

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii

April 5, 2017

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Kakaako Board Members:

SUBJECT:

Shall the Authority Authorize the Executive Director to Negotiate a Lease of Net Shed Building at Kewalo Basin and the Surrounding 0.53 acres (approx.) of Land, Together with a Right of Entry for an Additional 0.29 acres, Identified by Tax Map Key Nos. (1) 2-1-058-135 (portion), 136 (portion) and 137 (portion) with KUPU.

SUMMARY:

KUPU is currently operating an "Urban Youth Program and a Hawaii Youth Conservations Corps Program" from the Net Shed building on a month-to-month lease that was granted November 1, 2010. KUPU is requesting a ground lease for a term of 35 years at a base rent of \$1/year for the Net Shed building on the subject parcels. KUPU is also requesting a non-exclusive right of entry for an additional 0.29 acres of land identified by Tax Map Key Nos. (1) 2-1-058:137 (portion) to install and maintain landscaping. See Exhibit D, page 2.

AUTHORITIES:

The Hawaii Revised Statutes § 206E-4. Previous Authority Actions. Hawaii Administrative Rules (HAR) § 15-23-40 (Exhibit E).

BACKGROUND:

In November of 2010 the Hawaii Community Development Authority (HCDA) entered into a month-to-month lease (2010 Lease) with KUPU for use of the Net Shed building in Kewalo Basin Park. The 2010 Lease describes the use of the Net Shed building for the purpose of operation of "Urban Youth Programs and Hawaii Youth Conservations Corps." A copy of the 2010 Lease is provided as Exhibit A.

On May 2, 2012, the Authority authorized the Executive Director to execute a Letter of Intent (LOI) to lease the Net Shed building to KUPU for a thirty-five year term with a \$1 per year lease rent. A copy of the May 2, 2012 meeting minutes of is provided as Exhibit B. Subsequently a non-binding LOI was executed on February 20, 2013. A copy of the LOI is provided as Exhibit C. The LOI provides, among other things, that the use of Net Shed be only for the purpose of design, construction, establishment, operation and maintenance of KUPU training and community center.

On October 7, 2015, the Authority approved a finding of no significant impact for the final environmental assessment for the proposed Kupu Green Job Training Center Renovation at the Net Shed in the Kakaako Makai Area on Portions of Tax Map Key Nos. 2-1-58- 127 and 131, in accordance with Hawaii Revised Statutes, Chapter 343. ¹

In a letter dated March 14, 2017, KUPU is requesting lease (Request Letter) of the Net Shed building and the surrounding (approximately) 0.53 acres of land and a right of entry for an additional 0.29 acres of land within the Kewalo Basin Park. A copy of the letter is provided as Exhibit D.

ANALYSIS:

Makai Area Plan and Rules

Under the Makai Area Plan and Rules, primary land use in the area where the Net Shed is located is designated as Park. The Mauka Area Plan describes land use zone designated as Park as follows:

Generous park lands with direct access to the waterfront remain the centerpiece of the Plan for the Makai Area. Within this zone (P), a variety of park environments will be accommodated. The existing Kakaako Waterfront Park provides a passive park for walking, picnics, and quiet contemplation. Although plans are subject to more detailed feasibility studies and further refinement during design development, at this point, general concepts include the following:

- *An iconic mixed-use public or cultural facility within the Diamond Head portion of the Kakaako Waterfront Park.*
- *A large urban "green" area for active play and festivals.*
- *An interactive children's play area with water features and play apparatus.*
- *An amphitheater adjacent to the urban "green" area and interactive children's play area.*
- *Extensions of the current promenade around Kewalo Basin and mauka via the Mauka/Makai promenade.*

Within the park zone, cultural and educational uses along with a variety of active recreation activities will be allowed and encouraged to provide additional public resources.

The Makai Area Plan anticipates public and cultural facilities within the Diamond Head portion of the Kakaako Waterfront Park and allocates a floor area ratio of 1.0 and a maximum allowable height of 100 feet to an approximately 10 acres of land parcel on Diamond Head side of Kakaako Waterfront Park. Based on the floor area ratio and height allocated to this portion of Kakaako Waterfront Park, the Makai Area Plan anticipates uses such as performing art centers, museums, art galleries, aquariums, and exploratorium at this location. Kewalo Basin is set aside for the public to view and enjoy the working wharf aspect of the waterfront. Certain land parcels along the Kewalo Basin Harbor are designated as waterfront commercial, where commercial and retail uses are allowed. The strip of land fronting the ocean in Kewalo Basin is designated as park. Public access to the waterfront in the makai area is a priority of the Makai Area Plan and that is reflected in approximately one-mile of shoreline dedicated to park use. Net Shed in the section of land designated as "Park" served as an accessory use to the harbor use and supported the working wharf aspect of the waterfront. The Kakaako Makai Conceptual Master Plan adopted by the Authority in 2011 provides for a continuous public promenade along the edge of Kewalo Basin Harbor and a pedestrian promenade connection to Ala Moana Park.

HAR § 15-23-40, Makai Area Rules, provides for following uses.

Within areas designated "Park" (P), the following uses shall be permitted:

- (1) Amphitheaters;*
- (2) Performing arts centers;*
- (3) Museums, art galleries and workshops;*
- (4) Aquariums and [marine] research facilities;*
- (5) Active and passive recreation;*
- (6) Gardens, greenhouses;*
- (7) Parking;*
- (8) Exploratoriums; and*
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. The authority may allow other uses, provided such other uses shall further the purpose and intent of this chapter and the makai area plan. In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply.*

Makai Area Rules provide eight specifically enumerated principal uses in areas designated as "Park." The rule also provide uses that are clearly accessory to the principal uses and that the Authority may allow other uses that further the purpose and intent of the Mauka Area Plan and Rules.

KUPU Proposed Land Uses

In the Request Letter KUPU states that it is proposing to use the Net Shed as an educational, cultural and community center and provides the following descriptions of the proposed uses in and around the Net Shed as follows:

- Classroom and workshop space for workshops on culture and sustainability;
- Art exhibits featuring local artists;
- Exploratorium space for exhibits on sustainability, Hawaii culture and renewable energy; Symposium and event hosting;

- Community-based events and workshops and microenterprise facilities, such as aquaponics;
- Community service engagement for broader public;
- Temporary food service, such as a farm-to-table food truck;
- An accessory commercial kitchen and imu to provide food for visitors and events; and
- Renting the Net Shed for events by other groups following a model similar to what was implemented at the McCoy Pavilion.

