

## ***INFORMATION PACKET***

**PROPOSED DISPOSITION OF GENERAL LEASES BY NEGOTIATION FOR  
INDUSTRIAL (I-2) USE PROPERTY  
OF HAWAIIAN HOME LANDS PARCELS LOCATED AT  
MOANALUA KAI, SHAFTER FLATS, HONOLULU, ISLAND OF OAHU**

**Requesting Agency**

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

**91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707**

**June 3, 2024**

**INFORMATION PACKET**  
**For Industrial (I-2) Use Development at**  
**Moanalua Kai, Shafter Flats, Honolulu, Island of Oahu**

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**LIST OF ITEMS AVAILABLE FOR REVIEW IN DHHL HEADQUARTER OFFICE:**

A. Appraisal Report – dated January 2024

**NOTE:** While the data in this Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and professional sources, it is not guaranteed. DHHL bears no responsibility for Applicant’s actual reliance on the data provided. Applicant should make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant’s project.

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

### **Introduction:**

The Department of Hawaiian Home Lands (DHHL) is soliciting applications and proposals from qualified individuals or businesses (Applicants) interested in entering into a general lease of Hawaiian home lands situated in Moanalua, Island of Oahu. DHHL will each enter exclusive negotiations with the successful bidder for a general lease for its respective parcels. The four (4) parcels are located on Kilihau Street, Shafter Flats Industrial Development, Moanalua, Honolulu, ranging from 20,878 sf to 25,000 sf in size. The term of each respective lease shall be for thirty (30) years. Applicants must submit development plans for the site and meet certain objectives and criteria further described throughout the Information Packet that follows. The qualified applicant who submits the proposal that meets or exceeds DHHL's objectives and criteria and "the highest sealed-bid offer" that meets or exceeds the minimum upset rental for the first year of the lease, as determined by an independent appraisal, shall be selected to negotiate a general lease for the site.

### **Objectives:**

DHHL wishes to lease the subject properties at its highest and best use, which has been determined to be "Intensive Industrial Use" under the City & County of Honolulu I-2 zoning. DHHL's objectives for the Subject Properties call for the following:

- Provides the greatest returns to DHHL in a timely manner;
- Will be undertaken by a qualified applicant who will bear all or substantially all of the costs of the development and will not be subsidized by DHHL;
- Will be developed in a timely manner under individual leasehold arrangements;
- Is permitted under the applicable State land use and County of Hawaii zoning laws and ordinances for the Subject Properties, as such laws and ordinances may be amended from time to time;
- Provides improvements that increase the value of the Subject Properties, both during and after expiration of each respective lease arrangement; and
- Complies with applicable restrictions to the Subject Properties, including but not limited to, any easements and deed restrictions.

The lease rent revenues will be used to support DHHL's respective beneficiaries and programs. Proposed uses that are controversial and incompatible with the character of the surrounding neighborhood or create significant negative impacts on the community may be disqualified.

To be eligible for consideration as general lessee, each interested party must submit an application, including supporting documents, that meet certain criteria described in more detail within this Information Packet. An initial review of all completed applications received by the established deadline shall determine which applicants are "qualified" to be invited to attend the Public Auction and Bid Opening. The qualified Applicant submitting the highest sealed bid will be selected.

## **General Information:**

- **Authorization:** The disposition of the DHHL properties, is authorized by Section 204(a)(2), Hawaiian Homes Commission Act, 1920, as amended and shall along with the DLNR parcels be further subject to the provisions of Section 171-59(a) of the Hawaii Revised Statutes (“HRS”), as amended. All interested applicants are hereby advised to comply with the disposition process as described specifically throughout this Information Packet.<sup>1</sup>
- **Subject Properties to be Leased in “As Is” Condition:** The Subject Properties shall be leased in an “as is” condition, and DHHL make no representations regarding the condition of the Subject Properties or the suitability of the property for any development proposed by any applicant. Applicants shall, at their sole expense, be responsible for conducting their own investigations and due diligence regarding the Subject Properties.
- **Permitted Uses:** The Subject Properties are being offered for Industrial (I-2) Use development. Improvements and uses within the DHHL Parcel shall conform to those allowed in a I-2 zoning classification use and all applicable permit requirements consistent therewith. Operation of a scrap metal yard, junk yard and similar type operations, and bulk storage of flammable and explosive products shall be prohibited.
- **Chapter 343, Environmental Assessment:** Prior to commencement of any construction on the site, the Applicant/Lessee shall comply with Chapter 343 of the Hawaii Revised Statutes, as amended, which requires that an assessment be made to determine the impacts the proposed development may have on the surrounding community and environment. Such compliance shall be considered completed upon the issuance of a Finding of No Significant Impact (FONSI) or final approval and acceptance of an Environmental Impact Statement (EIS), whichever is applicable.
- **Utilities:** All public utilities, including water, sewer and electricity are available to serve the Subject Properties along and within surrounding public roadways, but may or may not be adequate to serve the successful bidder’s proposed development project. The successful bidder shall be responsible for obtaining the necessary utility services for its development project, and any required upgrades, infrastructure, improvements, and connections shall be done at the successful bidder sole expense.

**Cancellation or Modification of Proposed Disposition:** DHHL reserves the right to amend, modify, or cancel this proposed disposition or any portions of this proposed disposition by written notice from the Chairperson of the Hawaiian Homes Commission. DHHL also reserve the right to waive any submittal requirements, request/require modifications to any submittal, request/require additional information or clarification from any applicant or reject all submittals when it is in the best interest of DHHL.

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<sup>1</sup> The issuance of this Information Packet was authorized by the Hawaiian Homes Commission on September 18-19, 2023 (Agenda Item F-9).

## II. LEGAL PUBLIC NOTICE

**LEGAL PUBLIC NOTICE FOR  
PROPOSED DISPOSITION OF GENERAL LEASES BY NEGOTIATION  
FOR INDUSTRIAL (I-2) USE PROPERTY  
Property Location: Moanalua Kai, Shafter Flats, Honolulu, Island of Oahu**

The Department of Hawaiian Home Lands (DHHL) intends to dispose of lands by public auction. As authorized by §204(a)(2), Hawaiian Homes Commission Act, 1920, as amended, individuals, companies and/or corporations interested in leasing the property herein described shall have forty-five (45) days from the date this “LEGAL NOTICE OF PUBLIC AUCTION” is first published, that date being **June 3, 2024**, in which to submit completed applications for DHHL consideration.

All applications submitted by **4:00 p.m. on Wednesday, July 17, 2024**, will undergo review. Only those applications that satisfy DHHL’s initial objectives and criteria and are deemed “qualified” will receive written notification by **Wednesday, July 31, 2024**, confirming their qualification to participate in the Auction process. Qualified applicants may then attend and bid at the scheduled Public Auction as outlined below:

**DATE & TIME:**            **Friday, September 27, 2024, at 10:00 a.m.**

**LOCATION:**                **DHHL Kapolei Office, Hale Pono’i  
91-5420 Kapolei Parkway, Kapolei, Oahu**

### Basic Lease Terms

The industrial leases offered by DHHL shall include the following basic terms:

#### A. Land to be disposed:

1. Four (4) industrial lots (Lots 17 & 18 will be combined), situate at Shafter Flats Industrial Development, Moanalua, Island of Oahu. The minimum upset ground rent as shown in the Table below will be basis for the interested and qualified applicant/bidder to bid on for Year 1 of the lease term. There are existing warehouse/office buildings on each of the properties and will be included as part of the lease.

<u>Lot No.</u>	<u>Tax Map Key</u>	<u>Land Area</u>	<u>Upset Rental</u>	<u>Per Annum</u>
17 & 18	(1) 1-1-064:019 & 020	50,000/sf	\$425,000.00	2.5% escalation
20	(1) 1-1-064:022	25,000/sf	\$212,500.00	2.5% escalation
5	(1) 1-1-064:031	20,787/sf	\$181,900.00	2.5% escalation

2. **Sealed Rent Bids:** This disposition will be conducted by sealed bid for the Subject Properties. Applicants must submit sealed lease rent bids, for the subject property and/or properties they are interested in. Each lease rent bid shall be adjusted and escalate at 2-1/2% per annum from the successful sealed bid for the term of the lease, and must be in an amount equal to or greater than the minimum upset rents stated above. The applicant that submits the highest total bid for each respective lease will be deemed the “successful bidder” and will enter exclusive negotiations with DHHL for a general lease.
3. **Earnest Money “Bid” Deposits:** Eligible applicants shall, together with their detailed development plan and sealed rent proposal, remit earnest money deposits consisting of one (1) separate payment in the form of cashier’s or certified checks for assurance of successful bidder’s commitment to this proposed

disposition. With respect to the subject properties being offered payments shall be made payable to the Department of Hawaiian Home Lands as follows:

Lot No.	Tax Map Key	Earnest Money "Bid" Deposit
17 & 18	(1) 1-1-064:019 & 020	\$106,250.00
20	(1) 1-1-064:022	\$53,125.00
5	(1) 1-1-064:031	\$45,475.00

Earnest money deposits shall be held uncashed by DHHL until the successful bidder has been determined. Earnest money deposits submitted by unsuccessful bidders shall be returned.

