

**Shall the Authority Authorize the Executive Director or His Designee to Execute a 40-Year Lease with a 20-Year Option to Extend with the Kalaeloa Heritage and Legacy Foundation for the 77-Acre Kalaeloa Heritage Park, Tax Map Key Nos. (1) 9-1-013: 067 and 069?**

*Staff Report*  
August 12, 2015

**History:**

- Base Realignment and Closure (“BRAC”) parcel numbers 13073-B and 13073-D, now known as Tax Map Key (“TMK”) Nos. (1) 9-1-013: 067 and 069, were identified in the 1999 U.S. Navy Environmental Impact Statement and the 2006 Kalaeloa Master Plan as the appropriate sites to establish the Kalaeloa Heritage Park (“Park”). The identified Park site contains natural, cultural and archaeological resources, including some features that are unique to Kalaeloa. Unique features located within the Park include, but are not limited to: a historic walking trail, military features, sink holes used for burials, agriculture, and storage, and religious stone structures.
- In September 2009, the Hawaii Community Development Authority (“HCDA”) received conveyance of TMK: (1) 9-1-013: 067 consisting of approximately 65 acres and TMK: (1) 9-1-013: 069 consisting of approximately 11 acres (see Exhibit A).
- In January 2010, HCDA staff began discussions with members of the ‘Ahahui Siwila Hawai‘i O Kapōlei Hawaiian Civic Club regarding the potential stewardship of these lands.
- In October 2010, members of the civic club began the formation of a separate non-profit entity specifically focused on the Park. The Kalaeloa Heritage and Legacy Foundation (“KHLF”), a non-profit 501(c)(3) charitable organization, was formed in January 2011.
- In February 2011, KHLF members submitted a draft plan to the HCDA for stewardship of Park lands and requested that a Revocable Right-of-Entry permit (“ROE”) for the site be granted. The ROE would allow the KHLF members to continue their voluntary work to maintain the Park lands; a stewardship partnership that had begun when the U.S. Navy still owned the parcels.
- In May 2011, the HCDA granted a one-year ROE to the KHLF members. Volunteers continued their work to remove invasive species and other overgrowth, establish walking paths to view 11 cultural features, erect a perimeter access gate to enhance

safety and security and build a stone structure to house *iwi na kupuna* (ancestral bones, remains).

- The KHLF also partnered with the Department of Agriculture to combat the gall wasp infestation that was destroying the native *wiliwili* trees in the Park.
- In 2012 and 2013, the HCDA issued additional one-year ROE extensions to the KHLF. The extensions have allowed the KHLF to create numerous partnerships with over 50 community organizations, including schools, businesses and civic clubs. Volunteers have logged over 12,000 hours to maintain and improve the Park.
- KHLF members have also conducted numerous tours and outreach efforts to educate the community about the Park's historical sites, including its Native Hawaiian and military history.
- In 2012, the KHLF cleared land to receive the Greenside Lanai, a structure that is sustainability-focused and composed of recycled materials, including two shipping containers. During the process, the City and County of Honolulu noted that stockpiling of materials requires a permit and the KHLF undertook efforts to meet the requirements. The permit was issued on May 7, 2015 and the Notice of Violation was closed on May 20, 2015.
- In 2013, the Park was selected by the Advisory Council on Historic Preservation as a "Section 106 Success Story," (see Exhibit B) and Rear Admiral Frank Ponds, commander of the Navy Region Hawaii, presented the KHLF with a commendation for their efforts. Additionally, in 2014, Senator Mike Gabbard and the members of the Senate, Hawaii State Legislature, presented the KHLF a commendation for their preservation accomplishments at the Park.

#### **Discussion:**

- At its July 8, 2015 meeting, the Authority authorized HCDA Acting Executive Director Aedward Los Banos, or his designee, to negotiate lease terms with the KHLF. The Authority also requested that issues raised in the meeting be addressed and that the action item be included in the Authority's August 2015 agenda. The following issues were raised:
  1. What is the specific percentage dedicated to the Park generated from rents for HCDA Kalaeloa-owned lands? *Answer: The HCDA reserves the right to set the budget.*
  2. What is the amount of funding does the HCDA dedicate to the Park? *Answer: The HCDA does not have a budget for the Park. In the*

*past, the HCDA has funded the portable toilet rental, Environmental Assessment (“EA”) and Conceptual Park Plan (“CPP”).*

3. Will the HCDA reserve the right to conduct inspections? *Answer: Yes, it will be worked into the lease conditions.*
4. Will the KHLF be required to do an annual report? *Answer: Yes, it will be worked into the lease conditions.*
5. Is it possible to do a 10-year right-of-entry or a 20-year lease? *Answer: A 10-year right-of-entry is not a viable option because a shorter term lease does not allow the KHLF to secure necessary funding.*
6. What is the rationale for structuring the lease terms of 40-year term with a 20-year extension? *Answer: The rationale was based on the potential to secure grant funding, corporate donations and other financial backing.*
7. Why is this Park under the HCDA jurisdiction and not the Department of Land and Natural Resources (“DLNR”)? *Answer: The DLNR rejected BRAC Kalaeloa land conveyances in the past. In more recent conversations, the DLNR indicated that the department is not interested in receiving other Kalaeloa land parcels, including one that currently has endangered species.*
8. What is the definition for net-revenue? *Answer: Revenue less all operating costs. The lease will include specifications.*

In addition, letters of support were submitted prior to the meeting (see Exhibit C).

- In 2013, the HCDA contracted Townscape, Inc. to complete a Park EA and CPP. The KHLF was an integral partner in this approximately seven-month long process. The CPP was presented to the HCDA’s four Kalaeloa stakeholder groups and the Kapolei/Makakilo/Honokai Hale Neighborhood Board No. 34; and all of the groups express support for the plan.
- At its April 9, 2014 meeting, the Authority authorized the HCDA Executive Director to extend the right-of-entry to allow the KHLF to continue their stewardship of the Park.
- From 2011 to 2015, the KHLF had a right-of-entry agreement to access and conduct stewardship activities at the Park.

- In May 2015, the KHLF secured a Conditional Use Permit of Vacant Land in order to continue their preservation work and complete other administrative activities prior to pursuing a lease agreement.
- To date, the thousands of volunteer hours, knowledge, curatorship and partnerships provided by the KHLF has been working toward the goal of securing a long-term lease from the HCDA for the Park site, similar to the agency’s lease with Kāko‘o ‘Ōiwi in the Heeia Community Development District. The KHLF’s draft visitor’s packet, strategic plan and business plan were provided to the HCDA Authority at its July 8, 2015 meeting.
- The key elements of the Park Lease are as follows (see Exhibit D):
  - 40-year term with a 20-year extension period.
  - Base Rent: \$1.00 annually and reopen negotiations before the extension period.
  - Percentage Rent:
 

1st to 5th year	=	0% of gross revenue
6th to 10th year	=	1% of gross revenue
11th to 15th year	=	2% of gross revenue
16th to 20th year	=	3% of gross revenue
21st to 25th year	=	4% of gross revenue
26th to 40th year	=	5% of gross revenue

The KHLF submitted a PRO FORMA to demonstrate how it plans to address lease conditions (see Exhibit E).

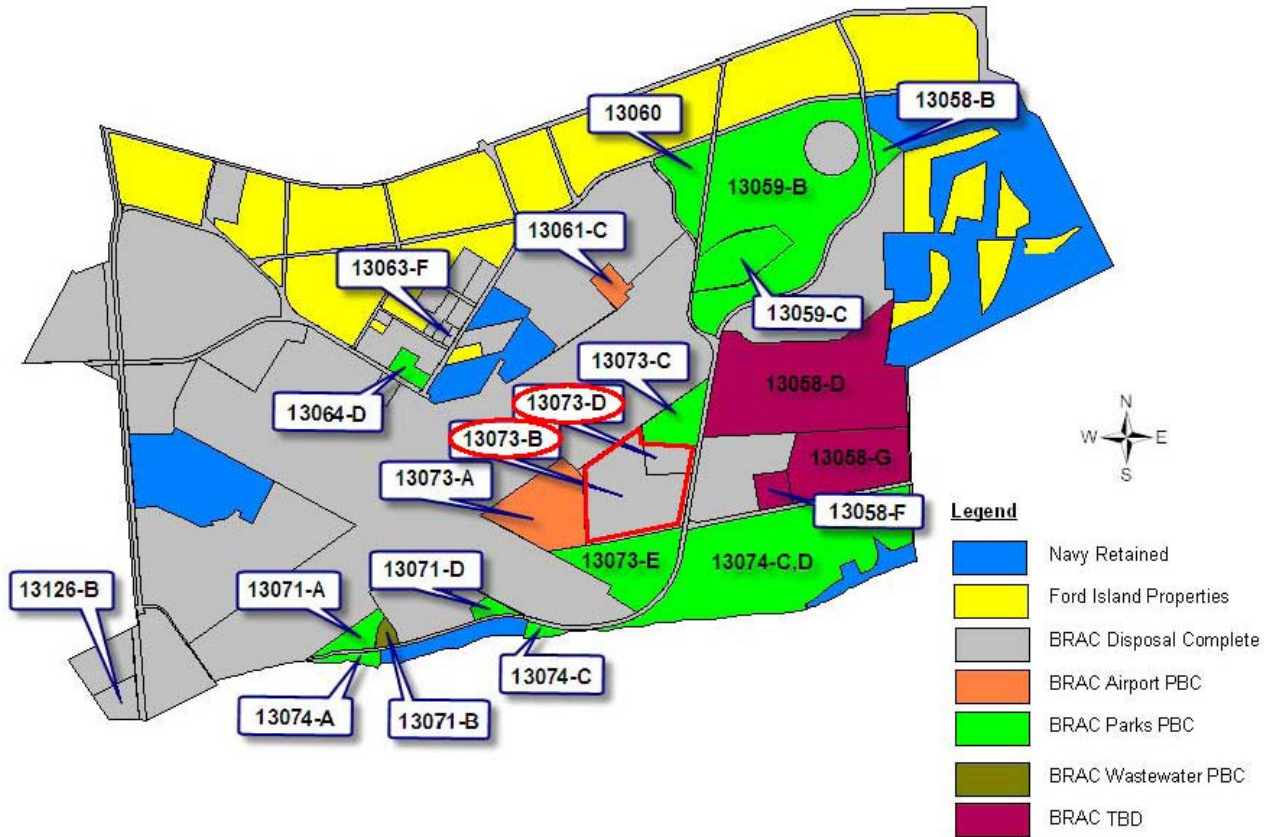
**Authority:**

- Pursuant to Hawaii Revised Statutes (“HRS”), Chapter 206E, the HCDA is responsible for the redevelopment of the Kalaeloa Community Development District.
- Section 206E-4(10), HRS, authorizes the HCDA by itself, or in partnership with qualified persons, to acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project.

**Recommendation:** Staff recommends that the Authority authorize the Executive Director or his designee to execute a 40-year lease with a 20-year option to extend with the Kalaeloa Heritage and Legacy Foundation for the 77-acre Kalaeloa Heritage Park, Tax Map Key Nos. (1) 9-1-013: 067 and 069.

Attachments: Exhibit A - Map of Kalaeloa Heritage Park Parcels  
Exhibit B - Advisory Council on Historic Preservation Section 106 Success  
Story  
Exhibit C - Letters of Support  
Exhibit D - Proposed Lease  
Exhibit E - Proposed Pro Forma and Potential Funder's List

## Kalaheoa Heritage Park Location



**Exhibit A**



“The Kalaeloa Heritage Park integrates the pre-contact history of Hawaii with that of the plantation and military past.”

— SHAD KANE  
Member of the Kapolei Hawaiian Civic Club and Chairman of the Oahu Council of Hawaiian Civic Club's Committee on the Preservation of Historic Sites and Cultural Properties

Photos: Ewa Beach, (photo courtesy Wikimedia Commons); landscape photo of portion of the heritage park (photo courtesy Kalaeloa Heritage and Legacy Foundation)

# 106 SUCCESS STORY

## Former Navy Base Preserves Native Hawaiian Heritage, Military History

Oahu, Hawaii



### THE STORY

For centuries, Native Hawaiians have resided in a geographic region known as the 'Ewa Plain, part of the traditional Hawaiian land division of Honolulu. Hawaiian oral history associates this area with some of the earliest migrations from East Polynesia. The 'Ewa Plain is also known for its natural and economic history in the 19th and 20th centuries. In 1795, it became known as “Barbers Point” after Captain Henry Barber's ship grounded on the nearby coral reef. Naval Air Station (NAS) Barbers Point was commissioned in 1942 and became an important air center, technical training school, and fortification in World War II, manned by 12,000 sailors. During the Korean War, it was used as a critical staging area and would later become home to the Rainbow Fleet—a squadron used to track Soviet submarines. Today, the vestiges of early Hawaiian stacked coral dwellings and agricultural features, religious structures, modified sinkholes, and trail markers still exist. Traditional Hawaiian burials may also be present. In addition, 20th century habitation, ranching, and sisal cultivation sites are located alongside World War II military components.

### THE PROJECT

NAS Barbers Point was recommended for closure in 1993 by the Base Closure and Realignment Commission. That same year, the state of Hawaii established the Barbers Point NAS Redevelopment Commission, which prepared a redevelopment plan to guide reuse of the property.

### THE 106 PROCESS

The Navy, the federal agency carrying out this project, was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects are likely to ensue. The Navy completed consultation with the Hawaii State Historic Preservation Officer (SHPO) and other consulting parties in 1998 and in

CONTINUED >>>





Photos: Left, Kauhale that serves as a visitors center; Right, visitors at the end of the trail (photos courtesy Kalaeloa Heritage and Legacy Foundation)

2010 regarding the base closure and land transfer. The Navy concluded the Section 106 process in both instances with a finding of "no historic properties adversely affected" provided certain conditions were met, including placing historic preservation covenants on particular transferred properties to ensure future preservation and appropriate treatment. Restrictive covenants place land use controls on each property and require consultation with the SHPO for activities that would potentially impact cultural resources. The station was closed in 1999, and in 2002, redevelopment responsibility was transferred from the Redevelopment Commission to the Hawaii Community Development Authority (HCDA). The Navy retained 1,055 acres for military housing and support facilities and conveyed 334 acres to HCDA and another 819 acres to other state agencies. The HCDA partnered with a nonprofit organization, the Kalaeloa Heritage and Legacy Foundation, to build the Kalaeloa Heritage Park on a portion of the state lands. The park provides public access and interpretation of cultural elements on the site and the broader area. The Navy continues to evaluate its historic properties on the Navy-retained lands, including both cultural and former naval aviation sites.

## THE SUCCESS

When the Navy's last naval air station in the Hawaiian Islands ended 57 years of service, the Section 106 and base closure processes resulted in the preservation of Native Hawaiian archaeological sites and access to previously restricted cultural sites for Native Hawaiians and the public through development of the Kalaeloa Heritage Park. The Section 106 process and the work of the Kapolei Hawaiian Civic Club led to the identification of the Hawaiian cultural presence in the former Navy property. Federal, state, and private agencies partnered with local community groups to create the 77-acre park containing more than 177 relatively undisturbed archaeological features including a heiau (temple) and habitation and agricultural sites. Now the cultural sites at Kalaeloa Heritage Park are being preserved to educate the community on centuries-old Hawaiian cultural traditions and practices, advocate cultural awareness, and maintain an authentic Hawaiian presence in the Kalaeloa area.

### Consulting Parties:

Department of the Navy  
General Services Administration  
ACHP  
Hawaii State Historic Preservation  
Office  
Office of Hawaiian Affairs  
Oahu Council of Hawaiian Civic  
Clubs  
Historic Hawaii Foundation  
National Park Service  
National Trust for Historic  
Preservation

For more about Section  
106 and the ACHP go  
to [www.achp.gov](http://www.achp.gov)

ADVISORY COUNCIL ON HISTORIC PRESERVATION  
1100 Pennsylvania Avenue NW, Suite 803, Washington DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)



Preserving America's Heritage



Kalaeloa Heritage and Legacy Foundation's Kalaeloa Heritage Park Lease  
Prior to August 12, 2015

	Name	Date of Testimony	Date HCDA Received	Written Comments (Support)	Written Comments (Oppose)	Written Comments	Email Comments (Support)	Email Comments (Oppose)	Comments from HCDA Website (Support)	Comments from HCDA Website (Oppose)	Comments from HCDA Website
1	Shad Kane	7/2/2015							1		
2	Samuel Gon	7/5/2015							1		
3	Kathryn Johnson	7/5/2015							1		
4	Cheryl Green	7/5/2015							1		
5	Rona Ikehara-Quebral	7/6/2015							1		
6	John Stephen Athens	7/6/2015							1		
7	Trever Duarte	7/6/2015							1		
8	Sedrika Anuhealii	7/7/2015							1		
9	Councilmember Kymberly Marcos Pine	7/7/2015							1		
10	Senator Mike Gabbard	7/7/2015							1		
11	Lance Holden	7/7/2015							1		
12	Gary Omori	7/7/2015							1		
13											
14											
				0	0	0	0	0	12	0	0

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Public Testimony Website Submission Kalaeloa Heritage Park Lease to the Kalaeloa  
Heritage and Legacy Foundation  
ShadKane

to:

contact

07/02/2015 07:38 PM

Hide Details

From: ShadKane <shadskane@gmail.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Shad Kane

**Organization**

Kalaeloa Heritage and Legacy Foundation

**Address**

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Kapolei, Hawaii 96707

[Map It](#)

**Phone**

(808) 672-4765

**Email**

[shadskane@gmail.com](mailto:shadskane@gmail.com)

**Project Name**

Kalaeloa Heritage Park Lease to the Kalaeloa Heritage and Legacy Foundation

**Do you support or oppose?**

Support

**Comment**

The Kapolei Hawaiian Civic Club was represented on the Parks and Recreation and Public Facilities Task Force to the Barbers Point Redevelopment Commission as part of the closure of the Barbers Point NAS. The Kapolei HCC supported the position of the PRPF Task Force and recommended to the BPRC that the subject 77 acre parcel be identified as a heritage park in terms of its future reuse and hence forth be identified as the Kalaeloa Heritage Park. The KHP is meant to serve a community benefit. Most people think of the 'Ewa/Kapolei/Makakilo/Kalaeloa/Honokai Hale in terms of its agricultural/military past. Few people are aware of its colorful cultural history. The Kalaeloa Heritage and Legacy Foundation, a 501c3 non-profit is working in partnership with the HCDA in building the heritage park. All this being done also in partnership with many district stake holders to include district schools, University of Hawaii Manoa, UHWO, LCC, HPU, high schools, charter schools, regional developers, land owners, contractors, QLCC Waianae, Kamehameha Schools and many others in sharing this cultural past.

In the short term we have cleaned up a portion of site number 1753 of the archaeological survey submitted by the International Archaeological Research Institute, Inc. in 1997. We identified 11 archaeological features of the total 51 and joined them by a mulched interpretive trail. The structures are examples of permanent and temporary house sites, agricultural, water and burial sinkholes. Religious structures identified as both personal and communal prayer. Perhaps most interesting is a paved trail with upright stones every 8 to 10 feet. This trail is identified on Malden's Map of 1825 as originating at the coastal community of Kualaka'i and traversing approximately 4 miles to Kaloi Gulch adjacent Makakilo and also to the wetlands of West Loch. Kualaka'i Parkway gets its name from this trail as the former North-South Road sat on the natural alignment of the Kualaka'i Trail.

Currently the site tour is approximately about an hour and a half. All the cultural protocol is followed to include oli and pule. Half hour of the history of how the park came to be and the ancient place names associated with the region and the park. Currently it is only a walking tour. Eventually the interpretive trail will be extended subsequent to the hiring of an archaeological firm to do a more detailed survey and recover more data. Story boards will be installed for self guided tours.

