

**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*  
September 2, 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 (“KHP” or “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. A map of the parcels are attached (see Exhibit A).
- 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.
- 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," 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 August 12, 2015 meeting, the Authority deferred authorizing the HCDA Acting Executive Director Aedward Los Banos from executing a lease with the KHLF until September 2, 2015. The Authority requested further clarification on the following issues:
  - The Pro Forma submitted by the KHLF reflected activities that may mimic a theme park type operation. The Authority recommended utilizing the visitor information on the Department of Business, Economic Development, and Tourism website for comparable operations and information. The Authority wants to see a revised Pro Forma reflecting stewardship activities and expectations described in the KHP Conceptual Park Plan.



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.*

Letters of support was submitted prior to the meeting and included in the August 12, 2015 Authority packet. Staff found another letter of support and has included it in this packet (see Exhibit D).

- 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 CPP.
- 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:
  - 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

**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 – Revised Proposed Pro Forma  
 Exhibit C – Draft Lease  
 Exhibit D – Additional Letter of Support

# Kalaeloa Heritage Park Location

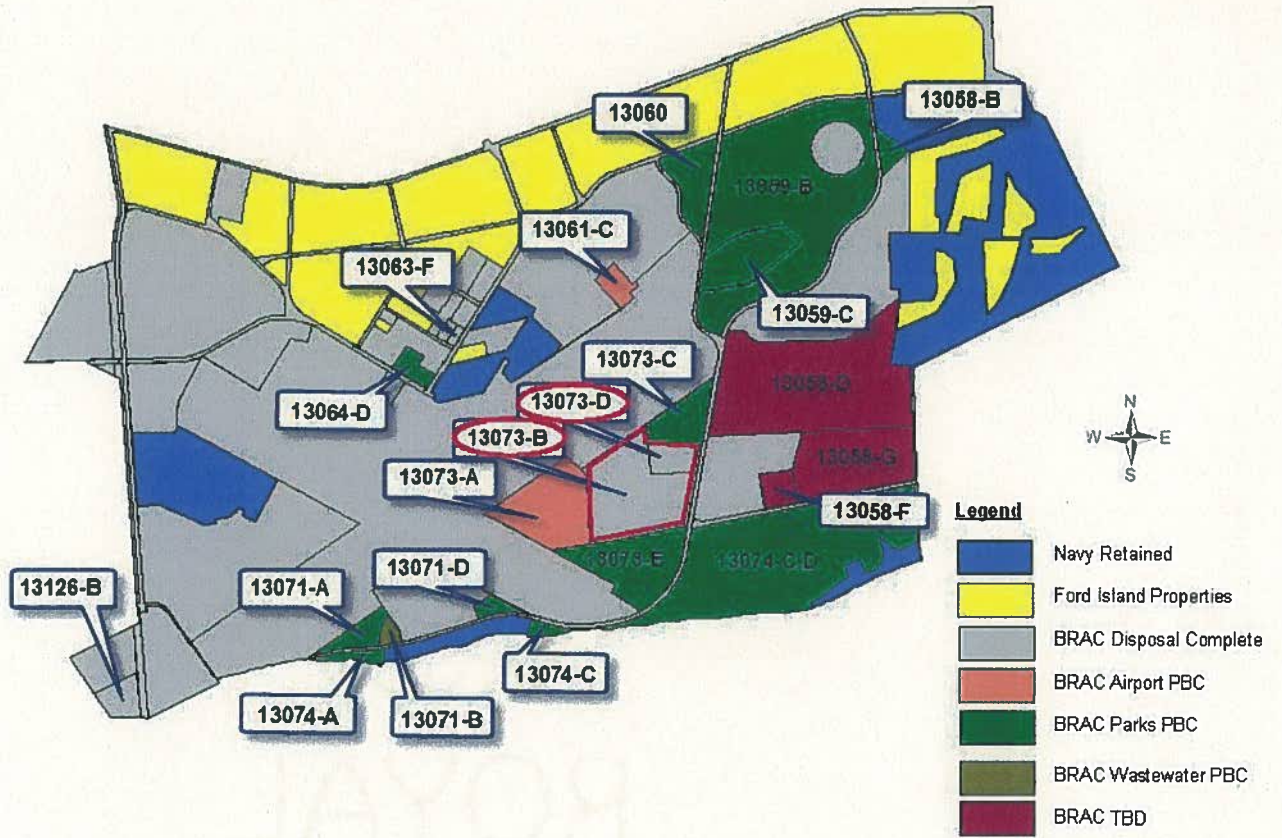


Exhibit A







## GENERAL LEASE NO. 15-05

THIS INDENTURE OF LEASE ("Lease"), is made as of the \_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("LESSOR"), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business is 547 Queen Street, Honolulu, Hawaii 96813, and KALAELOA HERITAGE AND LEGACY FOUNDATION ("LESSEE"), a Hawaii nonprofit corporation, whose mailing address is P. O. Box 75447, Kapolei, Hawaii, 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 hereby 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 p.m. 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 Hawaii (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 (180th) 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 (180th) 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). 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 Hawaii, 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 Hawaii, 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 Hawaii 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 Hawaii 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 materialmens' 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 Hawaii, 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**

6.1 Stewardship. LESSEE shall protect and preserve all archaeological sites, artifacts and historic properties located in, on, or under the Premises in accordance with all Applicable Laws, including but not limited to, Hawaii Revised Statutes Chapter 6E. LESSEE shall also protect and preserve all sites and resources identified in the 1999 Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Barbers Point, Hawaii conducted by the U.S. Department of the Navy, a copy of which is attached hereto as **Exhibit "E"**.