4. Character of Use: The leased premises shall be allowed to be used under the existing County Zoning regulation for "I-2 Intensive Industrial District" purposes only. Operation of any scrap metal yard, junk yard and similar type operations, and bulk storage of flammable and explosive products shall be prohibited.
5. Lease Term: Thirty (30) Years; to commence from the first day of the calendar month following the execution of a general lease document.
6. Rental Payment: Monthly, in advance.
7. Improvement Requirements: Successful applicants shall submit a renovation plan for the improvements to the leased premises, in an amount of no less than \$200,000.00, within six (6) months from commencement of the lease and complete the renovation within thirty (30) months from plan approval using new material and in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County government.

Existing Improvements:

- Lot 17 Warehouse of 14,873 *sf*, built in 1969, with an adjacent on-grade surface parking area
- Lot 18 Warehouse of 14,873 *sf*, built in 1969, with an adjacent on-grade surface parking area
- Lot 20 Warehouse of 15,700 *sf*, built in 1969, with a 5,265 *sf* mezzanine, and an adjacent on-grade surface parking area
- Lot 5 Warehouse and ancillary office building of 17,256 *sf*; built in 1972, with an adjacent on-grade surface parking area

All existing warehouse/office buildings and/or improvements will be included in the lease in "As Is" condition, with the Lessee assuming all responsibility in the repair and maintenance of the building improvements.

8. Rental Reopening's: Annual lease rent shall be adjusted and escalate at 2.5% per annum from the successful sealed bid for the remaining of the term of the lease.
9. Ingress, Egress and Utilities: The Lessee shall, at its own cost and expense, be required to provide its own ingress, egress, and utilities to the demised premises.
10. Assignment/Subletting: The Lessee's ability to assign the lease or sublet the leased premises shall be limited by the terms of the lease and by statutes. The Lessor shall have the right to revise the rent based upon the rental rate charged to the sublessee(s).
11. Bond and Other Terms and Conditions: Refer to Conduct of Disposition and Draft of Lease Document.

B. Additional Information

Packets containing an application form, property information and other requirements for completing the application process are available for pick up by prospective applicants during regular office hours at DHHL's Kapolei Office located at 91-5420 Kapolei Parkway, Kapolei 96707 or can be downloaded from DHHL's official website. This Legal Notice of Public Auction, Application Qualification, Criteria, and Guidelines, Applicant and Qualification Form, Public Auction Guidelines, Conduct of Disposition, General Property Information, including maps and description of the lots, and a draft of the lease document for complete and detailed terms, covenants and conditions to be observed and performed by the respective lessees, and public auction procedures are on file for public inspection during regular hours at the office of the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, and at the District Offices in Waimea, Hilo, Molokai, Maui and Kauai, or by visiting DHHL's website ([dhhl.hawaii.gov](http://dhhl.hawaii.gov)), which are by this reference incorporated herein and made a part hereof.


This proposed disposition is authorized by and may be cancelled, postponed, or continued from time to time as to all or any of the items listed hereunder by public announcement to that effect by order of the Chairperson, Hawaiian Homes Commission.

**The Application Form with all required information and attachments is due by July 17, 2024, at 4:00 p.m.** Only those applicants who have submitted applications by the above deadline and have been qualified by DHHL will be invited to participate in the public auction. Each applicant shall be informed, in writing, in advance of the auction date as to their eligibility to bid at the auction.

For additional information please contact Peter "Kahana" Albinio, Jr., General Professional at the Department of Hawaiian Home Lands, Land Management Division, at (808) 620-9451 or by email at [peter.k.albinio.jr@hawaii.gov](mailto:peter.k.albinio.jr@hawaii.gov).

DATE: 5/22/2023

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

By   
Kali Watson, Chairperson  
Hawaiian Homes Commission

Honolulu StarAdvertiser  
Website: <https://dhhl.hawaii.gov/asset-management/publicauctions/>  
(Local Newspaper Publication)  
Date: June 3, 2024

### III. APPLICATION QUALIFICATIONS CRITERIA & GUIDELINES

The Department of Hawaiian Home Lands (DHHL) has established the qualification criteria and sealed bid evaluation procedure described below to enable it 1) to identify applicants to bid for a general lease disposition of available industrial lots in Shafter Flat Industrial Development, Moanalua, Honolulu, Oahu; and 2) to select the qualified applicant with the highest sealed bid offer of rent to be paid to DHHL as Lessor under a general lease.

#### Qualification Guidelines

Each applicant must satisfy the following requirements:

1. The applicant shall establish that it has the **necessary experience** in Hawaii and is able to successfully complete an industrial development in Hawaii. To meet the criterion the applicant must demonstrate each of the following:
  - a) Must have worked in such capacity that will demonstrate experience in the specific area/field of operation in the State of Hawaii as the applicant's principal activity for not less than two of the last five years. The applicant may establish this eligibility by submitting a resume or income tax returns;
  - b) Must demonstrate knowledge and/or personal experience in dealing with federal, state, and county regulations and other agencies governing development of such projects. The applicant may establish eligibility by documenting participation in land use issues and the building permit process, either personally or through a consultant; and
  - c) Must submit a current Certificate of Good Standing (corporations only), a current Tax Clearance Certificate from both the federal and state departments of taxation.
2. The applicant must demonstrate the **feasibility of completing** a proposed development or renovation of existing improvements within a 36-months construction period. To enable DHHL to determine whether the applicant meets the criteria, the applicant is required to submit reports, plans and other documents described below. Because of the three-year requirement to complete improvements and/or renovations, the applicant should provide reports, plans etc. by the deadline for submitting applications and bids. The applicant must submit the information as described below:
  - a) The applicant's proposed plan;
  - b) A map or site plan showing the location of the proposed project and any related facilities;
  - c) A timeline that shows all major tasks that must be accomplished by the end of the three-year construction period. The applicant must detail how it expects to obtain the required Federal, State and/or County permits to complete the proposed project; and
  - d) A business profile on each entity which will be a principal member of the applicant's development team showing the experience of each in development, the resources each is proposing to commit to the project, and the role to be played by the entity in this proposed project.



Failure to complete and submit the information mentioned above will not automatically result in the applicant's failure to meet the feasibility criteria, however, such failure will be considered by DHHL in determining whether the applicant has the ability to complete the proposed project by the end of the required construction period.

3. The applicant shall possess the **financial capability to complete** the proposed project. To enable DHHL to determine whether the applicant meets the financial capability criterion, the applicant is required to submit each of the following:
  - a) A detailed budget/cost estimate showing the estimated cost of construction of the proposed project;
  - b) Current financial statements or tax returns for the applicant and each entity relied on by the applicant either to provide financing or to assist in obtaining such financing, e.g. by signing on or guaranteeing the financing;
  - c) Documents identifying all financial resources upon which the applicant is relying on to complete the proposed project together with evidence (such as a signed loan commitment or notice of intent to lease from prospective tenants) that financing is committed to the project; and
  - d) The applicant shall submit a bid deposit of \$xxxx (equivalent to three months of the upset annual rent for the first year) for the interested property, in the form of a cashier's check or certified check. The deposit from the applicant selected for negotiation will be non-refundable and will be applied to the lease rent upon signing of a lease. If no lease is entered into between DHHL and the selected applicant, the deposit will be retained by DHHL, provided only that DHHL conducts all lease negotiations in good faith. Deposits from applicants not selected for negotiation will be returned.

DHHL is the sole entity that will evaluate the applicant's financial qualifications. The evaluation will be based on the applicant's documentation of financial capability to complete the proposed project as submitted to DHHL. All contingencies to which any proposed financing is subject to must be described in the documents submitted with the Application.

4. The applicant must have a **feasibility plan for the operation and management** of the development project after construction. To enable DHHL to determine whether the applicant meets this criteria, the applicant is required to submit pro-formas showing income and expense items for the proposed project for the first five (5) years of operation.

An applicant may submit documentation in support of its application in addition to that required above, but failure to provide any required documentation may result in the failure of applicant to qualify.

## IV. APPLICATION AND QUALIFICATION FORM

For Industrial (I-2) Use Development  
of Hawaiian Home Lands situated in Shafter Flats Industrial Development,  
Moanalua, Honolulu, Island of Oahu

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Person to Contact / Title

\_\_\_\_\_  
Applicant's Address

\_\_\_\_\_  
Contact Person's Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Applicant's Telephone No.

\_\_\_\_\_  
Contact Person's Telephone No.

\_\_\_\_\_  
Applicant's Email Address

\_\_\_\_\_  
Contact Person's Email Address

List of Corporate Officers and Directors or Individual Partners, Joint Ventures or Owners.

