and Native Hawaiians to the extent practical, and that training opportunities be provided such persons in management and interpretation of the settlement's cultural, historical, educational, and scenic resources.

SEC. 103. The boundaries of the park shall include the lands, waters, and interests therein within the area generally depicted on the map entitled "Boundary Map, Kalaupapa National Historical Park", numbered P07-80024, and dated May 1980, which shall be on file and available for public inspection in the local and Washington, District of Columbia offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereinafter referred to as the "Secretary") may make minor revisions in the boundary of the park by publication of a revised boundary map or other description to that effect in the Federal Register.

Boundaries;
public
inspection.
16 USC 410jj-2.

SEC. 104. (a) Within the boundary of the park, the Secretary is authorized to acquire those lands owned by the State of Hawaii or any political subdivision thereof only by donation or exchange, and only with the consent of the owner. Any such exchange shall be accomplished in accordance with the provisions of sections 5 (b) and (c) of the Act approved July 15, 1968 (82 Stat. 354). Any property conveyed to the State or a political subdivision thereof in exchange for property within the park which is held in trust for the benefit of Native

Land
acquisition.
16 USC 410jj-3.

16 USC 460i-22.

48 USC 691.

48 USC 697.

48 USC 698.

F...ians, as defined in the Hawaiian Homes Commission Act of 1920 shall, as a matter of Federal law, be held by the grantee subject to an equitable estate of the same class and degree as encumbers the property within the preserve; and "available lands" defined in section 203 of the Hawaiian Homes Commission Act may be exchanged in accordance with section 204 of said Act. The vesting of title in the United States to property within the park shall operate to extinguish any such equitable estate with respect to property acquired by exchange within the park.

(b) The Secretary is authorized to acquire privately-owned lands within the boundary of the park by donation, purchase with donated or appropriated funds, or exchange.

(c) The Secretary is authorized to acquire by any of the foregoing methods except condemnation, lands, waters, and interests therein outside the boundary of the park and outside the boundaries of any other unit of the National Park System but within the State of Hawaii, and to convey the same to the Department of Hawaiian Home Lands in exchange for lands, waters, and interests therein within the park owned by that Department. Any such exchange shall be accomplished in accordance with the provisions defined in subsection (a) of this section.

Administration.
16 USC 410j-4.
43 USC 1457, 16
USC 1, 2, 3, 4, 22,
43.
16 USC 461-467.

SEC. 105. (a) The Secretary shall administer the park in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535), the Act of August 21, 1935 (49 Stat. 666), and the provisions of this Act.

(b)(1) With the approval of the owner thereof, the Secretary may undertake critical or emergency stabilization of utilities and historic structures, develop and occupy temporary office space, and conduct interim interpretive and visitor services on non-Federal property within the park.

Cooperative agreements.

(2) The Secretary shall seek and may enter into cooperative agreements with the owner or owners of property within the park pursuant to which the Secretary may preserve, protect, maintain, construct, reconstruct, develop, improve, and interpret sites, facilities, and resources of historic, natural, architectural, and cultural significance. Such agreements shall be of not less than twenty years duration, may be extended and amended by mutual agreement, and shall include, without limitation, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement. Each such agreement shall also provide that the owner shall be liable to the United States in an amount equal to the fair market value of any capital improvements made to or placed upon the property in the event the agreement is terminated prior to its natural expiration, or any extension thereof, by the owner, such value to be determined as of the date of such termination, or, at the election of the Secretary, that the Secretary be permitted to remove such capital improvements within a reasonable time of such termination. Upon the expiration of such agreement, the improvements thereon shall become the property of the owner, unless the United States desires to remove such capital improvements and restore the property to its natural state within a reasonable time for such expiration.

(3) Except for emergency, temporary, and interim activities as authorized in paragraph (1) of this subsection, no funds appropriated pursuant to this Act shall be expended on non-Federal property unless such expenditure is pursuant to a cooperative agreement with the owner.



(4) The Secretary may stabilize and rehabilitate structures and other properties used for religious or sectarian purposes only if such properties constitute a substantial and integral part of the historical fabric of the Kalaupapa settlement, and only to the extent necessary and appropriate to interpret adequately the nationally significant historical features and events of the settlement for the benefit of the public.

Religious structures.

Sec. 106. The following provisions are made with respect to the special needs of the leprosy patients residing in the Kalaupapa settlement—

Leprosy patients.
16 USC 410jj-5.

(1) So long as the patients may direct, the Secretary shall not permit public visitation to the settlement in excess of one hundred persons in any one day.

(2) Health care for the patients shall continue to be provided by the State of Hawaii, with assistance from Federal programs other than those authorized herein.

(3) Notwithstanding any other provision of law, the Secretary shall provide patients a first right of refusal to provide revenue-producing visitor services, including such services as providing food, accommodations, transportation, tours, and guides.

(4) Patients shall continue to have the right to take and utilize fish and wildlife resources without regard to Federal fish and game laws and regulations.

(5) Patients shall continue to have the right to take and utilize plant and other natural resources for traditional purposes in accordance with applicable State and Federal laws.

