

INFORMATION PACKET

**Public Notice of Proposed Disposition
Commercial/ Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009**

Requesting Agency

**State of Hawai'i
Department of Hawaiian Home Lands**

91-5420 Kapolei Parkway
Kapolei, Hawai'i 96707

November 6, 2024 (Ads - 11/20, 11/27, & 12/04)

INFORMATION PACKET

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009

LIST OF ITEMS CONTAINED IN THIS INFORMATION PACKET:

- I. Introduction, Objectives and General Information
- II. Legal Notice – Proposed Disposition of Hawaiian Home Lands;
Commercial/Resort Mixed-Use Development; 41.152 acre Parcel in Wailua,
Kaua'i; TMK No. (4) 3-9-006:009
- III. Minimum Qualifications; Evaluation Criteria
- IV. Application Form; Request for Qualifications/Experience
- V. Submission Timeline and Important Dates
- VI. General Property Information

EXHIBITS:

Exhibit 1 – TMK Map

Exhibit 2 – 02/22/95 DAGS Survey Report

Exhibit 3 – Proforma General Lease

Exhibit 4 – Evaluation Criteria and Scoresheet

Exhibit 5 – Application Form

Exhibit 6 – Excerpt (“PREAMBLE”) from 01/28/2008 DHHL Solicitation

LIST OF ITEMS AVAILABLE OR TO BE AVAILABLE FOR REVIEW AT DHHL:

- A. Current Appraisal Report (*to be commissioned for receipt during PDA due diligence*)
- B. Current Title Report (*to be commissioned for receipt during PDA due diligence*)
- C. March 31, 2005 “*INFRASTRUCTURE COST ESTIMATES And Conceptual Residential & Resort/Commercial Plot Plans*”
- D. August 2007 Timeshare Feasibility Report
- E. January 2008 Draft Environmental Assessment Report (including November 10, 2007, Phase I Environmental Assessment Report)
- F. August 2008 Water Master Plan

NOTE: While the data in this Information Packet and all 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 an applicant’s actual reliance on the data provided. The applicant should make his/her/its own independent study to verify the accuracy of the information and determine its usefulness to applicant’s proposed project.

I. INTRODUCTION, OBJECTIVES AND GENERAL INFORMATION

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009

Introduction:

The Department of Hawaiian Home Lands ("DHHL") is soliciting proposals from individuals or entities interested in entering into a Project Developer Agreement ("PDA") and General Lease ("GL") under §220.5 of the Hawaiian Homes Commission Act, 1920, as amended, for the development of Hawaiian home lands situated in Wailua, Kaua'i. The development site is an approximately 41.152 acre parcel in Wailua, Kaua'i that is bordered by: (i) Kūhiō Highway (Hawai'i Route 56) to its west/mauka; (ii) a separate 11.482 acre DHHL parcel and the Wailua Municipal Golf Course to its south; (iii) the Hilton Garden Inn Kauai Wailua Bay site to its north; and (iv) and Lydgate (County of Kaua'i) Park to its east/makai (the "Property"). A TMK Map for the Property is attached hereto as Exhibit 1. A February 22, 1995 Survey Report issued by the State of Hawaii, Department of Accounting and General Services (C.S.F. No. 22.266) of the Property is attached hereto as Exhibit 2.

Under the PDA, the proposing party selected by DHHL will be contracted to lease the Property (pursuant to the GL) and to design, build, finance, own and maintain ("D.B.F.O.M.") a Commercial/Resort mixed-use project (the "Project"). A proforma GL is attached hereto as Exhibit 3. The PDA and the GL shall be co-terminus at sixty-five (65) years from the commencement of commercial operations at the Property (to be defined in the agreements) and shall be cross-defaulted, such that the termination of either agreement shall automatically terminate the other. As further discussed herein: (i) consideration to DHHL for entering into the PDA will be a negotiated share of the gross revenue of the Project; (ii) the lease rent due DHHL under the GL shall be set by appraisal on the basis of the fair market value of the Property (as further discussed herein); and (iii) the lease rent paid to DHHL under the GL shall be credited against the gross revenue share due to DHHL under the PDA, such that over any measurable period of time, the effective payment to DHHL under the PDA shall be the amount, if any, by which the negotiated share of gross revenue for the period *exceeds* the rent paid to DHHL under the GL for that same period.

General Objectives and Criteria:

DHHL seeks the development of the Property at its highest and best use, which it has determined to be a commercial/resort mixed-use project that would be permitted under an RR-20 zoning designation of the County of Kaua'i (if it was applicable). Proposals including any type of long term (non-transient) residential development will not be accepted. If there are questions about a specific type of use being acceptable, please contact DHHL's Land Management Division for clarification.

To be considered as developer for the Project, an interested party must submit:

1. An application for consideration to serve as project developer with information and supporting documents that establish that certain minimum requirements described in more detail within this Information Packet are met/satisfied;
2. A statement of qualifications and experience of their proposed development team to D.B.F.O.M. their proposed development;
3. Conceptual plans (layouts and elevation drawings) and a descriptive narrative for the proposed development;
4. A proforma development budget and schedule, including the projected date of commencement of commercial operations (including any proposed phasing of the takedown and development of, and commencement of commercial operations on, any divided portion of the Property); and
5. Proforma business financials for the initial ten years of commercial operation of the developed Project.

Items 3, 4 and 5 shall be submitted in a sealed envelope. An initial review of items 1 and 2 shall determine which applicants are qualified to move forward in this selection process. The sealed envelope from any applicant determined not to be qualified to move forward will be returned to them unopened. If there are more than one qualified applicant, then DHHL will open the remaining sealed envelopes and review, score and rank the entirety (*i.e.*, all of submission items 1 – 5) of the respective submission packages. The qualified applicant with the highest ranking submission package will be determined to have made the “best” development proposal and will be selected to negotiate a PDA and GL. If DHHL and a qualified applicant selected for negotiation are not able to agree upon final terms of a PDA and GL within the prescribed time (as discussed in more detail herein), then DHHL may successively determine that the qualified applicant with the next highest ranking submission package has made the next “best” development proposal and will, therefore, be selected for negotiation of a PDA and GL (with the same time limit to agree upon final terms).

General Information:

- Only complete submission packages (containing all of items 1-5 above) shall be scored and ranked.
- The negotiated PDA will provide a right of entry for the “Developer” to conduct customary due diligence activities for a maximum one hundred twenty (120) day due diligence period. If the Developer opts in writing to proceed with the Project on or before the end of the due diligence period, then it shall promptly: (i) file with DHHL a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants and conditions of the PDA; and (ii) execute and deliver the GL and comply with providing all deliverables thereunder, including proof of holding the required types and coverages of liability insurance.
- Lease rent under the GL will be set by independent third-party appraisal to be commissioned by DHHL for delivery within ninety (90) days of full execution of the PDA (*i.e.*, during the

due-diligence period of the PDA) on the basis of the fair market value of the Property (as further discussed in Section II hereof). Only for purposes of preparing and delivering proforma business financials as part of its proposal (submission item 5 above), an applicant should assume that: (i) the annual lease rent for the Property for the first year from their projected commencement of commercial operations date is the product of eight percent (8%) applied against the 2024 assessed value of the Property established and by the County of Kaua‘i; and (ii) the annual lease rent shall escalate each year thereafter by two percent (2%).