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

NOTE: Please attach a separate page if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes.

Corporate Shareholders / Partners Holding 25% or More of the Outstanding Shares:

Name: _____	Name: _____
Title: _____	Title: _____
Telephone No.: _____	Telephone No.: _____
Address: _____	Address: _____
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Telephone No.: _____	Telephone No.: _____
Address: _____	Address: _____
_____	_____

Applicant intends to bid on the following parcels:

Property No. _____	TMK No.: _____
Intended Use _____	
Property No. _____	TMK No.: _____
Intended Use _____	
Property No. _____	TMK No.: _____
Intended Use _____	
Property No. _____	TMK No.: _____
Intended Use _____	

## **Project Description:**

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

**Project Development Team**

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

**Applicants shall include the following:**

- (a) If applicable a certified copy of the Articles of Incorporation.
- (b) If applicable a certified copy of the By-Laws.
- (c) If applicable, a certified copy of the Corporation Resolution.
- (d) If applicable, a certified copy of the Limited Liability Company Articles of Organization
- (e) If applicable, a certified copy of the Partnership Certificate.
- (f) If applicable, a certified copy of the Joint Venture Agreement.
- (g) A current Certificate of Good Standing from the Department of Commerce and Consumer Affairs.
- (h) A current Tax Clearance from the Department of Taxation and Internal Revenue Service.
- (i) Applicant’s proposed plan within 36-months construction period.
- (j) A map or site plan showing the location of the proposed project.
- (k) A timeline that shows all major tasks that must be accomplished by the end of the three-year construction period.

**Please attach a description of the Applicant’s company experience which supports the foregoing requirement and which includes the following information:**

- (a) A list of industrial / commercial projects developed;
- (b) The role of the applicant in developing the listed industrial/commercial projects;
- (c) A brief description of the industrial / commercial projects;
- (d) If applicable, a description of all industrial / commercial projects or facilities owned and operated by the applicants;
- (e) If applicable, a statement of the applicant’s past or current involvement with the Department of Hawaiian Home Lands (DHHL).

**Please attach the following which supports the financial capability to complete the proposed project (Please refer to Applicant Qualification Criteria for further details).**

- (a) Preliminary budget / cost estimate showing the estimated cost of construction;

- (b) Current financial statements or tax returns;
- (c) Documents identifying all financial resources;
- (d) A bid deposit equivalent to three (3) months of the upset annual rent for the property;
- (e) A pro-forma showing projected income and expenses for the proposed project; and
- (f) If applicable, a description of any financial default, modification of terms, and conditions of financing to avoid default, or legal actions taken or pending against the applicant and borrowing and guaranteeing entities and their principals.

Note: Financial information submitted to DHHL shall be kept confidential and shall not be considered as a public record as defined in Chapter 92, Hawaii Revised Statutes. Financial information shall not be released without the express written consent of the applicant.

THE UNDERSIGNED APPLICANT, understands that DHHL is relying on the information provided herein to qualify the undersigned as an eligible Applicant under the Hawaiian Homes Commission Act, 1920, as amended. The undersigned represents and warrants that the information provided is true and complete and that DHHL may consider the information as continuing to be true and correct until a written notice of a change is given to DHHL by the undersigned. The Undersigned agrees to provide any other information that DHHL deems necessary to determine the qualifications of the applicant.

\_\_\_\_\_  
**Name of Company/Individual**

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

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

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

## V. PUBLIC AUCTION GUIDELINES

The Public Auction Sealed Bid Opening shall be held on Friday, September 27, 2024 at 10:00 am at DHHL’s Kapolei Office, Hale Pono’i located at 91-5420 Kapolei Parkway, Kapolei, Oahu

Any person or entity shall be entitled to bid for a general lease at this auction, **except** a person who:

- a) Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;
- b) Is a minor;
- c) Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;
- d) Failure to submit a “completed application” as described in the Applicant Qualification Criteria included in this Information Packet, a sealed rent proposal, or advanced rent deposit in certified or cashier’s check, payable to the Department of Hawaiian Home Lands in the amount as shown below, an amount equal to one-fourth of the minimum upset annual rental for each available lot:

<u>Tax Map Key No.</u>	<u>Annual Upset Rent</u>	<u>Advanced Rent Due</u>
(1) 1-1-064:018 & 019	\$425,000.00	\$106,250.00
(1) 1-1-064:020	\$212,500.00	\$ 53,125.00
(1) 1-1-064:033	\$181,900.00	\$ 45,475.00

- e) Failure to meet the eligibility criteria as outlined in the Applicant Qualification Guidelines and has been informed by DHHL, in writing, that applicant has not met the eligibility criteria.

Further, all prospective bidders must be pre-qualified pursuant to the qualification criteria as referenced above and will be invited to attend the public auction. All sealed bid envelopes from qualified and eligible bidders shall be opened for the first time and the highest bidder shall be declared the “Successful Bidder”. All qualified bidders or authorized corporation representatives **must be present in person** at the auction with proper identification.

DHHL reserves the right to negotiate with respect to any and all terms and conditions of the lease including all rent provisions, provided, however, that any negotiated adjustments to the rent do no result in such adjustments being less than the amount of rent offered by the prospective bidder. The annual rental for the second year through the thirtieth year shall be stepped up at two and one-half percent (2.5%) per annum, compounded.

DHHL reserves the right to negotiate with the qualified applicant with the next highest offer, should the selected applicant fail to conclude negotiation with respect to the lease.

### Additional Information

All prospective bidders are responsible to thoroughly read and understand the terms, covenants, reservations and conditions of the lease offering by reviewing a copy of the Notice of Proposed Disposition, Applicant Qualification Criteria, Conduct of Disposition, the DHHL’s draft of the general lease document, and maps and legal descriptions of the lots available at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Oahu, or at

the DHHL District Offices in Hilo and Waimea, Hawaii; Hoolehua, Molokai; Wailuku, Maui and Lihue, Kauai, or by visiting DHHL’s website at [dhhl.hawaii.gov](http://dhhl.hawaii.gov).

All prospective bidders are encouraged to physically inspect the available parcels, provided that DHHL is indemnified and held harmless from personal injury or damages that resulted from such property inspection. You may make an appointment for a site visit by contacting DHHL’s Land Management Division at 620-9450, on Oahu.

**SIGNIFICANT DATES AND DEADLINES:**

- **Monday, June 3, 2024**                      Advertisement of Legal Public Notice
  
- **Wednesday, July 17, 2024**              Step One – Applicant Qualification Deadline Due:  
Completed Applications with supporting documents  
**Time: 4:00 p.m. (HST)**  
Location: Department of Hawaiian Home Lands  
                  91-5420 Kapolei Parkway  
                  Kapolei, Hawaii 96707
  
- **Wednesday, July 31, 2024**              Notify “Qualified Applicant(s)”
  
- **Friday, September 27, 2024**              Sealed Bid Opening  
**Time: 10:00 a.m. (HST)**  
Location: Department of Hawaiian Home Lands  
                  91-5420 Kapolei Parkway  
                  Kapolei, Hawaii 96707



## VI. CONDUCT OF DISPOSITION

The following procedures, terms and conditions are applicable to this disposition of general leases of Hawaiian home lands by public auction.

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

### A. PRE-SELECTION PROCEDURE:

1. File the Application Form for a negotiated general lease and submit to DHHL no later than **4:00 p.m. Wednesday, July 17, 2024**. Application should consist of:
  - a. Application Form
  - b. Business Information Form
  - c. Proposal to lease Hawaiian home lands and information requested for the construction and/or redevelopment for industrial use (Refer to Applicant Qualification Criteria)
  - d. A bid deposit equivalent to twenty-five percent (25%) of the upset annual rent for the first year in the form of cashier's check or certified check. (Refer to Applicant Qualification Criteria)
2. An application may be rejected for any of the following reasons:
  - a. If the Application is late, conditional, incomplete or does not adhere to the format and instructions;
  - b. If it is shown that inaccurate statements were stated in the Application;
  - c. If the Application fails to meet any of the qualifying criteria (Refer to Applicant Qualification Criteria); or
  - d. If it is not in the best interest of DHHL of Hawaiian Home Lands' Trust beneficiaries.
3. DHHL will notify each prospective applicant, in writing, in advance of the date of the auction as to the applicant's eligibility or non-eligibility to participate in this proposed negotiation and disposition. Any applicant may examine the basis of DHHL's determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by DHHL were followed; provided that, if any applicant with objections does not notify DHHL, and the grounds therefor, in writing, within twenty (20) days of the receipt of the notification, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of DHHL to follow the conditions and criteria.
4. If there is only one eligible applicant, DHHL, may, after notice as provided in Paragraph 3 above, negotiate the details of the lease disposition (Refer to Applicant Qualification Criteria).
5. If there are two or more applicants, selection of the lessee shall be made by sealed bids. The time of the opening of such tenders shall be after the deadline for applicants to file written objections has passed. All sealed bids delivered to DHHL with the application shall be opened by DHHL at the hour and place to be stated in the Notice. All qualified bidders or authorized corporate representatives must be present in person at the auction. All qualified bidders must bring a picture identification card and funds pursuant to section "d" of the Public Auction Guidelines. All bids which do not comply with the requirements of the call for tenders shall be rejected.