The 2010 Lease describes the use of the Net Shed for operation of Urban Youth Programs and Hawaii Youth Conservations Corps.

The 2012 LOI provides that the use of the Net Shed be only for design, construction, establishment, operation and maintenance of a KUPU training and community center.

The September 2015 Final Environmental Assessment (FEA) describes the proposed use as a KUPU Green Job Training Center with the Net Shed specifically being used for vocational classrooms, commercial kitchen for vocational training, and office and conference use.

Comparing the proposed uses described in these various documents, it appears that the proposed and/or anticipated use of the Net Shed has evolved and broadened from what is described in the 2010 Lease, LOI, and FEA to the more detailed uses described in the Request Letter. The principal use, however, is a Green Job Training Center.

The principal uses anticipated in the 2010 Lease, the LOI, the FEA, and proposed in the Request Letter do not fall under the eight clearly enumerated uses in the Makai Area Rules, HAR § 15-23-40. Some aspects of the proposed uses in the Request Letter could more broadly fall under the cultural and educational uses anticipated in the Makai Area Plan. The FEA addresses this in Section 5.1.4, and under the "Discussion" paragraph appropriately states that "While not a specifically enumerated park use, the Kupu Green Job Training Center does further the purpose and intent of the Mauka Area Plan and Rules and the proposed land use change will require HCDA approval."

The FEA is a disclosure document and discloses that the uses anticipated by KUPU will require land use change.

There are certain aspects of the proposed uses that could be being consistent with the "Park" use; however, as provided in HAR § 15-23-40, a determination by the Authority will have to be made before those uses can be permitted. The Authority should consider whether the uses proposed by KUPU further the purpose and intent of the Makai Area Plan and Rules before considering the lease request by KUPU.

Floor Area Ratio (FAR) and Density

At the Kewalo Basin location, the Makai Area Plan and Rules assign a FAR of 0.10 for land parcel zoned as "Park" and 0.20 for land parcel zoned as "Waterfront Commercial." The Net Shed building straddles both "Park" zone land and "Waterfront Commercial" zoned land. The

land parcel identified by TMK (1) 2-1-058:136 has a portion of land, approximately 3,918 square feet in area, that is zoned as "Waterfront Commercial" and the remaining land approximately 15,534 square feet in area, zoned as "Park." The total area of the parcel is 19,542 square feet. The total floor area available for the parcel of land is 2,738 square feet. The floor area of existing the Net Shed building is 8,400 square feet. Since the parcel containing the Net Shed has been subdivided and since the floor area of the Net Shed is greater than the floor area allocable to the subdivided parcel, Net Shed would be considered a legal non-conforming structure. KUPU is proposing to construct a mezzanine floor within the Net Shed and add another 1,600 square feet of floor area to the structure. This would add to increase in non-conformity, which is not permitted under the Makai Area Rules unless TMK (1)2-1-058-136 is developed jointly with adjoining TMK (1)-2-058-135 or 137 under the provisions of "joint development" in the Makai Area Rules.

RECOMMENDATION

Staff recommends that the Authority consider the provision of HAR § 15-23-40, and decide on uses proposed by KUPU as to their efficacy in furthering the purpose and intent of the Makai Area Plan and Rules before considering the lease request by KUPU.

Respectfully submitted,

Deepak Neupane, P.E., AIA
Director of Planning and Development

APPROVED FOR SUBMITTAL:

Jesse K. Souki, Executive Director
Hawaii Community Development Authority

Attachments:

Exhibit A -- Month to Month Lease No. 10-21
Exhibit B- May 2, 2012, Summary Meeting Minutes
Exhibit C- Non Binding Letter of Intent
Exhibit D- Request Letter
Exhibit E- HAR § 15-23-40

The Kewalo Basin area has been subdivided as of July 29, 2016 to account for the leasing of operations and maintenance of the Kewalo Basin Harbor to Kewalo Harbor, LLC. The land parcels under consideration for the KUPU request are now subdivided as TMKs 2-1-058-135,136, & 137.

MONTH-TO-MONTH LEASE NO. 10-21

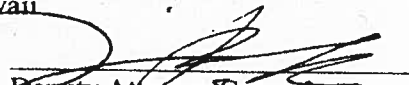
This Month-to-Month Lease ("Lease") is entered into as of the date in item 8 below (such date, the "Effective Date") between the Hawaii Community Development Authority ("Lessor") and Kupu ("Lessee"), a Hawaii non-profit corporation whose business address is 4211 Waialae Avenue, Suite 1020, Honolulu, Hawaii 96816. (Each party hereto is a "Party.")

In consideration of the Parties' respective undertakings below, the Parties agree as follows: Lessor leases to Lessee (1) (a) for the period from the Effective Date through the last day of the month in which the Effective Date lies and (b) continuing on a month-to-month basis thereafter and (2) for the purpose set forth in item 4 below, (3) the premises (a) described in item 2 below, (b) delineated as "Kupu." on Exhibit A attached hereto and made a part hereof, and (c) located at the site described in item 1 below (such site, the "Project Site") and at the address set forth in item 3 below (such premises, the "Premises"). For each calendar month, Lessee shall pay the rent specified in item 5 below (prorated for a partial calendar month; such rent, the "Rent") and the monthly common-area maintenance expense specified in item 6 below (such expense, the "Common-Area Maintenance Expense") and shall perform all other obligations imposed upon Lessee by the terms in Exhibit "B" hereto and made a part hereof.