The next phase of work is defined in the conceptual plan to include a visitor's center, theater, farmers market, aquaponics, greenhouse, caretakers residence, maintenance yard, bus and vehicle parking. All aspects of the project will be "green" to include power by the sun. In order to execute the next phase a lease agreement must be agreed upon. I am in support of a lease being awarded to the Kalaeloa Heritage and Legacy Foundation by the Hawaii Community Development Authority.



Public Testimony Website Submission Other  
SamuelGon

to:

contact

07/05/2015 06:42 AM

Hide Details

From: SamuelGon <ohukaniohia@gmail.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Samuel Gon

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Hālau Mele

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(808) 285-4937

**Email**

[ohukaniohia@gmail.com](mailto:ohukaniohia@gmail.com)

**Project Name**

Other

**Do you support or oppose?**

Support

**Comment**

The lease of the Kalaeloa Heritage Park to the Kalaeloa Heritage and Legacy Foundation is a crucial step in making the Kalaeloa Heritage Park a reality. The Park is meant to serve a community benefit. Few people are aware of the colorful history of the Kapolei and Kalaeloa region. The Kalaeloa Heritage Park defines that past. I have personally visited the remarkable site and fully support their plans to develop a fine interpretive center there. Please grant their lease of 77 acres.



Public Testimony Website Submission Kalaeloa Heritage Park

KathrynJohnson

to:

contact

07/05/2015 02:04 PM

Hide Details

From: KathrynJohnson <nadagirl9@gmail.com>

To: contact@hcdaweb.org,

**Name**

Kathryn Johnson

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87-267 Heleuma  
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[nadagirl9@gmail.com](mailto:nadagirl9@gmail.com)

**Project Name**

Kalaeloa Heritage Park

**Do you support or oppose?**

Support

**Comment**

The Kalaeloa Heritage Park defines that past and will help to preserve and protect Hawaii. Please grant their lease of 77 acres."





Public Testimony Website Submission Kalaeloa Heritage Park and 77 acre lease."

cherylgreen

to:

contact

07/05/2015 03:56 PM

Hide Details

From: cherylgreen <burgharc@gmail.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

cheryl green

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[burgharc@gmail.com](mailto:burgharc@gmail.com)

**Project Name**

Kalaeloa Heritage Park and 77 acre lease."

**Do you support or oppose?**

Support

**Comment**

We continue to need more parks and areas which support Hawaiian culture. Support locally.

**Public Testimony Website Submission Kalaeloa Heritage Park**

RonaIkehara-Quebral

to:

contact

07/06/2015 01:21 PM

Hide Details

From: RonaIkehara-Quebral &lt;rikehara@iarii.org&gt;

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Rona Ikehara-Quebral

**Organization**

International Archaeological Research Institute, Inc. (IARII)

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2081 Young Street  
Honolulu, Hawaii 96826-2231  
United States

[Map It](#)**Phone**

(808) 946-2548

**Email**[rikehara@iarii.org](mailto:rikehara@iarii.org)**Project Name**

Kalaeloa Heritage Park

**Do you support or oppose?**

Support

**Comment**

This written testimony is in support of the Hawai'i Community Development Authority executing a 40-year lease of the 77-acre Kalaeloa Heritage Park (with a 20-year option to extend), to the Kalaeloa Heritage and Legacy Foundation. I am a professional archaeologist who has been working in Hawai'i for over 25 years. The Kalaeloa Heritage Park contains hundreds of well-preserved archaeological and cultural features which provide evidence of the cultural practices and lifestyle of ancient Hawai'i, and are significant within a broader regional context. There is so much more to be done to thoroughly document this cultural site. Uncle Shad Kane and the Kalaeloa Heritage and Legacy Foundation must be commended for their efforts to care for and preserve this important legacy for public viewing and for the future generations of Hawai'i.

**Public Testimony Website Submission Kalaeloa Heritage Park****John StephenAthens**

to:

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07/06/2015 04:20 PM

Hide Details

From: John StephenAthens &lt;JSAthens@iarii.org&gt;

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History: This message has been forwarded.

**Name**

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(808) 946-2548

**Email**[JSAthens@iarii.org](mailto:JSAthens@iarii.org)**Project Name**

Kalaeloa Heritage Park

**Do you support or oppose?**

Support

**Comment**

This written testimony is in support of the Hawai'i Community Development Authority executing a 40-year lease of the 77-acre Kalaeloa Heritage Park (with a 20-year option to extend), to the Kalaeloa Heritage and Legacy Foundation. I am a professional archaeologist who has been working in Hawai'i for over 35 years. The Kalaeloa Heritage Park contains hundreds of well-preserved archaeological and cultural features which provide evidence of the cultural practices and lifestyle of ancient Hawai'i, and are significant within a broader regional context. Because of my professional work experience at Barbers Point before Kalaeloa Heritage and Legacy Foundation came into existence, I am very well aware of special character of these remains and their generally excellent state of preservation. With the work being done by the Kalaeloa Heritage and Legacy Foundation, it is now possible for the public to easily access these archaeological remains and be able to glimpse a picture of Hawai'i's past cultural landscape and not just a few isolated features. This is truly an important benefit to the community and schools on O'ahu. The Kalaeloa Heritage and Legacy Foundation must be commended for its efforts to care for and preserve this important legacy for public viewing and for the future generations of Hawai'i. I urge the Hawai'i Community Development Authority to execute a lease with the Kalaeloa Heritage and Legacy Foundation to ensure the continuity of work at the Kalaeloa Heritage Park.

**Public Testimony Website Submission Kalaeloa Heritage Park**

Trevor Duarte

to:

contact

07/06/2015 10:41 PM

Hide Details

From: Trevor Duarte &lt;tduarte@iarii.org&gt;

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(808) 306-1524

**Email**[tduarte@iarii.org](mailto:tduarte@iarii.org)**Project Name**

Kalaeloa Heritage Park

**Do you support or oppose?**

Support

**Comment**

This written testimony is in support of the Hawai'i Community Development Authority executing a 40-year lease of the 77-acre Kalaeloa Heritage Park (with a 20-year option to extend), to the Kalaeloa Heritage and Legacy Foundation. I am a professional archaeologist who has been working in Hawai'i for over 6 years. The Kalaeloa Heritage Park provides visitors and kama'aina alike the chance to access a variety of well preserved archaeological features on the 'Ewa Plains. Uncle Shad Kane and the docents of KHP have done a tremendous job to preserve the sites and `ike (knowledge) associated with Kalaeloa Heritage Park. Rare native plants are nurtured, sites are cleaned and cared for, and the story of Kalaeloa is perpetuated. The Kalaeloa Heritage and Legacy Foundation must be commended for its efforts to care for and preserve this important legacy for public viewing and for the future generations of Hawai'i. I urge the Hawai'i Community Development Authority to execute a lease with the Kalaeloa Heritage and Legacy Foundation to ensure the continuity of work at the Kalaeloa Heritage Park.

--

Trevor Duarte, M.A.

Field Supervisor

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**Public Testimony Website Submission Kalaeloa Heritage Park and 77 acre parcel**

SedrikaAnuhealii

to:

contact

07/07/2015 05:58 AM

Hide Details

From: SedrikaAnuhealii &lt;mkamohalii@yahoo.com&gt;

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**Name**

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**Email**[mkamohalii@yahoo.com](mailto:mkamohalii@yahoo.com)**Project Name**

Kalaeloa Heritage Park and 77 acre parcel

**Do you support or oppose?**

Support

**Comment**

Please approve this. I am very appreciative of all the work done to this area.





Public Testimony Website Submission 40 year lease with 20 year option to extend with the  
Kalaeloa Heritage and Legacy Foundation

KymberlyMarcos Pine

to:

contact

07/07/2015 03:44 PM

Hide Details

From: KymberlyMarcos Pine <kmpine@honolulu.gov>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Kymberly Marcos Pine

**Organization**

Honolulu City Council

**Email**

[kmpine@honolulu.gov](mailto:kmpine@honolulu.gov)

**Project Name**

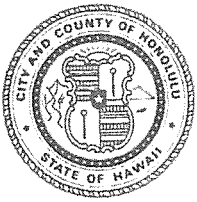
40 year lease with 20 year option to extend with the Kalaeloa Heritage and Legacy Foundation

**Do you support or oppose?**

Support

**File Upload**

- [07.06.15-Testimony-HCDA-Kalaeloa.pdf](#)



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
530 SOUTH KING STREET, ROOM 202  
HONOLULU, HAWAII 96813-3065  
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

KYMBERLY MARCOS PINE  
COUNCILMEMBER, DISTRICT 1  
TELEPHONE: (808) 768-5001  
EMAIL: kmpine@honolulu.gov

July 6, 2015

Hawaii Community Development Authority  
457 Queen Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813

**Subject: Testimony Submitted In Support of the 40-Year Lease with a 20-Year Option to Extend with the Kalaeloa Heritage and Legacy Foundation. (Kalaeloa Matters Agenda Item #2)**

Aloha Chair and Members of the of the Hawaii Community Development Authority,

Thank you for the opportunity to provide testimony on the proposal to authorize the Executive Director to negotiate and execute a 40-year lease with a 20-year option to extend with the Kalaeloa Heritage and Legacy Foundation for the 77-acre Kalaeloa Heritage Park, TMK Nos. (1) 9-1-013; 067 and 069. (Kalaeloa Lease). I **strongly support** the granting of this lease.

The Kalaeloa Heritage Park is a 77 acre park that is home to over 177 recorded cultural sites, including a heiau, habitation sites, and native plants. Constructed out of coral, many of these cultural structures are unique and cannot be found anywhere else on O'ahu. Since taking oversight of the site, volunteers organized by the Kalaeloa Heritage and Legacy Foundation, a non-profit organization, have cleared portions of the land and transformed the rugged landscape – replacing invasive plant species with native drought-tolerant plants. Volunteers have also created walking paths to view 11 cultural features and constructed a traditional hale. To date, Foundation members and volunteers have logged over 3,000 hours of work at the site.

The Foundation's mission is to partner, plan, advocate and provide stewardship so the historical sites and mo'olelo of Kalaeloa can be preserved and perpetuated. A key component of bringing this mission to fruition is the State's plan to lease the Heritage Park to the Foundation. A lease will provide the Foundation with the legal ownership it needs to complete its restoration plan for the park site.

I urge HCDA members and the Executive Director to negotiate and execute the Kalaeloa Lease. Thank you for the opportunity to provide testimony. Should you have any questions or require any additional information please do not hesitate to contact me at 768-5001.

Sincerely,

A handwritten signature in black ink, reading "Kymberly Pine". The signature is written in a cursive, flowing style with a large initial "K" and a stylized "Pine".

Kymberly Marcos Pine  
Councilmember, District 1

**Public Testimony Website Submission Kalaeloa Heritage Park**

MikeGabbard

to:

contact

07/07/2015 03:57 PM

Hide Details

From: MikeGabbard &lt;sengabbard@capitol.hawaii.gov&gt;

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Mike Gabbard

**Organization**

State Senate

**Address**

State Capitol, Rm. 201

Honolulu, HI 96813

United States

[Map It](#)**Phone**

(808) 586-6830

**Email**[sengabbard@capitol.hawaii.gov](mailto:sengabbard@capitol.hawaii.gov)**Project Name**

Kalaeloa Heritage Park

**Do you support or oppose?**

Support

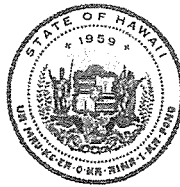
**File Upload**

- [070815-SenatorGabbardTestimony\\_HCDA.pdf](#)

SENATOR MIKE GABBARD

20TH DISTRICT

KAPOLEI, MAKAKILO,  
AND PORTIONS OF EWA, KALAELOA  
& WAIPAHU



**The Senate**

STATE CAPITOL  
HONOLULU, HAWAII 96813

CHAIRMAN  
WATER, LAND & AGRICULTURE

VICE CHAIR  
TRANSPORTATION & ENERGY

MEMBER  
JUDICIARY & LABOR  
HIGHER EDUCATION & THE ARTS

**TESTIMONY TO THE  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
CHAIRPERSON JOHN WHALEN  
From  
MIKE GABBARD  
State Senator – District #20  
July 8, 2015**

**RE:** Testimony in Support of Authorizing the Executive Director to Negotiate and Execute a Lease with the Kalaeloa Heritage and Legacy Foundation for the Kalaeloa Heritage Park

Aloha. As a resident of Kalaeloa for the last 11 years and the State Senator for this community, I'm testifying in strong support of the Hawaii Community Development Authority (HCDA) executing a lease with the Kalaeloa Heritage and Legacy Foundation (KHLF) for the Kalaeloa Heritage Park.

On March 12, 2014, I had the opportunity to join with my colleagues in honoring the KHLF with a Senate "floor presentation" for their work at the Kalaeloa Heritage Park. During our presentation, I offered them mahalo for dedicating "themselves to preserving this cultural treasure and making the vision of Kalaeloa as a Wahi Ho'okela become reality."

KHLF members and volunteers have logged thousands of volunteer hours and, along with its partners, cleared about 3 acres of overgrown kiawe bush to reveal a cluster of significant archeological sites, which include sink holes, habitation structures, a religious altar, and a trail that is being used as an educational site. The goal of KHLF is to build a multi-purpose cultural center where the mo'olelo (stories) of Kalaeloa can be shared, where cultural practitioners can display their art, and where the community can embrace their heritage.

As the City of Kapolei continues to grow and Kalaeloa is restored to a thriving community, it's important that we not lose sight of the importance of community gathering places, which preserve and celebrate our history and culture. The Kalaeloa Heritage Park is on its way to becoming such a place and should be nurtured and supported by HCDA. Thank you for considering these points in making your decision on the KHLF lease.



# Public Testimony Website Submission Long Term Lease Between HCDA and KHLF for The Kalaeloa Heritage Park

LanceHolden

to:

contact

07/07/2015 04:14 PM

Hide Details

From: LanceHolden <holdengd2015@icloud.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

## Name

Lance Holden

## Organization

'Ahahui Siwila Hawai'i o Kapolei (Hawaiian Civic Club of Kapolei)

## Address

P.O. Box 700007  
Kapolei, Hawaii 96709-0007  
United States

[Map It](#)

## Email

[holdengd2015@icloud.com](mailto:holdengd2015@icloud.com)

## Project Name

Long Term Lease Between HCDA and KHLF for The Kalaeloa Heritage Park

## Do you support or oppose?

Support

## Comment

'Ahahui Siwila Hawai'i O Kapolei, the Hawaiian Civic Club of Kapolei, a Native Hawaiian organization, is one of 67 component organizations throughout the State of Hawai'i and the continental U.S., linked under the Association of Hawaiian Civic Clubs. The Hawaiian Civic Club of Kapolei is one of 27 civic clubs on the Island of O'ahu that make up the O'ahu Council of Hawaii Civic Clubs. The first civic club was founded in 1918 by Prince Jonah Kūhiō Kalaniana'ole and, since then, the movement to preserve and protect all aspects of the native culture has continued to develop and expand.

Our 'Ahahui was chartered in 1993 to establish a Hawaiian cultural presence in the new city of Kapolei. It was tasked with the responsibility of identifying, preserving and restoring historic sites in the ahupua'a of Honouliuli. This area includes, but is not limited to the 'Ewa Plains, Kalaeloa, Ko 'Olina, Kapolei, Makakilo, Honokai Hale, Makaiwa, Waimānalo, Ka Lo'i, Pohakea, Līhu'e, Kupehau and Pālehua.

Our Mission Statement: 'Ahahui Siwila Hawai'i o Kapolei, kupa'āina of Honouliuli, rooted with the kuleana to assure that cultural traditions and practices of nā oiwi o Hawai'i are perpetuated by promoting cultural awareness, providing educational opportunities, and an authentic Hawaiian presence in our community.

On behalf of the members of the 'Ahahui Siwila Hawai'i O Kapolei (ASHOK), we applauded the hard work and accomplishments of the Kalaeloa Heritage and Legacy Foundation (KHLF) in preserving the 77-acre parcel of state land designated as the "Kalaeloa Heritage Park". ASHOK is in support of KHLF and it's efforts to obtain a long term lease agreement with HCDA.

It is ASHOK's hope that KHLF will be able to continue with their mission as caretaker for the Kalaeloa Heritage Park and continue sharing and preserving the culturally significant sites in perpetuity for future generations.

Mahalo,  
Lance C. Lanakila Holden  
Pelekikena - 'Ahahui Siwila Hawai'i o Kapolei





Public Testimony Website Submission KALAELOA CULTURAL HERITAGE PARK  
GARYOMORI

to:

contact

07/07/2015 06:02 PM

Hide Details

From: GARYOMORI <garykomori@gmail.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

GARY OMORI

**Organization**

GARY K. OMORI LLC

**Address**

98-1936 HAPAKI STREET  
AIEA, HAWAII 96701-1639  
United States  
[Map It](#)

**Phone**

(808) 551-6693

**Email**

[garykomori@gmail.com](mailto:garykomori@gmail.com)

**Project Name**

KALAELOA CULTURAL HERITAGE PARK

**Do you support or oppose?**

Support

**Comment**

Mahalo for allowing me to submit testimony to support of the extension of the lease for the Kalaeloa Cultural Heritage Park.

With all the proposed development scheduled for this area this Park would provide a connection for the people of this growing community with the culture and rich heritage of this area. In addition it will serve as a place where individuals can commune with the indigenous plants and the serenity and peace one can find away from the stress of urban living.

The Kupuna Shad Kane has selflessly committed to making this park a reality for all to enjoy and is the primary driving force behind this wonderful community amenity which will be appreciated by current and future generations. Kupuna Shad Kane has through his devotion to sharing his broad knowledge of the history of the area to both older and younger generation alike. It is without question that this park will have a significant beneficial effect to not only the community in which it serves but to all people who visit the park.

As a tribute to Kupuna Kane's efforts and the benefit it will provide I wholeheartedly encourage the passage of extending the lease for the Kalaeloa Cultural Heritage Park.

# EXHIBIT D

## GENERAL LEASE NO. 15-05

THIS INDENTURE OF LEASE ("Lease"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the HAWAI'I COMMUNITY DEVELOPMENT AUTHORITY ("LESSOR"), a body corporate and a public instrumentality of the State of Hawai'i, whose principal place of business is 547 Queen Street, Honolulu, Hawai'i 96813, and KALAELOA HERITAGE AND LEGACY FOUNDATION ("LESSEE"), a Hawaii nonprofit corporation, whose mailing address is P.O. Box 75447, Kapolei, Hawai'i, 96707 (each, a "Party", and collectively, the "Parties").

### RECITALS

**WHEREAS**, LESSOR is the fee simple owner of the Premises (defined below);

**WHEREAS**, LESSEE desires to lease the Premises to develop and operate a multi-purpose cultural center with the objective of preserving and maintaining archaeological, cultural and natural resources in the Kalaeloa Heritage Park, as described in the Kalaeloa Heritage Park Conceptual Plan approved by LESSOR at its June 18, 2014 meeting (hereinafter, "Project," which is further defined below);

**NOW, THEREFORE**, in consideration of the terms, covenants, and conditions contained herein, and other good and valuable consideration, the receipt of which are herby acknowledged by each of the Parties, LESSOR and LESSEE do hereby agree as follows:

### ARTICLE I DEMISE

1.1 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, that certain real property, together with all easements, appurtenances, and other rights and privileges now or hereafter belonging or appertaining to the leased premises identified as Lots 13073-B (approx. 65.356 acres) and 13073-D (approx. 11.501 acres) depicted on Map 971, attached hereto as **Exhibit "A"** and incorporated by reference herein, which was filed in Land Court Order No. 135167 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on April 19, 1999, with Land Court Application 1069, affecting Transfer Certificate of Title No. 529,664 (collectively, the "Premises").