Sec. 107. The following provisions are made with respect to additional needs of the leprosy patients and Native Hawaiians for employment and training. (The term "Native Hawaiian" as used in this title, means a descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to the year 1778.)—

Employment and training.
16 USC 410jj-6.
"Native Hawaiian."

(1) Notwithstanding any other provision of law, the Secretary shall give first preference to qualified patients and Native Hawaiians in making appointments to positions established for the administration of the park, and the appointment of patients and Native Hawaiians shall be without regard to any provision of the Federal civil service laws giving an employment preference to any other class of applicant and without regard to any numerical limitation on personnel otherwise applicable.

(2) The Secretary shall provide training opportunities for patients and Native Hawaiians to develop skills necessary to qualify for the provision of visitor services and for appointment to positions referred to in paragraph (1).

Sec. 108. (a) There is hereby established the Kalaupapa National Historical Park Advisory Commission (hereinafter referred to as the "Commission"), which shall consist of eleven members each appointed by the Secretary for a term of five years as follows:

Kalaupapa National Historical Park Advisory Commission.
Establishment.
Membership.
16 USC 410jj-7.

(1) seven members who shall be present or former patients, elected by the patient community; and

(2) four members appointed from recommendations submitted by the Governor of Hawaii, at least one of whom shall be a Native Hawaiian.

(b) The Secretary shall designate one member to be Chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

Chairman.
Vacancies.

(c) A member of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably

Compensation.
Expenses.

incurred by the Commission in carrying out its responsibilities under this Act on vouchers signed by the Chairman.

(d) The Secretary shall consult with and seek the advice of the Commission with respect to the development and operation of the park including training programs. The Commission shall, in addition, advise the Secretary concerning public visitation to the park, and such advice with respect to numbers of visitors shall be binding upon the Secretary if the Commission certifies to him that such advice is based on a referendum, held under the auspices of the Commission, of all patients on the official Kalaupapa Registry.

Expiration.

(e) The Commission shall expire twenty-five years from the date of enactment of this Act.

Reevaluation.
16 USC 410jj-8.

SEC. 109. At such time when there is no longer a resident patient community at Kalaupapa, the Secretary shall reevaluate the policies governing the management, administration, and public use of the park in order to identify any changes deemed to be appropriate.

Appropriation
authorization.
16 USC 410jj-9.

SEC. 110. Effective October 1, 1981, there are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title but not to exceed \$2,500,000 for acquisition of lands and interests in lands and \$1,000,000 for development.

100TH CONGRESS
1ST SESSION

H. R. 2712

[Report No. 100-165]

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, JUNE 23), 1987

Received; read twice and referred to the Committee on Appropriations

SEPTEMBER 22, 1987

Reported by Mr. BYRD, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1988, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the following sums are appropriated, out of any money
 4 in the Treasury not otherwise appropriated, for the Depart-
 5 ment of the Interior and related agencies for the fiscal year
 6 ending September 30, 1988, and for other purposes, namely:
 7
 8
 9
 10
 11
 12 *rescinded: Provided further, That notwithstanding any other*
 13 *provision of law, Public Law 96-565 is amended by adding*
 14 *the following at the end of section 104(a): "The Secretary*
 15 *may lease from the Department of Hawaiian Home Lands*
 16 *said trust lands until such time as said lands may be ac-*
 17 *quired by exchange as set forth herein or otherwise acquired.*
 18 *The Secretary may enter into such a lease without regard to*
 19 *fiscal year limitations": Provided further, That none of the*
 20 *funds appropriated to the National Park Service shall be*
 21 *used to remove, obstruct, dewater, fill or otherwise damage*
 22 *the Brooks River fish ladder in the Katmai National Park,*
 23 *Alaska: Provided further, That of the funds hereafter avail-*
 24 *able to the National Park Service, \$85,000 shall be available*
 25



United States Department of the Interior

DEPT. OF HAWAIIAN HOME LANDS

AUG 1 9 56 AM '88

NATIONAL PARK SERVICE
PACIFIC AREA OFFICE
300 Ala Moana Blvd., Box 50165
Room 6.305
Honolulu, Hawaii 96850

IN REPLY REFER TO:

L1425(PAAR)

July 28, 1988

Ms. Ilima A. Piihanaia, Chairman
Hawaiian Homes Commission
335 Merchant Street
Honolulu, Hawaii 96813

Dear Ilima,

As you may know, the U. S. Congress recently enacted legislation allowing the National Park Service to lease Hawaiian Home Lands within Kalaupapa National Historical Park until such time as these lands may be acquired by exchange. Since it appears that no land exchange can be accomplished within the foreseeable future, this letter is to request a long-term lease covering the following lands as outlined in red on the enclosed map:

Entire ahupua'a of Kalaupapa, Kalawao County, Molokai	1,247 acres
Northern Portion of Palaau State Park - Maui County, Molokai	+ 50 acres
Approximate total	1,297 acres

The primary purpose of this lease would be to enable the National Park Service to operate and maintain the Park in accordance with Public Law 96-565, copy enclosed. We would envision a lease for about 50 years' duration with terms and conditions similar to leases your agency has entered into with other federal agencies.