1. Project Site: TMK (1)-2-1-58-1 (por)
2. Premises: 8,000 sq. ft. in the Net Shed Building, excluding landscaper storage
3. Location: 1125-F Ala Moana Blvd., Honolulu, Hawaii 96814
4. Purpose: Operation of Urban Youth Programs and Hawaii Youth Conservations Corps
5. Rent: See Special Conditions
6. Common-Area Maintenance Expense: None
7. Initial Security Deposit: None
8. Effective Date: November 1, 2010
9. Term: Month to Month

Approved as to Form for Lessor by the
Department of the Attorney General, State
of Hawaii

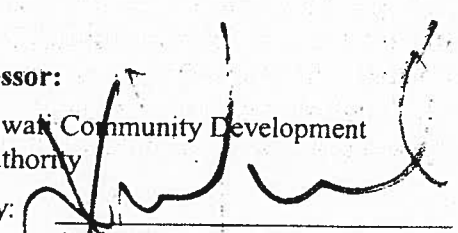
By:


Deputy Attorney General

Lessor:

Hawaii Community Development
Authority

By:


Anthony J.H. Ching
Executive Director

AGC

Lessee:

Kupu

By: 

**John Leong
Executive Director**

EXHIBIT A

Exhibit A
Koreala
Not to Scale
TMK: (1)-2-1-58-1 (part)

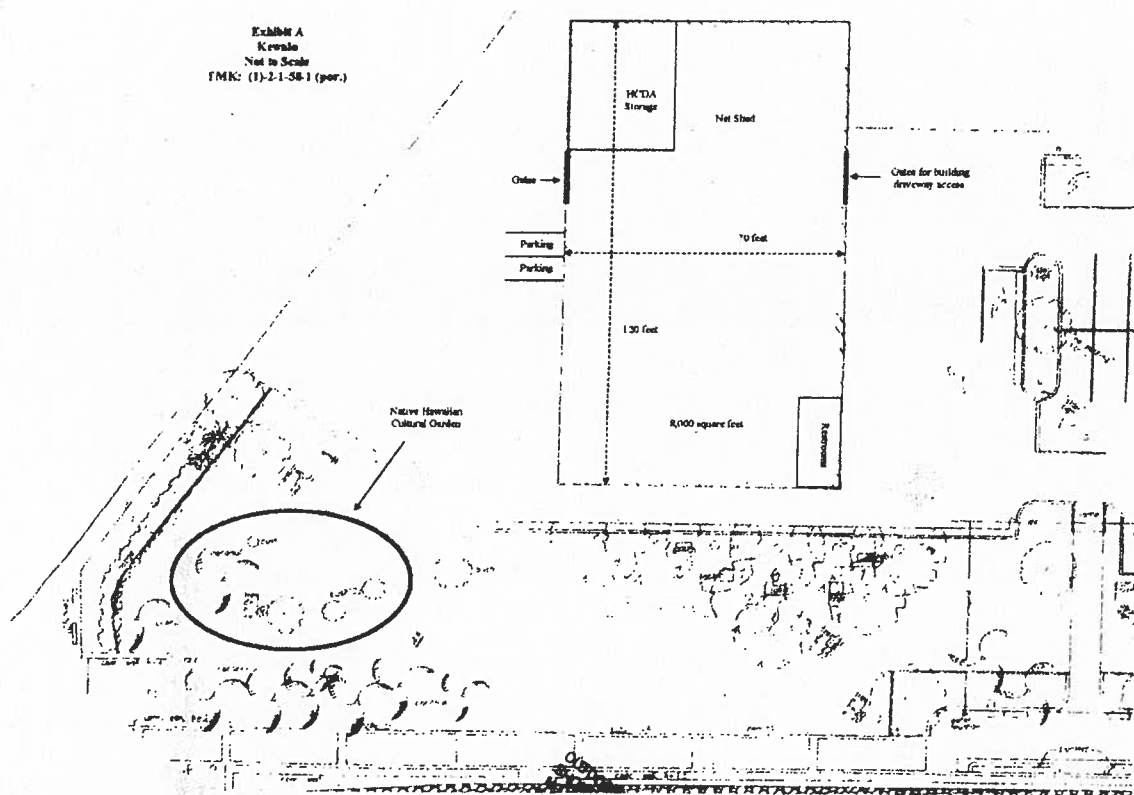


Exhibit "B"
TERMS AND CONDITIONS

1. **TERM.** This Lease is from **November 1, 2010** through **November 30, 2010** and on a month-to-month basis thereafter.
2. **COMMON-AREA MAINTENANCE EXPENSE.** If applicable, Lessee shall pay the Common-Area Maintenance Expense. For any given month, the Common-Area Maintenance Expense is intended to reflect a prorated portion of the month's total common-area maintenance and administrative expenses incurred by Lessor in providing such services as utilities (electricity, telephone, cable), water, sewer, trash disposal, patrol security, parking control and collection of parking payments payable to Lessor, and maintenance of the common area of the Project Site.
3. **CALCULATION OF THE COMMON-AREA MAINTENANCE EXPENSE.** If applicable, Lessor shall calculate the Common-Area Maintenance Expense in the same proportion of the total common-area maintenance and administrative expenses incurred by Lessor as the Premises' area is a proportion of the aggregate area leased by all lessees at the Project Site during a given month.
4. **RENT.** If applicable, the Rent and Common-Area Maintenance Expense shall be payable in advance, without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this Lease. If the 1st day of a month falls on a nonbusiness day, then payment shall be due on the last business day of the prior month. There is a five (5) day grace period.
5. **INTEREST; SERVICE CHARGE.** Without prejudice to any other remedy available to Lessor, Lessee shall without further notice or demand pay to Lessor (a) interest at the rate of one percent (1%) per month, compounded monthly, on any amount due and unpaid from the date payment is due to the date of payment and (b) a service charge of \$0.00 for each and every calendar month in which a payment is due and remains unpaid.
6. **LESSEE'S PRIOR INSPECTION.** Lessee warrants that it has inspected the Premises and all improvements thereon, knows the condition thereof, accepts the Premises, including soil, water, structures and any hazardous substances that may be found to exist, and fully assumes all risks incident to the use and enjoyment of the Premises.
7. **SECURITY DEPOSIT.** If applicable: (a) Upon the Parties' execution of this Lease, Lessee shall deposit in legal tender or in such other form as may be acceptable to the Lessor, the amount specified in item 7 on the signature page (page 1) of this Lease as security for the faithful performance by Lessee of all the terms and conditions of this Lease (the amount required to be deposited with Lessor as such security at any given time or the amount deposited with Lessor as so required, the "Security Deposit," and the amount specified in item 7, the "Initial" Security Deposit). (b) At any given time during the term of this Lease, the required Security Deposit shall be equal to the greater of (1) the Initial Security Deposit or (2) the sum of (A) the Rent and (B) the Common-Area Maintenance Expense then in effect. (c) If the required Security Deposit increases at any time, Lessee shall deposit the increment with Lessor within 10 days after notice from Lessor to Lessee of the increase. If the required Security Deposit decreases at any time, Lessor shall refund the decrement to Lessee within 10 days after the decrease occurs. (d) The