- Specific terms of the PDA to be negotiated between DHHL and a selected applicant shall include, but are not limited to:
 - Definitions of “commencement of commercial operations” and “gross revenue of the Project”.
 - DHHL’s share of gross revenue of the Project as consideration for entering into the PDA.
 - Dates on which the Developer must submit to DHHL for approval preliminary plans and final plans and specifications for the Project that account for any proposed phased takedown and development of divided portions of the Property, and the date(s) of completion of any proposed phases of development and the total development.
 - Minimum requirements for off-site and on-site improvements that the Developer must install, construct and complete by the date of completion of the total development.
 - Benefits to be provided by the Developer to promote native Hawaiian socio-economic advancement, including support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands on the Island of Kaua‘i.
- Prior to commencement of any demolition or construction at the Property, the Developer shall comply with Chapter 343 of the Hawai‘i 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.
- The Developer shall be responsible for all funds needed to develop the Property. No State of Hawai‘i funds are to be used in the development of the Property.
- For purposes of both the PDA and the GL, The Developer will accept the Property “As-Is”, with all conditions, encumbrances, faults and deficiencies, known or unknown. Without limiting the foregoing, the Developer acknowledges that the following are likely conditions present on and affecting the Property: (i) cultural and archaeological sites; and (ii) unpermitted occupation and use by a “homeless” community.

II. LEGAL NOTICE

PROPOSED DISPOSITION OF HAWAIIAN HOME LANDS

41.152 acre Parcel in Wailua, Kaua‘i; TMK No. (4) 3-9-006:009

As authorized by §220.5, Hawaiian Homes Commission Act, 1920, as amended, the Department of Hawaiian Home Lands (DHHL) invites interested persons to submit their applications, qualifications and experience and proposals for the development of the land described herein (the “Property”). Individuals, partnerships, corporations, limited liability companies or other business entities interested in developing the Property shall have ninety (90) days from the date this Legal Notice is last published - that date of last publishment being December 4, 2024 - in which to submit the following for DHHL consideration:

1. An application to be project developer;
2. A statement of qualifications and experience;
3. Conceptual plans and description of the proposed development;
4. A proforma development budget and schedule; and
5. Proforma financial statements for the initial 10 years of commercial operations.

Submission items 3–5 shall be submitted in a sealed envelope. Only complete submission packages (with all five submission items) received by **4:00 p.m. on Tuesday, February 25, 2025**, shall receive full consideration by DHHL.

DHHL will initially review submission items 1 and 2 to determine which applicants have met the minimum qualifications for selection as the project developer of the Property. Within ten (10) days of the submission package deadline - *i.e.*, by not later than **Friday, March 7, 2025** - said initial review shall be completed and DHHL will promptly thereafter notify the applicants determined not to be minimally qualified to move forward and will return their sealed envelopes to them unopened.

On **Friday, March 14, 2025**, DHHL shall open the sealed envelopes of the applicants determined to be minimally qualified for further consideration. If only one applicant has been determined to be qualified, DHHL may proceed to negotiate the details of a Project Developer Agreement (“PDA”) and General Lease (“GL”) with that qualified applicant. If there are two or more qualified applicants, then DHHL shall, within the next forty-five (45) days – *i.e.*, by not later than **Friday, April 25, 2025** – review, score and rank the respective submission packages in their entirety (*i.e.*, considering all of submission items 1-5) and notify the qualified applicant with the highest ranking submission package of their selection to negotiate the details of a PDA and GL. If DHHL and the initial qualified applicant selected for negotiation are not able to agree upon final terms of a PDA and GL within sixty (60) days of their selection for negotiation – *i.e.*, by not later than **Friday, June 27, 2025** – subject to extension by mutual agreement of the negotiating parties, then DHHL may successively select the qualified applicant with the next highest ranking submission package for negotiation of the details of a PDA and GL, subject to the same 60-day negotiation period with extension by mutual agreement.

Information Packets containing an application form, a request for a statement of qualifications and experience, property information, objectives and criteria, and other requirements for completing the submission package process are available on DHHL's website: <https://dhhl.hawaii.gov> or for pick up by prospective applicants during regular office hours at DHHL's Oahu office located at 91-5420 Kapolei Parkway, Kapolei, HI, or at DHHL's District Offices in Hilo and Waimea, Hawai'i; Hoolehua, Molokai; Wailuku, Maui and Lihue, Kaua'i.

Land to be Disposed: Approximately 41.152 acres of vacant/undeveloped land in Wailua, Kaua'i, (Tax Map Key No. (4) 3-9-006:009) nestled between Kūhiō Highway (Hawai'i Route 56) to its west/mauka and Lydgate (County of Kaua'i) Park to its east/makai.

Nature of Development; Permitted Use: Commercial/Resort mixed-use project that would be permitted under an RR-20 zoning designation of the County of Kaua'i (if it was applicable). Proposals including any type of long term (non-transient) residential development will not be accepted.

Phased Leasing/Development: The Developer may propose to takedown (lease) and develop subdivided portions of the Property in multiple phases, which may result in multiple GL being issued under a single PDA.

Term: The PDA and GL(s) shall be co-terminus at sixty-five (65) years from the commencement of commercial operations (to be defined in the agreements) and shall be cross-defaulted such that the termination of one agreement shall automatically terminate the other(s).

PDA Due Diligence: The PDA will provide a right to enter the property to conduct customary due diligence activities for a maximum one hundred twenty (120) day due diligence period. If the Developer opts in writing to proceed with the Project on or before the end of the due diligence period, then it shall promptly: (i) file with DHHL a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants and conditions of the PDA; and (ii) execute and deliver the GL and comply with providing all deliverables thereunder, including proof of holding the required types and coverages of liability insurance.

Contract Consideration: Consideration to DHHL for entering into the PDA will be a negotiated share of the gross revenue of the Project. Lease rent due DHHL under the GL shall be set by an independent third-party appraisal to be commissioned by DHHL for delivery during the due diligence period afforded in the PDA. The appraisal shall determine the fair market value of the Property based on its "Permitted Use" set forth above and as if unencumbered by the PDA. The lease rent paid to DHHL under the GL shall be credited against the gross revenue share due to DHHL under the PDA for the same period. As such, over any measurable period, the effective payment to DHHL under the PDA shall be the amount, if any, by which the negotiated share of gross revenue for the period *exceeds* the lease rent paid to DHHL under the GL for that same period.