1.2. Term. The Premises is demised unto LESSEE, together with all of the improvements (if any) and all appurtenant rights, but subject to the terms and conditions of this Lease, commencing at 12:00 pm Hawaii time on \_\_\_\_\_, 2015 ("Commencement Date") through 12:00 p.m. Hawaii time on \_\_\_\_\_, 2055 ("Termination Date"), unless this Lease is earlier terminated as provided herein (hereinafter, the "Initial Term", and together with the Extended Term, as defined in Section 1.4 below, if applicable, shall collectively be referred herein as the "Term").

1.3. LESSOR's Option to Terminate Lease. Notwithstanding any provision to the contrary herein, LESSOR shall have the option to terminate this Lease after Lease Year 1 (defined below in Section 2.1 below) if, in LESSOR's sole opinion and discretion, LESSOR determines that LESSEE has not satisfactorily resolved the following: (1) the Notice of Violation NOV-09-085, dated September 23, 2013, and Notice of Order NOO-262, dated December 19, 2013, both of which were issued by the Department of Planning and Permitting, City and County of Honolulu (hereinafter "DPP") and are attached hereto as **Exhibits "B" and "C"**, respectively; and (2) the June 23, 2014 Warning Letter issued by the Solid and Hazardous Waste Branch of the Department of Health, State of Hawai'i (hereinafter "DOH") and attached hereto as **Exhibit "E"**.

1.4. LESSEE's Option to Extend Term.

(a) At the end of the Initial Term, LESSEE may elect to extend this Lease for a period of twenty (20) years commencing on the day after the Initial Term (hereinafter, such additional twenty (20) year period is referred to as the "Extended Term"). Except as otherwise provided herein, the Extended Term shall be subject to the same terms and conditions of the Initial Term.

(b) The option shall expire at 4:00 p.m. Hawaii time on the one hundred eightieth (180<sup>th</sup>) day preceding the Termination Date. LESSEE shall submit written notice to LESSOR indicating LESSEE's election to exercise this option no later than the one hundred eightieth (180<sup>th</sup>) day preceding the Termination Date. Should LESSEE fail to give timely written notice of its intention to exercise this option, LESSEE shall be deemed to have elected not to exercise its option and this Lease shall terminate on the Termination Date.

(c) Even if this option is timely exercised, it shall be of no effect if:

(i) LESSEE commits a material breach hereof at any time before the Termination Date, if such material breach remains uncured beyond the applicable notice and cure period and remains uncured at the time of LESSEE's election to exercise the option; or

(ii) At any time before the Termination Date, LESSOR terminates this Lease in accordance with the terms of this Lease.

## **ARTICLE II RENT**

2.1. Annual Rent. Annual rent shall be payable by LESSEE to LESSOR, without notice or demand, in legal tender of the United States of America, and shall be in addition to and over and above all other payments to be made by LESSEE as provided elsewhere in this Lease. It is the purpose and intent of LESSOR and LESSEE that the annual rent specified herein shall be net to LESSOR, except as otherwise provided in this Lease. For purposes of calculating rent under this Lease, the term "Lease Year" shall mean a consecutive twelve (12) month period, i.e., Lease Year 1 commences on the Commencement Date and ends 12 consecutive months thereafter.

(a) Initial Term (Lease Years 1 through 40). For the Initial Term, LESSEE shall pay to LESSOR an annual rent which shall be the sum of the annual base rent and the annual percentage rent, if applicable. For the Initial Term, the annual base rent shall be ONE DOLLAR (\$1.00)

(c) . For the Initial Term, the percentage rent shall be as follows:

Lease Years 6 through 10: 1% of Gross Revenue

Lease Years 11 through 15: 2% of Gross Revenue

Lease Years 16 through 20: 3% of Gross Revenue

Lease Years 21 through 25: 4% of Gross Revenue

Lease Years 26 through 40: 5% of Gross Revenue

Gross Revenue means any and all revenues, income, or other receipts received or collected by LESSEE with respect to all business conducted at, in, from, or upon the Premises and from any support facilities managed by LESSEE pursuant to Section 6 below. Gross Revenue shall not include the following: (i) the amount of any tax or assessment imposed by any Governmental Authority which is separately charged as tax to a customer or consumer and actually paid by LESSEE to the respective government authority; (ii) any cash or credit refunds made to a customer or consumer to the extent such sale is or has been included in LESSEE's computation of gross revenue; and (iii) any revenue or receipts which are: (A) donor imposed restricted funds; (B) in-kind contributions; (C) reimbursements (e.g., taxes, utilities); (D) fees paid to third-party credit or debit card companies; (E) extraordinary receipts, including condemnation or insurance proceeds, amounts recovered in legal actions for tortious conduct and punitive damages, and proceeds of any capital transaction, including without limitation proceeds of any sale, financing, or refinancing of any interest in LESSEE in the Premises and any capital contribution or loan made; (F) interest on bank accounts and investment earnings with respect to any capital or operating reserves held with respect to the Premises; (G) interest, financing, and installment sales charges or other charges, however denominated, paid by customers for extension of credit on sales; (H) amounts paid to sublessees, licensees, or concessionaires for the sale of goods, services, or merchandise by them; (I) all currency conversion transactions; (J) merchandise returned to sources (such as manufacturers, suppliers, and shippers), exchanged between stores, or transferred to another store or warehouse; (K) sums and credits received in the settlement of claims for loss of or damage to merchandise, inventory, or equipment; (L) delivery and installation charges or any service charge rendered on a non-profit basis for the convenience of customers; (M) revenue from coin-operated devices, such as public telephones, stamp machines, public toilet locks, or vending machines; (N) sales of fixtures, equipment, or property which are not retail merchandise; (O) gift certificates, gift cards, or like vouchers, until such time as the same shall have been converted into a sale by redemption; (P) amounts credited for discounts, promotion coupons, other promotional credits, or other sales allowances; (Q) tips or gratuities; (R) accommodation sales, such as stamps and money orders; (S) going out of business, salvage, and loss leader sales; (T) mail order catalog and Internet sales; (U) bulk transfer or sale of

products or merchandise; (V) sales of promotional items at cost; and (W) merchandise, services, or meals sold or given to employees or offered for promotional purposes.

LESSEE shall pay the annual percentage rent, if applicable, within sixty (60) days following the end of each Lease Year during the Initial Term. Each payment of percentage rent shall be accompanied by a written statement certified as correct by LESSEE, or a person duly authorized by LESSEE, setting forth the amount of Gross Revenue collected or received by LESSEE by category for the preceding Lease Year.

LESSEE shall at all times keep and maintain accurate accounting records of all proceeds and receipts generated at, by, from or upon the Premises, including accounting records of proceeds received or collected by LESSEE from any sublessees or tenants located in or upon the Premises. LESSEE shall also keep and maintain accurate accounting records of all operating expenses deducted from the gross proceeds and receipts generated at, by, from or upon the Premises. LESSOR shall have the right to require LESSEE to prepare and furnish, at LESSEE's sole expense, financial statements prepared according to generally accepted accounting principles regularly employed by LESSEE and covering any fiscal year regularly employed by LESSEE for the maintenance of its financial statements. All such information shall be held by LESSOR, its agents, attorneys, and accountants in strictest confidence to the extent permitted by law.

If at any time LESSEE determines or discovers that LESSEE has underpaid the percentage rent due and owing to LESSOR for any period under this Lease, LESSEE shall immediately notify LESSOR in writing of such deficiency and the deficient amount shall be due and payable within five (5) business days after the date of the written notice.

LESSOR shall be entitled to an audit of LESSEE's accounting records pertaining to the Premises during normal business hours of LESSEE, provided LESSOR provides LESSEE with fourteen (14) calendar days prior written notice. Any such audit shall be performed only by an accountant that charges on an hourly basis and not on a contingency or percentage of recovery basis. If an audit by LESSOR's accountant or by a licensed independent certified public accountant retained by LESSOR shall disclose that any percentage rent payment to has been underpaid by FIVE PERCENT (5%) or more for any period under examination, LESSOR, in addition to any other remedies available at law or under this Lease, shall be entitled to reimbursement by LESSEE of all costs and expenses incurred in completing any such audit, in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

If at any time LESSOR determines or discovers that LESSEE has overpaid the percentage rent for any period under this Lease, LESSOR shall immediately notify LESSEE in writing of such overpayment and the overfunded amount shall be refunded to LESSEE within twenty-one (21) business days after the date of the written notice.

(b) Extended Term (Lease Years 41 through 60, if applicable). If LESSEE timely and effectively exercises its option for an Extended Term, the annual rent shall be reopened at commencement of the Extended Term. The annual rent for the Extended Term shall be determined by mutual agreement of the Parties. Should LESSOR issue a demand to Lessee to negotiate and Lessee fails to respond within thirty (30) days, LESSEE's failure to respond shall constitute a material breach of this Lease and upon such breach, LESSOR may terminate this

Lease forthwith without notice and pursue any other remedies to which LESSOR is entitled to by law or under this Lease. If the Parties fail to reach an agreement at least ninety (90) days before the commencement of the Extended Term, then the annual rent for the Extended Term shall be the annual fair market rental of the Premises at the time of the commencement of the Extended Term, subject to all then-existing encumbrances and land use zoning and regulations (hereinafter, "Annual Fair Market Rental"). LESSOR shall contract an appraiser to determine the Annual Fair Market Rental and shall furnish a copy of such determination to LESSEE by certified mail with return receipt requested. The determination shall be deemed received by LESSEE on the date the LESSEE signs the return receipt or three (3) days after mailing, whichever occurs first. If LESSEE disagrees with the determination, LESSEE must notify LESSOR in writing within thirty (30) days after receipt of the determination, and LESSEE shall thereafter have ten (10) days within which to appoint an appraiser and provide written notification of the appraiser's name and address to LESSOR. Should LESSEE fail to appoint an appraiser within the ten-day period, such failure shall constitute a material breach of this Lease and upon such breach, LESSOR may terminate this Lease forthwith without notice and pursue any other remedies to which LESSOR is entitled to by law or under this Lease. Within sixty (60) days of LESSEE's appointment of an appraiser, LESSOR's appraiser and LESSEE's appraiser shall appoint a third appraiser, and in case of their failure to do so, either Party may apply to any person then sitting as a Judge of the Circuit Court of the First Circuit of the State of Hawaii for appointment of the third appraiser. The three appraisers shall then determine the Annual Fair Market Rental by arbitration in accordance with Chapter 658A, Hawaii Revised Statutes. The Parties shall each pay one-half of all of the proper costs and fees of the arbitration, provided that each Party shall pay their own attorneys' fees and costs. In the event that the Annual Fair Market Rental is not finally determined before the commencement of the Extended Term, the LESSEE shall pay the annual fair market rental as determined by LESSOR's appraiser until the new annual rent for the Extended Term is determined by arbitration as provided herein, and the annual rent paid by LESSEE shall then be subject to retroactive adjustments as appropriate. Once the annual rent for the Extended Term has either been agreed to by mutual agreement by the Parties or determined as set forth above, LESSEE shall pay the annual rent in full on the first day of each Lease Year during the Extended Term or, if the annual rent is comprised in part of a percentage rent, then LESSEE may pay such annual percentage rent by no later than sixty (60) days after the end of the applicable Lease Year.

### **ARTICLE III RESERVATIONS**

3.1. Minerals, Waters, and Historic Remains. Subject to the rights of native Hawaiians and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including Hawaii Revised Statutes Chapter 6E (Historic Preservation), LESSOR hereby reserves the following:

(a) Minerals. All minerals as hereinafter defined, in, on, or under the Premises and the right, on its own behalf or through person(s) authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining; provided that as conditions precedent to the exercise by LESSOR of the rights reserved in this subsection (a), (i) LESSOR shall provide



thirty (30) days prior written notice with details regarding access to the Premises and (ii) just compensation shall be paid to LESSEE for any of LESSEE's improvements taken. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any Premises, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use in general construction in furtherance of LESSEE's permitted activities on the Premises and not for sale to others.

(b) Waters. All surface waters, ground waters, and storm water and other water systems appurtenant to the Premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as required in the exercise of this right reserved; provided that as a condition precedent to the exercise by LESSOR of the rights reserved in this subsection, just compensation shall be paid to LESSEE for any of LESSEE's improvements taken.

(c) Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the Premises.

3.2 Withdrawal for public purposes. LESSOR hereby reserves the right to withdraw at any time during the Term of this Lease, with reasonable notice and without compensation, except as provided herein, any portion of the Premises for public uses or purposes, including construction of new roads or extensions, or changes in line or grade of existing roads, and for rights of way and easements of all kinds, and the right to remove soil, sand, rock, or gravel as may be necessary, together with the right to enter upon the Premises to remove said soil, sand, rock, or gravel; provided, that as conditions precedent to the exercise by LESSOR of the rights reserved in this subsection, LESSOR shall provide thirty (30) days prior written notice to LESSEE and just compensation shall be paid to LESSEE for any of LESSEE's improvements taken.

3.3 Right to enter. LESSOR hereby reserves the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties or to inspect the Premises; provided, however, in the exercise of such rights, the LESSOR shall not interfere unreasonably with LESSEE's use and enjoyment of the Premises and any entry or 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.

3.4 Easements. LESSOR hereby reserves the right and option to create, designate, grant, and relocate from time to time, at its sole cost and expense, any and all necessary easements for utilities and services, including drainage, water, sewer, electricity, cable television, communications, and other utilities under, across, and through the Premises, provided that LESSOR shall use best efforts to assure that: (a) such easements do not cross under, across, or through any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct or install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption (or as minimal disruption

as possible) to LESSEE's use and enjoyment of the Premises. In no event shall LESSOR create, designate, grant, locate or relocate, construct or install any easement which would materially and adversely impact or affect LESSEE's use and enjoyment of the Premises. If any work on or relating to an easement will temporarily materially and adversely impact or affect LESSEE's use and enjoyment of the Premises, LESSOR shall use its best efforts to expedite any work with respect to the easement. Upon completion of any such work by LESSOR, the Premises shall be returned, at LESSOR's sole cost and expense, to substantially the same condition as it was prior to the commencement of such work.

#### **ARTICLE IV LESSEE'S COVENANTS**

Unless specifically provided otherwise in this Lease, the following covenants shall apply during the Term:

4.1. Payment of Rent. LESSEE shall pay 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.

4.2. Taxes and Assessments. LESSEE shall pay or cause to be paid, when due or prior to delinquency, the amount of all taxes, rates, assessments of every description as to which the Premises or any portion thereof, or any improvements thereon, or as to which LESSEE is now or hereafter may be assessed or become liable for by authority of law during the Term; provided 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 may be charged thereunder, which become due and payable during the Term. LESSEE shall reimburse to LESSOR, within ten (10) days after receipt of invoices and/or reasonable supporting documentation, for any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document relating to this transaction to which LESSEE is a party, creating or transferring an interest or an estate in the Premises. LESSEE shall have the right to contest any tax, rate, assessment, or other charge imposed against the Premises, provided that such contest shall not result in a sale of, or a lien being attached to, the Premises. 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. To the extent that LESSOR shall receive the same, LESSOR agrees to submit to LESSEE all real property tax or assessment valuation notices within five (5) Business Days after receipt by LESSOR, and all real property tax or assessment invoices which are sent to LESSOR at least sixty (60) days prior to the last date the same may be paid without penalty or interest.

4.3. Utility Services. During the Term, and to the extent such utility services are available to the Premises, LESSEE shall be responsible for obtaining any necessary utility services and shall pay or cause to be paid when due, all utility charges, duties, and rates of every description, including water, sewer, gas, telephone, cable television, communications, refuse collection, relocation of utility poles and lines or any other charges relating to utility services for the Premises or any part thereof, or any improvements thereon, whether assessed to or payable by LESSOR or LESSEE.

4.4. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4.5. Sanitation. During the Term, LESSEE shall keep the Premises and improvements in a reasonably sanitary and clean condition. LESSEE shall be responsible for the removal of all trash upon the Premises, whether or not placed on the Premises by LESSEE or with or without LESSEE's consent, and whether or not placed on the Premises prior to the Term of this Lease.

4.6. Waste and Unlawful, Improper or Offensive Use of the Premises. LESSEE shall not commit, suffer, or authorize to be committed any waste, nuisance, strip, or unlawful, improper, or offensive use of the Premises or any part thereof. Nor shall LESSEE cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises without first securing LESSOR's prior written consent.

4.7. Compliance with Laws. LESSEE shall comply with the applicable law, regulations and requirements of all municipal, state, and federal authorities, and shall observe all municipal ordinances and state and federal statutes and rules and regulations properly promulgated thereunder ("Applicable Laws") applicable to the Premises, now in force or that may hereafter be in force, including but not limited to, all applicable federal, state, and county environmental impact regulations. LESSEE will at all times during the Term, and at its own expense, make, build, maintain and repair all fences, roads, curbs, sidewalks and parking areas that may be required under any Applicable Laws to be made, built, maintained or repaired upon the Premises.

4.8. Improvements. Except as provided herein and which may be required by law, LESSEE shall not, at any time during the Term, construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind and description, or allow or permit any person, entity, or sublessee to construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind and description, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose, including the adjustment of the annual rent under this Lease. Any improvements made, built, installed, or constructed by LESSEE on the Premises shall be at LESSEE's sole cost and expense, including but not limited to improvements required by law. LESSEE shall own any improvements made in or on the Premises during the term of this Lease. Upon the expiration or termination of this Lease, the Project and any other improvements consented to by LESSOR as permanent improvements are to remain on the Premises and become the property of LESSOR and any improvements consented to by LESSOR as not permanent are to be removed by LESSEE at LESSEE's sole cost and expense.

4.9. Repairs to Improvements. During the Term of this Lease, LESSEE shall, at its own expense, keep, repair, and maintain all buildings and improvements constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted.

4.10. Liens. LESSEE shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of LESSEE becoming subject to any

attachment, lien, charge, or encumbrance, except as provided in this Lease, and shall indemnify, defend, and hold harmless LESSOR and the State of Hawai‘i, and their respective officials, directors, members, employees, and agents, from and against all such attachments, liens, charges, and encumbrances and all resulting expenses, including all attorneys’ fees and costs incurred by LESSOR arising from or based out of such actions. This provision shall survive the termination or expiration of the Lease Term.

4.11. Non-Transferable. LESSEE shall not sell, transfer, assign, convey, dispose, lease, mortgage, sublet, or otherwise alienate or encumber this Lease or any rights hereunder without Lessor’s express prior written consent. If LESSEE is a partnership, limited liability company, joint venture or corporation, the sale or transfer (except by way of devise, bequest, intestate succession, or transfer to trust) of more than TWENTY-FIVE PERCENT (25%) of the ownership interest in any such partnership, limited liability company, joint venture, or corporation (whether accomplished through one or multiple transactions in which case only the transaction that triggers a 25% assignment or by dissolution, merger, or any other means) shall be deemed an assignment for purposes of this section, and LESSOR may either withhold its consent to the transfer in its sole discretion or condition LESSOR’s consent on an adjustment of the Annual Rent or other terms in this Lease as LESSOR deems desirable in its sole discretion; provided that this section shall not apply to residential subleases.

4.12. Hazardous Materials.

(a) The Premises was conveyed to LESSOR by that certain Quitclaim Deed dated September 21, 2010, filed in the Office of the Assistant Registrar, Land Court State of Hawaii in Document No. 4004324 (“Quitclaim Deed”), a copy of which is attached hereto as **Exhibit “D”**. The Quitclaim Deed provides, among other things, that the Premises is covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)).