DHHL shall select the applicant who submits the highest bid. The successful bid shall be no less than the upset annual rental stated in the Legal Notice of Proposed Disposition.

6. Notwithstanding the above paragraph, DHHL may reject any or all bids and waive any defects when, in its opinion, such rejection or waiver will be for the best interests of its beneficiaries.

**B. DUTIES OF SUCCESSFUL BIDDER**

1. Execute a Memorandum of Lease respecting the successful bidder's award of the lease, and pay twenty-five percent (25%) of the annual upset rent in cash, certified check or cashier's check (refer to Applicant Qualification Criteria).
2. Within one (1) working day from the date of award of the lease, the bidder must execute an affidavit stating that they are not in arrears in the payment of taxes, rents or other obligations owing the State of Hawaii or any of its political subdivisions, and that they have not had any leases, licenses or permits that were issued by the State of Hawaii or its political subdivisions, rescinded, cancelled or terminated due to the bidder's lack of performance within the last five (5) years.
3. Within one (1) working day from the date of award of the lease, the bidder must pay the difference between the 25% of bid annual rental at the fall of the hammer and the 25% of the annual upset rental, if there is a difference and all estimated charges in connection with this negotiated disposition, as required by law, including the cost of appraisal, survey, documentation, printing, advertising, conveyance tax, and all other incidental costs incurred by DHHL. If there is an excess of estimated charges, it will be returned to the successful bidder. The estimated charges are not payable from applicant's bid deposit and are in addition to any other payment required by the lease.
4. Within seven (7) working days from the date of award of the lease, furnish State of Hawaii and County tax clearances, showing that the successful bidder is not in arrears in payment of taxes and other obligations to the State of Hawaii or the County in which the premises are located at the time of the award of the lease and up to and including the date of the tax clearances.
5. Within reasonable time following such award, the lease document shall be tendered to the successful bidder for execution. The successful bidder shall have thirty (30) days in which to execute the document and submit the performance bond and insurance certificates specified in the lease.
6. Upon signing of the lease, lessee will pay all outstanding legal and consultant charges associated with the disposition.

**C. CANCELLATION**


DHHL requires that lease negotiations be concluded and a lease signed no later than ninety (90) days following the selection of the successful bidder provided that, for good cause shown, an extension of time to the negotiation period may be granted with approval of the Chairman, Hawaiian Homes Commission.

In the event the successful bidder fails to comply with the requirements as described above, DHHL may, in its option, cancel the award, thereby terminating any and all rights pursuant to the disposition of the

defaulting awardee and retain any amounts paid by the successful bidder as damages. The foregoing shall not exclude any other remedies available to DHHL.

Dated: 5/22/2024

DEPARTMENT OF HAWAIIAN HOME LANDS

By   
Kali Watson, Chairperson  
Hawaiian Homes Commission

## VII. GENERAL PROPERTY INFORMATION

### FOR INDUSTRIAL (I-2) USE DEVELOPMENT SHAFTER FLATS INDUSTRIAL DEVELOPMENT MOANALUA, HONOLULU, ISLAND OF OAHU

The Department of Hawaiian Home Lands (DHHL) owns 13.82 acres in 20 tax map key (TMK) parcels located on the Island of Oahu, within the ahupua'a of Moanalua, in an area known as Mapunapuna or Shafter Flats. The four (4) parcels being offered range from 20,787 to 25,000 square feet. The properties are accessed via the City-owned and managed Kilihau Street, which runs parallel to North Nimitz Highway. DHHL has designated these parcels for intensive industrial (I-2) development consistent with the surrounding area. The properties are relatively flat and generally slopes from the northern to the southern portions of the properties. Certain makai areas of the properties experienced drainage and ponding issues during heavy rains and high tides, particularly around the intersection of Kakoi and Kilihau Streets.

In general, the Mapunapuna/Shafter Flats area is characterized by a mix of commercial, light and heavy industrial uses. The properties are located in close proximity (approximately 0.8 miles) to the Honolulu International Airport. The properties have good access to urban Honolulu and the remainder of the island due to the proximity to North Nimitz Highway, a major arterial extending from Waikiki via Ala Moana Boulevard to Pearl Harbor.

Legal Description – A copy of the legal description for each subject property is included in the Information Packet (See Exhibits A & B, immediately following this Section).

Land Area – The parcels range from 20,787 to 50,000 square feet as shown below:

	Lot No.	Tax Map Key No.	Address	Land Area
1	17 & 18	(1) 1-1-064:019/020	2696/2688 Kilihau Street, Honolulu, HI 96819	50,000 <i>sf</i>
2	20	(1) 1-1-064:022	2670 Kilihau Street, Honolulu, HI 96819	25,000 <i>sf</i>
3	5	(1) 1-1-064:031	2627 Kilihau Street, Honolulu, HI 96819	20,787 <i>sf</i>

County Zoning – All properties are currently zoned I-2, Intensive Industrial. Although DHHL is not subject to county and state land use zoning, it intends to continue with the current zoning guidelines for planning and permitting purposes.

The purpose of the I-2 district is to recognize the importance of industrial uses to the welfare of City residents by providing areas for industrial uses without undue competition from other uses and ensuring compatibility with non-industrial areas. Typical uses include manufacturing, refining, sorting, processing and storage of materials and products. Limited business activities that directly support the industrial uses or those employed by industries therein are permitted in this district.

Transit Oriented Development Area – All properties are within the Transit Oriented Development Area (TOD) of the Lagoon Drive Station. Under the Airport Area Transit Oriented Development Plan adopted in March 2022, land uses in the vicinity of the subject property are envisioned to be oriented towards mixed use industrial and commercial uses.

Flood Hazard District – Based upon the Federal Insurance Rate Maps, the properties are located with Map Number 15003C0243H, dated November 5, 2014 and is located in Zone AE. Zone AE indicates areas determined to be within the 1% annual chance flood with base flood elevation determined.

Periodic flooding during high tides and severe weather events has been and continues to be an issue in the Shafter Flats area. Improvements have been made by the City & County of Honolulu to mitigate flooding issues. However, it is not uncommon for some salt water ponding to occur along and within Kilihau Street during normal high tides. More extensive flooding occurs during King Tide events during the summer months.

Utilities – All public utilities including water, sanitary sewer, gas, electricity, telephone, cable and wireless internet services are available to the properties. There are no known capacity constraints that would impact the use or redevelopment of the properties.

Improvements – The building area and other property estimates are preliminary and are subject to verification by professional survey.

	Lot No.	Tax Map Key No.	Improvements
1	17 & 18	(1) 1-1-064:019 & 020	Warehouse; 14,873 <i>sf</i> ; built in 1969 Warehouse; 14,873 <i>sf</i> ; built in 1969 Adjacent on-grade surface parking area
2	20	(1) 1-1-064:022	Warehouse; 15,700 <i>sf</i> ; built in 1969, with a 5,265 <i>sf</i> mezzanine, and an adjacent on-grade surface parking area
3	5	(1) 1-1-064:031	Warehouse and ancillary office building of 17,256 <i>sf</i> ; built in 1972, with an adjacent on-grade surface parking area

Hazardous Materials/Contaminants – An assessment or investigation for possible hazardous material or contamination has not been conducted for these parcels.

For additional information or to schedule a site inspection, please contact Peter “Kahana” Albinio, Jr., General Professional, at (808) 620-9451 or by email at [peter.k.albinio.jr@hawaii.gov](mailto:peter.k.albinio.jr@hawaii.gov). Due to the limited number of copies of the appraisal reports, they may be reviewed in but not removed from DHHL office. To make an appointment to review these reports, please contact Abby Tubera at (808) 620-9450.

# EXHIBIT A

## Metes and Bounds Description and Survey Map



C.S.F. No. 26,032

STATE OF HAWAII  
LAND SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

November 24, 2023

(REVISED – NOVEMBER 2023)  
SHAFTER FLATS INDUSTRIAL DEVELOPMENT  
UNIT III  
LOT 5  
Moanalua, Honolulu, Oahu, Hawaii

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

- Beginning at the southwest corner of this parcel of land, at the northwest corner of Lot 4 of Shafter Flats Industrial Development, Unit III, and on the east side of Kilihau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 10,095.61 feet South and 4627.28 feet East, thence running by azimuths measured clockwise from True South:-
1. 189° 04' 36.35" feet along the east side of Kilihau Street;
  2. Thence along the east side of Kilihau Street on a curve to the right with a radius of 40,00 feet, the chord azimuth and distance being:  
211° 51' 10" 30.98 feet;

- 1 -

C.S.F. No. 26,032

November 24, 2023

3. Thence along the east side of Kilihau Street on a curve to the left with a radius of 60,00 feet, the chord azimuth and distance being:  
197° 57' 10" 71.69 feet;
4. 267° 00' 141.12 feet along Lot 4 of Shafter Flats Industrial Development, Unit II;
5. 356° 08' 125.00 feet along the west side of Moanalua Stream;
6. 86° 08' 193.98 feet along Lot 4 of Shafter Flats Industrial Development, Unit III to the point of beginning and containing an AREA OF 20,787 SQUARE FEET.