Security Deposit held by Lessor shall not bear interest. (e) Promptly following the termination of this Lease, Lessor shall return to Lessee the Security Deposit deposited with Lessor in full if Lessee has faithfully performed its obligations under this Lease. (e) Otherwise, Lessor may apply the Security Deposit deposited with Lessor as an offset to any amount owed by Lessee to Lessor under this Lease or to any damages or loss incurred by Lessor because of Lessee's breach. (f) For purposes of clause (b)(2)(B), the Common-Area Maintenance Expense in effect at a given time shall mean the average monthly Common-Area Maintenance Expense payable by a lessee of the Premises during the prior calendar year.

8. **HAZARDOUS MATERIALS.** (a) Neither Lessee nor any person acting on Lessee's behalf shall (1) release any hazardous materials at, onto, or from the Premises; (2) 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 (3) bring onto the Premises any such materials, except (A) for use in the ordinary course of Lessee's business and (B) with Lessor's prior written consent, which Lessor may withhold in its sole and absolute discretion. (b) Lessee shall be responsible for the cost of any testing required by any lender or 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. (c) At Lessor's request, Lessee shall execute affidavits, representations and the like concerning Lessee's best 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. (d) 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. (e) Clauses (c) and (d) shall survive the expiration or earlier termination of this Lease. (f) 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. (g) For purposes of this Lease, "person" means any individual or legally recognized entity. (h) For purposes of this paragraph, to "release" hazardous material means to (1) 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 (2) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment.

9. **INSURANCE.** Concurrently with the Parties' execution of this Lease, Lessee shall deliver to the Lessor Certificate(s) of Insurance evidencing that such policy has been issued and is in force throughout the duration of this Lease with the following coverage and minimum amounts:

Insurance Coverage: Minimum Policy Limits

Commercial General Liability: \$1,000,000 General Aggregate Limit (other than
Completed Operations)
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit

\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate (or Equivalent Coverage under CGL)

Worker's Compensation: Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile \$500,000 per occurrence and \$1,000,000 in aggregate

Lessee's insurance shall:

- a. Be issued on an occurrence basis by an insurance company or surety company authorized to do business in the State of Hawaii.
- b. Name the Hawaii Community Development Authority and the State of Hawaii and their elected officials, officers, employees and volunteers as additional insured.
- c. Provide that Lessor shall be notified at least fifteen (15) days prior to termination, cancellation or material change in its insurance coverage.
- d. Cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of Lessee or its officers, agents, employees, invitees or licensees, in connection with Lessee's use or occupancy of the Premises.
- e. 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.
- f. Lessee shall keep such insurance in effect and the certificate(s) on deposit with the Lessor during the entire term of this Lease. Upon request by the Lessor, Lessee shall furnish a copy of the policy or policies.
- g. Failure of Lessee to provide and keep in force such insurance shall be regarded as a material default under this Lease. The Lessor shall be entitled to exercise any or all of the remedies provided in this Lease for default of Lessee.
- h. The Hawaii Community Development Authority 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 opinion, 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.

10. **INDEMNITY.** Lessee shall at all times with respect to the Premises use due care for public safety and shall defend, hold harmless and indemnify Lessor and State of Hawaii and their respective

officers, agents, volunteers and employees from and against all claims or demands for damages, including claims for property damage, personal injury or death, arising on the Premises, or by reason of any fire or explosion thereon arising from, growing out of, or caused by any act or omission on the part of Lessee or its officers, agents, employees, invitees, or licensees, in connection with Lessee's use or occupancy of the Premises.

11. **ACCEPTANCE OF RENT NOT A WAIVER.** Lessor's acceptance of any rent shall not constitute a waiver of any breach hereof by Lessee or impair Lessor's right to terminate this Lease in accordance with it or with law. Failure by Lessor to insist upon strict performance of this Lease by Lessee or to exercise any right reserved by Lessor shall not be construed as a waiver or relinquishment of any of Lessor's rights under this Lease.

12. **PROPERTY TAXES.** Lessee shall pay all real property taxes lawfully assessed against the Premises.

13. **WASTE, STRIP, NUISANCE; MAINTENANCE.** Neither Lessee nor any person acting on its behalf shall make or cause any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises. Lessee shall maintain the Premises, improvements thereon, and all equipment and other personal property thereon in a strictly clean, neat, safe, orderly and sanitary condition, free of waste, rubbish and debris. Lessee shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse from the Premises.

14. **ENTRY BY LESSOR.** Lessor or its agents and employees may enter the Premises at all reasonable hours to inspect the Premises to determine if Lessee is complying with the terms of this Lease. Lessee shall not make any claim for damages or set off of rent, service charge or other charges because of such entry.

15. **REPAIRS.** Lessee shall, at its own expense, keep and maintain the Premises and all improvements in a condition similar to that which existed on the Effective Date, ordinary wear and tear and damage by acts of God excepted.

16. **STRUCTURAL IMPROVEMENTS, ALTERATIONS OR ADDITIONS.** No substantial improvement, alteration or addition of a structural nature shall be made, installed, or constructed on, under or within the Premises by Lessee unless it first submits its plans and specifications for such work to Lessor for approval and Lessor approves such plans and specifications in writing. Such plans and specifications shall comply with all applicable laws, rules and regulations. Any improvements, alterations or additions shall be accomplished at the sole cost and risk of Lessee. Lessor shall not be responsible for any damage to or destruction of any such improvements, alterations or additions or any personal property on the Premises. Lessee shall provide notice to the responsible agencies, including the Office of Environmental Quality, and otherwise comply with Chapter 343, Hawaii Revised Statutes, to determine if such improvements, alteration or addition requires environmental assessments or environmental impact statements.