(b) Neither LESSEE nor any person acting on LESSEE’s behalf shall release any hazardous materials at, onto, or from the Premises, store or use at the Premises such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for storage and use of such materials, or bring onto the Premises any such materials, unless LESSEE obtains LESSOR’s prior written consent, which LESSOR may withhold in its sole and absolute discretion. LESSEE shall be responsible for the cost of any testing required by any governmental agency to ascertain whether LESSEE or any person acting on LESSEE’s behalf has released any hazardous materials at, onto, or from the Premises. At LESSOR’s request, LESSEE shall execute affidavits, representations and the like concerning LESSEE’s knowledge and belief regarding the presence of any hazardous materials that LESSEE or any person acting on its behalf has brought onto or released at, onto, or from the Premises. LESSEE shall indemnify, defend and hold LESSOR harmless from any damages and claims resulting from any release by LESSEE or any person acting on LESSEE’s behalf, during the term of this Lease, of hazardous materials at, onto, or from the Premises or elsewhere. For purposes of this Lease, “hazardous material” means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation

and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. For purposes of this paragraph, to “release” hazardous material means to (a) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or disperse hazardous material in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (b) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment.

4.13. Conditions of Premises. LESSEE hereby agrees and acknowledges that LESSOR has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to LESSOR or reasonably discoverable by LESSEE. The Premises are being leased “AS IS, WHERE IS.” LESSEE further agrees that LESSOR shall not be held responsible for any injury or damage to LESSEE due to the presence of hazardous materials on or in the Premises. LESSEE further agrees that any property left on the Premises during the term of this Lease shall be left there at the sole risk of LESSEE.

4.14. Subleases. LESSEE shall not sublease the Premises or any part thereof without the prior written approval of LESSOR; provided, however, that prior to this approval, LESSOR shall have the right to review the terms and conditions of the proposed sublease, including but not limited to, the proposed rent to be charged to the sublessee.

4.15. Indemnity. LESSEE shall defend, indemnify, and hold harmless LESSOR and the State of Hawai‘i, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death, based upon or arising out of or in connection with: (a) LESSEE’s breach of this Lease; (b) any act or omission on the part of LESSEE or LESSEE’s members, partners, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “Permitted Persons”) relating to the use, occupancy, maintenance, or enjoyment of the Premises; (c) any injury sustained or suffered by Permitted Persons while on the Premises; and (d) any other act or omission in any way relating to or arising out of this Lease (collectively, “Covered Claims”). LESSEE shall reimburse LESSOR for all its costs and expenses, including reasonable attorneys’ fees, incurred in connection with LESSOR’s defense of any Covered Claims, and all 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. This provision shall survive the termination of the Lease.

4.16. Insurance. LESSEE shall obtain on an occurrence basis and maintain at all times during the Term of this Lease, at its own expense, insurance coverage of the kinds and in amounts greater than or equal to those specified herein. LESSEE’s insurance shall be issued by an insurance company authorized to do business in the State of Hawai‘i and shall specifically identify and designate the Premises. Prior to first entry onto the Premises, LESSEE shall provide to Lessor a copy of all required insurance policies. LESSEE shall name LESSOR and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as

additional insureds on all insurance policies required herein. LESSOR shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in LESSEE's insurance coverage. LESSEE shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of LESSEE in connection with LESSEE's use or occupancy of the Premises. The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE's liability under this Lease or to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease. LESSEE shall keep such insurance in effect and copies of policies on deposit with LESSOR during the entire Term of this Lease. Upon request by the LESSOR, LESSEE shall furnish a copy of the policy or policies. Failure of LESSEE to provide and keep in force such insurance shall be regarded as a material default under this Lease and LESSOR shall be entitled to exercise any or all of the remedies provided in this Lease for default of LESSEE.

LESSOR is a self insured State agency. LESSEE's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by LESSEE.

LESSOR reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in LESSOR's sole discretion, the above insurance does not provide adequate protection for LESSOR, it may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

(a) Commercial Property Insurance. LESSEE shall procure, carry and continuously maintain, at all times during the Term and at its own cost and expense, commercial property insurance and extended coverage insurance (to the extent not already covered by the commercial property insurance policy) covering, without limitation, all buildings, structures, structures under construction (except as the same may be covered by a builder's risk policy), improvements, furniture, fixtures, machinery, equipment, stock, and any other commercial or personal property owned, borrowed, or used by LESSEE on the Premises to the extent of LESSEE's interest therein. Additionally, LESSEE shall procure, carry, and continuously maintain, at all times during the Term and at its own cost and expense, commercial insurance coverage for risk of loss by hurricane, flood, tsunami, tidal wave, and earthquake, and such other hazards as is reasonably available in the market at a reasonable cost or risks a prudent person would insure against. All insurance coverages shall be in an amount equal to the full replacement cost at the time of loss, without deduction for depreciation, but with such deductibles as reasonably determined by LESSEE, provided that such deductibles shall not exceed TEN THOUSAND DOLLARS (\$10,000.00), except hurricane, flood, tsunami, and earthquake which limits and percentage deductible shall be reasonably determined by LESSEE. In the event of partial or total loss occurring during the Term, any proceeds derived from the above policies shall be used by LESSEE to rebuild, replace, or repair the damaged improvements according to plans and specifications approved in writing by LESSOR, which approval shall not be unreasonably withheld; provided that in the event of partial or total loss during the last ten (10) years of the Term, as applicable, LESSEE shall have the option in its sole discretion to terminate this Lease upon sixty (60) days written notice to LESSOR, provided all proceeds derived from the above policies are paid to LESSOR.

(b) Commercial General Liability. LESSEE shall procure, carry, and continuously maintain, or cause to be maintained, at all times during the Term and at its own cost and expense, commercial general liability insurance to protect against claims for bodily injury or death, or for damage to property, which may arise out of LESSEE's products, operations, use, maintenance, and contractual liability assumed by LESSEE, or by anyone employed by LESSEE, or by anyone for whose acts LESSEE may be liable. LESSEE shall maintain in force and effect the following insurance coverages on an occurrence basis with minimum limits of liability as follows:

General Aggregate Limit (other than (products-completed operations)	\$2,000,000.00
Products-Completed Operations Aggregate Limit	\$2,000,000.00
Personal and Advertising Injury Limit	\$2,000,000.00
Each Occurrence Limit	\$2,000,000.00

Except with LESSOR's prior written approval, which shall not be unreasonably withheld, the above shall not have a deductible amount in excess of exceed TEN THOUSAND DOLLARS (\$10,000.00) for any one occurrence.

(c) Workers' Compensation and Employers' Liability. Workers' Compensation and Employers' Liability insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of LESSEE. LESSEE shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event LESSEE has employees, otherwise LESSEE will require its contractors to maintain):

<u>Workers' Compensation</u>	Hawaii statutory limits	
<u>Employer's Liability</u>		
Bodily Injury By Accident	\$2,000,000.00	Each Accident
Bodily Injury By Disease	\$2,000,000.00	Policy Limit
Bodily Injury By Disease	\$2,000,000.00	Each Employee

(d) Business Automobile Liability. Insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. LESSEE shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event LESSEE has employees, otherwise LESSEE will require its contractors to maintain):

Bodily Injury each person	\$2,000,000.00
Bodily Injury each accident	\$2,000,000.00
Property Damage each accident	\$2,000,000.00
Personal Injury Protection/No-Fault Combined Single Limit	Hawaii statutory limits or \$2,000,000.00

(e) Umbrella/Excess Liability. The Umbrella/Excess Liability policy shall be written on an "occurrence" basis with a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per policy year and a self-insured retention or deductible no greater than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). The umbrella/excess insurance coverage shall, at a minimum, "follow form" over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers' Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers' Liability (but not Workers' Compensation), and Business Automobile Liability Insurance. LESSEE shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$2,000,000.00
Aggregate Limit	\$2,000,000.00

(f) Builder's Risk Policy. LESSEE shall procure and assume all responsibility for procurement of a Builder's Risk Policy. To the extent of coverage afforded by Builder's Risk or any other property or equipment floater insurance applicable to the Project or equipment used in construction of the Project, regardless of whether such insurance is owned by or for the benefit of LESSEE, LESSOR, LESSEE's contractor and subcontractors, or their respective agents, authorized representatives, and employees (each, a "Beneficiary", and collectively, the "Beneficiaries"), each Beneficiary waives all rights of recovery against each other for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance as per the terms of this Lease. If the policies of insurance referred to in this subsection (f) require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed. Any deductible amount applied to any loss payable under the Builder's Risk insurance shall be borne by the insured interests whose Project is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed or complete, to materials stored on or off site, or to materials in transit. LESSOR neither represents nor assumes responsibility for maintaining property insurance on the entire Project or that such insurance, if any, is adequate to protect the interests of LESSEE, its contractor and subcontractors. LESSEE, its contractor and subcontractors agree that they will assume the responsibility to satisfy themselves as to whether Builder's Risk insurance in completed value is in force and that it shall be the obligation of LESSEE, its contractor and subcontractors to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Project.

4.17. Notification of Certain Events. As soon as practicable after obtaining knowledge or notice thereof, LESSEE shall deliver to LESSOR, together with copies of all relevant documentation with respect thereto, notice of: (a) any loan default; (b) all summons, citations, directives, complaints, notices of violation or deficiency, and other communications from any Governmental Authority other than LESSOR, asserting a material violation of Governmental Requirements (defined below) applicable to the Premises; and (c) any litigation or proceeding relating to the Premises in which LESSEE is a party if an adverse decision therein would, in LESSEE's reasonable opinion, have a material adverse effect on LESSEE's ability to perform its obligations hereunder.



4.18. Surrender and Termination of the Lease. At the expiration or termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Premises, together with all buildings and improvements that are to remain on the Premises in good order and condition, reasonable wear and tear excepted, and free and clear of all liens and encumbrances other than those matters as LESSOR and LESSEE may mutually agree upon. All inventory, trade fixtures, furniture, machinery, and equipment that LESSEE or LESSEE's tenants/sublessees use or install on the Premises and any other personal property, shall remain such party's property and may be removed by such party. Should LESSEE fail to remove any and all of LESSEE's personal property from the Premises, after notice thereof, LESSOR may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of LESSEE, and LESSEE agrees to pay all costs and expenses for disposal, removal, or storage of the personal property.

4.19. Processing Fees/Documentation. Notwithstanding anything to the contrary in this Lease, LESSEE agrees to pay to LESSOR a reasonable fee for LESSOR's processing of consents and assignments and for providing documents required, or authorized by the terms, covenants, and conditions of this Lease.

4.20. Security of the Premises. LESSEE shall be solely responsible for the security of the Premises during the Term as deemed prudent by LESSEE acting in a commercially reasonable manner. LESSOR shall not be obligated to provide any security services, facilities, or equipment for the Premises during the Term, and LESSOR shall not be liable to LESSEE or any Permitted Persons for any failure to provide security services during the Term or any loss, injury, or damage suffered as a result of such failure, and LESSEE shall indemnify, defend, and hold LESSOR and the State of Hawaii, and their respective officials, directors, members, employees, and agents, harmless from any claim(s) for such loss, injury, or damage if the basis for such claim(s) arose during the Term. This provision shall survive the termination of the Lease.

4.21. Justification of Sureties. Any bonds required by this Lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii.

4.22. Lessor's Lien. LESSOR shall have a lien on all the buildings and improvements placed on the Premises by 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 of LESSOR 's costs, attorney's fees, rent reserved, for all taxes and assessments paid by LESSOR on behalf of LESSEE, and for the payment of all money provided in this lease to be paid by LESSEE, and this lien shall continue until the amounts due are paid.

4.23. Mortgage. Except as provided in this Lease, LESSEE shall not mortgage, hypothecate, or pledge the Premises, any portion, or any interest in this Lease without the prior written approval of LESSOR, and any mortgage, hypothecation, or pledge without the approval shall be null and void. Upon due application and with the written consent of LESSOR, LESSEE may mortgage this Lease, or any interest, or create a security interest in the leasehold of the Premises. If the mortgage or security interest is to a recognized lending institution in either the

State of Hawaii or elsewhere in the United States, the consent may 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 land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

4.24. Historic Preservation. In the event any historic properties or burial sites, as defined in Hawaii Revised Statutes Chapter 6E, are found on the Premises, LESSEE shall immediately stop all land utilization or work or both and contact the Historic Preservation Office. LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, protection, or removal of such sites or remains. LESSEE shall, at all times during the Term, comply fully with all Applicable Laws and regulations with respect to all prehistoric or historic remains or sites of archaeological significance present or discovered at the Premises.

## **ARTICLE V IMPROVEMENTS TO PREMISES**

5.1 Project. LESSEE contemplates constructing, at its own cost and expense, those certain improvements identified in the Kalaeloa Heritage Park Conceptual Plan prepared by Townscape, Inc., dated August 2014, which includes but is not limited to, the construction of a cultural center, parking, maintenance shed and caretaker/security cottage, on the Premises (hereinafter, the "Project").

5.2. Time of Performance for Project. Time being of the essence, LESSEE shall prosecute its work on the Project diligently and continuously.

5.3. Project Financing. LESSEE represents that, prior to commencing any visible construction on any phase of the Project, LESSEE will have secured the funds sufficient to complete such phase.

5.4. Performance of Project. LESSEE, at its own cost and expense, before commencing visible construction on the Project, shall procure and deposit with LESSOR a copy of the contractor's performance bond (HS/AIA Document A311 or its equivalent) and labor and materials payment bond (HS/AIA Document A311 or its equivalent) naming LESSOR and the State of Hawai'i as additional obligees thereunder in an amount equal to ONE HUNDRED PERCENT (100%) of the construction cost of the Project, with a surety reasonably satisfactory to LESSOR and qualified to do business in the State of Hawaii, that assures the performance of such contract(s) by the contractor pursuant to the terms of the construction contract, and the

completion of such by the contractor pursuant to the terms of such contract free and clear of all mechanics' and materialmen's liens and claims.

5.5. Approvals and Permits. Prior to commencing visible construction on the Project, LESSEE shall have obtained all the necessary governmental approvals, permits and entitlements (collectively, the "Approvals") for such part, portion, or phase then sought to be commenced and shall have so certified to LESSOR in writing, along with copies of the Approvals obtained. LESSOR shall use its reasonable best efforts to cooperate with LESSEE in securing all necessary Approvals from Governmental Authorities; provided that nothing in this Lease shall adversely affect, influence, limit, restrict or reduce the right of LESSOR, as the redevelopment authority for the Kalaeloa Community Development District (the "Redevelopment Authority"), to exercise its governmental power and authority and act in regulatory matters in accordance with applicable Governmental Requirements. LESSEE expressly acknowledges that LESSOR, as the Redevelopment Authority for the Kalaeloa Community Development District, has not guaranteed, promised, or otherwise indicated that LESSEE will be granted any Approvals it may require from LESSOR, as the Redevelopment Authority.

5.6. Compliance with Americans with Disabilities Act of 1990. LESSEE shall cause to be performed, any construction, demolition, alteration, or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances, and regulations of all duly constituted authorities, including without limitation and to the extent applicable, the Americans with Disabilities Act of 1990 Title III Regulations, the ADA Accessibility Guidelines and the Minimum Guidelines and Requirements for Accessible Design promulgated by the Architectural and Transportation Barriers Compliance Board, Title II (Public Accommodations) of the Civil Rights Act of 1964, the Architectural Barriers Act of 1968, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended, or supplemented.

5.7. Construction Contract.

(a) At least fifteen (15) days prior to commencement of work on the Project, LESSEE shall deliver to LESSOR a copy of the executed construction contract. LESSEE represents and warrants that it shall only contract with a contractor who is licensed and registered to do business as a contractor in the State of Hawaii, and who maintains such licensing and registration throughout the course of the Project. The construction contract shall describe the methods of construction that are designed to facilitate compliance with applicable Governmental Requirements relevant to the reduction of the negative impact of construction (e.g., dust control) on adjacent properties and on businesses in the vicinity of the construction, if any. These shall include policies regarding scheduling of certain activities (e.g., delivery of materials and equipment) that disrupt vehicular and pedestrian traffic, such activities being limited to off-peak hours to the extent possible; policies concerning the placement of temporary structures (e.g., field offices, scaffolding, hoists); and temporary utility connections (e.g., light, heat, power) that may adversely affect surrounding businesses, if any.

(b) LESSEE shall require that the contractor and any subcontractors, consultants, or independent contractors who furnish materials to be integrated into the Project or

perform work on the Project, indemnify, defend, and hold LESSOR and the State of Hawai'i, and their respective officials, directors, members, employees and agents, harmless from and against any and all claims, actions, penalties, damages, liabilities, costs, and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon, resulting from, or arising out of or in connection with: (i) their non-observance or non-performance of any Applicable Laws; (ii) any injury sustained or suffered by them while on the Premises; (iii) any other act or omission on their behalf relating to the materials furnished to or work performed on the Project; and (iv) any materialman's or mechanic's liens arising from or relating to the Project. This provision shall survive the termination of the Lease.

(c) LESSEE shall also cause the construction contract to bind its contractors and any subcontractors to, comply with applicable laws and regulations, as amended, of the U.S. Department of Labor; safety and health regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Pub. L. 91-596); and any other safety and health regulations applicable to work on the Project, including without limitation the Hawaii Occupational Safety and Health Law (Hawaii Revised Statutes Chapter 396) and the rules and regulations promulgated thereunder and Hawaii Revised Statutes Chapter 104 (Wages and Hours of Employees on Public Works). Nothing in these laws and regulations shall be construed to supersede or in any manner affect any workers' compensation law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

(d) LESSEE shall require that its contractor and any subcontractors, consultants, or independent contractors who furnish materials or services to be integrated into the Project or perform work on the Project, add LESSOR and the State of Hawaii, and their respective officials, directors, members, employees, and agents as additional insureds to their policy or policies of insurance.

5.8. Performance of Construction Contract. LESSEE shall take reasonably prudent precautions to protect from damage to property adjacent to, or in close proximity to, the Project, caused by the work or the actions or omissions of LESSEE and LESSEE's contractors and consultants, or their respective employees, agents, guests, or subcontractors. LESSEE shall be responsible for damage or injury to adjacent public and private property resulting from its construction operations. This applies, but is not limited, to public utilities, trees, lawn areas, buildings, dwellings, monuments, fences, pipes, underground structures, and public streets (except natural wear and tear of streets resulting from legitimate use thereof by LESSEE), and wherever such property is damaged due to the activities of LESSEE or LESSEE's contractors or consultants, or their respective employees, agents, guests, or subcontractors, it shall be restored or remedied promptly by LESSEE, at its own expense, to the same or better condition which existed immediately before such damage. In case of failure on the part of LESSEE to restore or remedy or take steps to restore or remedy and diligently prosecute such restoration and remediation, or make good such damage or injury, LESSOR may, upon thirty (30) days written notice to LESSEE and thereafter upon fifteen (15) days following a second written notice to LESSEE, proceed to repair, rebuild, or otherwise restore or remedy such property as may be necessary, and the cost thereof (including a reasonable administrative fee) shall be immediately due and payable by LESSEE to LESSOR. LESSEE shall confine the equipment, apparatus,

materials, and supplies of LESSEE and LESSEE's contractors and consultants, or their respective employees, agents, guests, or subcontractors, to the Premises, or as otherwise permitted by law or by private agreement.

5.9. As-Built Drawings. Within six (6) months after issuance of a permanent certificate of occupancy with respect to any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, LESSEE shall deliver to LESSOR two copies of the "as-built" plans and specifications for such part, portion, or phase.