Recognizing that Kalaupapa is a unique situation with respect to its resident population, existing land uses, religious and support facilities, there are no doubt a number of special terms and conditions which should be addressed prior to and during preparation of the lease document. I have designated Al Baldwin of my staff to work with your office in this regard.

2

Federal land acquisition procedures require that we conduct an appraisal of the lands involved prior to negotiating a rental amount. Mr. Baldwin will be happy to arrange for such an appraisal by our Regional Land Resources Division whenever you deem it appropriate.

It is my firm belief that this endeavor by our respective organizations offers a significant opportunity to obtain substantial benefits for not only the present residents of Kalaupapa but also many native Hawaiians who will live and work in the park in the future.

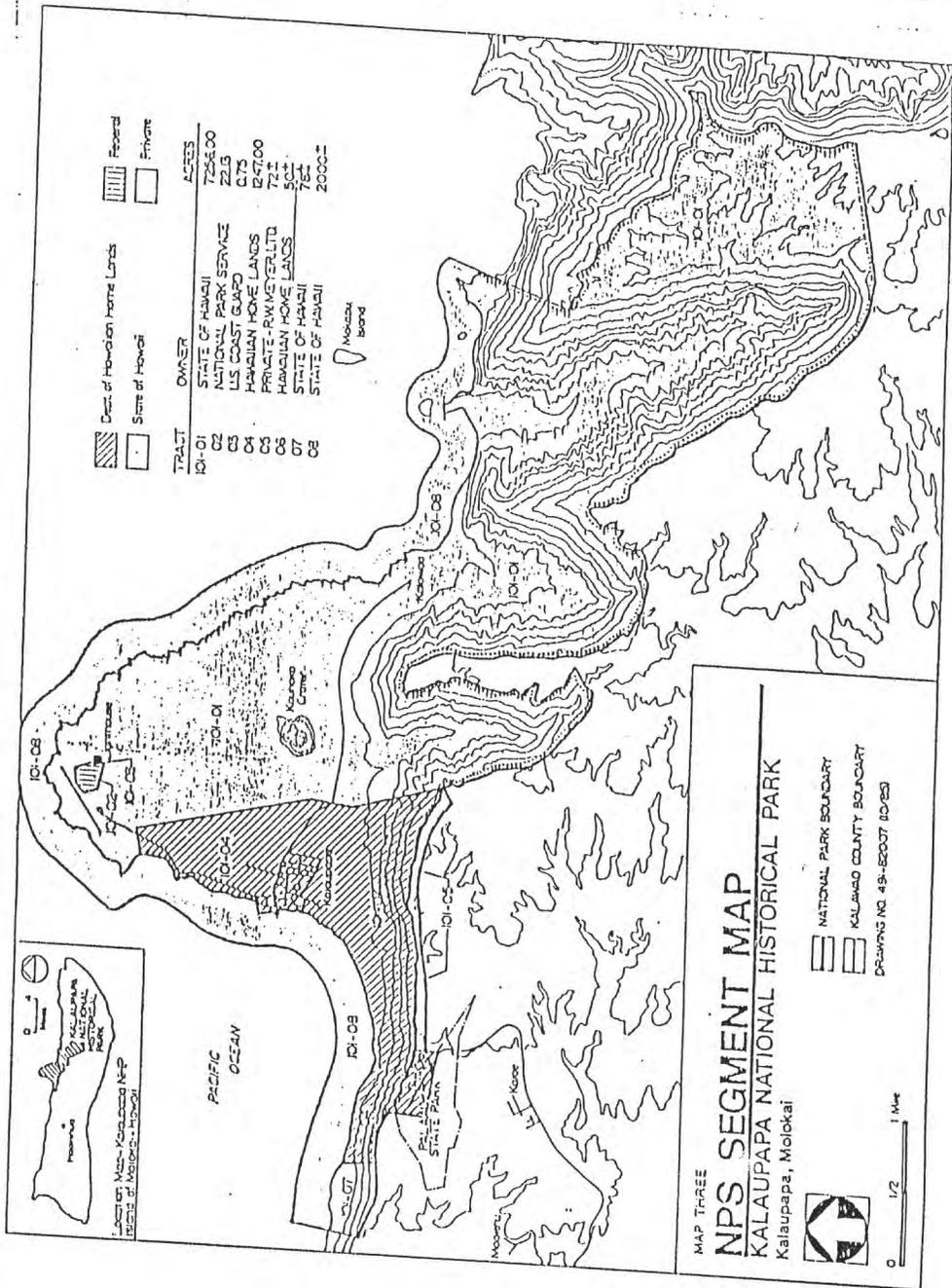
With much aloha,

Bryan Harry
Bryan Harry
Director, Pacific Area

Enclosures (2)

ITEM NO. C-4

AMBIT "E"



ITEM NO. C-4

EXHIBIT "F"

DRAFT

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP () _____

REQUESTOR TO FILL ABOVE

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

THIS INDENTURE OF LEASE, made this _____ day of _____, by and between the STATE OF HAWAII, by its Department of Hawaiian Home Lands, whose principal place of business is 335 Merchant Street, Honolulu, Hawaii, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called the "LESSOR," and the United States of America, by its National Park Service, Department of the Interior, hereinafter called "LESSEE":