LAND SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

Compiled from H.S.S., Plat 2146-C  
and Oahu File Folder 5.

By: *Meyer A. Cummins*  
Meyer A. Cummins  
Land Surveyor ap

- 2 -



STATE OF HAWAII  
 LAND SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
 HONOLULU

C.S.F. No. 26024

November 24, 2023

(REVISED - NOVEMBER 2023)  
 SHAFTER FLATS INDUSTRIAL DEVELOPMENT  
 UNIT I

LOT 17

Moanalua, Honolulu, Oahu, Hawaii

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

- Beginning at the southwest corner of this parcel of land, at the southeast corner of Lot 16 of Shafter Flats Industrial Development, Unit I, and on the north side of Kihian Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 10,163.03 feet South and 4067.30 feet East, thence running by azimuths measured clockwise from True South:-
1. 189° 04' 250.00 feet along Lot 16 of Shafter Flats Industrial Development, Unit I;
  2. 279° 04' 100.00 feet along Lot 15 of Shafter Flats Industrial Development, Unit I;
  3. 9° 04' 250.00 feet along Lot 18 of Shafter Flats Industrial Development, Unit I;

- 1 -

C.S.F. No. 26024

November 24, 2023

4. 99° 04' 100.00 feet along the north side of Kihian Street to the point of beginning and containing an AREA OF 25,000 SQUARE FEET.

LAND SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
 STATE OF HAWAII

By: *Meyer A. Cummins*  
 Meyer A. Cummins  
 Land Surveyor

Compiled from H.S.S. Plat 2146-B  
 and Oahu File Folder 2.

ap

- 2 -



STATE OF HAWAII  
 LAND SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
 HONOLULU

C.S.F. No. 26025

November 24, 2023

(REVISED - NOVEMBER 2023)  
 SHAFTER FLATS INDUSTRIAL DEVELOPMENT  
 UNIT I

LOT 18

Moanalua, Honolulu, Oahu, Hawaii

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

- Beginning at the southwest corner of this parcel of land, at the southwest corner of Lot 19 of Shafter Flats Industrial Development, Unit I, and on the north side of Kihaha Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 10,194.55 feet South and 4259.80 feet East, thence running by azimuths measured clockwise from True South:-
1. 99° 04' 100.00 feet along the north side of Kihaha Street;
  2. 189° 04' 250.00 feet along Lot 17 of Shafter Flats Industrial Development, Unit I;

- 1 -

C.S.F. No. 26025

November 24, 2023

3. 279° 04' 100.00 feet along Lot 15 of Shafter Flats Industrial Development, Unit I and Lot 3 of Shafter Flats Industrial Development, Unit II, Governor's Executive Order 2441;
4. 9° 04' 250.00 feet along Lot 19 of Shafter Flats Industrial Development, Unit I to the point of beginning and containing an AREA OF 25,000 SQUARE FEET.

LAND SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
 STATE OF HAWAII

By:   
 Meyel A. Cummins  
 Land Surveyor

ap

Compiled from H.S.S. Plat 2146-B  
 and Oahu File Folder 2.





STATE OF HAWAII  
LAND SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 26.027

November 24, 2023

(REVISED - NOVEMBER 2023)  
SHAFTER FLATS INDUSTRIAL DEVELOPMENT  
UNIT I

LOT 20

Moanalua, Honolulu, Oahu, Hawaii

Being a portion of the filled land of Moanalua Fishery acquired by the Territory of Hawaii by Final Order of Condemnation Law No. 16653 dated July 18, 1946 and recorded in Liber 1981, Pages 81 to 94 (Land Office Deed 7995) and by quitclaim deed by Samuel M. Damon Estate dated June 20, 1946 and recorded in Liber 2914, Page 438 (Land Office Deed 7993), set aside as Fort Shafter Military Reservation by Governor's Executive Order 1273 and subsequently quitclaimed to the State of Hawaii by the United States of America by deed dated March 15, 1963 and recorded in Liber 4485, Page 501 (Land Office Deed S-19997).

Beginning at the southwest corner of this parcel of land, at the southeast corner of Lot 19 of Shafter Flats Industrial Development, Unit I, and on the north side of Kilihau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 10,210.31 feet South and 4,358.55 feet East, thence running by azimuths measured clockwise from True South:-

- 1. 189° 04' 250.00 feet along Lot 19 of Shafter Flats Industrial Development, Unit I;
- 2. 279° 04' 100.00 feet along Lot 3 of Shafter Flats Industrial Development, Unit II, Governor's Executive Order 2441;

- 1 -

C.S.F. No. 26.027

November 24, 2023

- 3. 9° 04' 250.00 feet along Lot 2 and Lot 1 of Shafter Flats Industrial Development, Unit III;
- 4. 99° 04' 100.00 feet along the north side of Kilihau Street to the point of beginning and containing an AREA OF 25,000 SQUARE FEET.

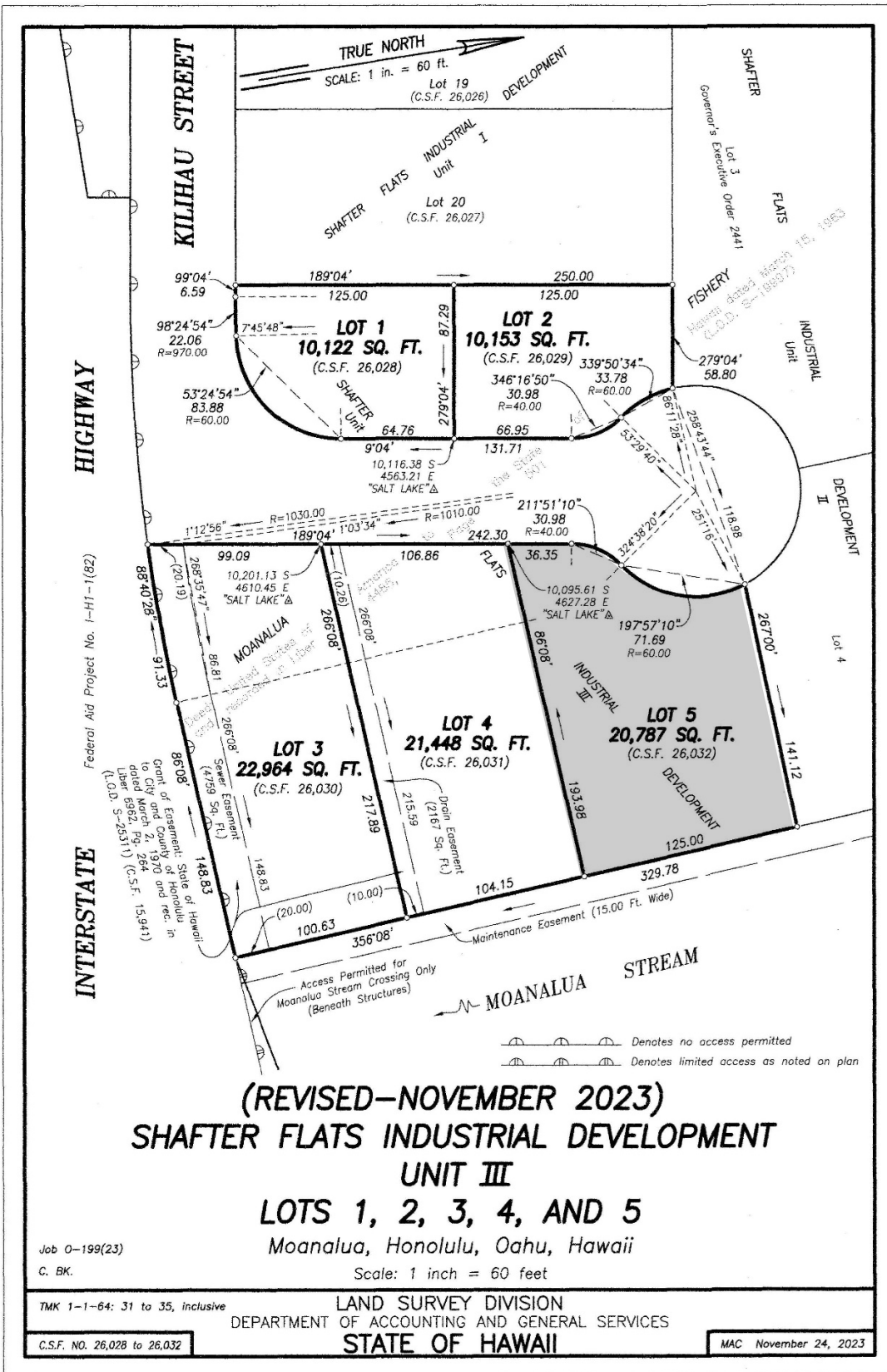
LAND SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