17. **REMOVAL OF IMPROVEMENTS OR ADDITIONS.** Lessee may remove, at its own cost and risk, any and all improvements or additions or any portions thereof, constructed or installed by it upon the Premises, at any time during the term of this Lease or within 30 days after this Lease's

termination, provided that Lessee gives Lessor written notice before undertaking any such removal. Until such removal and restoration of the Premises have been completed to Lessor's satisfaction, Lessee shall pay the Rent that would otherwise be due if this Lease were not terminated for the period Lessee continues to use or occupy the Premises following the termination. Any improvements or additions remaining at the Premises after 30 days following this Lease's termination shall become the property of Lessor.

18. **LIENS.** Lessee shall not commit or suffer any act or neglect which results in any attachment, lien, charge or other encumbrance upon the Premises, any improvement thereon. Lessee shall indemnify, defend, and hold Lessor harmless from and against all such encumbrances and all resulting expenses, including without limitation, attorneys' fees to clear the Premises, improvements thereon, or leasehold of such encumbrances.

19. **COMPLIANCE WITH LAWS; DISCRIMINATION PROHIBITED.** Lessee shall comply with all laws, statutes, ordinances, rules and regulations of all governmental agencies, applicable to the Premises or relating to and affecting any business or other commercial activity conducted on the Premises. The use and enjoyment of the Premises shall not be in support of any policy that discriminates against anyone based upon race, creed, color, sex or national origin.

20. **TRANSFERABILITY AND MORTGAGE.** (a) This Lease and the Premises or any part thereof, inclusive of any and all rights or obligations accruing or arising under this Lease, shall not be sold, transferred, assigned, leased, mortgaged, sublet, licensed, or otherwise alienated or encumbered in any manner whatsoever without Lessor's prior written consent. (b) Any such alienation or encumbrance in contravention of clause (a) shall be void and shall be a material breach of this Lease. (c) For purposes of clause (a), any change in ownership or control of 40 percent or more of the equity or voting interest in Lessee from the Effective Date through any time during the Lease term shall be considered a transfer. (d) Lessor may (1) withhold its consent to a transfer in its sole discretion or (2) condition Lessor's consent on an adjustment of Base Rent or such other changes in this Lease as Lessor deems desirable in its sole discretion.

21. **TERMINATION.** (a) This Lease may be terminated by Lessor or Lessee following at least thirty (30) days' prior written notice. (b) If Lessee fails to pay any amount when due or otherwise commits a material breach of this Lease and fails to cure such breach within five (5) business days following Lessor's notice to Lessee of the breach, Lessor may immediately terminate this Lease without further notice. (c) If Lessee fails to vacate the Premises following this Lease's termination in accordance with clause (a) or clause (b), Lessee shall pay Lessor liquidated damages of \$200 for each day that Lessee continues to occupy or use the Premises following the termination date. (d) Such damages (1) are not a penalty, but rather are reasonable estimates of the losses that Lessor would suffer and that the Parties agree and acknowledge would be difficult to ascertain under the circumstances triggering the damages and (2) are Lessor's remedy for Lessee's failure to vacate the Premises following this Lease's termination.

22. **RIGHT TO RE-ENTER AND ASSUME POSSESSION.** Lessor reserves the right and Lessee agrees that, upon its breach of this Lease or this Lease's termination under paragraph 21 above, Lessor may without necessity of court action, enter upon and administratively take possession of the Premises from Lessee.

23. **REMOVAL OF PERSONAL PROPERTY.** (a) If any of Lessee's personal property remains on or at the Premises following this Lease's termination and Lessee fails to remove such property within 10 days after Lessor's written notice to Lessee of the presence of such property on the Premises, then Lessor may remove such property from the Premises and either deem the property abandoned or dispose of the property or place the property in storage. (b) Lessee shall bear all costs and expenses for such disposal, removal, or storage and indemnify Lessor against any costs or expenses incurred by it for such disposal, removal, or storage. (c) Clause (b) shall survive the termination of this Lease.
24. **COURT COSTS AND ATTORNEY'S FEES.** Lessee shall pay any and all court costs and attorney's fees incurred or paid by the Lessor in collecting any damages, charges, penalties due from or payable by the Lessee under this Lease in removing from the Premises the Lessee and any improvements or additions constructed or installed thereon, or in recovering damages or losses caused by Lessee's breach of this Lease, or in the collection of delinquent payments due under this Lease.
25. **INTERPRETATION.** The use of any gender shall include all genders, the use of the singular shall include the plural and the use of the plural shall include the singular, as the context may require.
26. **PARTIAL INVALIDITY.** The invalidity, illegality, or unenforceability of any part of this Lease shall not affect or impair the validity, legality, or enforceability of the remainder.
27. **TIME OF THE ESSENCE.** Time is of the essence as to all obligations to be performed promptly or by or at a specified time under this Lease.
28. **CONFLICTING TERMS AND CONDITIONS.** In any conflict between the foregoing terms of this exhibit and the terms of paragraph 29 below, priority shall be given to the latter terms.
29. **SURVIVAL OF OBLIGATIONS.** All Lessee obligations under this Lease shall survive the termination hereof.
30. **SPECIAL CONDITIONS.**
- a. In lieu of lease rent, Lessee agrees to perform beautification and outreach programs for the Kewalo Basin Park. The beautification and outreach programs shall include such items as requested by Lessor, including without limitation, community outreach and education, conducting community service activities within the park and the general community, routine beautification (trash pickup, graffiti clean-up) and/or maintaining the Native Hawaiian Cultural Garden as identified on Exhibit A.
 - b. Lessee shall maintain the Premises, including the restrooms within the Premises, in a clean and orderly manner and shall remove any rubbish or debris on the Premises or surrounding area. Lessee shall, at Lessee's expense, furnish its own supplies for the restrooms.
 - c. Lessee acknowledges that the Premises exclude the storage area that shall be utilized by HCDA's landscape contractor. Lessee shall not interfere with other parties' use and enjoyment of their premises including without limitation ingress/egress.