W I T N E S S E T H :

THAT, the LESSOR for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed, and performed, does hereby demise and lease unto the LESSEE, and the LESSEE does hereby lease and hire from the LESSOR that certain parcel of Hawaiian home lands, comprising 1,247 acres more or less, situate at Kalaupapa, County of Kalawao, State of Hawaii, Tax Map Key No. 6-1-01:01, more particularly described in Exhibit "A," and shown on the map marked Exhibit "B," outlined in yellow, both attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto the LESSEE for the term of FIFTY (50) years, commencing on the 1st day of _____, up to and including the 30th day of _____, unless sooner terminated as hereinafter provided, the LESSOR reserving and the LESSEE yielding and

ITEM No. C-4
EXHIBIT "G"

paying to the LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, but not more than one year in advance, without notice of demand, in quarterly installments on or before the first (1st) day of January, April, July and October, each and every year during said term provided that adequate appropriations are available from year to year for the payment of rentals.

1. Rental. The lease rental for the first fifteen (15) years shall be the sum of _____ per annum.
2. Percentage Rental. In addition to the annual lease rental hereinabove specified, LESSEE shall pay to the LESSOR, as "percentage rental", a sum equal to _____ of "gross annual rent collected" from revenue-producing visitor services permitted to operate in Kalaupapa National Historical Park during each fiscal year. For the purpose of this lease, "Gross annual rent collected" shall mean the aggregate annual gross charges for concessions, and all other gross income collected by LESSEE from subtenants, concessionaries and/or other occupants utilizing the premises. Percentage rent shall be computed on the federal fiscal year basis from October 1 through September 30. Percentage rent, if any, shall be due and payable not later than 90 days after the end of a fiscal year for which such rent is to be computed.
3. Reopening of term. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the fifteenth (15th), twenty-fifth (25th), thirty-fifth (35th), and forty-fifth (45th) years of the lease term, in accordance with the procedure prescribed in paragraph 4 below.
4. Determination of rental upon reopening of the annual rental. The rental for each period to be reopened and redetermined shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the LESSOR; provided, that should the LESSEE fail to agree upon the fair market rental as determined by the LESSOR'S appraiser, the LESSEE shall promptly appoint its own appraiser and give

written notice thereof to the LESSOR, and in case the LESSEE shall fail to do so within ten (10) days after being advised of the fair market rental as determined by the LESSOR'S appraiser, the LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the demised premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure to do so within ten (10) days after appointment of the second appraiser, either party may have the third appraiser appointed by such judge and the fair market rental shall be determined by arbitration as provided in Chapter 658, Hawaii Revised Statutes. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the sixtieth (60th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of the LESSOR and the LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by the LESSOR and the LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. The LESSEE shall pay for its own appraiser, the LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the LESSEE and the LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of the LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the LESSEE shall continue to pay the rent effective for the previous rental period, but the LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

5. Non-waiver. Nothing herein contained shall be construed as being a waiver of any rights, duties, or obligations belonging unto the LESSOR relating to any accrued back rentals due from the use of the demised premises.

Add 6. Special Provision. *

ARTICLE ONE

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.
- a. All minerals as hereinafter defined, in, on, or under the demised premises, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other minerals substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in road construction in furtherance of the LESSEE's permitted activities on the demised premises and not for sale to others.
 - b. All surface waters, ground waters, and water systems appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved.
 - c. As a condition precedent to the exercise by the LESSOR of any rights reserved in this paragraph 1, ^{fair market value} ~~just compensation~~ shall be paid to the LESSEE for any of LESSEE's improvements taken and the rental will be reduced in proportion to the rental value of the demised premises of which the LESSEE is deprived.

-4-

* Any future appraisal conducted for the purpose of the land exchange authorized by Section 104 of Public Law 96-565 shall be based on the highest and best use of the lands at that time and as though said land were not encumbered by this lease.

-4-

ITEM N.O. C-4
EXHIBIT "G"

2. Prehistoric and historic remains. All prehistoric and historic remains found on the demised premises.
3. Withdrawal. Pursuant to Section 204(2) of Hawaiian Homes Commission Act, 1920, as amended, the LESSOR shall have the right to withdraw from the operation of this lease all or any portion of the demised land for the purposes of the Hawaiian Homes Commission Act. The LESSEE shall not be entitled to any compensation for improvements, if any, already erected on the lands hereby demised. The LESSEE shall be entitled to compensation for those improvements hereafter made by the LESSEE which have been approved by the LESSOR, in accordance with Article Two, Paragraph 7, titled Improvements, of this agreement on any land withdrawn, in any amount equal to the fair market value thereof, less any credits which are to be or have been applied to the lease rental, as provided herein. The LESSOR shall give LESSEE five years withdrawal notice prior to any withdrawal. Prior to issuing the notice of withdrawal, the Department of Health and the patients of Kalaupapa shall be provided an opportunity to submit their concerns within thirty (30) days. Final decision to withdraw lies with the Hawaiian Homes Commission. No further improvements shall be allowed to be constructed upon any lands for which withdrawal notice has been given. If only a portion of the demised land is withdrawn, the rental for the remaining portion will be reduced in proportion to the rental value of the land withdrawn. Such withdrawal shall be subject to the provision of Section 105(b)(2) of Public Law 96-565.