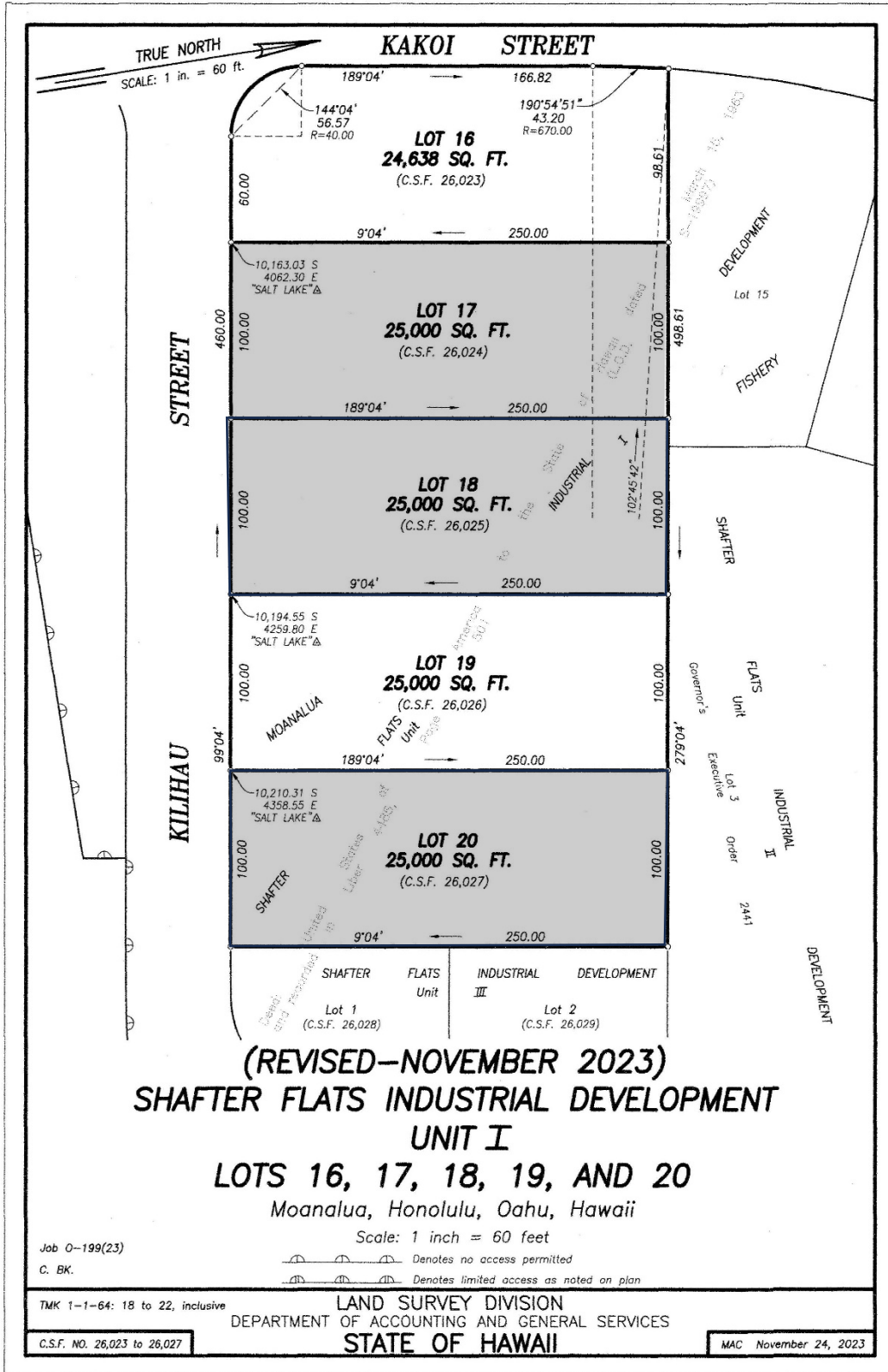
Compiled from H.S.S. Plat 2146-B  
and Oahu File Folder 2.

By: *Meyer A. Cummins*  
Meyer A. Cummins  
Land Surveyor



ap

- 2 -





Job 0-199(23)  
C. BK.

Scale: 1 inch = 60 feet  
 Denotes no access permitted  
 Denotes limited access as noted on plan

TMK 1-1-64: 18 to 22, inclusive

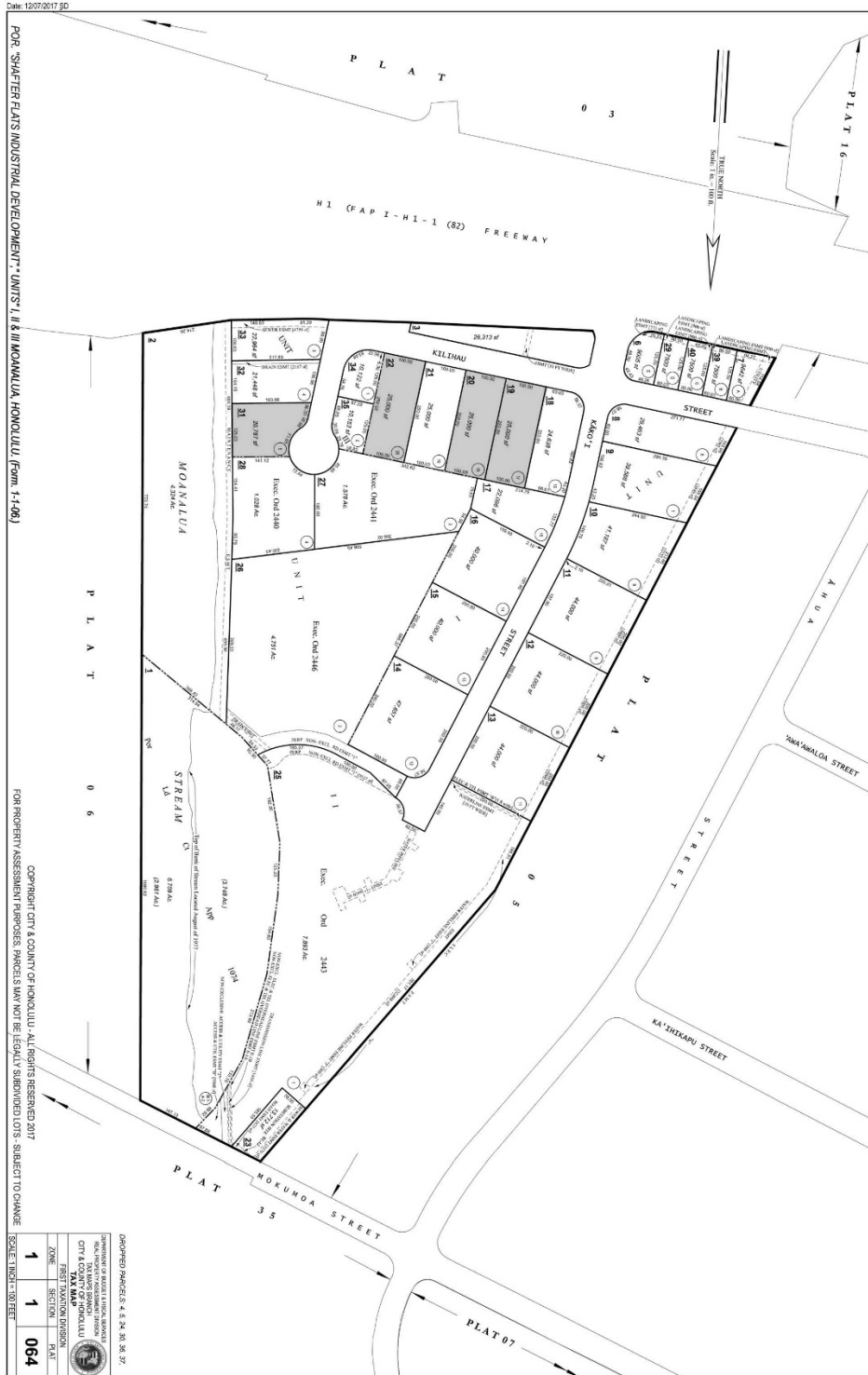
LAND SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

C.S.F. NO. 26,023 to 26,027

MAC November 24, 2023

# EXHIBIT B

## Current Tax Map Key Map



**EXHIBIT C**  
Copy of Standard General Lease Document  
Attached

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

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

between

STATE OF HAWAII

and

---

covering

HAWAIIAN HOME LANDS

situate at

Tax Map Key (1) 1-1-064: \_\_\_\_\_  
Shafter Flats Industrial Development  
Moanalua, Honolulu, Island of Oahu

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EXHIBITS

“A”	Legal Description of Premises
“B”	Subdivision Map
“C”	Sublease Rent Participation Policy
“C-1”	Additional Notes to Sublease Participation Policy
“D”	Memorandum of Lease

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

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

THIS INDENTURE OF LEASE (the "Lease"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, but shall be effective on the date set forth below, by and between the STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and \_\_\_\_\_, a \_\_\_\_\_ (sole proprietor or \_\_\_\_\_ corporation), whose business and mailing address is \_\_\_\_\_, hereinafter called "LESSEE."