Chapter 343 Environmental Assessment: Prior to commencement of any demolition or construction at the site, the Developer shall comply with Chapter 343 of the Hawai'i 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.

No State Funds: The Developer shall be responsible for all funds needed to develop the Property. No State of Hawai‘i funds shall be used in the development of the Property.

“As-Is”: The Developer will accept the Property “As-Is”, with all conditions, encumbrances, faults and deficiencies, known or unknown. Without limiting the foregoing, the Developer shall acknowledge that the presence of cultural/archaeological sites, and unpermitted occupation and use by a “homeless” community are suspected or known conditions present on and affecting the Property.

Community Benefits: The Developer will be required to engage in community outreach and to negotiate a benefits package to be provided by the Developer to promote native Hawaiian socio-economic advancement, including support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands on the Island of Kaua‘i.

Beneficiary Consultation: During this disposition process, DHHL will consult with the Hawaiian Homes Commission and the beneficiaries of the Hawaiian Home Lands Trust regarding the Project and the proposed use(s) of the Property. In furtherance of meaningfully considering the outcomes of such consultation, **DHHL reserves the right to modify or cancel this disposition of its lands at its sole discretion.**

For additional information and/or to schedule a site inspection, you may contact Russell K. Kaupu, Property Development Agent, Office of the Chairperson, DHHL at (808) 730-0168 or Russell.K.Kaupu@hawaii.gov.

Dated: Honolulu, Hawai‘i November 14, 2024

**State of Hawai‘i
Department of Hawaiian Home Lands**

By: /s/ _____
Kali Watson, Chairperson
Hawaiian Homes Commission

Honolulu Star Advertiser
(Local Newspaper Publication)

Dates: 11/20, 11/27 & 12/04/2024

III. MINIMUM QUALIFICATIONS; EVALUATION CRITERIA

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009

All parties interested in being selected as project developer for the subject property shall have until 4:00 p.m. on Tuesday, February 25, 2025, for delivery of a completed submission package to the Department of Hawaiian Home Lands (DHHL) at 91-5420 Kapolei Parkway, Kapolei, Hawai'i 96707. All applications received after this deadline will not be considered.

Any individual(s) or entity may submit a complete submission package, **except** one that:

- a. Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawai'i or to any of its political subdivisions.
- b. Is a minor; or
- c. Has had during the five (5) years preceding October 31, 2024, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof.

A "complete submission package" shall consist of **all** of the following five submission items:

1. An application (with supporting documentation) for consideration to serve as project developer in form and substance as set forth in Section IV hereof;
2. A statement of the qualifications and experience of the proposed development team as requested in Section IV hereof;
3. Conceptual plans (layouts and elevation drawings) and a descriptive narrative for the proposed development with sufficient detail to depict both on and off site improvements proposed to be constructed and the purposes for which such improvements shall be used *[to be submitted with submission items 4 and 5 in a sealed envelope]*;
4. A proforma development budget and schedule, including the projected date of commencement of commercial operations and any proposed phasing of takedown and development *[to be submitted with submission items 3 and 5 in a sealed envelope]*; and
5. Proforma business financials for the initial ten years of commercial operation of the developed Project *[to be submitted with submission items 3 and 4 in a sealed envelope]*.

Minimum Qualification: Submission items 1 and 2 will be reviewed and evaluated by DHHL to determine whether the applicant has, in DHHL's sole and absolute discretion, the minimum experience and financial and professional capacity necessary to successfully D.B.F.O.M. the Project.

Full Evaluation: Submission items 3, 4 and 5 shall be submitted in a sealed envelope and will only be opened and evaluated for those applicants found to be minimally qualified. The entire submission package (*i.e.*, all of submission items 1-5) will be considered and scored using the criteria and scoresheet attached hereto as Exhibit 4.

Applicants are responsible for thoroughly reading and understanding the terms, covenants, reservations and conditions of this offering by reviewing a copy of the Legal Notice of Proposed Disposition, all other data contained in this Information Packet, and other informational items made available for review in DHHL's office located at **91-5420 Kapolei Parkway, Kapolei, Hawai'i, or at the DHHL District Offices in Hilo and Waimea, Hawai'i; Hoolehua, Molokai; Wailuku, Maui and Lihue, Kaua'i**. By request, out-of-state applicants can make arrangements to obtain the information by contacting DHHL's Land Management Division.

Prospective applicants are encouraged to physically inspect the property, provided that DHHL is indemnified and held harmless from any personal injury or damages that result from such property inspection. You may make an appointment for a site inspection by contacting Russell K. Kaupu, Property Development Agent, Office of the Chairperson, DHHL at (808) 730-0168 or Russell.K.Kaupu@hawaii.gov.

IV. APPLICATION FORM; REQUEST FOR QUALIFICATIONS/EXPERIENCE

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009

A. Application Form

The application form for interested parties to complete and submit is attached hereto as Exhibit 5. As applicable, please provide the requested information as completely as possible. Separate pages may be attached if more space is needed to fully respond. If any of the submitted information changes during the disposition process, it is the responsibility of the applicant to promptly update DHHL in writing of such changes. **By its signature on the final page, the applicant certifies to DHHL that: (i) all information contained therein, and all documents and information submitted in support thereof, are true, accurate, and complete to the best of their knowledge; and (ii) none of the three disqualifying conditions set forth in Section III above applies to the applicant.** Financial information submitted to DHHL shall be kept confidential, shall not be considered public records as defined in Chapter 92, Hawai'i Revised Statutes, and shall not be released without the express written consent of the applicant.

B. Request For Qualifications/Experience

For the purpose of this request, "applicant" shall mean the individuals and/or entities applying to develop the Project, and all principals or key team members associated therewith who will play a key role in the success of the venture. Please submit a statement of the relevant qualifications and experience of the applicant and all members of the proposed Project Development Team ("PDT") that, as applicable, specifically includes the following:

1. A list with brief descriptions of all commercial/resort projects applicant and PDT members have developed or worked on, including the role played in such developments and their respective development budgets;
2. A description of all commercial/resort projects or facilities owned and/or operated by the applicant;
3. A description of the applicant's past or current work or involvement with DHHL or any other State agency; and
4. A description of the applicant's past or current work with, or support of, native Hawaiian communities and organizations, including any support for community development, job training and placement, and educational and/or cultural programs for residents of Hawaiian home lands.