- d. Lessee acknowledges that it may be required to relocate its property from the Premises to another location in order to accommodate other needs, construction activity, etc. Lessee shall cooperate with Lessor on any such relocation by moving, at Lessee's own expense, all of its property from the Premises within seven business days after receipt of written notice from Lessor to relocate such property. Lessee may terminate the Lease at any time within seven (7) days after receipt of such notice by written notice to Lessor of such termination.
- e. Lessee shall park its vehicles only on the ewa side of the building, shall use the building drive through to access the ewa side of the building and shall keep the area open for ingress/egress of others.
- f. In addition to the monthly rental provided in Item 5, Lessee shall, upon request, reimburse Lessor for electrical usage in the Premises. Lessee shall be responsible for replacing light bulbs and maintaining electrical fixtures within the Premises.
- g. Lessee will address any loitering or other issues that may affect the health, safety and welfare of its staff, program participants and visitors of the organization or the park. Lessee shall keep a ten (10) foot area surrounding the Premises clear from any personal property placed there by Lessee or others.

31. **COUNTERPARTS; FACSIMILE SIGNATURES.** This Lease may be executed in several duplicate counterparts. Such counterparts, when executed, shall constitute a single agreement. Any Party may execute and deliver this Lease by signing the signature page and electronically transmitting a facsimile thereof.

Minutes of a Regular Meeting
of the Members of the
Hawaii Community Development Authority,
State of Hawaii

MEETING NO. 374
Wednesday, May 2, 2012

AGENDA #1
(KAKAAKO)

I. CALL TO ORDER/ROLL CALL

A regular meeting of the Kakaako Members of the Hawaii Community Development Authority ("Authority"), a body corporate and public instrumentality of the State of Hawaii, was called to order by Mr. Joseph Dwight, Chairperson of the Authority, at 9:02 a.m. on Wednesday, May 2, 2012, at the Authority's principal executive offices at 461 Cooke Street, Honolulu, Hawaii 96813, pursuant to Article IV, Section 1 of the Authority's Bylaws.

Members Present: Grady Chun (9:11 a.m.)
Joseph Dwight, IV
Mary Alice Evans
Randy Grune
Jay Kadowaki
Miles Kamimura
Maile Meyer
Lois Mitsunaga
Ralph Morita
Ryan Mukai
Luis Salaveria

Members Absent: Jonathan Lai
Kay Mukaigawa

Others Present: Anthony Ching, Executive Director
Lori Tanigawa, Deputy Attorney General
Deepak Neupane, Director of Planning and Development, Kakaako
Chris Sadayasu, Compliance Assurance and Community Outreach
Officer
Shelby Hoota, Program Specialist
Tessa Malama, Kalaeloa Director of Planning and Development
Patricia Yoshino, Secretary
Holly Hackett, Court Reporter

III. KAKAAKO MATTERS (shorted to only show Kupu)

6. Decision Making: Shall the Authority Authorize the Executive Director to Execute a Letter of Intent with Kupu to Lease the Net Shed Facility for a Thirty-Five (35) Year Term at \$1.00 per Year?

Chairperson Dwight introduced Mr. John Leong, executive director of Kupu, who would be describing their program and plans for the Net Shed.

Mr. Leong introduced Mr. Matt Bauer, Kupu director of operations.

Mr. Leong explained that Kupu was formed in 2007 and engages young adults in service to give back to the community in natural resource management, such as taking care of watersheds, coastal areas, wetlands and culturally sensitive areas like lo'i kalo and fishponds. They have 7 programs on all the islands that engage about 400 young adults, as well as 15,000 to 17,000 volunteers actively engaged in activities which assist 80 different organizations throughout the state. The organizations range from the Department of Land and Natural Resources, Kamehameha Schools, Fish and Wildlife, National Park Service, Nature Conservancy, Waipa Foundation and Kakoo Oiwi. Last year, they provided about \$6 million in benefits to the community, brought in the largest AmeriCorps program into the state through federal funding, and gave out over \$500,000 in funds to provide opportunities for local youth to get into college, secondary education or trade schools.

One of the main programs currently located at the Net Shed is the Urban Corps. The Urban Corps trains young adults from Honolulu's urban area and works in partnership with adult education schools. When young adults graduate from the Urban Corps, they would have worked in various conservation, renewable energy projects, have gained life skills training such as resume writing, interviewing skills, anger management, financial literacy, and get their high school equivalency through McKinley Adult Education School.

Mr. Ching summarized the staff report in the packet distributed to Members. The Net Shed was an open shed for fishermen in the harbor to repair their nets; however, that same historical need no longer exists. He proposed that the Net Shed be viewed as a public facility and not as a commercial opportunity. The HCDA entered into a month-to-month relationship with Kupu, and they have stewarded the place beyond our expectations. They took care of issues with the park shower, care for the native Hawaiian garden, and there are no homeless in the area. They are a willing partner in some of the other beautification and conservation projects in the area and beyond, potentially into Kalaeloa.

Member Evans asked if there was a tax map key ("TMK") and the square footage of the area.

Mr. Ching responded that a map is forthcoming. In terms of a TMK, it was a portion of a lot of record and has not been formally subdivided. It is approximately 8,000 square feet in area and was located on the Diamond Head side of the channel entrance.

Member Evans asked how many square feet would be in the Letter of Intent.

Mr. Ching replied that it would be a portion of the TMK where it was located and approximately 8,000 square feet, to include the shed and parking areas.

Member Salaveria asked about Kupu's fund raising efforts.

Mr. Leong explained that the capital campaign has not yet been initiated, as the first step was to secure a Letter of Intent to give potential funders the guarantee that their funds had something to go towards. They would be looking for private foundation funds, federal grants and other funding sources.

Member Luersen suggested a time period of a year for the Letter of Intent since raising \$2.5 million might take a while.

Member Maluafiti asked what the value of a lease agreement would be if the space were rented commercially.

Mr. Ching responded that it would depend on the use. A warehouse would be about \$1 per square foot, but the location was not ideal for that situation. The highest and best use would be something like a restaurant, which would be in the \$4 million range with the landlord's share at 6-8 percent of the gross income.