## **ARTICLE VI STEWARDSHIP AND OPERATION OF KALAELOA HERITAGE PARK**

**\*\*STILL BEING DRAFTED**

## **ARTICLE VII MUTUAL COVENANTS**

7.1. Breach. Time is of the essence and following the notice and cure provisions provided herein, as applicable, any one or more of the following events shall constitute an "Event of Default" by LESSEE under this Lease:

- (a) If LESSEE shall fail to make any required payment within five (5) days after due and such failure shall not have been cured within fifteen (15) days after receipt of written notice from LESSOR respecting such overdue payment;
- (b) If LESSEE abandons the Premises;
- (c) If this Lease and the Premises shall be attached or taken by operation of law, if not released or appropriately bonded within ninety (90) days after receipt of written notice by LESSOR;
- (d) If LESSEE shall fail to observe, perform, or comply with any material non-payment term, covenant, agreement, or condition of this Lease; and
- (e) If LESSEE shall fail to observe, perform, or comply with any of the Applicable Laws.

### 7.2. Remedies Upon Event of Default.

(a) Notice of Default. Upon the occurrence of any Event of Default, LESSOR shall deliver a written notice of the occurrence of such event, making demand upon LESSEE to cure or remedy such event within thirty (30) days from the date of receipt of the notice. In the event LESSEE shall fail to cure such noticed event within thirty (30) days following receipt of LESSOR's written notice or, in the case of any non-monetary event which cannot reasonably be cured within thirty (30) days following receipt of LESSOR's written notice, LESSEE shall fail to commence the cure of such non-monetary event and diligently prosecute such cure to

completion, an Event of Default shall be deemed to have occurred and LESSOR may pursue its rights and remedies. In the case of an Event of Default described in the section above, an Event of Default shall be deemed to have occurred and LESSOR may pursue its rights and remedies if any required rent payment is not made within the cure period provided for in the section above.

(b) LESSOR's Remedies. Upon an Event of Default and following expiration of the applicable notice and cure periods, LESSOR shall have the absolute unconditional right if it so elects: (i) to any and all remedies available at law or in equity; (ii) to terminate this Lease after having provided a second written notice to LESSEE stating that LESSOR intends to terminate the Lease unless LESSEE cures such Event of Default within fifteen (15) days from the date of such second notice or commences and diligently pursues such cure where the cure is not reasonably susceptible to cure within fifteen (15) days; (iii) to receive liquidated damages as and to the extent set forth in this Lease; (iv) to institute and prosecute proceedings to enjoin or restrain LESSEE from commencing or continuing said breach, and/or to cause by injunction LESSEE to correct and cure said breach or threatened breach; (v) to recover from LESSEE all rent due through the date this Lease is terminated (with interest at the Default Rate until paid), plus any amount necessary to compensate LESSOR for the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom which shall include, without limitation: (A) court and all other costs and reasonable attorneys' fees for services in connection with an Event of Default, in recovering possession, or for prosecuting any action or proceeding against LESSEE in which LESSOR prevails, (B) all reasonable costs and expenses of any re-letting, including without limitation all reasonable costs of alterations and repairs, and (C) all reasonable brokerage commissions or other similar expenses of LESSOR in connection with such re-letting; and (vi) LESSOR may, but is not required to, pay any amounts which LESSEE is required to pay under this Lease, and if LESSOR makes any such payment, LESSOR may collect interest on the amount paid. In the event of termination of this Lease, all improvements made by LESSEE shall remain and become part of the Premises of LESSOR, and LESSOR may retain all rent paid in advance as payment toward LESSOR's damages. Except as otherwise provided herein, none of the remedies enumerated herein is exclusive, and nothing herein shall be construed as prohibiting LESSOR from pursuing any other remedies at law, in equity, or otherwise available to it under this Lease.

(c) Cumulative Remedies. The rights and remedies of LESSOR, whether provided by law or by this Lease, shall be cumulative, and the exercise by LESSOR of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, to the extent permitted by law. No waiver made by LESSOR shall apply to obligations beyond those expressly waived in writing.

(d) LESSOR's Right to Act. If LESSEE shall fail or neglect to do or perform any covenant or condition required under this Lease and such failure shall not be cured with any applicable cure period, then without limiting any of LESSOR's rights under this Lease, LESSOR may, but shall not be required to, make any payment payable by LESSEE under this Lease, discharge any lien, take out, pay for and maintain any insurance required under this Lease, or do or perform or cause to be done or performed any such other act or thing (including but not limited to entering upon the Premises for such purposes). LESSEE shall repay to LESSOR upon demand the entire out-of-pocket cost and expense incurred by LESSOR in connection with the

cure, including without limitation compensation to the agents, consultants, and contractors of LESSOR and reasonable attorneys' fees and expenses. LESSOR may act upon shorter notice or no notice at all if necessary, in LESSOR's reasonable judgment, to address any emergency situation related to health or safety or governmental or municipal time limitation, or to protect LESSOR's interest in any portion of the Premises. LESSOR shall not be required to inquire into the correctness of the amount or validity of any tax or lien that may be paid by LESSOR, and LESSOR shall be duly protected in paying the amount of any such tax or lien claimed and in such event LESSOR also shall have the full authority, in LESSOR's sole judgment and discretion and without prior notice to or approval by LESSEE, to settle or compromise any such lien or tax. Any act or thing done by LESSOR pursuant to the provisions of this subsection (d) shall not be or be construed as a waiver of any such failure by LESSEE, or as a waiver of any term, covenant, agreement, or condition contained in this Lease, or of the performance of any term, covenant, agreement, or condition contained in this Lease.

7.3. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, nor of LESSOR's right of reentry for breach of covenant, nor of LESSOR's right to declare and enforce a forfeiture for any breach, and the failure of LESSOR 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 any term, covenant, condition, or option.

7.4. Notices. 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 Party shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service as follows (or as updated pursuant to a written notice sent in accordance with this section):

If to LESSEE:           Kalaeloa Heritage and Legacy Foundation  
                                  P.O. Box 75447  
                                  Kapolei, Hawai'i, 96707  
                                  Attention: Melissa Lyman

If to LESSOR:           Hawaii Community Development Authority  
                                  547 Queen Street  
                                  Honolulu, Hawaii 96813  
                                  Attention: Executive Director  
                                  Telephone:     (808) 594-0300

And a copy to:           Department of the Attorney General  
                                  c/o Public Safety Hawaiian Home Lands and Housing Division  
                                  425 Queen Street  
                                  Honolulu, Hawaii 96813  
                                  Telephone:     (808) 587-2978

or at such other address as may be specified from time to time in writing by either Party and delivered to the other Party in accordance with this section. Unless otherwise provided in this Lease, all such notices hereunder shall be deemed to have been given on the date personally delivered or faxed or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of first attempt at delivery (as depicted on any return receipt, as an example) shall be deemed the date notice has been given.

7.5. 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 this Lease, without hindrance or interruption by LESSOR or any other person or persons by, through, or under it, unless otherwise provided in this Lease. LESSOR's covenant of quiet enjoyment, however, shall not in any way obligate LESSOR to defend or protect the Premises from political protests.

7.6. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rental payments shall be TWELVE PERCENT (12%) per annum, prorated daily based on the actual number of days in such calendar year. 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 to LESSOR, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

7.7. LESSEE's Waiver. LESSOR shall not be responsible for or liable to LESSEE and LESSEE does hereby release LESSOR, waive all claims against LESSOR, and assume the risk for any injury, loss, or damage to any person, Premises or property in, on, over, or under the Project, by or from any cause whatsoever (except to the extent caused by LESSOR's acts or omissions or those of LESSOR's employees and agents).

7.8. Condemnation. If, at any time during the term of this Lease, any portion of the Premises should be condemned or required for public purposes by any governmental agency or entity which renders the remainder of the Premises unsuitable for the use or uses for which the Premises were leased, LESSEE shall have the option to surrender this Lease and be discharged and relieved from any further liability, provided that LESSEE may remove any improvements constructed, erected, or placed by it within a reasonable period allowed by LESSOR. LESSEE shall not, by reason of the condemnation, be entitled to any claim against the LESSOR for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the LESSOR.

7.9. Governing Law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

7.10. 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.



7.11. 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.

7.12. Time is of the Essence. Time is of the essence in all provisions of this Lease.

7.13. No Party Deemed Drafter. Each Party has thoroughly reviewed this Lease and has had the opportunity to obtain counsel if desired prior to execution hereof, and the Parties agree that neither Party shall be deemed to be the drafter hereof.

7.14. Counterparts. This Lease may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

7.15. Entire Agreement; Amendments. This Lease constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This Lease cannot be modified except by a written agreement signed by both parties.

7.16. Definitions. In addition to any definitions set forth above, as used herein, unless clearly repugnant to the context:

(a) "Day" or "days" shall mean a calendar day or calendar days unless otherwise indicated.

(b) "Governmental Authority" or "Governmental Authorities" means any federal, state, county, or municipal governmental authority, including all executive, legislative, judicial, and administrative departments and bodies thereof having jurisdiction over LESSEE or the Project.

(c) "Governmental Requirements" means all laws, ordinances, statutes, executive orders, rules, zoning requirements, and agreements of any Governmental Authority that are applicable to the acquisition, remediation, renovation, demolition, development, construction, and use of the Premises, without limitation all required permits, approvals and any rules, guidelines, or restrictions enacted, promulgated, or imposed by Governmental Authorities.

(d) "Prohibited Uses" means and includes: (i) any establishment featuring explicitly-sexual, adults-only entertainment (including without limitation stores offering adult books or films, adults-only theaters, or nude or semi-nude entertainment facilities); (ii) any illegal activity or conduct, including without limitation any establishment that offers illegal or illicit services under the guise of therapeutic massage; (iii) sale or offering of sale of paraphernalia for use with illegal drugs; (iv) gambling facilities or operations; (v) storage or stockpiling of supplies and materials on exterior parking lots or other areas where they are visible from properties surrounding the Project, except for the temporary stockpiling of construction material for use in the construction of any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, provided that the same is stored in a safe manner and does not pose a hazard to the public or others who may visit

or work on the Premises; (vi) obnoxious bright lights, odors, dust, smoke, or other noxious agents which could unreasonably disrupt surrounding properties; and (vii) any prohibited uses identified in Figure 1.7 of the Kalaeloa Community Development District Rules, Hawaii Administrative Rules Chapter 15-215.

(e) "State" means the State of Hawaii.

(f) "Substantial Completion" or "Substantially Complete" means the issuance of a permanent certificate or certificates of occupancy for the entire Project.

(g) "subcontractor" means a person hired by LESSEE's contractor to do or perform part of the construction of the Project.

7.17. Execution.

(a) LESSOR represents and warrants to LESSEE, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSOR is authorized to do so, (ii) LESSOR has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSOR, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSOR according to the terms of this Lease.

(b) LESSEE represents and warrants to LESSOR, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSEE is authorized to do so, (ii) LESSEE has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSEE, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSEE according to the terms of this Lease.

Approved by Hawaii Community  
Development Authority at its meeting  
held on:

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Deputy Attorney General

**LESSOR:**

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Name:  
Its:

**LESSEE:**

**KALAELOA HERITAGE AND LEGACY  
FOUNDATION**

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

Name:

Its:

DRAFT

66-1092-1146-221

1089

MAP 971

# EXHIBIT A

LAND COURT  
STATE OF HAWAII  
LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 13073  
AS SHOWN ON MAP 957  
INTO LOTS 13073-A TO 13073-E, INCLUSIVE  
AND DESIGNATION OF THE FOLLOWING EASEMENTS:  
EASEMENT 6785 AFFECTING LOT 13073-A  
EASEMENT 6786 AFFECTING LOT 13073-E  
AT HONOLULU, EWA, OAHU, HAWAII

CONTROL POINT SURVEYING, INC.  
*William J. K. Elmer*  
Licensed Professional Land Surveyor  
No. 1000  
Land Court Certificate Number 177

1043 9009 40 LDC  
Honolulu, Hawaii  
February 5, 1999

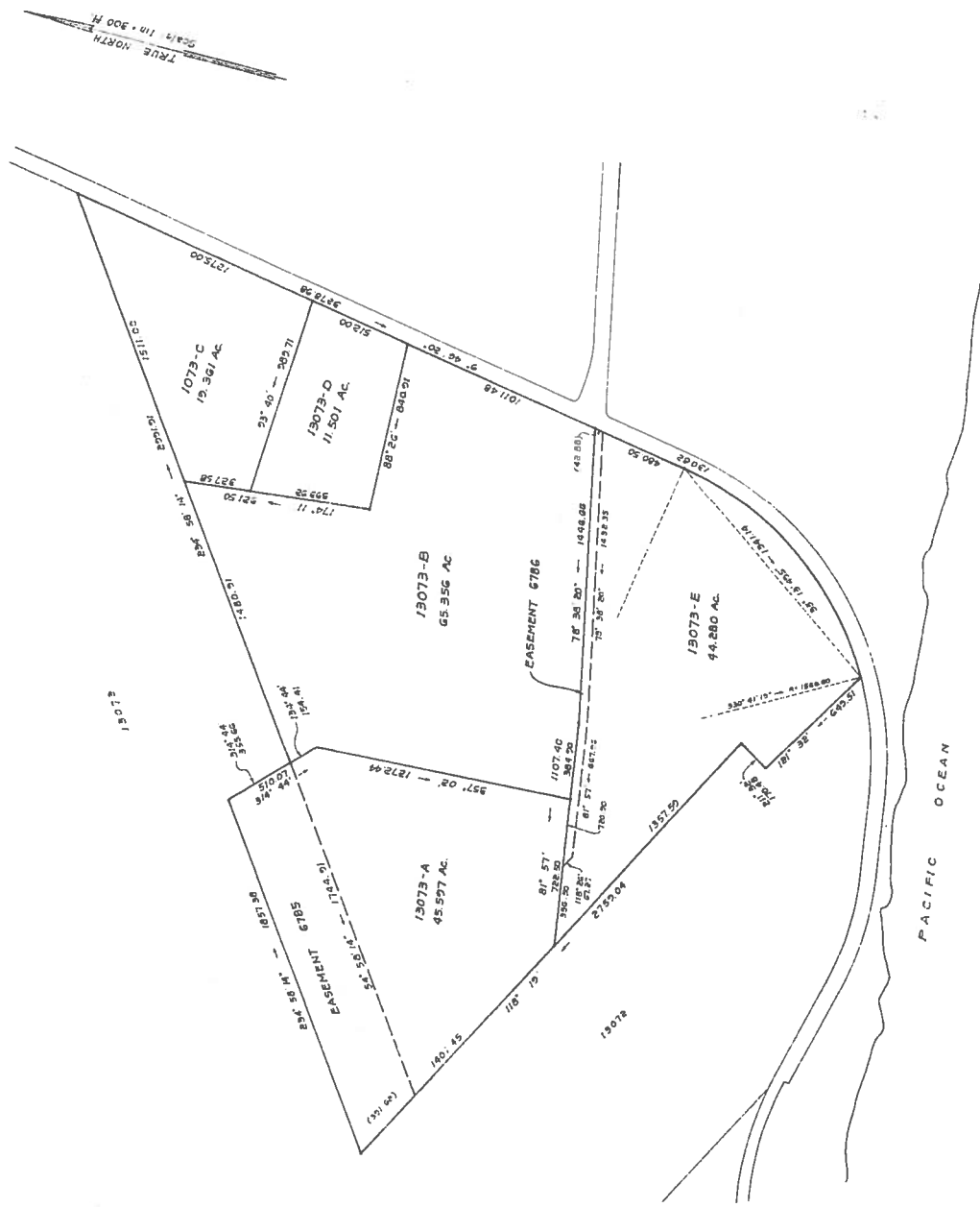
OWNER: United States of America  
TRANSFER CERTIFICATE OF TITLE 523,664

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED MAY 10, 1999

*Karen I. [Signature]*  
CLERK OF THE LAND COURT

*Filed April 19 1999*  
*Jessie Blumenthal*  
*clerk*

81" x 38" - 47 5/8" H



NOTE:  
Area of Easement 6785 = 14,472 AC  
Area of Easement 6786 = 1,515 AC

For Map 971, 1/13/99  
see 1000



RECEIVED

2013 SEP 24 PM 12 17

# Notice of Violation

HAWAII COMMUNITY  
DEVELOPMENT  
AUTHORITY

Violation No.: 2013/NOV-09-085 (SD)

Date: September 23, 2013

**Owner(s)**

Hawaii Community Development Authority  
461 Cooke Street  
Honolulu, Hawaii 96813

**Contractor(s)**

**Tenant/Violator**

**Architect/Plan Maker**

**Lessee**

**Agent**

**Engineer**

TMK: 9-1-013:067

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

**Codes and/or Ordinance(s)  
and Section(s)**

**Violation(s)**

ROH 1990, as amended, Chapter 14  
Section 14-14.1(c)

Stockpiling without a permit (approximately 2,259 cubic yards).  
A NOTICE OF ORDER, as indicated below will be issued by the  
Department of Planning and Permitting imposing CIVIL FINES for  
the specified violations. You will be charged with an initial fine of  
\$750.00; and if no corrective action is taken by the specified date,  
you will be assessed a daily fine of \$750.00, until corrective action  
is completed.

**STOP WORK!** You are hereby ordered to stop illegal work immediately.

You are hereby ordered to take immediate measures to stabilize the site and protect abutting properties.

You are hereby ordered to obtain permit(s) and/or correct violation by October 23, 2013.

Please call the undersigned after the corrections have been made.

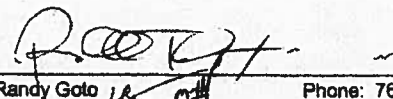
You are reminded that if no action is taken within the specified  
time:

1. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations; and/or
2. This matter may be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action.

**Special  
Instructions:**

Orig - Owner  
Director  
HPD  
Project Review Section  
Permitting and Inspection Section  
Inspection Unit (2)  
File (w/original attach.)

Inspector:

  
Randy Goto

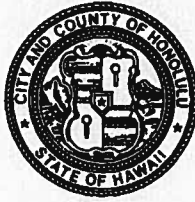
Phone: 768-8089

for the Director Department of Planning and Permitting

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honoluluodpp.org](http://www.honoluluodpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7013 0600 0002 3782 9822

**NOTICE OF ORDER**

NO.: 2013/NOO-262

DATE: December 19, 2013

TO: Owner/Contractor/Lessee/Tenant: \_\_\_\_\_

Owner: Hawaii Community Development Authority

461 Cooke Street

Honolulu, Hawaii 96813

Address of Violation: \_\_\_\_\_

Tax Map Key: 9-1-013: 067 (POID 165452)

Description: Stockpiling approximately 2,259 cubic yards without a permit.

The Department of Planning and Permitting (DPP) inspected the above-described structures and/or premises and found a violation of one or more ordinances of the City and County of Honolulu. As a result, Notice of Violation (NOV) 2013/NOV-09-085 was issued on September 23, 2013 (copy attached). As of this date, the violation described in the NOV has not been corrected. Pursuant to the authority granted by the Revised Ordinances of Honolulu (ROH), you are hereby ordered to:

1. Pay a fine of \$750 by January 20, 2014.
2. Correct the violation by January 20, 2014. If corrective action has not been completed by this date, a daily fine of \$750 will be assessed until the correction is complete. You are responsible for contacting the inspector, Randy Goto at (808) 768-8089, to verify the corrective action.

Checks (with the Notice of Order number noted on it) are payable to the City and County of Honolulu, and should be mailed or delivered to the Department of Planning and Permitting, 650 South King Street, 8<sup>th</sup> Floor, Honolulu, Hawaii 96813.