WITNESSETH:

**ARTICLE ONE**  
**DEMISE**

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Shafter Flats Industrial Development, Moanalua, Honolulu, City & County of Honolulu, State of Hawaii, and further identified as Lot \_\_, also further identified as TMK No. (1) 1-1-064:xxx, comprising \_\_\_\_\_ acre, more or less, of Hawaiian Home Lands, more particularly described in **Exhibit "A"**, and as shown on the map marked **Exhibit "B"**, both attached hereto and made a part hereof ("Premises").

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term of fifty-five (55) years commencing on \_\_\_\_\_ (which shall be the Effective Date of the Lease), and ending as of midnight on \_\_\_\_\_ unless sooner terminated as hereinafter provided.

**ARTICLE TWO**  
**RESERVATIONS AND RIGHT OF WITHDRAWAL**

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term

of this Lease. "Minerals," as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE's permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR's ownership of the mineral rights pursuant to §171-58 and §182-2 of the Hawaii Revised Statutes, as amended.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the "Act"), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE's improvements so withdrawn or rendered unsuitable for LESSEE's intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Two.

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

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE's permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE's reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 16, titled Surrender, of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

**ARTICLE THREE**  
**RENTAL**

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

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR's principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_.00) per annum (\$\_\_\_\_\_.\_\_ per month);

Lease years 11 through 20: \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
per annum (\$\_\_\_\_\_.\_\_ per month);

Lease years 21 through 55: Annual base rental shall be reopened as provided in Section 2 below.

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

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twentieth (20th) lease year of the term for the next ensuing ten-year period comprising lease years 21-30 and shall be reopened and re-determined at the expiration of the thirtieth (30<sup>th</sup>) lease year for the next ensuing ten-year period comprising lease years 31-40, and for the final fifteen years for lease year 41-55, the annual base rent shall be reopened and re-determined, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the "fair market rental value" of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR's appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR's appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes, as amended. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery

of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent. In no event shall the annual base rental determined by appraisal for any 10-year period be less than the annual base rent for the preceding 5-year or 10-year period. Notwithstanding the above, in the event that LESSOR and LESSEE shall fail to mutually agree upon the fair market rental value of the Premises for any 10-year period, and the Rent is thereafter determined by the appraisal procedure described above, then LESSEE may elect, if the Rent determine by the appraisal is not acceptable to LESSEE, to surrender all, but not part, of its right, title and interest under this Lease, provided, however, that any such election to terminate and surrender must be made by LESSEE within thirty (30) days of the date the appraisers deliver their determination and shall be effective only if LESSOR is provided written notice of the election within the thirty (30) days.

#### ARTICLE FOUR

##### THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.
2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall

defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements.

4. Improvements Required by Law. LESSEE will, at LESSEE's own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE will at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and will defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable notice, LESSEE will permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE will repair and make good at LESSEE's own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR's agents or employees in effecting any such repairs), and LESSEE will pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements.

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

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

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

(d) Construction Bond Requirements. LESSEE will, before commencing construction of any improvements within the Premises in excess of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00), deposit with LESSOR either (i) copies of the contractor's performance bond (HS/AIA Document A311 or its equivalent), and a labor and material payment bond (HS/AIA Document A311 or its equivalent), naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics' and materialmen's liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR's reasonable judgement, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic's and materialman's liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.



(e) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. Seq., the Architectural Barriers Act of 1968, 42, U.S.C.4151 et. Seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C.790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called "Public Accommodations Laws").

(ii) Responsibility for Compliance. Notwithstanding LESSOR'S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney's fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE's alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR's investigation and handling (including the defense) of LESSEE's failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR's ownership of the Premises; and (D) LESSOR's enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE will, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

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

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

Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

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

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

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

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

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

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

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

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE's subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to

be an assignment and shall require Landlord's consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent's shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the lease rent of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit "C", said Policy to be interpreted and applied and calculated, for purposes of this Lease, as indicated in Exhibit "C-1" entitled "Additional Notes to Sublease Participation Policy" attached hereto; (b) the base rent may not be revised downward; and (c) any such subletting shall be subject to Section 12 of this Article Four. The term of any such sublease shall not exceed the term of this Lease.

11. Liens. LESSEE will not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE's obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises will be used only for the following purposes: Industrial related uses permitted under I-2 Intensive Industrial District use only. In no event shall the Premises be used for the construction of any residential lots, units or project. Operation of a scrap metal yard, junk yard and similar type of operations, and bulk storage of flammable and explosive products shall be prohibited.

13. Indemnity.

(a) LESSEE will indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and

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

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

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the party joined without fault on its part.

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

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE's business, whether made or acquired at LESSEE's, LESSOR's or at another's expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO

policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR's prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

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

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

(b) Liability Insurance.

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

(1) Limits. Limits for such coverage shall be \$1,000,000 per occurrence, \$2,000,000 aggregate.

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

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

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

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

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

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$2,000,000 per policy year and a self-insured retention and/or deductible no greater than \$10,000.

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

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

an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

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

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR's satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE's expense and LESSEE will, within thirty (30) days from LESSEE's receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by

LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to one hundred fifty percent (150%) of the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

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

17. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR's standard fees for LESSOR's processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

18. Hazardous Materials.

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

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

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto.



LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

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

The covenants of this Section 18 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE's interest in the Premises and shall continue in full force and effect for the benefit of LESSOR.

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

20. No Warranty. Except as expressly stated herein, LESSOR makes no representations or warranties with respect to the condition of the Premises, their compliance with applicable law or their suitability for LESSEE'S intended use. The Premises are being leased "AS

IS". LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR's surrounding lands may be subdivided, developed, improved, sold, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, sale, operation and use of the LESSOR's surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

21. Lease Performance Bond and Security Deposit. LESSEE will, at its own cost and expense, within thirty (30) days from the lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE will also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision will be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each lease rent reopening date. The deposit, if any amount left after reasonable and justifiable deductions, will be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

## ARTICLE FIVE

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

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans

replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE's interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term "holder" shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the "Mortgagee") shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as "notices", and each of them as a "notice") which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be "Mortgagee" for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given

in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days' additional written notice of LESSEE's failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE's rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) Mortgagee or its assigned of the Approved Mortgage shall be liable to perform the obligations herein imposed on LESSEE only during the period such person has possession or owner

(g) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee's lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE's bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee's receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the "Confirmation of Lease"), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE's part thereunder to be performed and observed from and after the date of such

assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE's property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE's property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE's liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE's part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon disposition which exceeds the fair market lease value of the land as previously determined by LESSOR's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE's personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 16 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE's use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR's right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts;



condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

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

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease, a form of which is attached hereto as Exhibit "D".

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

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

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

If to LESSOR:

Department of Hawaiian Home Lands  
Hale Kalaniana'ole  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707  
Attn: Land Management Division

And a copy to: Department of the Attorney General  
465 South King Street, Basement  
Honolulu, Hawaii 96813  
Attention: AG-PSHH

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

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"):

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.  
("RCRA")  
Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
("CERCLA") amended by Superfund Amendments and Reauthorization Act of  
1986 ("SARA"), 42 U.S.C. 9601 et seq.  
Clean Air Act, 42 U.S.C. Sections 7401 et seq.  
Clean Water Act of 1977, 33 U.S.C. 1251 et seq.  
Pesticide Act of 1978, 7 U.S.C. 13 et seq.  
Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq.  
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.  
Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.  
Emergency Planning and Community right to know Act, 42 U.S.C. 11001 et seq.  
Chapter 128D, Hawaii Revised Statutes  
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESSOR" shall mean and include LESSOR herein, its successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) "Rent" shall mean all amounts payable to LESSOR by LESSEE under Sections of this Lease, whether described herein as "Rent" or otherwise.

(h) 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.