6.2 Park Operations. The Kalaeloa Heritage Park Conceptual Plan prepared by Townscape, Inc., dated August 2014, contemplates the construction and operation of a visitor park ("Park"). If the Park is constructed in accordance with Article V of this Lease, LESSEE shall establish dates and times for Park operations. LESSEE shall ensure Park rules and signage are posted throughout the Park. LESSEE expressly acknowledges that all Park guests constitute Permitted Persons for purposes of Section 4.15 above. LESSEE shall ensure that all Park guests are assigned to a docent and are accompanied by Park personnel at all times during their visit to the Park. LESSEE shall ensure that Park guests are only allowed to access those portions of the Park which have been properly cleared and secured for guest access. LESSEE shall take appropriate safety precautions in clearly marking and restricting access to any sink holes, lava tubes, historic sites or any burials. LESSEE shall support educational activities and promote education instruction, methods and partnerships. LESSEE shall abide by all the protocols and recommendations set forth in the Kalaeloa Heritage Park Environmental Assessment, attached hereto as **Exhibit "F"**, and the Kalaeloa Heritage Park Conceptual Plan. The LESSOR reserves

the right to have final approval of future partnerships and agreements as it pertains to the operations and maintenance of the Park.

## **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, Hawaii, 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

*This space is left intentionally blank.*



(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:



Public Testimony Website Submission Artspace

JoseBustamante

to:

contact

07/07/2015 10:54 AM

Hide Details

From: JoseBustamante <jose.bustamante@huntcompanies.com>

To: contact@hcdaweb.org,

History: This message has been forwarded.

**Name**

Jose Bustamante

**Organization**

Hunt Companies

**Address**

737 Bishop Street, Suite 2750

Honolulu, HI 96813

United States

[Map It](#)

**Phone**

(808) 792-3756

**Email**

[jose.bustamante@huntcompanies.com](mailto:jose.bustamante@huntcompanies.com)

**Project Name**

Artspace

**Do you support or oppose?**

Support

**Comment**

Hunt Companies ("Hunt"), a landowner in Kalaeloa, supports Kalaeloa Heritage and Legacy Foundation's ("KHLF") mission and believes that a long-term lease of the 77-acre Kalaeloa Heritage Park between KHLF and the Hawaii Community Development Authority ("HCDA") will be vital to preserving and protecting the Native Hawaiian cultural and historical sites in Kalaeloa. Through the leadership of Shad Kane, Hunt believes that KHLF is an exemplary steward of the lands that comprise the Kalaeloa Heritage Park, and will execute its mission to the best of its ability and for the good of the community. Hunt sincerely thanks KHLF for its significant contributions in maintaining Kalaeloa Heritage Park as a repository rich with cultural and historical resources, and hopes that KHLF will continue its invaluable mission in Kalaeloa through a long-term lease with HCDA.

**Exhibit D**