V. DISPOSITION TIMELINE AND IMPORTANT DATES

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua‘i; TMK No. (4) 3-9-006:009

Chronological List of Important Dates for this Disposition:

A.	Legal notice publication	November 20, 27 and December 04, 2025
B.	Deadline for receipt of complete submission packages at DHHL’s Oahu Office	4:00 pm on Tuesday, February 25, 2025
C.	Deadline for DHHL to conduct its initial review of items 1 and 2 of the submission packages to determine which applicants are minimally qualified	Friday, March 7, 2025
D.	Deadline for DHHL to review, score and rank the entire submission packages of the minimally qualified applicants (<i>if</i> there are 2 or more minimally qualified applicants) and to notify the applicant with the highest ranking submission package of their selection for negotiation	Friday, April 25, 2025
E.	Deadline for DHHL and the initial applicant selected for negotiation to agree upon final terms of a PDA and GL and to execute and deliver the PDA	Friday, June 27, 2025
F.	Period for DHHL and subsequent applicants selected for negotiation to agree upon final terms of a PDA and GL and to execute and deliver the PDA	60 days from selection
G.	Due diligence period under the PDA within which DHHL and the developer opting to proceed with the Project shall execute and deliver the GL	120 days from the effective date of the PDA

VI. GENERAL PROPERTY INFORMATION

Commercial/Resort Mixed-Use Development
41.152 acre Parcel in Wailua, Kaua'i; TMK No. (4) 3-9-006:009

The Property is located in Wailua, Island of Kaua'i, Hawai'i, and is currently identified on the tax maps of the State of Hawai'i as Division 4, Zone 3, Section 9, Plat 006, Parcel 009. It is approximately 4 miles north of Lihue town which has evolved into the civic, financial, commercial and transportation center for the island of Kaua'i. Significant to the urbanization of Lihue has been the development of Lihue Airport and Nawiliwili Harbor. Together, these facilities comprise the County's primary gateways for all arriving and departing visitors and goods. Most of the island's commercial, industrial, residential, public and government facilities, including primary and secondary education facilities, are located in Lihue.

The Property is located along the eastern coastline of the Island of Kaua'i, approximately 3 miles north of Lihue Airport, which has direct flight service from the U. S. mainland and Canada (Vancouver, BC). The Property has more than 2,500 feet of frontage along Kūhiō Highway (Hawai'i Route 56), the only major highway connecting all communities on the eastern and northern side of the island. A secondary roadway, Leho Drive, loops around the parcel. The Hilton Garden Inn Wailua Bay is just a few short steps across Leho Drive from parcel and has 216 rooms and cabanas. The Property is within walking distance to the shoreline/beach, the Wailua Municipal Golf Course, the Lydgate Beach Park (County of Kaua'i) and the Wailua River. It is 1.5 miles south of the historic 77-acre Coco Palms Resort property which is currently being redeveloped.

OTHER PROPERTY DATA:

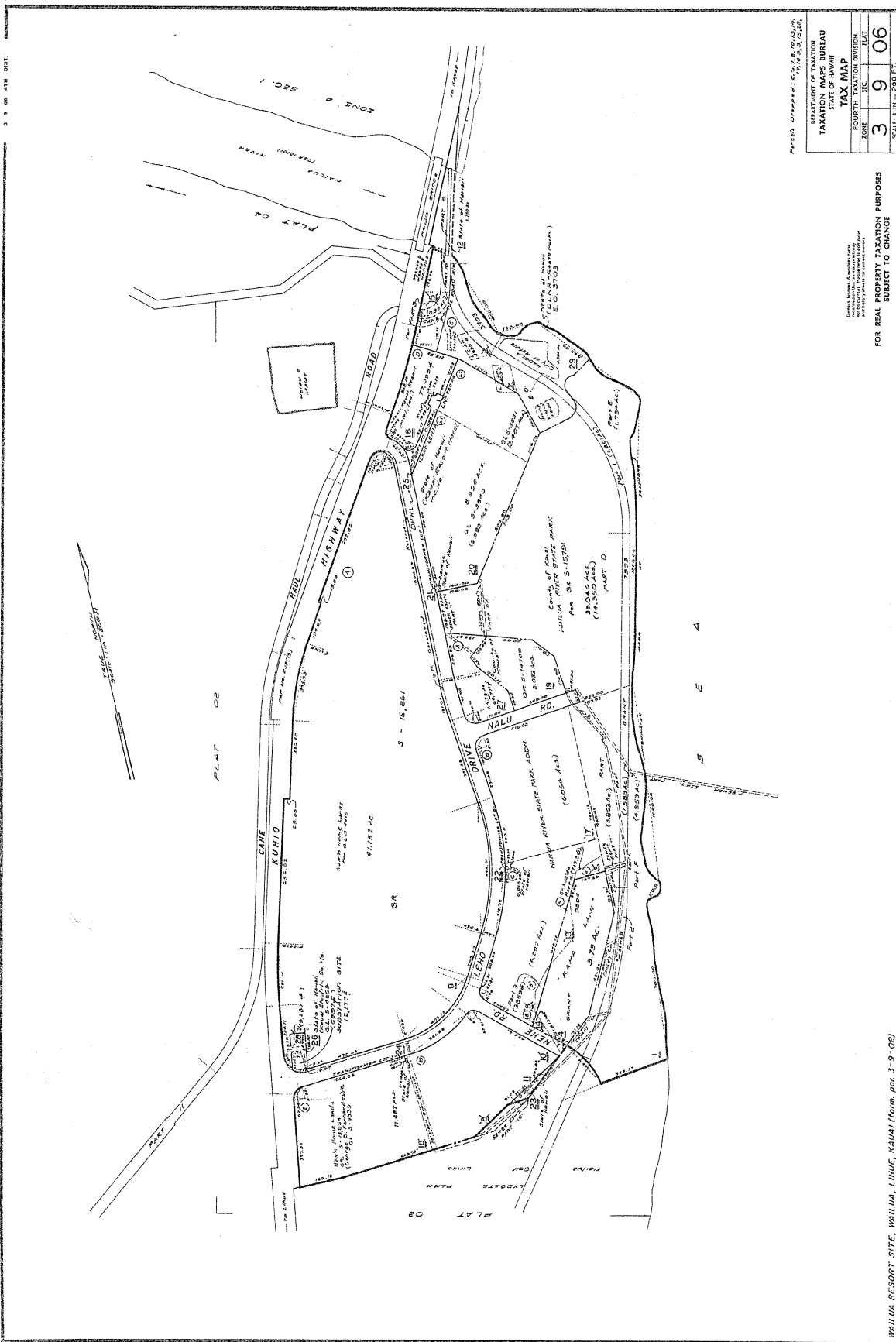
- Legal Description: A legal description (metes and bounds) of the Property can be found in the 02/22/95 DAGS Survey Report attached hereto as Exhibit 2.
- Land Area: Tax Map Key No. (4) 3-9-006:009 is 41.152 acres. Please note that as noted in such survey report, there is a 20-foot wide "buffer area" which is licensed to the Kaua'i Island Utility Cooperative for landscaping and access to its electric substation that is directly adjacent to the Property at the northern intersection of Kūhiō Highway (Hawai'i Route 56) and Leho Drive.
- Use History: The prior use of the property was for cultivation of sugar cane and other agricultural crops. In more recent years, the Property has lain fallow. As discussed in Exhibit 6 attached hereto, the Property has significant cultural/historical value to Native Hawaiians.
- Land Use Zoning: The Property is currently zoned Open (OP) by the County of Kaua'i but has been valued as if zoned Resort (RR-20) and available for commercial/resort development. DHHL is not subject to county land use zoning and can designate the zoning that is appropriate to its desired use.
- Flood Hazard Districts: Certain areas are prone to periodic inundation from flooding and/or tsunami which could result in the loss of life and property, creation of health and safety hazards,