HAWAII COMMUNITY  
DEVELOPMENT  
AUTHORITY

2013 DEC 20 PM 1 02

RECEIVED

EXHIBIT C

If the fine is not paid and/or the violation is not corrected by the due date, this matter may be referred to the Department of the Corporation Counsel for civil remedy and/or the Prosecuting Attorney's Office for criminal prosecution. The fine, if unpaid, may also be added to taxes, fees or charges such as your driver's license, vehicle registration, business license, and/or building permit. Further, the civil fine may be placed as a lien on your property with foreclosure an option to collection of the fine.

If the order is issued to more than one person, each person shall be jointly and severally liable for the full amount of any fine imposed by the order.

This order shall become final on January 20, 2014. Before the final date, any person(s) subject to an order may appeal the provisions of the order. However, an appeal does not suspend any provision of the order, including the imposition of the civil fines. Copies of the appeal rules are available at the DPP.

Should you have any questions regarding this order, please contact our Code Compliance Branch at (808) 768-8110.



George I. Atta, FAICP  
Director

GIA:tt

Attach: 2013/NOV-09-085

cc: Randy Goto, Site Development Division,  
Inspection Unit Branch

[1104296]

# EXHIBIT D

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUM Doc 4004324  
DATE CTI 998,103 - 998,104  
SEP 30, 2010 01:00 PM

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL ☒ PICKUP ☐

Hawaii Community Development Authority  
461 Cooke Street  
Honolulu, Hawaii 96813  
Attention: Anthony J.H. Ching

THIS DOCUMENT COMPRISES \_\_\_\_\_ PAGES

Tax Map Key No.

## QUITCLAIM DEED

This Quitclaim Deed ("Deed") is made this 21st day of Sept, 2010, by and between the **UNITED STATES OF AMERICA ("GRANTOR")**, acting by and through the Department of the Navy, with a principal office at 1455 Frazee Road, Suite 900, San Diego, California 92108, and the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and a public instrumentality of the State of Hawaii ("GRANTEE")** whose address is 461 Cooke Street, Honolulu, Hawaii 96813.

## RECITALS

**WHEREAS**, by authority contained in Section 2855 of the FY 2010 National Defense Authorization Act, (Public Law 111-84), the Secretary of the Navy is authorized to convey all right, title, and interest of the United States to certain portions of the former Naval Air Station, Barbers Point to the GRANTEE; and

**WHEREAS**, GRANTEE, has requested conveyance, without consideration, to a portion of the former Naval Air Station Barbers Point, described below, comprising approximately 87.426 acres of land, more or less, together with certain improvements thereon and adjacent thereto (the "Property").

**WHEREAS**, on September 30, 2008, GRANTOR executed a Finding of Suitability to Transfer (FOST) for Parcels 13073-B and 13073-D. Also on June 8, 1999, GRANTOR executed a FOST for Parcel 13126-B, and on August 5, 2009, GRANTOR



executed a FOST Addendum for the Parcel, these documents set forth the basis for GRANTOR's determination that the Property is suitable for transfer pursuant to 42 U.S.C. Section 9620(h)(3).

**NOW, THEREFORE,** GRANTOR, in consideration of the foregoing, the covenants, conditions and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and forever quitclaim to GRANTEE all of GRANTOR's right, title and interest in the Property, more particularly described as:

- I. Lot 13073-B, consisting of an area of 65.356 acres, more or less, as shown on Map 971, as set forth in Land Court Order No. 135167, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 529,664, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 135167.
- II. Lot 13073-D consisting of an area of 11.501 acres, more or less, as shown on Map 971, as set forth in Land Court Order No. 135167, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 529,664, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 135167.
- III. Lot 13126-B consisting of an area of 10.569 acres, more or less, as shown on Map 1006, as set forth in Land Court Order No. 138482, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, being a portion of the property covered by Transfer Certificate of Title No. 532,712, issued to GRANTOR, hereinafter referred to as the "Property", along with rights of ingress and egress as noted on Land Court Order No. 138482.

**IV. TOGETHER WITH:**

All of GRANTOR's right, title and interest in and to buildings, improvements, and utilities located on the Property and all rights, tenements, hereditaments, and appurtenances thereonto belonging, excepting those improvements and interests hereinafter specifically excluded, excepted or reserved, all as set forth in Section V below.

**V. EXCEPTING AND RESERVING:**

**A.** Excepting and reserving unto GRANTOR, its successors and assigns, all of the following utility facilities, easements, rights-of-way and other rights and entitlements.

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

ii. Those certain electrical transformers (excluding transformer pads and fencing), poles, wire lines, guy wires, anchors and/or underground wire lines, ducts, manholes, and other appliances and equipment located within the Property that are utilized to provide electrical service for lots other than the Property, the locations of which are approximately shown on HECO Drawing No. C4633, dated July 7, 1999, entitled "Barbers Point NAS Electrical Easements, Quad 7, 46KV, 12KV & 4KV Lines", on file at HECO's office at 900 Richards Street, Honolulu, Hawaii 96813, and identified as "Easements for Existing Electrical Facilities", (hereinafter referred to collectively as "existing electric utility facilities"); TOGETHER WITH perpetual easements and rights-of-way over, across, under, and through the Property for the operation, maintenance, repair, replacement, and/or removal of said existing electric utility facilities located on the Property; and GRANTOR further hereby reserves for itself or any person or entity designated by GRANTOR, including HECO, the right to survey the land areas beneath said existing electric utility facilities as may be considered by GRANTOR to be reasonably necessary for the transmission and distribution of electricity for light, power and/or communications and control circuits for the use of occupants of the Property and other lots. GRANTOR's right to survey said land areas includes the right to create metes and bounds maps and/or descriptions of specifically delineated easement areas and the right to designate said easements on Land Court map(s) over, across, under and through the Property for electric utility purposes, upon notice to, but without requirement for joinder or and consent of GRANTEE or any person holding under or through GRANTEE. Said consent should not be unreasonably withheld or delayed. GRANTOR further reserves the right to cancel the perpetual easements and rights-of-way reserved hereunder in this paragraph and to grant new specifically delineated easements to HECO or any other entity, through the execution of a grant of easement document, upon notice to but without requirement for joinder or and consent of GRANTEE so long as it does not unreasonably inhibit GRANTEE's use of the property or good faith efforts have otherwise been made by GRANTOR to locate the easement in

a place that will not unreasonably inhibit GRANTEE's use of the property. Notwithstanding the foregoing, if the Land Court or another court of competent jurisdiction requires a document to be executed by GRANTEE in order for GRANTOR to file Land Court petitions to designate said easements, to file the Cancellation and Grant of Easement, or to otherwise effectuate the grant of said easements, GRANTEE hereby appoints GRANTOR as GRANTEE's attorney-in-fact solely for the purpose of (1) filing all Land Court petitions necessary or appropriate to designate said easements on any Land Court map(s), (2) granting such easements, and (3) doing all other things necessary to effectuate such grants. This power-of-attorney is coupled with an interest and is irrevocable.

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

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

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

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

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

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

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

vi. Easement "2280," affecting Lot 298, as shown on Map 496 and Easement "2281," affecting Lots 178, 316, 317, 318, and 319, as shown on Map 496, of Land Court Application 1069, and as set forth by Land Court Order No. 95854, filed November 14, 1989, and granted to GRANTOR, as set forth in that certain Grant dated June 8, 1989, filed as Land Court Document No. 1685728, and noted on Certificate of Title No. 15790.

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

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

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

x. Perpetual flight clearance easement, in, over, and above Lot 204-A-2-A-2, as shown on Map 217 of Land Court Application 1069, as set forth by Land Court Order No. 35554, filed July 19, 1972, and Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order no. 5852, filed July 3, 1944, reserved

to GRANTOR in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393.

xi. Right of access, including but not limited to, right to transport, haul and tow aircraft over and along the existing road in Lot 208, as shown on Map 34 of Land Court Application 1069, as set forth by Land Court Order no. 5852, filed July 3, 19944, reserved to GRANTOR in that certain Quitclaim Deed dated August 1, 1974, filed as Land Court Document No. 693093, and noted on Certificate of Title No. 170393, and the right to control public and private vehicular traffic on said road during these aircraft transport operations.

xii. Easement 10070 affecting Lot 13073-B was designated, and recorded as Land Court Order No. 178423 on Transfer Certificate of Title 529664 on March 11, 2009 as shown on Land Court Application 1069 Map 1453.

xiii. Easement 6782 affecting Lot 13126-B was designated and recorded as Land Court Order No. 135276 on Transfer Certificate of Title 121822 on May 15, 1999 as shown on Land Court Application 1069 Map 969.

xiv. Easement 6936 affecting Lot 13126-B was designated and recorded as Land Court Order No. 138482 on Transfer Certificate of Title 532712 on March 2, 2000 as shown on Land Court Application 1069 Map 1006.

xv. Lots 13073-B and 13073-D, are subject to Reservation as contained in that certain document filed as Land Court Document No. 87883.

**VI. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, CONDITIONS AND RESTRICTIONS,** which shall be binding upon and enforceable against GRANTEE, its successors and assigns, in perpetuity:

**A.** GRANTEE hereby accepts conveyance of the Property subject to all covenants, conditions and restrictions, easements, rights-of-way, reservations, rights, agreements, encumbrances of record pertaining to the Property.

**B.** GRANTEE covenants that the Property will be used for public benefit as required for a conveyance made without consideration under Section 2855 of the FY 2010 National Defense Authorization Act, (Public Law 111-84).

**C. FOST NOTIFICATIONS**

i. The FOSTs and FOST Addendum reference environmental conditions on the Property and on other properties not subject to this Deed. The FOST sets forth the basis for GRANTOR's determination that the Property is suitable for transfer. GRANTEE acknowledges that it has been made aware of the notifications contained in the FOST and FOST Addendum, that GRANTEE has received copies of the FOST and FOST Addendum, and that all documents referenced therein have been made available to GRANTEE for inspection and reproduction.

ii. GRANTEE is hereby notified that arsenic, atrazine, bis(2-ethylhexyl) phthalate, 4,4'-DDE (commonly, "dichlorodiphenyldichloroethylene," or 1,1-bis-(4-chlorophenyl)-2,2-dichloroethene), 4,4'-DDT (commonly, "dichlorodiphenyl-trichloroethane" or 1,1-bis-(4-chlorophenyl)-2,2,2-trichloroethane), lead, lindane, and thallium were released in the Regional Groundwater System (POI-49), which lies beneath the property. The chemicals detected were at concentrations that did not require a response action.

**D. Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)):** For the Property, GRANTOR provides the following notice, description, and covenants and retains the following access rights:

i. **Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)):** Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), of the act, is provided in Exhibit A, attached hereto and made a part hereof.

ii. **Description of Remedial Action Taken, If Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):** Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit A, attached hereto and made a part hereof.

iii. **Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)):** Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), GRANTOR warrants that:

(a) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed; and

(b) any additional remedial action found to be necessary after the date of this Deed shall be conducted by GRANTOR.

iv. **Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)):**

GRANTOR retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of GRANTOR, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for GRANTOR to meet its responsibilities under applicable laws and as provided for in this Deed. Such easement and right of access shall be binding on GRANTEE and its successors and assigns and shall run with the land.

In exercising such easement and right of access, GRANTOR shall provide GRANTEE or its successors or assigns, as the case may be, with reasonable notice of GRANTOR's intent to enter upon the Property and exercise GRANTOR's rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. GRANTOR shall use reasonable means to avoid and to minimize interference with GRANTEE's and its successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to GRANTOR. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due GRANTEE, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by GRANTOR.

In exercising such easement and right of access, neither GRANTEE nor its successors and assigns, as the case may be, shall have any claim at law or equity against GRANTOR or any officer or employee of GRANTOR based on actions taken by GRANTOR or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by GRANTEE and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

**E. Floodplain Notification.** To the extent that any portion of the Property lies within a floodplain as defined in section 6(c) of Executive Order No. 11988, Floodplain Management, dated May 24, 1977, construction, development and other uses of that portion of the Property could be restricted by the standards and criteria of the National Flood Insurance Program of the Federal Emergency Management Agency, or other applicable regulations.

**F. No Hazard to Air Navigation.** GRANTEE covenants for itself, its successors and assigns, that prior to any construction or alteration on the Property,

GRANTEE will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Code of Federal Regulations, title 14, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

**G. Non-Discrimination.** GRANTEE covenants for itself, its heirs, successors and assigns, and every successor in interest to the Property, or any part thereof, that GRANTEE and such heirs, successors and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale or lease of the Property or in such parties' employment practices conducted thereon. This covenant shall not apply, however, to the lease, or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises primarily used for religious purposes. GRANTOR shall be deemed a beneficiary of this covenant without regard to whether it remains an owner of any land or interest therein in the locality of the Property and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**H. Historic Preservation Covenant.** GRANTEE hereby covenants on behalf of itself, its successors and assigns, and every successor in interest to the Property hereby conveyed, to protect and maintain the historic properties on Lots 13073-B and 13073-D, described in the attached Exhibit "B" and depicted in the map attached as Exhibit "C" and are hereinafter referred to as the "Historic Properties", in a manner that preserves the attributes that contribute to the eligibility of the said historic properties for the National Register of Historic Places. Such attributes include association with significant events, information potential, design, setting, feeling, and views from, to, and across the historic properties. Grantee, its successors or assigns further agrees to the following;

i. Construction, alteration, rehabilitation, renovation, demolition, disturbance of the ground surface, including but not limited to vegetation clearance, grading, or excavation, or other action to be undertaken on any portion of Lots 13073-B and 13073-D that would materially affect the integrity or the appearance of the attributes of the Historic Properties described in Exhibit "B" shall only be undertaken or permitted after consultation with the Hawaii State Historic Preservation Officer (SHPO) as provided by Hawaii Revised Statutes Chapter 6E (§ 6E-8). Actions that would affect views, including adding new structure site elements such as towers, fences, or obtrusive signs, may also be considered to materially affect the Historic Properties. The GRANTEE shall afford the designated SHPO an opportunity to review all proposed projects and provide recommendations regarding the treatment of known and potential subsurface historic properties.

ii. The GRANTEE shall consult with the SHPO, and all interested parties as designated by the SHPO, prior to taking any proposed action on the Property. GRANTEE is provided notice that the Kapolei Hawaiian Civic Club (KHCC) has requested that the SHPO grant it status as an interested party for proposed actions on



the Property, and also that KHCC has offered to assist GRANTEE with the protection and maintenance of cultural resources on the Property.

iii. The GRANTEE shall take prompt action to secure the Historic Properties from vandalism and will be responsible for any stabilization that may be required to prevent further deterioration from human disturbance or exposure to natural elements. However, stabilization methods and materials must be approved by the SHPO prior to implementation.

iv. The GRANTEE shall allow the SHPO access at all reasonable times and upon reasonable advanced notice to GRANTEE to inspect the said Historic Properties in order to ascertain whether the GRANTEE is complying with the conditions of this historic preservation covenant.

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

vi. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States of America or the SHPO may, following reasonable notice to GRANTEE, institute any action to enjoin said violation or to require the restoration of the Historic Properties.

vii. This covenant is binding on the GRANTEE in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by GRANTEE verbatim or by express reference in any deed or other legal instrument by which a fee simple interest or any lesser estate is conveyed in said Historic Properties or any part thereof.

**VII. THE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS** set forth herein are a binding servitude on the Property, shall inure to the benefit of GRANTOR and GRANTEE and their respective successors and assigns, and will be deemed to run with the land in perpetuity.

**VIII.** The term "GRANTOR" shall mean GRANTOR and its successors and assigns.

**IX.** Except as otherwise provided herein, or as otherwise provided by law, GRANTEE acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of GRANTOR regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR pursuant to Section VI(D)(iii)(b) above, GRANTEE further acknowledges that GRANTOR shall not be liable

for any latent or patent defects in the property except to the extent required by applicable law.

**X. LIST OF EXHIBITS.** The following exhibits are attached hereto and made a part hereof.

- A.** Exhibit "A" Notice of Hazardous Substances
- B.** Exhibit "B" Listing of Historic Properties
- C.** Exhibit "C" Archeological Site Map

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, GRANTOR has caused this Deed to be executed in the name and on behalf of GRANTOR by its duly authorized officer on the day first above written.

**UNITED STATES OF AMERICA**

Acting by and through the Department of the Navy

BY: 

WILLIAM R. CARSILLO

Real Estate Contracting Officer

Base Realignment & Closure Program Management Office West

**ACCEPTANCE AND ACKNOWLEDGMENT:**

GRANTEE hereby accepts this Deed, acknowledges receipt of the documents described herein and agrees to be bound by all the agreements, covenants, conditions and restrictions contained herein.

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

BY: 

ANTHONY J.H. CHING

Executive Director

Date: 9/21, 2010

Approved as to form for GRANTEE by the  
Department of the Attorney General, State  
of Hawaii

BY: 

Diane Taira

Deputy Attorney General

STATE OF HAWAII

)

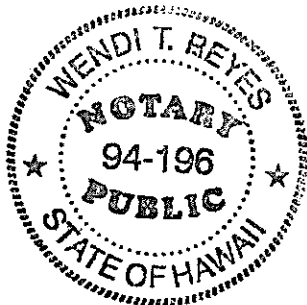
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SS.

;

On this 21st day of September, 2010, before me personally

appeared ANTHONY J.H. CHING, Executive Director of the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, State of Hawaii, a body corporate and a public instrumentality of the State of Hawaii and that said instrument, this (19) page Quitclaim Deed dated September 21, 2010, was signed in the First Circuit of the State of Hawaii on behalf of said body corporate of the State of Hawaii and acknowledged said instrument to be the free act and deed of said body corporate of the State of Hawaii.



Wendi T. Reyes  
Notary Public, State of Hawaii  
My commission expires: 3/30/2014

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO

On 9/21/10 before me, THOM O'BRIEN, Notary Public,  
(Here insert name and title of the officer)

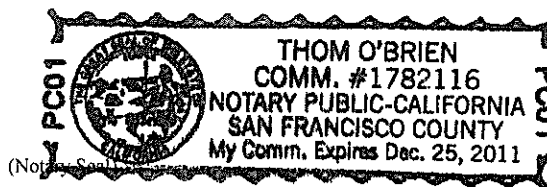
personally appeared WILLIAM R. CARSILO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

Notice is hereby given that the information provided below contains a notice of hazardous substances that may have been stored, released, or disposed of on the property at Former Naval Air Station Barbers Point, and the approximate dates that such storage, release(s), or disposal took place. Title 40 *Code of Federal Regulations* 373.3(b) requires that the following statement be prominently displayed in this notice. The information in this notice is required under the authority of regulations promulgated under 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act ([CERCLA] or "Superfund") Title 42 of the *United States Code* 9620(h).

**Table A-1: Hazardous Substances Stored, Released, or Disposed of**

Building, POI Site, or Location	Hazardous Substance	CAS Number	Regulatory Synonym	RCRA Waste	Reportable Quantity (kg)	Estimated Quantity	Units	Dates of Storage, Disposal, or Release (if known)	Stored (S), Disposed of (D), or Released (R)	Action Taken
POI-49 Regional Groundwater System	Arsenic	7440-38-2	None	No	0.454	Unknown	NA	Unknown	R	No action required. A NFA decision was concurred with by EPA and DOH in 1999 as presented in the Record of Decision (Navy 1999).
	Atrazine	1912-24-9	NA	No	NA	Unknown	NA	Unknown	R	
	bis(2-ethylhexyl)phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester; DEHP; Diethylhexyl phthalate	No	45.4	Unknown	NA	Unknown	R	
	4,4'-DDE (dichlorodiphenyl-dichloroethylene)	72-55-9	DDE; 4,4'(prime)-DDE	No	0.454	Unknown	NA	Unknown	R	
	4,4'-DDT (dichlorodiphenyl-trichloroethane)	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis (4) chloro-DDT; 4,4'(prime)-DDT.	No	0.454	Unknown	NA	Unknown	R	
	Lead	7439-92-1	None	No	4.54	Unknown	NA	Unknown	R	
	Lindane	58-89-9	γ-BHC; Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-; Lindane(all isomers)	No	0.454	Unknown	NA	Unknown	R	
	Thallium	7440-28-0	None	No	454	Unknown	NA	Unknown	R	

Source: Navy. 1999. "Record of Decision for No Action and Restricted Land Use Sites, Naval Air Station, Barbers Point, Oahu, Hawaii." April.