Mr. Leong stated that he appreciated that it was a great opportunity for a non-profit. He hoped that they would also be contributing back and had a proven track record that they provided financial benefits and social capital to the community.

Member Meyer stated she was excited and grateful for Kupu's work. In her opinion, this was the best and highest use because it was an investment in our future and raising up people as contributors to the community.

Chairperson Dwight asked whether any members of the public wished to comment.

Public Testimony:

Mr. Ron Iwami, representing Friends of Kewalos, stated they were a group of recreational users that use Kewalo Basin Park adjacent to the Net Shed. Kupu has transformed the area so it was now more public user friendly and people are not afraid to go there. It used to be a haven for the homeless and drug dealing. They expressed concerns to Kupu about parking, and Kupu made accommodations to park in the back of the Net Shed and not impact the

recreational parking areas at all. They supported Kupu and see it as a win-win situation.

Mr. Wayne Takamine stated that CPAC supported Kupu's use of the net house and felt it was beneficial to the community.

Chairperson Dwight entertained a motion for the Authority to authorize the Executive Director to execute a Letter of Intent with Kupu to lease the Net Shed Facility for a 35-Year Term at \$1.00 per Year.

A motion was made by Member Meyer and seconded by Member Morita.

A motion was made by Member Mukai and seconded by Member Meyer.

A roll call vote was conducted.

Ayes: Members Chun, Dwight, Evans, Grune, Kadowaki, Kamimura, Meyer, Mitsunaga, Morita, Mukai and Salaveria.

Nays: None.

The motion passed 11 to 0 with 2 excused (Members Lai and Mukaigawa).

A recess was taken at 11:57 a.m.

The meeting was reconvened at 12:11 p.m.*



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKA'AKO
KALAELOA

Neil Abercrombie
Governor

Brian Lee
Chairperson

Anthony J. H. Ching
Executive Director

461 Cooke Street
Honolulu, Hawaii
96813

Telephone
(808) 594-0300

Facsimile
(808) 594-0299

E-Mail
contact@hcdaweb.org

Web site
www.hcdaweb.org

NON-BINDING LETTER OF INTENT

February 20, 2013

Mr. John Leong
Executive Director
KUPU
4211 Waiialae Avenue, Suite 1020
Honolulu, Hawaii 96816

This Non-Binding Letter of Intent relates to **KUPU's** intent to lease approximately 8,000 square feet at the Net Shed Facility from *the Hawaii Community Development Authority* for the purpose of redeveloping and restoring the existing Facility to operate the Kupu Training and Community Center.

AREA & LOCATION: Approximately 8,000 square feet at the Net Shed Facility located in Kewalo Basin, Honolulu, Hawaii, identified by Tax Map Key (1) 2-1-58:128 (por) as highlighted on Exhibit "A" attached ("Premises").

USE OF PREMISES: To be used only for the following purpose(s): Design, construction, establishment, operation and maintenance of the Kupu Training and Community Center.

TERM: The term of the proposed lease is thirty-five (35) years.

BASE RENT: Base Rent for the Premises is \$1.00 per year, payable on the first day of each year during the term.

OPERATING EXPENSES: Kupu shall be responsible for all operating expenses, including, but not limited to, common area maintenance (including trash removal, water, electrical), management, building fire and liability insurance, conveyance tax, general excise tax, and real property taxes and assessments.

**SUBLEASING AND
ASSIGNMENT:**

Kupu will not be able to sublease or assign the proposed Lease, without the prior written consent of HCDA which may be granted or withheld by HCDA, in HCDA's sole discretion.

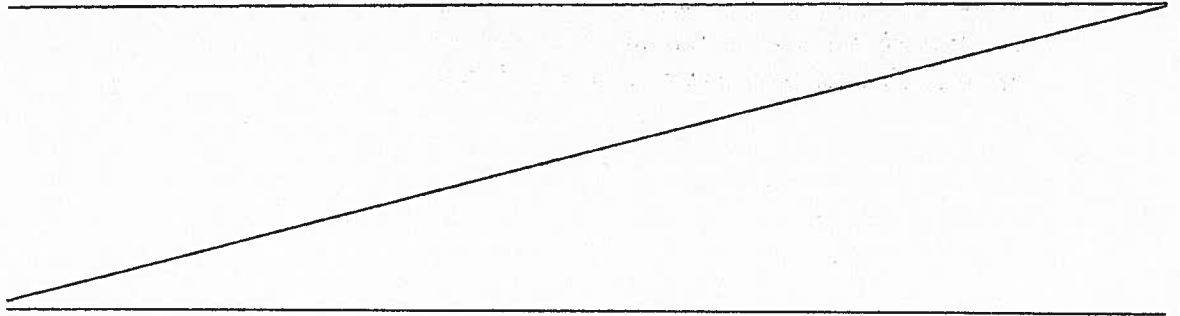
INSURANCE:

Kupu, at Kupu's sole cost and expense, will procure and maintain commercial general liability, property damage, and such other insurance coverage in such amounts as shall be specified by HCDA in the proposed Lease, covering HCDA, State of Hawaii and Kupu with respect to the Premises. Such insurance shall be written by a company authorized to do business in the State of Hawaii with a Best's Insurance Rating of A-/VII or better. Kupu shall furnish ACORD 25 certificates of such insurance, together with evidence of payment of the premium thereon, and shall name HCDA, State of Hawaii, HCDA's managing agent (if any) and other designees as additional insured.

**SPECIAL
CONDITIONS:**

1. Kupu, at its sole cost and expense will design, renovate and complete the Kupu Training and Community Center.
2. Kupu will not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, Kupu will immediately notify the HCDA and protect the site and the material from further disturbance until the HCDA gives clearance to proceed.
3. The Parties contemplates that the proposed Lease may require Kupu to submit the following if a Lease is executed: (i) conceptual drawings showing what the Kupu Training and Community Center will look like after it has been restored, (ii) provide specific information on the developmental phasing, including a time schedule, to build out the project, (iii) obtain

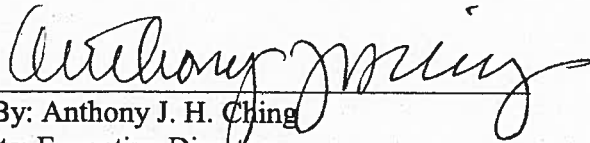
100 percent of the estimated project cost through cash or in-kind donations, estimated at \$2.6 million, (iv) obtain all necessary licenses, permits and approvals for the construction and operation of the facility, and (v) submit an executed construction contract to HCDA.