disruption of commerce and governmental services as well as extraordinary public expenditures for flood and tsunami protection and relief. Congress has determined that the regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue and relief efforts, thereby promoting the safety, health, convenience and general welfare of the community. Flood Hazard Districts are delineated on Flood Boundary and Floodway Maps and the Federal Insurance Rate Maps prepared by the Federal Insurance Administration and the Federal Emergency Management Agency. The subject site is situated within an area designated Zone A -- areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage (FEMA Flood Insurance Rate Map 1500020212F, effective date November 26, 2010).

- Special Management Area: As part of its due diligence, the Developer should check and confirm DHHL's understanding that the Property is not located within a Special Management Area or any other constraint district.
- Utilities:
 - a. Water: Based on the expected ultimate residential densities for both resort or commercial development, the Kaua'i County's Department of Water Supply has indicated in the past that any development will require its own water source, storage, and transmission/distribution system. The water needs for the Property (along with other neighboring properties) is included in a August 19, 2008 Water Master Plan prepared by Akinaka & Associates, Ltd., which is available for review upon request.
 - b. Electricity: Kaua'i Island Utility Cooperative (KIUC) has an existing electrical substation on a lot adjacent to the subject property. KIUC has committed to landscape and maintain a 20-foot buffer along the eastern side of the substation to buffer it from the Property. In past conversations, KIUC staff have indicated that KIUC has enough reserve capacity to supply electricity to the full build-out of a commercial/resort project on the Property. The Developer or development team will need to consult with KIUC and apply for electrical services to the project area once the desired loads are determined. DHHL prefers local electrical distribution networks within its lands to be placed underground.
 - c. Wastewater: The County of Kaua'i operates a wastewater treatment Plant (WWTP) in close proximity to the project area. While the WWTP only operates at less than its designed capacity (1.5 million gpd), the staff at the Wastewater Division of the County's Public Works Department has mentioned in the past that due to persistent operational deficiencies with the plant, upgrading is needed for it to reach its full capacity. As part of its due diligence, the Developer should check and confirm the County of Kaua'i's plans to upgrade and/or relocate this WWTP.
- Boundary Road: The Property is bounded on its eastern/makai side by Leho Drive, which is a county owned and maintained roadway. DHHL has no control of the location or configuration of Leho Drive.
- Topography: A topographical survey for the Property has not been conducted.

- Soils Condition: A geotechnical study of soil and sub-soil located on the Property has not been conducted.
- Hazardous Materials/Contaminants: The Property (along with other neighboring properties) is included in a October 10, 2007 Phase I Environmental Site Assessment report prepared by Environet, Inc., which is available for review upon request.
- Improvements: There are no visible or known improvements located on the Property.

Exhibit 1 -TMK Map



DWG NO.: 6028
 SOURCE: T.M.K. & B.L.M. RECORDS
 DATE: 11/11/03
 BY: M.K.E.

Revised Computer: 5,272,10,02/04
 17,863,3,2505

DEPARTMENT OF TAXATION	
TAXATION BUREAU	
FOURTH TAXATION DIVISION	
TAX MAP	
ZONE	3
SEC	9
PLAT	06
SCALE: 1" = 200' FT.	

FOR REAL PROPERTY TAXATION PURPOSES
 SUBJECT TO CHANGE

WAILUA RESORT SITE, WAILUA, LIHUE, KAUAI (Form: pnc 3-9-02)

Exhibit 2 - 02/22/95 DAGS Survey Report



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 22,266

February 22, 1995

PORTION OF THE GOVERNMENT (CROWN) LAND OF WAILUA

Wailua, Lihue, Kauai, Hawaii

Beginning at the northwest corner of this parcel of land and on the east side of Kuhio Highway, Federal Aid Project E-12-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 6815.87 feet South and 5656.16 feet East, thence running by azimuths measured clockwise from True South:-

1. Along Government Reserve A on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
78° 24' 30" 70.71 feet;
2. Thence along Government Reserve A on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
152° 27' 30" 66.02 feet;
3. 1° 30' 30" 1004.50 feet along Government Reserve A;
4. Thence along Government Reserve A on a curve to the left with a radius of 1540.00 feet, the chord azimuth and distance being:
357° 56' 30" 191.61 feet;
5. 354° 22' 30" 391.58 feet along Government Reserve A;
6. Thence along Government Reserve A on a curve to the right with a radius of 960.00 feet, the chord azimuth and distance being:
12° 22' 30" 593.31 feet;

7. 30° 22' 30" 203.30 feet along Government Reserve A;
8. Thence along Government Reserve A on a curve to the right with a radius of 435.00 feet, the chord azimuth and distance being:
58° 23' 45" 408.72 feet;
9. 86° 25' 467.67 feet along Government Reserve A;
10. 189° 00' 166.88 feet along Power Substation Site;
11. 99° 00' 70.00 feet along Power Substation Site;
12. 9° 00' 153.20 feet along Power Substation Site;
13. Thence along Government Reserve B on a curve to the right with a radius of 78.21 feet, the chord azimuth and distance being:
163° 01' 40" 68.50 feet;
14. 189° 00' 224.71 feet along the east side of Kuhio Highway, FAP E-12-A;
15. Thence along the east side of Kuhio Highway, FAP E-12-A on a curve to the right with a radius of 2470.00 feet, the chord azimuth and distance being:
192° 15' 45" 281.14 feet;
16. 195° 31' 30" 656.02 feet along the east side of Kuhio Highway, FAP E-12-A;
17. 285° 31' 30" 25.00 feet along a jog on the east side of Kuhio Highway, FAP E-12-A;
18. 195° 31' 30" 356.40 feet along the east side of Kuhio Highway, FAP E-12-A;
19. Thence along the east side of Kuhio Highway, FAP E-12-A on a curve to the right with a radius of 1145.00 feet, the chord azimuth and distance being:
204° 28' 355.93 feet;
20. 213° 24' 30" 194.05 feet along the east side of Kuhio Highway, FAP E-12-A;

21. 123° 24' 30" 15.00 feet along a jog on the east side of Kuhio Highway, FAP E-12-A;
22. 213° 24' 30" 692.86 feet along the east side of Kuhio Highway, FAP E-12-A to the point of beginning and containing an AREA OF 41.152 ACRES.