**Notes**

CAS = Chemical Abstracts Service  
DOH = State of Hawaii Department of Health  
EPA = U.S. Environmental Protection Agency  
kg = kilogram  
NA = not available  
Navy = Department of the Navy  
NFA = no further action  
POI = point of interest  
RCRA = Resource Conservation and Recovery Act

Table 2: Notice of Hazardous Substances Stored, Disposed of, or Released

Building, IRP/POI Site, or Location	Hazardous Substance	CAS Number	Regulatory Synonym	RCRA Waste	Reportable Quantity (kg)	Estimated Quantity	Units	Dates of Storage, Disposal, or Release (if known)	Stored (\$), Disposed of (D), or Released (R)	Action Taken
POI-49 Regional Groundwater System	Arsenic	7440-38-2	None	No	0.454	Unknown	NA	Unknown	R	No action required. A NFA decision was concurred with by EPA and DOH in 1999 as presented in the Record of Decision (Navy 1999).
	Atrazine	NA	NA	No	NA	Unknown	NA	Unknown	R	
	bis(2-ethylhexyl)phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester; DEHP; Diethylhexyl phthalate	No	45.4	Unknown	NA	Unknown	R	
	4,4'-DDE (dichlorodiphenyldichloroethylene)	72-55-9	DDE; 4,4(prime)-DDE	No	0.454	Unknown	NA	Unknown	R	
	4,4'-DDT (dichlorodiphenyltrichloroethane)	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4) chloro-DDT; 4,4(prime)-DDT.	No	0.454	Unknown	NA	Unknown	R	
	Lead	7439-92-1	None	No	4.54	Unknown	NA	Unknown	R	
	Lindane	58-89-9	γ-BHC; Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-; Lindane(all isomers)	No	0.454	Unknown	NA	Unknown	R	
	Thallium	7440-28-0	None	No	454	Unknown	NA	Unknown	R	

Notes:

CAS = Chemical Abstract Service  
DDE = dichlorodiphenyldichloroethylene  
DDT = dichlorodiphenyltrichloroethane  
DEHP = di(2-ethylhexyl)phthalate  
DOH = State of Hawaii Department of Health  
EPA = U.S. Environmental Protection Agency  
IRP = Installation Restoration Program  
kg = kilogram  
NFA = no further action  
NA = not applicable  
Navy = Department of the Navy  
POI = point of interest  
RCRA = Resource Conservation and Recovery Act

Exhibit "B"

Historic Properties

Site No	Parcel(s)	No. Features	Description	NRHP Criteria
1752	13073-B	42+	Hawaiian habitation/agricultural complex; one feature contains human remains	D
5115	13073-B 13073-D	8	WWII sentry post, wall and defensive features	A,D
5117	13073-B	6	Sisal wall	D
5130	13073-B	x	Sinkhole Complex	D
5114	13073-D	x	WWII Plane Wreck	A, D
1753	13073-B 13073-D	51+	Hawaiian habitation complex; three features contain human remains	D

x = Features present but number unknown



EXHIBIT C

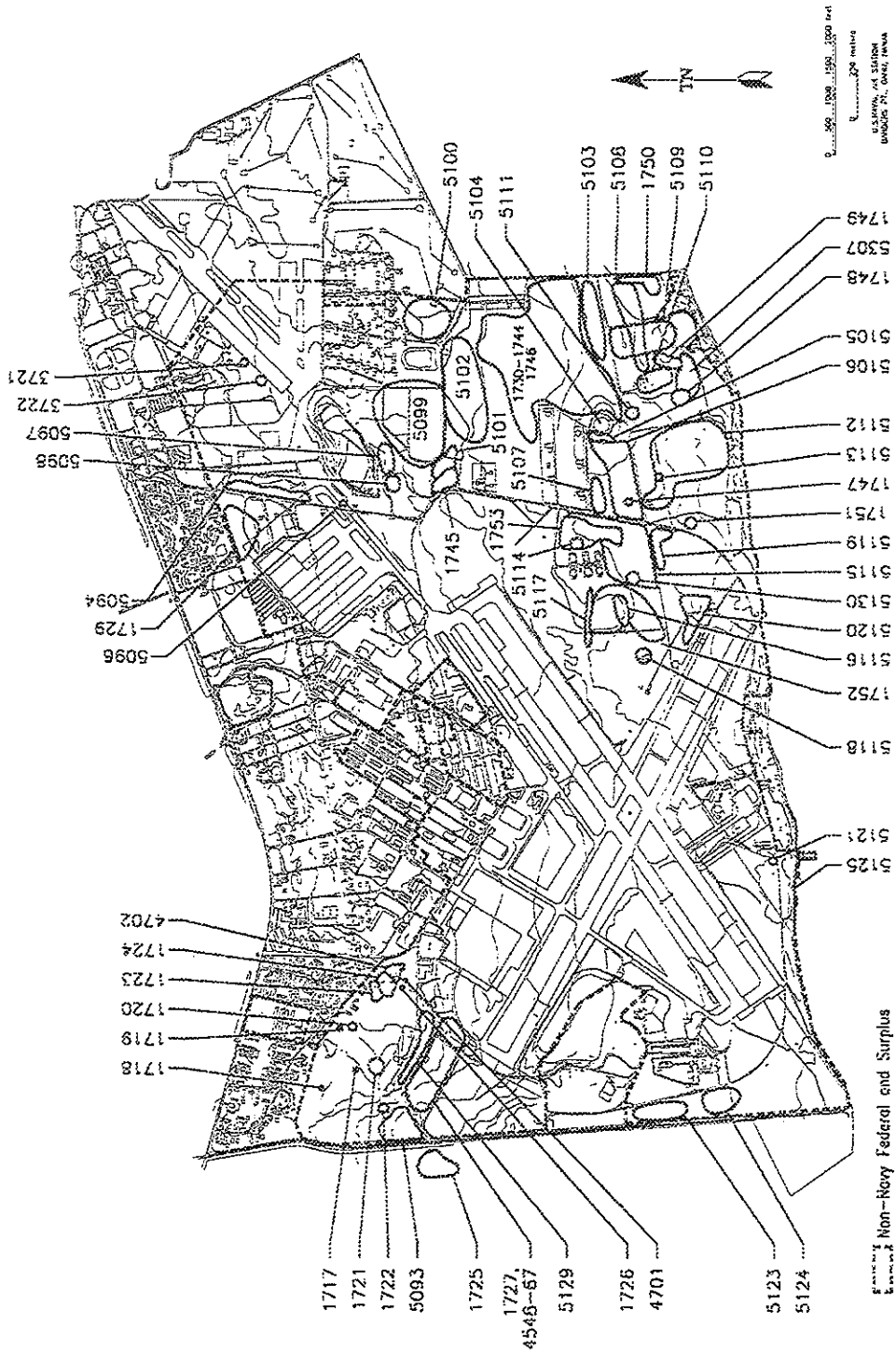
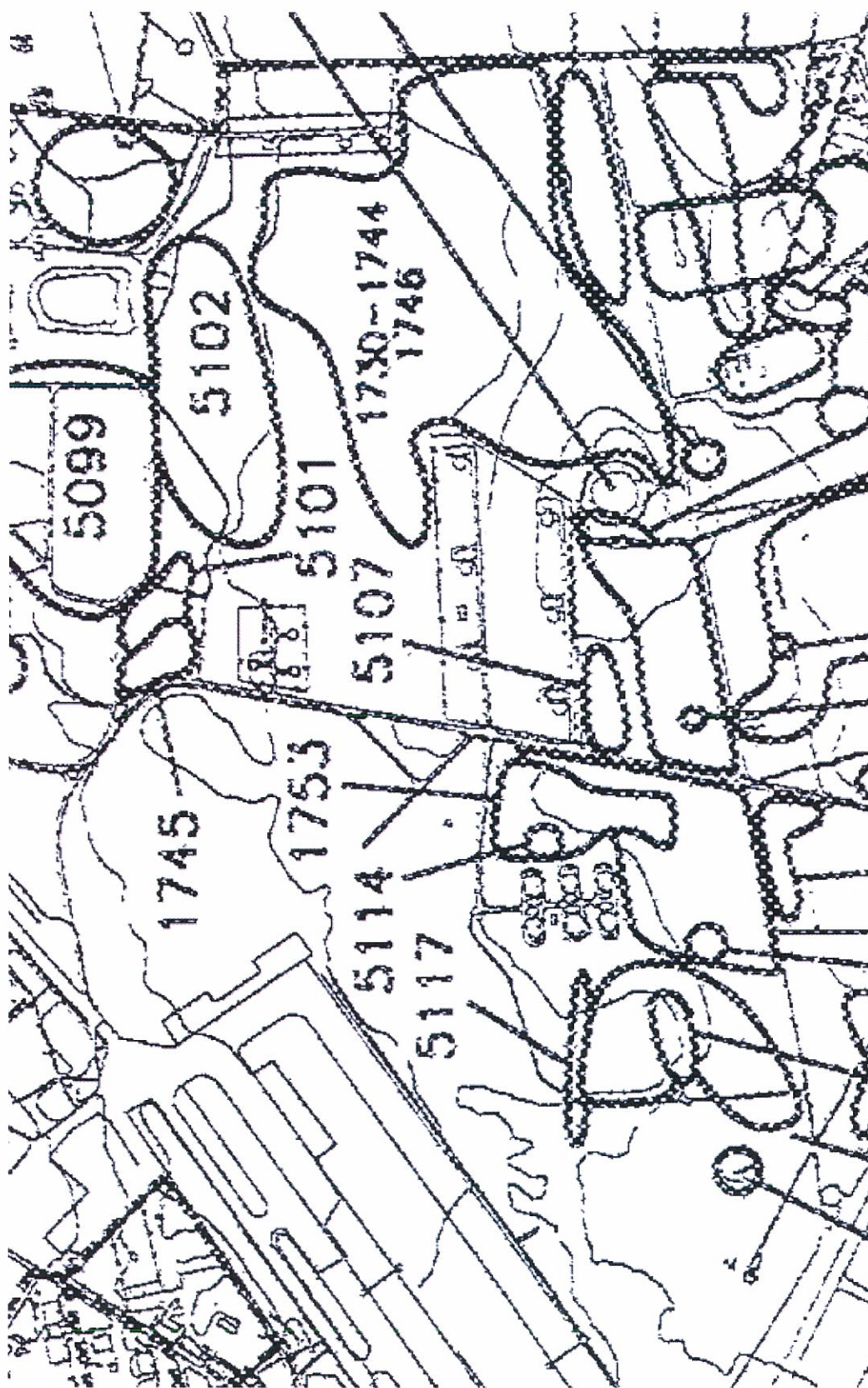


Figure E-2. Archaeological sites, non-Navy federal and surplus lands, NAS Barbers Point.

EXHIBIT C - 13073B AND 13073D



# EXHIBIT E

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



JUN 25 2014 **F**  
LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

June 23, 2014

S0626TN

**CERTIFIED MAIL NO. 7013 1710 0000 7660 1644  
RETURN RECEIPT REQUESTED**

**WARNING LETTER**

Mr. Anthony Ching, Executive Director  
Hawaii Community Development Authority  
461 Cooke Street  
Honolulu, Hawaii 96813

Dear Mr. Ching:

**SUBJECT:** Potential Unpermitted Solid Waste Management Facility  
Kalaeloa Regional Park (Future)  
Coral Sea Road, Kalaeloa, Hawaii, TMK: 91013067

On May 12, 2014, the Department of Health (DOH), Solid Waste Section (SWS) visited the subject site and noted the presence of stockpiles of hundreds of cubic yards of dirt and dirt mixed with large pieces of concrete. Small amounts of car parts and irons were also noted in the piles. It is our understanding that the materials were brought to the site by KT Hauling.

The operation of an illegal dump is a violation of Hawaii Revised Statutes (HRS) 342H-30 (a), which provides:

*No person, including any public body, shall engage in the operation of an open dump.*

Also, as the property owner and/or operator, you have the responsibility to properly manage and dispose of accumulated solid wastes. This responsibility is stated in the Hawaii Administrative Rules, Title 11, Chapter 58.1, which provides:

- (a) *The aesthetic, nonhazardous, and sanitary storage of solid waste is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the solid waste is accumulated.*
- (b) *Any person owning, operating, or managing a property, premise, business establishment, or industry has the responsibility of removing accumulated solid*

EXHIBIT E

*waste to an approved solid waste disposal facility. Contractual or other arrangements for the removal of accumulated solid waste shall not relieve a person of this primary responsibility as stated above. Solid waste shall be removed to an approved solid waste disposal facility, prior to creating a nuisance condition, health, or safety hazard.*

You are required to correct the above-mentioned areas of noncompliance and provide documentation of your corrective actions to the DOH-SWS as outlined below. Corrective actions shall include the following:

1. Immediately cease and desist bringing solid waste onto the subject property.
2. Within thirty (30) calendar days of your receipt of this letter, provide the DOH with information regarding the source, hauler, and dates for all imported dirt, concrete rubble, or other solid waste brought to the site. Include copies of driver's tags ~~or~~ receipts for all material brought to the site. Provide analytical data on the imported soil, if available.
3. Remove all solid waste, including concrete rubble greater than eight (8) inches in diameter and any imported materials that do not meet the definition of inert fill from the property within thirty (30) calendar days of your receipt of this letter. All solid waste removed from the property shall be taken to DOH-permitted disposal or recycling facilities.

HRS 342H-01 defines inert fill as, "...earth, soil, rocks, rock-like material such as cured asphalt, brick, and clean concrete less than eight (8) inches in diameter, except as specified by a licensed soils engineer with no exposed steel reinforcing rod. The fill material shall not contain vegetation or organic material or other solid waste."

Any earth and soil imported to the property shall be uncontaminated. In this case, that means it cannot contain other wastes nor have contaminant levels above the Environmental Action Levels for unrestricted use found in the DOH, Hazard Evaluation and Emergency Response Office, Environmental Hazard Evaluation guidance document. This guidance document can be found at: <http://eha-web.doh.hawaii.gov/eha-cma/Leaders/HEER/environmental-hazard-evaluation-and-environmental-action-levels>.

4. Submit copies of disposal receipts to the DOH-SWS within thirty (30) days of receipt of this letter.



Mr. Anthony Ching  
June 23, 2014  
Page 3

5. Contact Mr. Todd Nichols of the DOH, Solid and Hazardous Waste Branch at (808) 586-4226 within thirty (30) calendar days of your receipt of this letter to schedule a follow-up inspection of the subject site.


The DOH-SWS reserves the right to take enforcement actions on past and current solid waste violations. Please be aware that violations of state solid waste regulations could result in formal enforcement, which would carry a monetary penalty of up to ten thousand dollars (\$10,000) for each separate offense, for each separate day of the offense, in accordance with HRS 342H-9. For the illegal dumping of solid waste, HRS 342H-39 provides criminal penalties of up to twenty-five thousand dollars (\$25,000) for each separate offense; up to thirty (30) days imprisonment for each offense; or revocation or suspension by court order of any contractor's license to operate as a contractor or any applicable certificate of authorization from the public utilities commission.

Any deficiencies, which may be noted in this letter, are not necessarily inclusive, and any omissions shall not be construed as a determination of compliance with any applicable laws. Also, any omission to cite other violations is not intended to nor shall be binding upon the DOH. Please mail a response within thirty (30) calendar days of your receipt of this letter to:

Steven Y.K. Chang, P.E., Chief  
Solid and Hazardous Waste Branch  
Department of Health  
919 Ala Moana Boulevard, Room 212  
Honolulu, Hawaii 96814

Should you have any questions regarding this letter, please call Mr. Todd Nichols of our Solid Waste Section at (808) 586-4226.