Add

4. Relocation of trail/trail head. *

ARTICLE TWO

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of rent. That the LESSEE shall pay said rent to the LESSOR or at the times, in the manner and form aforesaid and at the place specified above, or to such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.
2. Utility services. That the LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas,

-5-

* The right to relocate the trail and/or trail head at no cost to the LESSEE, providing that if the relocated trail/trail head lies wholly on HHL, the public and the LESSOR shall be guaranteed free access to the NP via said trail.

-5-

ITEM No. C-4
EXHIBIT "G"

refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the LESSOR or the LESSEE in respect thereof may during the term become liable, whether assessed to or payable by the LESSOR or the LESSEE.

3. Sanitation, etc. That the LESSEE shall keep the demised premises and improvements in a strictly clean, sanitary, and orderly condition.
4. Waste and unlawful, improper, or offensive use of premises. That the LESSEE shall not strip or commit, suffer or permit to be committed any waste, or nuisance, or unlawful, improper or offensive use of the demised premises, or any part thereof.
5. Compliance with laws. That the LESSEE shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the premises, now in force or which may hereinafter be in force.
6. Inspection of premises. That the LESSEE will permit the LESSOR and its agents, at all reasonable times during the term, to enter the demised premises and all improvements thereon and examine the state of repair and condition thereof.
7. Improvements. That the LESSEE shall not at anytime during the term, construct, place, ~~maintain~~ and install on the demised premises any building, structure or improvement of any kind and description whatsoever except with the prior written consent of the LESSOR and upon such conditions as the LESSOR may impose, unless otherwise provided herein. The LESSEE may make minor nonstructural alterations without the LESSOR's consent. need to
redefine
this
8. Repairs to improvements. That, subject to the availability of funds in future year's appropriations, the LESSEE shall keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted. State of Hawaii, by its Department of Health, may repair or expand all existing improvements as deemed necessary for the continuation of the existing uses of such improvements for the care and treatment of persons affected with Hansen's disease.

9. Liens. That the LESSEE will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the LESSEE therein shall at anytime during the term become subject to any judgement, attachment, lien, charge, or encumbrance whatsoever, except as hereinafter provided, and will indemnify and hold the LESSOR harmless against all loss, costs and expenses including reasonable attorney's fee with respect thereto.
10. Character of use. That the LESSEE shall use the premises hereby demised solely as an integral part of the Kalaupapa National Historical Park established by Public Law 96-565 and for the purposes expressed therein.
11. Other Uses. Native Hawaiians, hereafter, will be given preferences in the use of the premises to provide revenue-producing visitor services after patients have exercised their first right of refusal. The LESSEE may permit the continual use of the demised premises by State of Hawaii agencies, religious organizations, and others currently occupying said premises.
12. Assignments, etc. Except as hereinafter provided, the LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the LESSOR. The LESSEE may sublease, assign, or permit other persons to occupy or use the said premises or any portion thereof in order to carry out the purposes and provisions of Public Law 96-565 which established Kalaupapa National Historical Park and other laws relating to the administration and management of U.S. National Parks; provided that preference shall be given to Native Hawaiians in the use of said premises to provide revenue-producing visitor services after patients have exercised their first right of refusal.
13. Mortgage. That, except as provided herein, the LESSEE shall not mortgage, hypothecate, or pledge the demised premises or any portion thereof of this lease or any interest therein without the prior written approval of the LESSOR and any such mortgage, hypothecation, or pledge without such approval shall be null and void.

14. Indemnity. To the extent authorized by law, and subject to the provisions of the Federal Tort Claims Act, as amended (28 U.S.C. 2671, et seq.) the LESSEE will indemnify, defend and hold the LESSOR harmless (a) from and against any claims or demands for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or omission of the LESSEE, or any nuisance made or suffered on the demised premises, or by any fire thereon, or growing out of or caused by any failure on the part of the LESSEE to maintain the demised premises in a safe condition, or by any act or omission of the LESSEE, and (b) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

Where a suit arising out of any aforesaid damage to, or loss of, property or injury or death is filed against the LESSOR in State Court, the LESSEE, when requested by the LESSOR, will cooperate by requesting that the U.S. Attorney seek removal of said suit to the U.S. District Court and defend said suit. The LESSEE will pay any damage where it is determined that the damage to, or loss of, property or personal injury or death occurring on the lands covered by this agreement was caused by the negligent or wrongful act or omission of any employee of the LESSEE while acting within the scope of his office or employment under circumstances where the LESSEE, if a private person, would be liable in accordance with the laws of the place where the act or omission occurred, as provided in the Federal Tort Claims Act.

Further, the LESSEE agrees that the use of the land by its employees and volunteers in the park shall be effected with all reasonable diligence and precaution to avoid damage to the land, property, or personnel of the LESSOR (see 28 U.S.C. 1491).