Reserving to the State of Hawaii, its successors and assigns, Non-Exclusive Transmission Line Easement A, as shown on plan attached hereto and made a part hereof and more particularly described as follows:

Beginning at the northwest corner of this easement, and on the east side of Kuhio Highway, FAP E-12-A, the true azimuth and distance from the end of Course 13 of the above-described parcel of land being 189° 00' 31.62 feet, thence running by azimuths measured clockwise from True South:-

1. 279° 00' 30.00 feet;
2. 9° 00' 50.00 feet along Power Substation Site;
3. 99° 00' 27.81 feet;
4. Thence along Government Reserve B on a curve to the right with a radius of 78.21 feet, the chord azimuth and distance being:
182° 12' 14" 18.51 feet;
5. 189° 00' 31.62 feet along the east side of Kuhio Highway, FAP E-12-A to the point of beginning and containing an AREA OF 1487 SQUARE FEET.

The above-described parcel of land is subject to a proposed road widening line along the east side of Kuhio Highway, FAP E-12-A.

22,266

C.S.F. No. _____

February 22, 1995

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: 

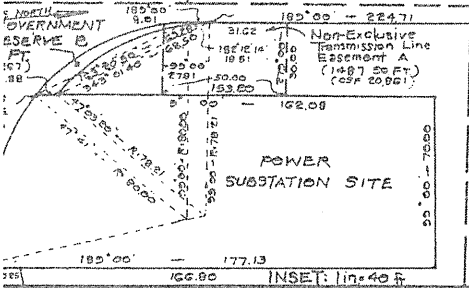
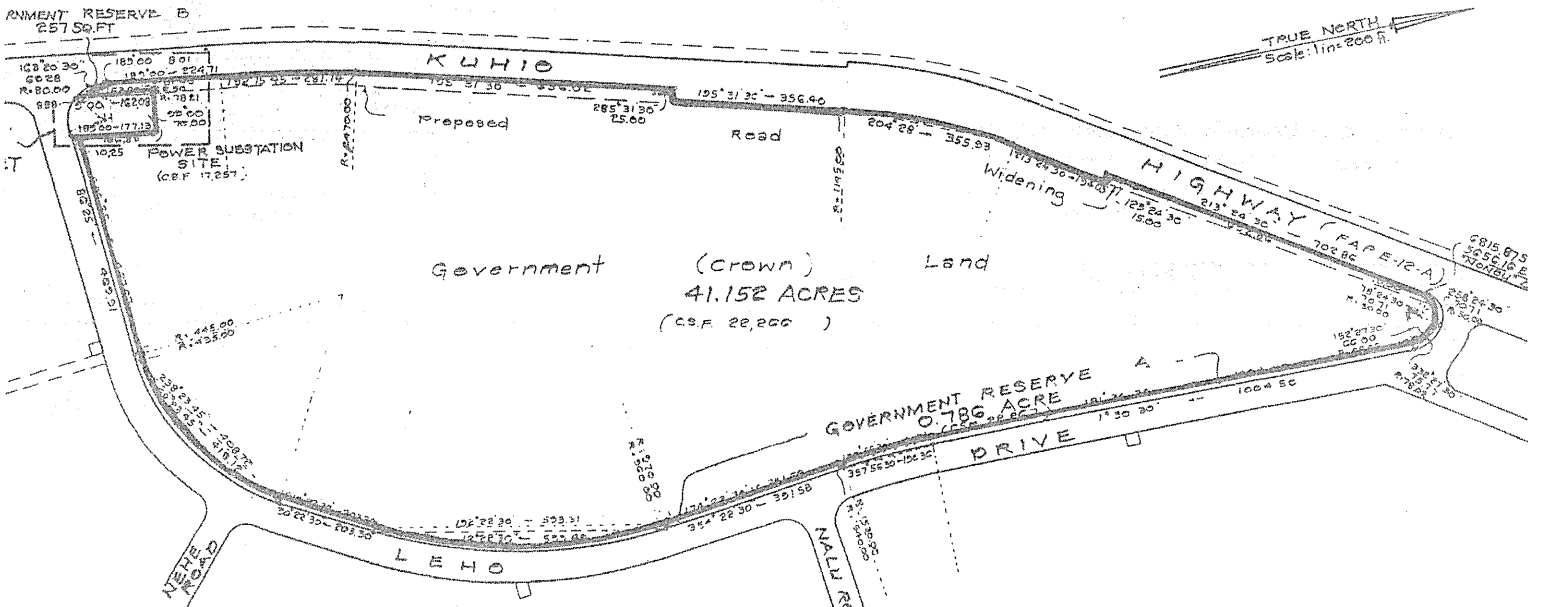
Stanley T. Hasegawa
Licensed Land Surveyor No. 3632 gm

Reviewed and Approved by:



Randall M. Hashimoto
Acting State Land Surveyor

Compiled from CSFs 14,797,
16,618, 17,257, 18,569,
19,563, 20,861 and Govt.
Survey Records.



PORTION OF THE GOVERNMENT (CROWN) LAND OF WAILUA
 AND GOVERNMENT RESERVES A AND B
 Wailua, Lihue, Kauai, Hawaii
 Scale: 1 inch = 200 feet

AS 0-10 (95)
 C.B. 18M-01, All Islands

TAX MAP 3-0-06:0
 C.S.F. NO. 22,266

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

EXHIBIT "B"
 5TH Feb 22, 1995

Exhibit 3 - Proforma General Lease

[NOTE: Sublease rent participation not required because already participating in sharing of gross revenue per the PDA.]

Exhibit 3 - Proforma General Lease

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

between

STATE OF HAWAII

and

covering

HAWAIIAN HOME LANDS

situate at

Island of _____

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EXHIBITS

“A”	Description of Premises
“B”	Premises Map
“C”	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 _____, 2025, 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 _____, Island of _____, County of _____, identified as TMK No. _____, comprising _____ acres, more or less, of Hawaiian Home Lands, more particularly described in **Exhibit "A"**, and as shown on the map marked **Exhibit "B"**, both attached hereto and made a part hereof ("Premises").

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term of sixty-five (65) 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 30: _____ Dollars
(\$ _____ .00) per annum (\$ _____ . per month);

Lease years 31 through 40: _____ Dollars
(\$ _____ .00) per annum (\$ _____ . per month);

Lease years 41 through 50: _____ Dollars
(\$ _____ .00) per annum (\$ _____ . per month);

Lease years 51 through 65: _____ Dollars
(\$ _____ .00) per annum (\$ _____ . per month);

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 redetermined at the expiration of the thirtieth (30th) 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 redetermined, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the "fair market rental value" of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE, provided that the mutually agreed upon amount is not lower than the appraised fair market rental value. 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 and LESSOR shall promptly notify LESSEE of the determination and provide LESSEE with the complete appraisal; 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, with each party paying for its own appraiser. The two appraisers thus appointed 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), fair market rental value shall be determined by mediation and arbitration under section 171-17(d). The costs of mediation and arbitration shall be borne equally by the LESSEE and LESSOR.