(i) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

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

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

\_\_\_\_\_

APPROVED AS TO FORM:

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

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

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

LESSOR

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

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

LESSEE

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "B"  
SUBDIVISION MAP

**EXHIBIT "C"**  
**SUBLEASE RENT PARTICIPATION POLICY**

Sublease Rent Participation Approved by the Hawaiian  
Homes Commission on April 24, 1987

"That the Commission rescind its action of June 30, 1983 which adopted a sublease rent participation policy based on charging 10% of the gross sublease income for improvements (building space) and 20% of the general lessee's gross sublease income for raw land and that the following be approved effective August 1, 1982:

1. To limit the department's participation to only the land. To adopt the sublease rent participation formula shown on Exhibit "C".
2. In lieu of the sublease rent participation of 20% of the gross sublease income assessed for those subleases covering raw lands only, the department shall participate in 50% of the difference of the sublease income charged by the lessee that exceeds the proportionate base rent (less any general excise tax) under the terms of the lease.
3. All monies collected from current general lessees due to sublease rent participation be credited to future lease rental payments of the respective general lessee.
4. That for current subleasing activities approved by the Hawaiian Homes Commission (HHC), there shall be no increase in sublease rent participation due to the new policy."

Extract from Exhibit "C":

Gross Annual Sublease Rent	
LESS:	4% General Excise Tax (if paid by sublessor)
EQUALS:	Effective Annual Sublease Rent
LESS:	Allowances (costs and investment returns)
EQUALS:	Income Attributable to Land
LESS:	Allocated Basic Lease Rent
EQUALS:	Amount of Increase in Lease Rent Due to Subleasing (if any)
X 50% EQUALS:	Amount Due to DHHL

## DHHL SUBLEASE RENT PARTICIPATION POLICY

### DEFINITION OF TERMS

Refer to Worksheet

#### I. SUBLEASING OF BUILDING SPACE

- Line 1: GROSS ANNUAL SUBLEASE RENT  
The total sublease rent amount collected by a general lessee without any deductions
- Line 2: LESS 4% GENERAL EXCISE TAX  
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.
- Line 3: EFFECTIVE ANNUAL SUBLEASE RENT  
Gross annual sublease rent less State G.E. Tax.
- Line 4: LESS ALLOWANCES  
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.
- Line 4a: MANAGEMENT, CREDIT LOSS  
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.
- Line 4b: REPAIR and MAINTENANCE  
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.
- Line 4c: REAL PROPERTY TAXES  
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.
- Line 4d: INSURANCE PREMIUMS  
Premiums paid for fire/liability insurance policies.



- Line 4e: SURETY BOND PREMIUM  
Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of \$20 per \$1,000 of the surety amount unless detailed expenses are provided by the general lessee.
- Line 4f: RETURN OF INVESTMENT  
Return of general LESSEE's cost of improvements over the Term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.
- Line 4g: RETURN. ON INVESTMENT  
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.
- Line 5: INCOME ATTRIBUTABLE TO LAND  
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.
- Line 6: ALLOCATED. BASE RENT  
The ratio of the subleased area to the. Total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.
- Line 7: INDICATED ADDITIONAL RENT  
Line 5 (Annual income Attributable to Land) less Line 6 (Allotted Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.
- Line 8: ADDITIONAL RENT PAYABLE TO DHBL  
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. SUBLEASING OF VACANT ("RAW") LAND ONLY  
(No subleasing of building space)

- Line 1: CROSS ANNUAL SUBLEASE RENT  
The total sublease rent amount collected by a general lessee without any deductions.

- Line 2: LESS 4% GENERAL EXCISE TAX  
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.
- Line 3: EFFECTIVE ANNUAL SUBLEASE RENT  
Gross annual sublease rent less State G.E. Tax.
- Line 4: ALLOCATED ANNUAL BASE LEASE RENT  
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.
- Line 5: INDICATED ANNUAL ADDITIONAL RENT  
Line 3 minus Line 4, but not less than zero.
- Line 6: ADDITIONAL ANNUAL RENT PAYABLE TO DHHL  
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.

SUBLEASE RENT PARTICIPATION

WORKSHEET

I. SUBLEASING OF BUILDING SPACE:

Line 1: Gross Annual Sublease Rent		\$ _____
Line 2: Less 4% General Excise Tax		( _____ )
Line 3: EQUALS Effective Annual Sublease Rent		_____
Line 4: Less Allowances:		
a. Management, Credit Loss	\$ _____	
b. Repair and Maintenance	_____	
c. Real Property Taxes	_____	
d. Insurance Premiums	_____	
e. Surety Bond Premium	_____	
f. Return <u>OF</u> Investment	_____	
g. Return <u>ON</u> Investment	_____	
Line 5: EQUALS Annual Income Attributable to Land		_____
Line 6: Less Allocated Annual Base Lease Rent		_____
Line 7: EQUALS Indicated Additional Annual Rent		_____
	TIMES 50%	X      0.50
Line 8: EQUALS Additional Annual Rent Payable to DHHL		_____

II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

Line 1: Gross Annual Sublease Rent		\$ _____
Line 2: Less 4% General Excise Tax		( _____ )
Line 3: EQUALS Effective Annual Sublease Rent		_____
Line 4: Less Allocated Annual Base Lease Rent		_____
Line 5: EQUALS Indicated Annual Additional Rent		_____
	TIMES 50%	X      0.50
Line 6: EQUALS Additional Annual Rent Payable to DHHL		_____

HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease:	\$8,000
Effective Annual Sublease Rent:	\$3,000
Total Land Area of Leasehold Premises:	24,000 sq. ft.
Subleased Land Area:	6,000 sq. ft.
RATIO: $\frac{6}{24} = .25$ X \$8,000 = \$2,000	Allocated Annual Base Lease Rent
Effective Annual Sublease Rent:	\$3,000
Allocated Annual Base Lease Rent:	- <u>2,000</u>
Indicated Additional Rent:	\$1,000
	Times 50% <u>.50</u>
SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL	\$ 500

EXHIBIT "C-1"

ADDITIONAL NOTES TO SUBLEASE PARTICIPATION POLICY

## ADDITIONAL NOTES TO SUBLEASE RENT PARTICIPATION POLICY

Lessor and Lessee agree that the following information shall be used in the application of the Sublease Rent Participation Policy to subleases under this Lease.

For Subleasing of Building Space:

1. Line 1: Gross Annual Lease Rent – Includes only base rent amount payable under the sublease; excludes other charges payable under the sublease, such as general excise tax and any reimbursements of costs or expenses.
2. Line 2: General Excise Tax – Amount of general excise tax payable by Lessee with respect to amounts paid under the sublease can be deducted to the extent not specifically reimbursed by sublessee pursuant to the sublease.
3. Line 4c: Real Property Taxes – Can be deducted if not specifically reimbursed by sublessee pursuant to the sublease.
4. Line 4d: Insurance Premiums – Can be deducted if not specifically reimbursed by sublessee pursuant to the sublease. Allowable insurance premiums include all insurance maintained by Lessee, including, without limitation, liability, property, and umbrella insurance.
5. Investment – With respect to this Lease, “Investment” for purposes of Line 4f and Line 4g includes, without limitation, the purchase price of improvements under Section 3 of this Lease equal to \$313,000.
6. Line 4f: Return of Investment – With respect to the Investment amount for the existing improvements (\$313,000), this amount shall be amortized over a 25-year period, which is the period of known, fixed rent. With respect to any future Improvement, the cost shall be amortized over the then remaining term of this Lease.
7. Line 6: Allocated Base Rent – Notwithstanding anything to the contrary, the ratio to be used shall be based on the following. The numerator is leased floor area under the sublease; denominator is the total floor area of the buildings located on the land demised under this Lease.

EXHIBIT "D"  
MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

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

TMK No.: (1)1-1-064:xxx

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

MEMORANDUM OF LEASE

**THIS MEMORANDUM OF LEASE** ("Memorandum") is made and entered into as of \_\_\_\_\_ 2004 by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and \_\_\_\_\_, whose business and mailing address is \_\_\_\_\_, hereinafter called "LESSEE."

1. **TERM AND PREMISES.** For a lease term commencing on \_\_\_\_\_, and ending as of midnight on \_\_\_\_\_, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at Shafter Flats Industrial Development Moanalua, Honolulu, Island of Oahu, further identified as Lot xx (TMK No. (1) 1-1-064:xxx), comprising \_\_\_\_\_ acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation,



the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for the following purposes: Industrial related uses permitted under I-2 Intensive Industrial district use only. In no event shall the Premises be used for the construction of any residential lots, units or project. Operation of a scrap metal yard, junk yard and similar type of operations, and bulk storage of flammable and explosive products shall be prohibited.

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

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

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

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

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

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

LESSOR

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

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

LESSEE

EXHIBIT "A"

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

On this \_\_\_\_ day of \_\_\_\_\_, 202x, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed did say that he is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

\_\_\_\_\_

Print or Type Name \_\_\_\_\_

Notary Public, State of Hawaii

My Commission expires: \_\_\_\_\_