15. Termination. (a) That at the natural termination of this lease, the LESSEE shall, peaceably deliver unto the LESSOR possession of the demised premises, and the improvements thereon shall become the property of LESSOR unless LESSEE desires to remove such capital improvements and restore the property to its natural state within a reasonable time. (b) Should LESSOR, for any reason other than for breach of the condition of this lease, terminate this lease prior to its natural expiration, LESSOR shall be liable to the LESSEE in an amount equal to the fair market value of any capital improvements made to or placed upon the property, consented to by the LESSOR, such value to be determined as of the date of such termination, or, at the election of the Secretary of the Interior, that the Secretary be permitted to remove such capital improvements within a reasonable time of such termination. (c) The LESSEE may terminate this lease, in whole or in part, at any time by giving a ^{ONE (1)} ~~five (5)~~ years termination notice in writing to the LESSOR, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of the mailing. As a condition of termination under this paragraph, LESSEE agrees it will continue to pay proportional annual rent until such time as it removes all capital improvements owned by the LESSEE or after a six (6) month period following termination, the LESSOR takes ownership of the improvements.

16. Non-warranty. The LESSOR does not warrant the conditions of the leased premises, as the same is being leased as is; and further, LESSOR does not warrant access to the demised premises, *except as heretofore provided in Article ONE, Item 4.*

ARTICLE THREE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Breach That time is of the essence of this agreement and if the LESSEE shall fail to yield to pay such rent or any part thereof at the times and in the manner aforesaid, or shall abandon the said premises, or if this lease and the premises shall be attached or

otherwise be taken by operation of law, or shall fail to observe and perform any of the covenants, terms and conditions therein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the LESSOR of a written notice of such breach or default by service, as provided by Sections 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to the LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the demised premises, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the demised premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrearage of rental and interest at the legal rate pursuant to Section 478, Hawaii Revised Statutes, or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the LESSOR.

2. Right to enter. The LESSOR or the county and the agents or representatives thereof shall have the right to enter and cross any portion of the demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the LESSOR or the county shall not interfere unreasonably with the LESSEE or the LESSEE's use and enjoyment of the premises.
3. Acceptance of rent not a waiver. That the acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant, or condition of this lease, nor of the LESSOR's right to re-entry for breach of covenant, nor of the LESSOR's right to declare and enforce a forfeiture for any such breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

4. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply, observe, and perform any of the terms, conditions, and covenants contained herein.
5. Quiet enjoyment. The LESSOR hereby covenants and agrees with the LESSEE that upon payment of the rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms, and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold, possess, and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the LESSOR except that the use of the demised premises by the LESSEE shall be limited and restricted by the continuation of the existing uses of the premises as a facility for the care and treatment of persons affected with Hansen's disease under the full and complete governance of the Director of Health pursuant to Chapter 26, Hawaii Revised Statutes; and further limited by the present ownership and/or use of all buildings and improvements by parties other than either the LESSOR or the LESSEE.
6. Severability. If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remaining provisions of this lease or the application of such terms or provisions to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and such other terms or provisions of the lease not affected by the decision or order shall be valid and shall be enforced to the fullest extent permitted by law.
7. Definitions. As used herein, unless clearly repugnant to the context:
 - (a) "Chairman" shall mean the Chairman of the Department of Hawaiian Home Lands of the State of Hawaii or his successor.

- (b) "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of such interest.
 - (c) "Lessee" shall mean and include the LESSEE herein, successors, or permitted assigns, according to the context hereof.
 - (d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.
 - (e) "Native Hawaiian" shall mean any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.
 - (f) "Patient" shall mean any person affected with Hansen's Disease and is being cared for or treated at the Kalaupapa Settlement by the Department of Health.
 - (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.
 - (f) The paragraph headings throughout this lease are for the convenience of the LESSOR and the LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.
8. Contingent fee. The LESSOR warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the LESSOR for the purpose of securing business. For breach or violation of this warranty, the LESSEE shall have the right to annul this lease without liability, or in its discretion to deduct from amounts otherwise due under this lease or other consideration, the full amount of such commission, brokerage, percentage, or contingent fee.

9. Benefit. No member of Congress or Resident Commission shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM AND
LEGALITY:

By _____
Chairman
Hawaiian Homes Commission

✓

Deputy Attorney General
State of Hawaii

LESSOR

Dated _____

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
(National Park Service)

By _____
LESSEE

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

On this ____ day of _____, 19 ____, personally appeared _____, to me personally known who being by me duly sworn, did say that she is the Chairman of the Hawaiian Homes Commission, and the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein set forth.