In the event that the fair market rental is not finally determined before the reopening date, the LESSEE shall pay the rental as determined by the LESSOR's appraiser until the new rent is determined, and the rental paid by LESSEE shall then be subject to retroactive adjustments as appropriate.

Should the LESSEE fail to notify LESSOR in writing within thirty (30) days after receipt of the determination that LESSEE disagrees with the fair market rental as determined by the LESSOR's appraiser and that LESSEE has appointed its own appraiser, then the fair market rental as determined by the LESSOR's appraiser shall be deemed to have been accepted by LESSEE and shall be the fair market rental as of the date of reopening.

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. [INTENTIONALLY OMITTED]

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. 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, any improvement, or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE's obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises will be used only for the following purposes: _____ . In no event shall the Premises be used for the construction of any residential lots, units or project. 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 shall release, indemnify, defend, 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, roadways and parking areas adjacent thereto in LESSEE's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the LESSEE to maintain the premises in a safe condition; or (iii) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the LESSEE's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. 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 LESSOR shall, without fault on its part, be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), LESSEE shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on LESSOR; furthermore, LESSEE shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by LESSOR in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

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

LESSEE 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 Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, 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, restrictions, 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 redispense under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the redispense; 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 redispense 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; 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 "C".

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

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

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

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

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

19. 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-biphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

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

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

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

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

(g) "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, Chairperson
Hawaiian Homes Commission

LESSOR

By _____

LESSEE

EXHIBIT "A"

DESCRIPTION OF PREMISES

EXHIBIT "B"

PREMISES MAP

EXHIBIT "C"

LAND COURT

REGULAR SYSTEM

RETURN BY (X) MAIL () PICK-UP

TMK No.: (1) 9-1-031:061

This document contains ____ pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of _____, 20__ by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and _____, whose business and mailing address is _____, hereinafter called "LESSEE.

1. **TERM AND PREMISES.** For a lease term commencing on _____, and ending as of midnight on _____, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at _____, Island of _____, further identified as TMK No. (x) _____, 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: _____ . 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, Chairperson
Hawaiian Homes Commission

LESSOR

a _____

By _____

LESSEE

EXHIBIT "A"

[Description of Premises]

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that she is the _____ of _____, a _____ 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: _____

Exhibit 4 – Evaluation Criteria and Scoresheet

An award will be made to the qualified applicant whose proposal is determined to be the most advantageous to DHHL and its beneficiaries based on the evaluation criteria listed in this exhibit. The total number of points used to score a submission package is 100. Evaluation of submission packages will be based on the following point distribution:

<i>CRITERIA</i>	<i>POINTS</i>
<p><u>A. Experience</u> -- The degree to which the submission package demonstrates the applicant's and the project development team's experience and professional qualifications relevant to the Project. Points will be awarded based on the following:</p> <ul style="list-style-type: none"> • The applicant's and project development team's experience with designing, building, financing, operating and maintaining projects of similar scope and size, with weight given to experience in directing a multidisciplinary team and facilitating a community involvement process. • The applicant's and project development team's experience working in or engaging with the motorsports and raceway industry. • The applicant's and project development team's experience working on DHHL or other government agency projects. 	20
<p><u>B. Past Performance</u> -- The degree to which the submission package demonstrates the applicant's and the project development team's experience on projects of similar size and scope for public agencies and/or the private sector. Points will be awarded based on the following:</p> <ul style="list-style-type: none"> • The applicant's and project development team's ability to complete a project on schedule and within budget, obtain innovative financing, employ alternative construction techniques, and integrate community and supportive services into the overall development of projects similar to that proposed in their submission package. • The applicant's demonstration that it is not in default and has not failed to perform under any contract, agreement, or lease with the State of Hawai'i, and does not have any outstanding judgments against it. 	20

<p><u>C. Capacity</u> -- The degree to which the submittal demonstrates the applicant's and the project development team's capacity to complete projects of similar size and scope for public agencies and/or the private sector. Points will be awarded based on the following:</p> <ul style="list-style-type: none"> • The applicant's and project development team's organization size, and number of employees; and description of the type, location, scheduled completion date, and dollar value of any concurrent projects that applicant may be involved in. • The applicant's financial capacity (as developer and provider of guarantees) as evidenced by financial statements, most recent audit and bank references, and statement of how applicant intends to honor all guarantees should the need arise. • The extent to which the applicant's organization chart demonstrates its team's capacity to meet the requirements of the proposed project. 	<p>20</p>
<p><u>D. Project Approach</u> -- The degree to which the submittal addresses DHHL's requirements and goals relevant to the project. Points will be awarded based on the following:</p> <ul style="list-style-type: none"> • The extent to which the applicant's proposed project reasonably maximizes and leverages income production from the Property. • The extent to which the applicant's proposed project commits to protect and preserve cultural and archaeological discoveries, including <i>iwi kūpuna</i>. • Unique approaches or solutions the Developer will undertake to address any adverse conditions of or at the Property, <i>e.g.</i> public or beneficiary protests or other expressions of anti-development sentiment. 	<p>20</p>
<p><u>E. Community Benefits</u> – The extent to which applicant has meaningfully approached beneficiaries of the Hawaiian Home Lands Trust to preliminarily negotiate a community benefits package that supports community development, job training and placement, and educational and/or cultural programs for homestead communities on the Island of Kaua'i.</p>	<p>20</p>

Exhibit 5 – Application Form

APPLICATION TO DHHL TO D.B.F.O.M.

Commercial/Resort Mixed-Use Development

41.152 acre Parcel in Wailua, Kaua‘i; TMK No. (4) 3-9-006:009

**** Attach Extra Sheets if Necessary ****

Applicant Name (1): _____ Individual or
 Entity: _____
type and where created

Signature: _____ Title (if entity): _____

Applicant Name (2): _____ Individual or
 Entity: _____
type and where created

Signature: _____ Title (if entity): _____

Applicant Name (3): _____ Individual or
 Entity: _____
type and where created

Signature: _____ Title (if entity): _____

For each *entity* applicant, provide the following:

- a) Name, title, telephone number and email address for each Director, Officer, Manager or Partner;
- b) Name, title, telephone number and email address for each Shareholder, Member or Partner holding a 20% or greater equity interest in the applicant;
- c) A current Certificate of Good Standing from the Hawai‘i Department of Commerce and Consumer Affairs;
- d) A current Tax Clearance from the Hawai‘i Department of Taxation and the U.S. Internal Revenue Service; and
- e) Certified copies of the entity’s organic documents –
 - Articles of Incorporation and Bylaws for a corporation;
 - Partnership Certificate and Partnership Agreement for a partnership; or
 - Articles of Organization and Operating Agreement for a limited liability company.