Sincerely,

  
STEVEN Y.K. CHANG, P.E. CHIEF  
Solid and Hazardous Waste Branch



											KALAELOA HERITAGE AND LEGACY FOUNDATION													
											KALAELOA HERITAGE PARK													
											HCDA CASH FLOW													
											CA-com													
Part I:	Revenue	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035		
Line #	Description	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15	Y16	Y17	Y18	Y19	Y20	Y21		
1	Park Entrance Fees					\$1,250	\$1,750	\$1,750	\$2,500	\$220,000	\$242,000	\$266,200	\$292,820	\$322,102	\$354,312	\$389,743	\$428,718	\$471,590	\$518,748	\$570,623	\$627,686	\$690,454		
2	Site Tour	\$7,800	\$7,800	\$7,800	\$15,600	\$15,600	\$15,600	\$15,600	\$15,600															
3	Wholesale Tour Packages									\$60,000	\$68,000	\$72,600	\$79,880	\$87,848	\$96,631	\$106,294	\$116,923	\$128,615	\$141,477	\$155,625	\$171,187	\$188,306		
4	Membership Dues	\$1,250	\$2,500	\$3,750	\$3,750	\$5,000	\$6,250	\$7,500	\$50,000	\$51,000	\$53,550	\$56,228	\$59,039	\$61,991	\$65,090	\$68,345	\$71,762	\$75,350	\$79,118	\$83,074	\$87,227	\$91,589		
5	Parking									\$158,400	\$161,588	\$164,799	\$168,095	\$171,457	\$174,886	\$178,384	\$181,952	\$185,591	\$189,303	\$193,089	\$196,950	\$200,890		
6	Gift Shop									\$264,000	\$269,280	\$274,666	\$280,159	\$285,762	\$291,477	\$297,307	\$303,253	\$309,318	\$315,504	\$321,815	\$328,251	\$334,816		
7	Food & Beverage									\$750,000	\$750,000	\$750,000	\$825,000	\$907,500	\$998,250	\$1,098,075	\$1,207,883	\$1,328,671	\$1,461,538	\$1,607,692	\$1,768,461	\$1,945,307		
8	Events									\$150,000	\$165,000	\$181,500	\$199,650	\$219,615	\$241,577	\$265,734	\$292,308	\$321,538	\$353,692	\$389,061	\$427,968	\$470,764		
9	Sub Leases									\$100,000	\$105,000	\$110,250	\$115,763	\$121,551	\$127,628	\$134,010	\$140,710	\$147,746	\$155,133	\$162,889	\$171,034	\$179,586		
10	Unrestricted Donations		\$20,000	\$20,000	\$20,000	\$25,000	\$30,000	\$30,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000		
11	Miscellaneous	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$5,000	\$5,025	\$5,050	\$5,075	\$5,101	\$5,126	\$5,152	\$5,178	\$5,204	\$5,230	\$5,256	\$5,282	\$5,308		
	Subtotal Gross Revenue	\$12,050	\$33,300	\$34,550	\$42,350	\$49,850	\$56,600	\$57,850	\$121,100	\$1,808,400	\$1,867,423	\$1,931,293	\$2,075,461	\$2,232,925	\$2,404,978	\$2,593,044	\$2,798,685	\$3,023,622	\$3,269,743	\$3,539,123	\$3,834,045	\$4,157,019		
Revenue Restricted Funds																								
1	Capital Campaign Grants		\$500,000	\$500,000	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 200,000.00	\$ 200,000.00	\$ -									
2	Capital Campaign Donations		\$100,000	\$100,000	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 150,000.00	\$ 150,000.00	\$ 190,120.00									
	In-Kind Services for Mitigations	\$350,000																						
3	Capital Campaign Loan						\$2,000,000.00																	
	Subtotal Gross Revenue Restricted Funds	\$350,000	\$600,000	\$600,000	\$700,000	\$700,000	\$2,700,000	\$700,000	\$700,000	\$700,000	\$700,000	\$700,000	\$350,000	\$350,000	\$ 190,120.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
	Balance Forward		\$0	\$600,000	\$1,200,000	\$1,900,000	\$2,600,000	\$3,162,737	\$1,292,474	\$1,356,697	\$1,420,920	\$1,485,143	\$1,714,366	\$1,593,589	\$1,472,812	\$0								
	Total Revenue	\$12,050	\$633,300	\$634,550	\$ 742,350.00	\$ 749,850.00	\$ 2,756,600.00	\$ 757,850.00	\$ 821,100.00	\$ 2,508,400.00	\$ 2,567,423.00	\$ 2,631,292.59	\$ 2,425,461.01	\$ 2,582,924.54	\$ 2,595,097.80	\$ 2,593,043.57	\$ 2,798,685.49	\$ 3,023,622.17	\$ 3,269,742.55	\$ 3,539,122.90	\$ 3,834,045.48	\$ 4,157,019.08		
Operating Expenses																								
Line #	Description																							
1	Stockpiling Mitigation	\$ 350,000.00																						
2	23, AIS Studies/Surveys and Plans						\$ 70,000.00	\$ 70,000.00	\$ 3,000.00															
3	21 Design						\$ 354,350.00	\$ 354,350.00	\$ 354,350.00															
4	22 Permits and Approvals						\$ 23,670.00	\$ 23,670.00	\$ 23,670.00															
5	7, 8, 16, 17, 18 Site Prep						\$ 52,300.00	\$ 52,300.00	\$ 52,300.00															
6	10, 11, 19 Phase 1 Area Devlp. Maintenance Yard						\$ 111,000.00	\$ 111,000.00	\$ 111,000.00															
7	12, 13, 14 Phase 1 Area Devlp. Sites						\$ 13,500.00	\$ 13,500.00	\$ 13,500.00															
8	3, 4, 2(5)20 Phase 1 Area Building						\$ 215,833.00	\$ 215,833.00	\$ 215,833.00															
9	1, 9, 15 Phase 1 Area Cultural Center A						\$ 1,160,833.00	\$ 1,160,833.00	\$ 1,160,833.00															
10	Phase 2 Cultural Center B									\$ 500,000.00	\$ 500,000.00	\$ 500,000.00												
11	Phase 3 Cultural Center C												\$ 335,000.00	\$ 335,000.00	\$ 335,000.00									
12	Contingency						\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00	\$ 135,777.00									
	Subtotal	\$ 350,000.00	\$0	\$0	\$0	\$0	\$ 2,137,263.00	\$ 2,570,263.00	\$ 635,777.00	\$ 635,777.00	\$ 635,777.00	\$ 470,777.00	\$ 470,777.00	\$ 470,777.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
	Restricted Revenue Balance Forward	\$0	\$600,000	\$1,200,000	\$1,900,000	\$2,600,000	\$3,162,737	\$1,292,474	\$1,356,697	\$1,420,920	\$1,485,143	\$1,714,366	\$1,593,589	\$1,472,812	\$1,662,932	\$0								
13	Insurance	\$1,500	\$1,500	\$1,500	\$4,000	\$4,000	\$5,500.00	\$5,500	\$10,000	\$10,000	\$10,000	\$12,000	\$12,000	\$12,000	\$15,000	\$15,000	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$33,750		
14	Equipment		\$6,000					\$6,000	\$6,000												\$7,000	\$7,000		
15	Maintenance	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$75,000	\$75,000	\$75,000	\$125,000	\$125,000	\$125,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$151,500	\$153,015		
16	Repairs and Replacements	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000	\$50,000	\$75,000	\$75,000	\$150,000		
17	Admin	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$15,000	\$15,450	\$15,914	\$16,391	\$16,883	\$17,389	\$17,911	\$18,448	\$19,002	\$19,572	\$20,159	\$20,764	\$21,386	\$22,028	\$22,689	\$23,370		
18	Office Supplies	\$1,200	\$1,200	\$1,200	\$1,200	\$1,320	\$1,386	\$1,455	\$1,528	\$1,757	\$1,845	\$1,937	\$2,034	\$2,136	\$2,243	\$2,355	\$2,473	\$2,596	\$2,726	\$2,862	\$3,006	\$3,156		
19	Health and Safety	\$2,840	\$2,982	\$3,131	\$3,288	\$3,452	\$3,625	\$3,806	\$3,996	\$4,116	\$4,240	\$4,367	\$4,498	\$4,633	\$4,772	\$4,915	\$5,062	\$5,214			\$0	\$0		
20	Management/Salary/Overhead		\$13,000	\$31,280	\$32,218	\$33,185	\$83,185	\$85,680.55	\$155,685	\$1,190,125	\$1,190,125	\$1,225,829	\$1,262,604	\$1,300,482	\$1,339,496	\$1,379,681	\$1,421,071	\$1,463,704	\$1,507,615	\$1,552,843	\$1,599,428	\$1,647,411		
21	Marketing				\$5,000	\$10,000	\$10,000	\$10,000	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000	\$ 20,000.00	\$ 50,000.00	\$ 52,500.00	\$ 55,125.00	\$ 57,881.25	\$					



										KALAELOA HERITAGE AND LEGACY FOUNDATION KALAELOA HERITAGE PARK HCDA CASH FLOW																			
Part I:		Revenue	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054								
Line #		Description	Y22	Y23	Y24	Y25	Y26	Y27	Y28	Y29	Y30	Y31	Y32	Y33	Y34	Y35	Y36	Y37	Y38	Y39	Y40								
1		Park Entrance Fees	\$759,500	\$835,450	\$918,995	\$1,010,894	\$1,111,983	\$1,223,182	\$1,345,500	\$1,480,050	\$1,628,055	\$1,790,860	\$1,969,947	\$2,166,941	\$2,383,635	\$2,621,999	\$2,884,199	\$3,172,619	\$3,489,880	\$3,838,868	\$4,222,755								
2		Site Tour																											
3		Wholesale Tour Packages	\$207,136	\$227,850	\$250,635	\$275,698	\$303,268	\$333,595	\$366,955	\$403,650	\$444,015	\$488,416	\$537,258	\$590,984	\$650,082	\$715,091	\$786,600	\$865,260	\$951,786	\$1,046,964	\$1,151,661								
4		Membership Dues	\$96,168	\$100,977	\$106,025	\$111,327	\$116,893	\$122,738	\$128,874	\$135,318	\$142,084	\$149,188	\$156,648	\$164,480	\$172,704	\$181,339	\$190,408	\$199,927	\$209,923	\$220,419	\$231,440								
5		Parking	\$204,907	\$209,005	\$213,186	\$217,449	\$221,798	\$226,234	\$230,759	\$235,374	\$240,082	\$244,883	\$249,781	\$254,776	\$259,872	\$265,069	\$270,371	\$275,778	\$281,294	\$286,920	\$292,658								
6		Gift Shop	\$341,512	\$348,342	\$355,309	\$362,415	\$369,664	\$377,057	\$384,598	\$392,290	\$400,136	\$408,139	\$416,301	\$424,627	\$433,120	\$441,782	\$450,618	\$459,630	\$468,823	\$478,199	\$487,763								
7		Food & Beverage	\$2,139,838	\$2,353,821	\$2,589,203	\$2,848,124	\$3,132,936	\$3,446,230	\$3,790,853	\$4,169,938	\$4,586,932	\$5,045,625	\$5,550,187	\$6,105,206	\$6,715,727	\$7,387,300	\$8,126,029	\$8,938,632	\$9,832,496	\$10,815,745	\$11,897,320								
8		Events	\$517,841	\$569,625	\$626,587	\$689,246	\$758,171	\$833,988	\$917,388	\$1,009,125	\$1,110,037	\$1,221,041	\$1,343,145	\$1,477,460	\$1,625,206	\$1,787,726	\$1,966,499	\$2,163,149	\$2,379,464	\$2,617,410	\$2,879,151								
9		Sub Leases	\$188,565	\$197,993	\$207,893	\$218,287	\$229,202	\$240,662	\$252,695	\$265,330	\$278,596	\$292,526	\$307,152	\$322,510	\$338,635	\$355,567	\$373,346	\$392,013	\$411,614	\$432,194	\$453,804								
10		Unrestricted Donations	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000								
11		Miscellaneous	\$5,335	\$5,362	\$5,388	\$5,415	\$5,442	\$5,470	\$5,497	\$5,524	\$5,552	\$5,580	\$5,608	\$5,636	\$5,664	\$5,692	\$5,721	\$5,749	\$5,778	\$5,807	\$5,836								
		Subtotal Gross Revenue	\$4,510,802	\$4,898,425	\$5,323,221	\$5,788,856	\$6,299,358	\$6,859,155	\$7,473,117	\$8,146,600	\$8,885,489	\$9,696,259	\$10,586,028	\$11,562,621	\$12,634,646	\$13,811,566	\$15,103,788	\$16,522,757	\$18,081,057	\$19,792,528	\$21,672,389								
		Revenue Restricted Funds																											
1		Capital Campaign Grants																											
2		Capital Campaign Donations																											
3		In-Kind Services for Milligations																											
		Capital Campaign Loan																											
		Subtotal Gross Revenue Restricted Funds																											
		Balance Forward																											
		Total Revenue	\$ 4,510,801.54	\$ 4,898,424.67	\$ 5,323,221.48	\$ 5,788,856.24	\$ 6,299,357.52	\$ 6,859,154.55	\$ 7,473,117.11	\$ 8,146,599.57	\$ 8,885,489.17	\$9,696,259	\$10,586,028	\$11,562,621	\$12,634,646	\$13,811,566	\$15,103,788	\$16,522,757	\$18,081,057	\$19,792,528	\$21,672,389								
Part II:		Operating Expenses																											
Line #		Description																											
1		Stockpiling Mitigation																											
2	23, AIS	Studies/ Surveys and Plans																											
3	21	Design																											
4	22	Permits and Approvals																											
5	7, 8, 16, 17, 18	Site Prep																											
6	10, 11, 19	Phase 1 Area Devlp. Maintenance Yard																											
7	12, 13, 14	Phase 1 Area Devlp. Sites																											
8	3, 4, 2(5)20	Phase 1 Area Building																											
9	1, 9, 15	Phase 1 Area Cultural Center A																											
10		Phase 2 Cultural Center B																											
11		Phase 3 Cultural Center C																											
12		Contingency																											
		Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -																			
		Restricted Revenue Balance Forward																											
13		Insurance	\$33,750	\$33,750	\$33,750	\$33,750	\$50,625	\$50,625	\$50,625	\$50,625	\$50,625	\$75,938	\$75,938	\$75,938	\$75,938	\$75,938	\$113,907	\$113,907	\$113,907	\$113,907	\$113,907								
14		Equipment																											
15		Maintenance	\$154,545	\$156,091	\$157,652	\$159,228	\$160,820	\$162,429	\$164,053	\$165,693	\$167,350	\$169,024	\$170,714	\$172,421	\$174,145	\$175,887	\$177,646	\$179,422	\$181,216	\$183,029	\$184,859								
16		Repairs and Replacements	\$150,000	\$150,000	\$154,500	\$159,135	\$163,909	\$168,826	\$173,891	\$179,108	\$184,481	\$190,016	\$195,716	\$201,587	\$207,635	\$213,864	\$220,280	\$226,888	\$233,695	\$240,706	\$247,927								
17		Admin	\$24,071	\$24,793	\$25,536	\$26,303	\$27,092	\$27,904	\$28,742	\$29,604	\$30,492	\$31,407	\$32,349	\$33,319	\$34,319	\$35,348	\$36,409	\$37,501	\$38,626	\$39,785	\$40,979								
18		Office Supplies	\$3,314	\$3,479	\$3,653	\$3,836	\$4,028	\$4,229	\$4,441	\$4,663	\$4,896	\$5,140	\$5,398	\$5,667	\$5,951	\$6,248	\$6,561	\$6,889	\$7,233	\$7,595	\$7,975								
19		Health and Safety	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0								
20		Management/Salary/Overhead	\$1,696,834	\$1,747,739	\$1,800,171	\$1,854,176	\$1,909,801	\$1,967,095	\$2,026,108	\$2,086,891	\$2,149,498	\$2,213,983	\$2,280,403	\$2,348,815	\$2,419,279	\$2,491,857	\$2,566,613	\$2,643,612	\$2,722,920	\$2,804,608	\$2,888,746								
21		Marketing	\$ 73,872.77	\$ 77,566.41	\$ 81,444.73	\$ 85,516.97	\$ 89,792.82	\$ 94,282.46	\$ 98,996.58	\$ 103,946.41	\$ 109,143.73	\$ 114,600.92	\$ 120,330.96	\$ 126,347.51	\$ 132,664.89	\$ 139,298.13	\$ 146,263.04	\$ 153,576.19	\$ 161,255.00	\$ 169,317.75	\$ 177,783.63								
22		Principal	\$55,250	\$59,835	\$64,802	\$70,180	\$76,005	\$82,213	\$88,815	\$96,544	\$104,558	\$113,236	\$112,634	\$132,813	\$143,836	\$155,775	\$168,704	\$182,626	\$197,551	\$207,477	\$217,403								
23		Interest & Fees	\$120,854	\$116,268	\$111,302	\$105,923	\$100,098	\$93,790	\$86,958	\$79,559	\$71,546	\$62,888	\$53,469	\$43,291	\$32,267	\$20,329	\$7,400	\$0	\$0	\$0	\$0								
24		Utilities	\$243,809	\$273,300	\$304,265	\$336,778	\$370,917	\$406,763	\$444,401	\$483,921	\$525,417	\$568,988	\$614,737	\$662,774	\$713,213	\$766,173	\$821,782	\$880,171	\$941,480	\$1,005,853	\$1,073,446								
25		Real Property Taxes	\$160,195	\$165,001	\$169,851	\$175,049	\$180,301	\$185,710	\$191,281	\$197,019	\$202,930	\$209,018	\$215,288	\$221,747	\$228,400	\$235,252	\$242,309	\$249,578	\$257,066	\$264,778	\$272,721								
26		Miscellaneous																											
		Total Operating Expenses	\$2,716,493	\$2,807,822	\$2,907,026	\$3,009,875	\$3,133,389	\$3,169,867	\$3,358,641	\$3,477,574	\$3,600,936	\$3,754,217	\$3,876,977	\$4,024,720	\$4,167,648	\$4,315,970	\$4,507,873	\$4,491,545	\$4,657,398	\$4,829,578	\$5,008,343								
		Net Non-Restricted Revenue	\$1,794,308	\$2,090,603	\$2,416,196	\$2,778,981	\$3,165,969	\$3,689,288	\$4,114,476	\$4,669,026	\$5,284,553	\$5,942,042	\$6,709,051	\$7,537,901	\$8,466,998	\$9,495,597	\$10,595,915	\$12,031,213	\$13,423,659	\$14,962,950	\$16,664,046								
		Net Restricted Revenue	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0								
		Net Total Revenue	\$1,794,308.21	\$2,090,603.14	\$2,416,195.81	\$2,778,981.18	\$3,165,968.77	\$3,689,287.64	\$4,114,476.14	\$4,669,025.53	\$5,284,553.03	\$5,942,042.24	\$6,709,050.72	\$7,537,901.08	\$8,466,998.25	\$9,495,596.60	\$10,595,915.46	\$12,031,212.55	\$13,423,659.01	\$14,962,949.87	\$16,664,045.89								
Part III:		Lease Payment Proposed																											
1		Base Rent	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1								
2		Percentage Rent	\$159,437.75	\$173,754.25	\$189,508.17	\$206,844.23	\$225,921.67	\$308,644.61	\$337,523.87	\$369,305.02	\$404,279.82	\$442,769.30	\$485,126.65	\$531,740.48	\$583,038.33	\$639,490.63	\$701,614.90	\$769,650.39	\$844,125.59	\$926,094.82	\$1,016,311.07								
Part IV:		Net Non Restricted Profit	\$1,634,869.47	\$1,916,847.89	\$2,226,686.64	\$2,572,135.95	\$2,940,046.10	\$3,380,642.03	\$3,776,951.28	\$4,299,719.51	\$4,880,272.21	\$5,499,271.94	\$6,223,923.08	\$7,006,159.61	\$7,883,958.92	\$8,856,104.97	\$9,894,299.56	\$11,261,561.16	\$12,579,532.42	\$14,036,854.04	\$15,647,733.82								
		Accumulative Loss/Profits non restricted	\$9,217,187	\$11,134,035	\$13,360,721	\$15,932,857	\$18,872,903	\$22,253,545	\$26,030,497	\$30,330,216	\$35,210,488	\$40,709,760	\$46,933,683	\$53,939,843	\$61,823,802	\$70,679,907	\$80,574,206	\$91,835,768	\$104,415,300	\$118,452,154	\$134,099,888								
ix																													



<b>Funding</b>	<b>Amount</b>	<b>Apply</b>	<b>Award</b>
ANA Grant	\$ 500,000.00	Sep-15	2016
Mail Campaign	\$ 100,000.00	Oct-15	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2015	
City and County Grants in Aid	\$ 250,000.00	Dec. 2015	2016
State of Hawaii Grants in Aid	\$ 250,000.00	Jan 2016	July 2016
Rural Housing and Economic Development Grants	\$ 250,000.00	Jan-16	2016
HUD Community Block Grant	\$ 250,000.00	Jan-16	2016
Fundraiser	\$ 100,000.00	Jul-16	
Hawaiian Airlines	\$ 250,000.00	Oct-16	
Mail Campaign	\$ 100,000.00	Oct-16	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2016	
American Express Cultural Heritage	\$ 500,000.00	Jan-17	2017
Fundraiser	\$ 100,000.00	Jul-17	
Mail Campaign	\$ 100,000.00	Oct-17	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2017	
AT&T Foundation	\$ 250,000.00	Jan-18	2018
Disney Aulani Community Grants	\$ 250,000.00	Jan-18	
Atherton Family Foundation	\$ 250,000.00	Jul-18	Dec-18
Fundraiser	\$ 100,000.00	Jul-18	
Mail Campaign	\$ 100,000.00	Oct-18	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2018	
Cook Foundation Ltd	\$ 250,000.00	Mar-19	Jul-19
Office of Hawaiian Affairs	\$ 500,000.00	Jan-19	
Fundraiser	\$ 100,000.00	Jul-19	
Mail Campaign	\$ 100,000.00	Oct-19	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2019	
Loan	\$ 2,000,000.00	Jan-20	
Kellogg Foundation	\$ 500,000.00	Jan-20	
Ford Foundation	\$ 500,000.00	Jan-20	
Clarence TC Ching	\$ 500,000.00	Jan-20	
Fundraiser	\$ 100,000.00	Jul-20	
Mail Campaign	\$ 100,000.00	Oct-20	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2020	
Fidelity Foundation	\$ 500,000.00	Jan-21	
Kresge Foundation	\$ 500,000.00	Jan-21	
James Campbell Foundation	\$ 200,000.00	Jan-21	
Abigail Kawananakoa Foundation	\$ 200,000.00	Jan-21	
Fundraiser	\$ 100,000.00	Jul-21	
Mail Campaign	\$ 100,000.00	Oct-21	
Crowd Funding Campaign	\$ 100,000.00	Dec. 2021	
Castle Foundation	\$ 200,000.00	Jan-22	

Total	\$ 10,850,000.00		
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