Notary Public, State of Hawaii

My Commission expires: _____

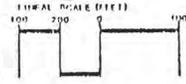
)
 : SS
_____)

On this ____ day of _____, 19 ____, before me personally appeared _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public

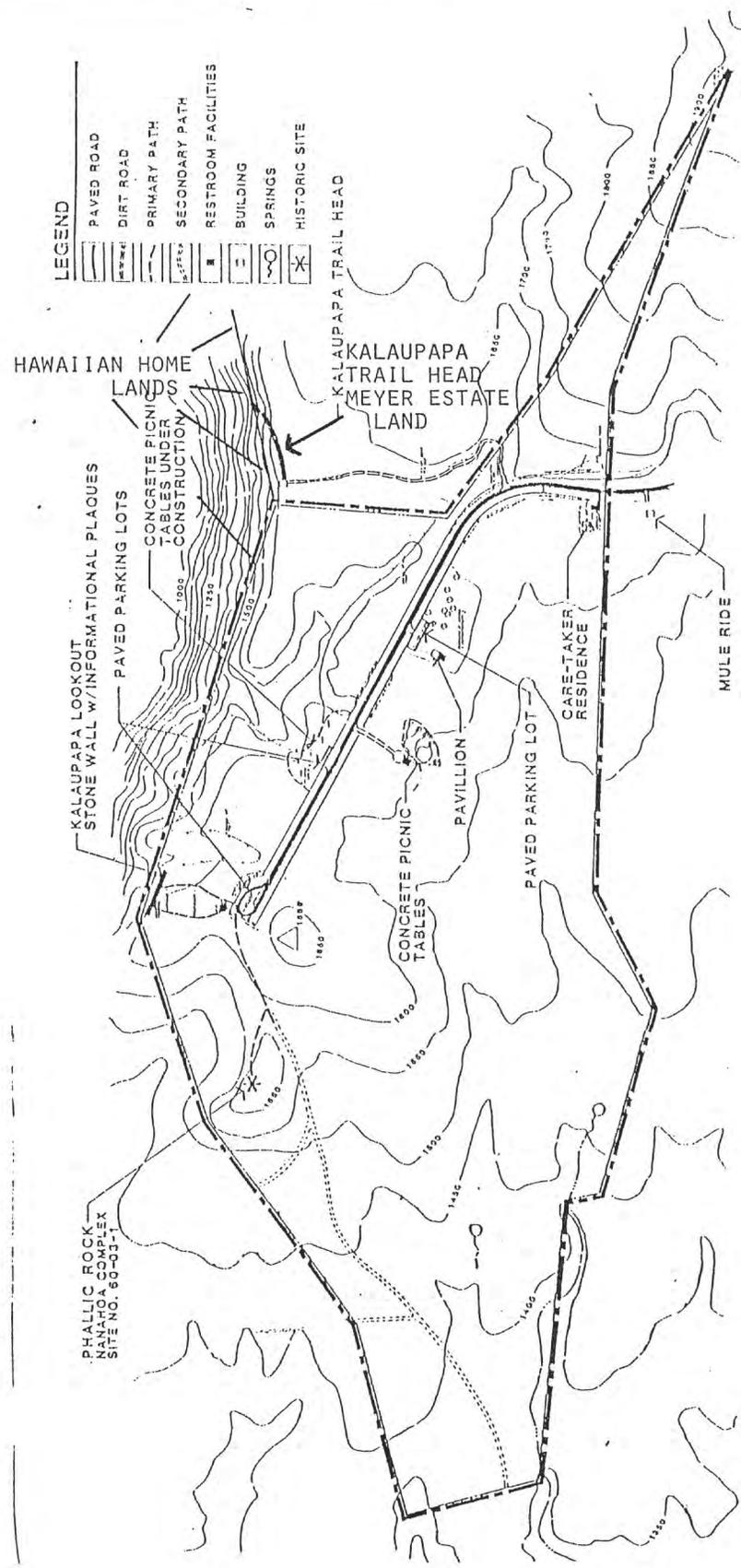
My Commission expires: _____

AREA SCALE
 (ACRES)
 1 sq. []
 1 sq. []



5-21-88

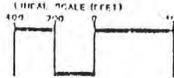
Source: "PalaaU Apana 3 Land Assessment", for Department of Hawaiian Home Lands, by Phillips, Brandt, Reddick, and Assoc. (Hawaii), Inc., November 1986