For each applicant (*individual or entity*), provide the following:

- 1) A current Tax Clearance from the Hawai‘i Department of Taxation and the U.S. Internal Revenue Service;
- 2) Current financial statements and last two years’ tax returns;
- 3) Documents identifying all financial resources; and
- 4) Name, title/relationship, telephone number and email address for two Hawai‘i based business/professional references.

PROJECT DEVELOPMENT TEAM

	Company / Address	Contact Name, Telephone and Email
Developer		
Architect		
Civil Engineer		
Contractor		
Environmental		
Archaeological/Cultural		
Construction Mgmt.		
Other (1)		
Other (2)		

Exhibit 6 – Excerpt (“PREAMBLE”) from 01/28/2008 DHHL Solicitation

PREAMBLE
For Commercial Development
Wailua, Island of Kaua‘i, Hawai‘i

Significance of Place

There is nothing more important than having a Hawaiian sense of place in Hawai‘i.



*Wailua is a portal—a gateway—
the entry point for the most significant historical corridor on the island of Kaua‘i.*

The story is told that the leader of the first Marquesan voyage proclaimed Wailuanuiaho‘āno, the “Great Sacred Wailua.” This included the land on either side of the Wailua River from the top of the mountain range to the sea. It is here at Wailua that Hawaiian settlement flourished for hundreds of years as Kaua‘i’s center for religious, political, and civic activity.

Wailua was the chosen place of residence for the ali‘i (royalty) on Kaua‘i. It was traditionally the seat of government for those chiefs who reigned over the windward region. When the island’s rule was consolidated under the reign of a Mō‘ī (paramount ruler), both Wailua and Waimea served as alternating royal residences for the ali‘i and their courts. Wailua was usually occupied during the summer months and Waimea during the winter months. Corresponding religious, political, and civic sites were established within both of these ahupua‘a. The utilization of these temples and other stately sites also conformed to seasonal and astronomical changes.

Wailua was a distinguished meeting place and assembly ground for councils of chiefs, heads of state, and leaders of family clans. They would convene at Wailua to deliberate about political, military, judicial, and /or civic affairs. This was also where orators, historians, and genealogists articulated, exchanged, and amassed information during gatherings of distinguished leaders and guests. But Wailua was not exclusively for the ali‘i – it was an ahupua‘a populated by maka‘āinana (general public) who were the primary cultivators of these lands who also provided labor for the ruling chiefs.

Wailua lands and its abundant resources were ideal because it could support a high concentration of royalty and an even larger resident population. Wailua was developed with comprehensive irrigation systems that captured a continuous supply of fresh water for the cultivation of extensive fields of kalo (taro). These were superb agricultural lands, with ideal geographic and climatic conditions, and continuously flowing water that allowed expansive agricultural activities along the Wailua River and its alluvial terraces. In addition, Wailua was host to several inland fishponds and excellent shoreline fishing grounds which provided protein and other dietary requirements.

Wailua was a significant spiritual center. The Wailua ahupua‘a was the designated pu‘uhonua (sacrosanct lands of refuge) for the Puna District (Līhu‘e). These were lands where battles and skirmishes would be avoided in order to protect the sanctity and integrity of the area. This also afforded protection to the chiefly residences, religious and stately temples, fishponds, agricultural fields, and other royal possessions within the Wailua ahupua‘a. In addition, the beach area at the mouth of the Wailua River is the locality known as Hauola, where people would come to cleanse themselves upon recovery from a prolonged illness.

Wailua was a significant cultural center which contained a large concentration of cultural sites. The large concentration of sites and their distinctive types and variations, signified the importance of the Wailua ahupua‘a. Moreover, the site locations were often aligned with significant places of power, sacredness, and spiritual activity. Although many of the sites were heiau, they were not all used for religious purposes. Some sites were used for civic, political, instructional, or community purposes. However, all sites were interrelated and considered integral, essential components for the vitality of the community.

As Wailua’s layers of historical significance are revealed, we begin to understand Wailuanuiaho‘āno, the Great, Sacred Wailua. We begin to see how Hawaiians were able to live in harmony with their environment and achieve food-sufficiency for its large resident population. We begin to see what attracted distinguished leaders and esteemed guests to the lands at Wailua. We begin to see Wailua as the seat of governance and power – the home to a thriving Hawaiian community where people lived, worked, and played.

Today, Wailua’s glorious and prestigious past is barely noticed driving along Kūhiō Highway. The largest heiau on Kaua‘i, a symbol of ancient significance, is located in Wailua, but it, too, lies hidden beneath

overgrown grass and unattended weeds. How would we know that this heiau, the Malae Heiau, situated in a land section named Malaeha‘akoa, was strategically positioned for unobstructed views of prominent mountain peaks on Maunakapu, ‘A‘āhoaka, Nounou, Kawaikini, and Wai‘ale‘ale, along with visual connections to the Hikinaakalā, Kukui, Holoholokū, and Poliahu heiau? How would we know that the dimensions of this heiau were systematically plotted by using the great Square of the Pegasus constellation as its architectural blueprint? How would we know the Great, Sacred Wailua when our lands have been marginalized as a greenbelt buffer, a fallow sugar cane field, a remnant from Hawai‘i’s recent plantation era?

It is clear that our 500-acre land asset at Wailua is severely underutilized in its current fallow state. The lands do not promote our mission to better the conditions of native Hawaiians and the lands are not providing affordable homes for Hawaiian beneficiaries.

It is therefore the wish of the Hawaiian Homes Commission for Hawaiians to resettle the ahupua‘a of Wailua and to resurrect the thriving economic and social fabric that once existed. We want to utilize the intrinsic natural and cultural resources at Wailua in order to create a Hawaiian community that can establish a renewed legacy for Wailuanuiaho‘āno.

We are interested in creative development proposals that can embrace what we envision for our lands, its resources, and the future Hawaiian community that will reside at Wailua. We want to see the layers of Hawaiian history and values that lie below these current fallow fields represented in the development proposals that are submitted. We believe that respect for the past will provide a bountiful future. We want to bring development ideas into our community without killing that community to accommodate them. We believe there are experienced and qualified individuals, who embrace excellence, thrive on innovation and share in our vision to see Wailua thrive once again. To these visionary and cutting-edge entrepreneurs... *Aloha and Welcome to Wailua!*

We invite you to look at Wailua and imagine the community that existed hundreds of years ago. There is a balanced of Hawaiians living and working on the land, children laughing and playing, political, and religious activity that enhance the community. Feel that energy and create a community that reflects the values and needs of “yesterday”... create a “today” that will address Wailua for “tomorrow.”