PRIME DEVELOPABLE AREAS
PALAAU APANA 3
 DEPARTMENT OF HAWAIIAN HOME LANDS

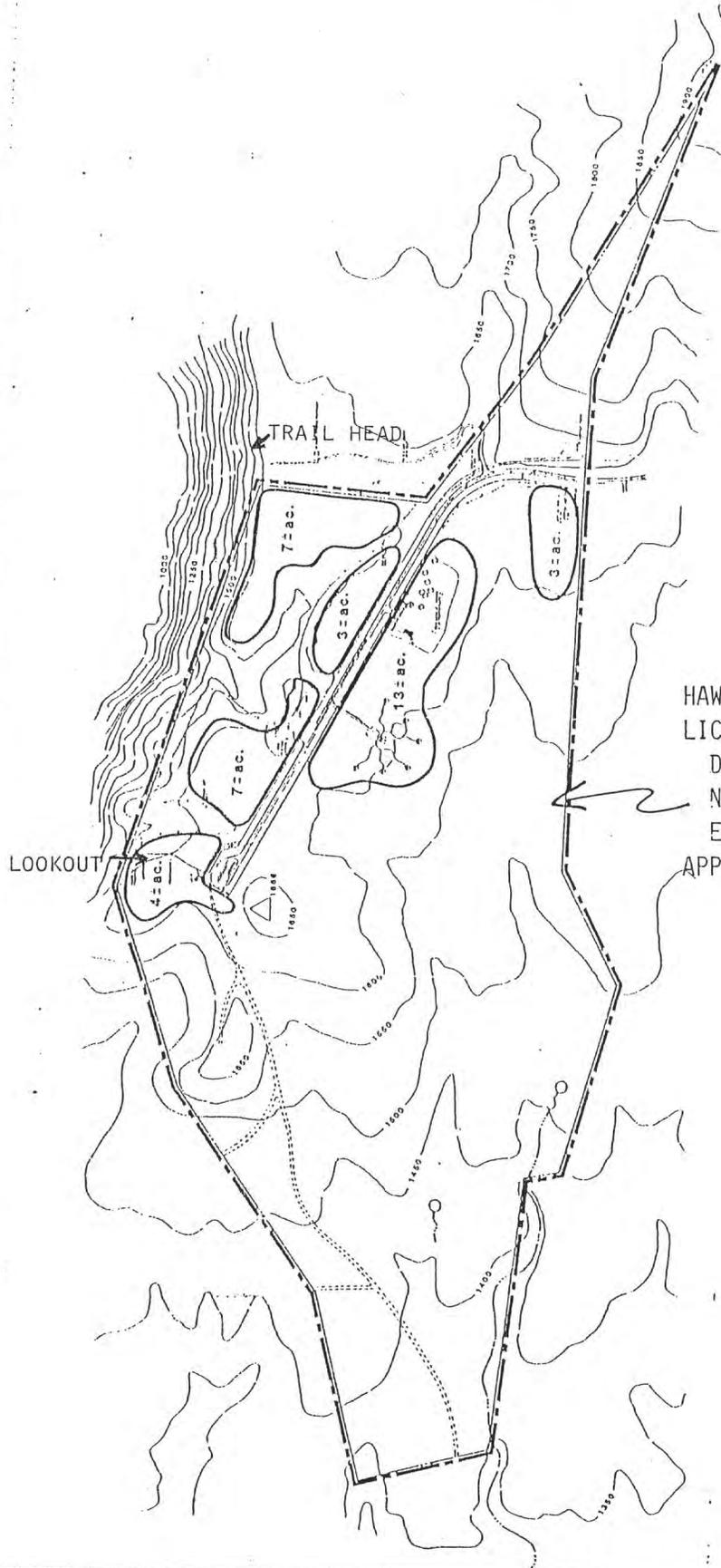
AREA SCALE (ACRES)

2 ac.	1 ac.
1 ac.	1 ac.



8-21-88

Source: "Palaaau Apana 3 Land Assessment", for Department of Hawaiian Home Lands, by Phillips, Brandt, Reddick, and Assoc. (Hawaii), Inc., November 1986



TOTAL ACRES : 37 =

HAWAIIAN HOME LANDS
 LICENSE NO. 215 TO
 DEPT. OF LAND AND
 NATURAL RESOURCES,
 EXPIRES 12-28-91
 APPROX. 233.68 ACRES

October 25, 2021
GL No. 231 - Pertinent Info

DEPARTMENT OF HAWAIIAN HOME LANDS' GENERAL LEASE NO. 231
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE
KALAUPAPA, MOLOKAI
October 25, 2021

PERTINENT INFO

Date of Lease: September 22, 1992

HHC Approval: July 25, 1989, Agenda Item No. C-4

Term of Lease: 50 years: July 15, 1991 – July 14, 2041

Land Area: 1,247 acres

Annual Lease Rent: \$325,000/annum 7/15/1991-7/14/1996
(Lump sum payment of \$1,491,500 for the 5 years discounted to present value)
\$131,500/annum 7/15/1996-7/14/2001
\$131,160/annum 7/15/2001-7/14/2006
\$200,000/annum 7/15/2006-7/14/2011
\$230,000/annum 7/15/2011-7/14/2016
\$250,000/annum 7/15/2016-7/14/2021

* Rental re-determination process for next five (5) yr period covering 7/15/2021-7/14/2026 is ongoing.

Lease rent to be reopened every 5 years; to be determined by independent appraisers; DHHL shall hire the appraiser; NPS to pay for the appraisal.

Character of Use: Use solely as an integral part of the Kalaupapa National Historic Park established by Public Law 96-565 and for the purposes expressed as “other uses”

Other Uses: Native Hawaiians, to be given preference (second right of refusal) in the use of the premise to provide revenue-producing visitor services after patients have exercised their first right of refusal. NPS may permit the continual use of the premises by State agencies, religious organizations, and other that were occupying the premises as of the date of the lease.

Withdrawal: Upon 5 years notice, DHHL has the right to withdraw all or any portions of the premises.

Special Provisions: Any future appraisal conducted for the purpose of a land exchange authorized by Section 104 of Public Law 96-565, shall be based on the premises being vacant and available for development to its highest and best use, without regard to the provisions of Public Law 96-565, as amended.

When patients are no longer residing on the premises, the fair market rental shall be reopened and redetermined based on the premises being available for development to its highest and best use.