ENFORCEABILITY:

This Non-Binding Letter of Intent does not create a binding or enforceable agreement between the Parties. The Parties agree and acknowledge that this Non-Binding Letter of Intent does not contain all the material terms and conditions of the proposed Lease referenced herein, and that only a fully executed Lease shall give rise to any binding obligations. Both parties understand that neither this Non-Binding Letter of Intent nor any discussions or negotiations which the parties may have had or may have regarding the Premises shall create any obligation whatsoever on the part of either party to enter into a final and binding contract, and that HCDA may elect not to lease the Premises to Kupu. Please read carefully before signing.

Hawaii Community Development Authority



By: Anthony J. H. Ching
Its: Executive Director

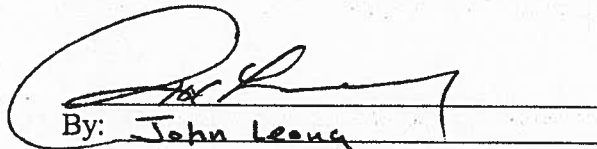
Date: FEB 20 2013

“HCDA”

**ACCEPTANCE OF
NON-BINDING
LETTER OF INTENT:**

Receipt and acceptance of this Non-Binding Letter of Intent is hereby acknowledged.

KUPU



By: John Leong
Its: Executive Director

Date: 2/26/13

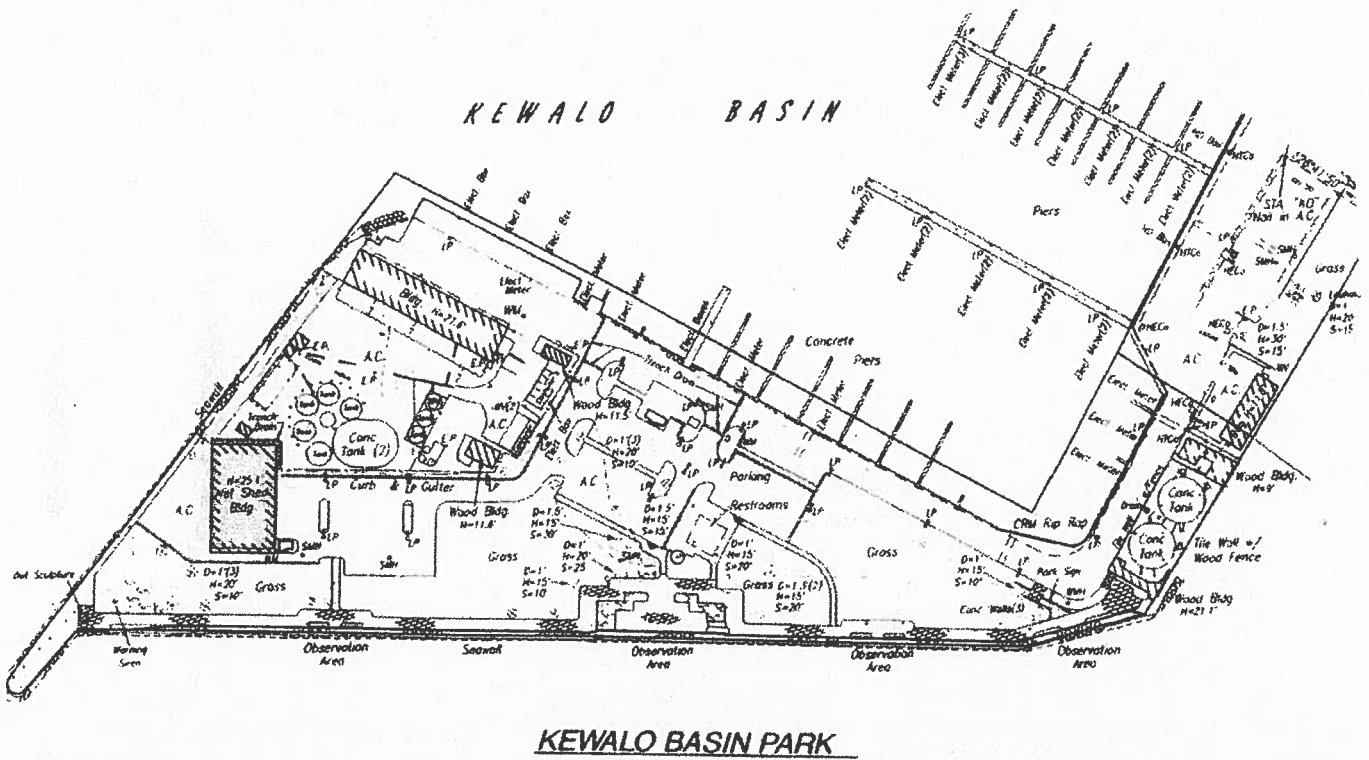
“KUPU”

EXHIBIT "A"

Kewalo Basin Net Shed Building

TMK: (1) 2-1-58:128 (por)

Not to Scale



RECEIVED
2017 MAR 20 PM 2 35

HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

18185
Calvert G. Chipchase
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Direct Line: (808) 521-9220
Direct Fax: (808) 540-5021
Email: cchipchase@ca des.com

March 14, 2017

BY HAND DELIVERY

Jesse K. Souki
Executive Director
Hawaii Community Development Authority
American Brewery Building
547 Queen Street
Honolulu, Hawai'i 96813

Re: Request for Lease of Net Shed Building at Kewalo Basin and the surrounding 0.53 acres (approx.) of land, together with a right of entry for an additional 0.29 acres, identified by Tax Map Key Nos. (1) 2-1-058-135 (portion), -136 (portion) and -137 (portion)

Dear Director Souki:

I respectfully submit a request by KUPU, a Hawai'i nonprofit and tax-exempt organization ("Kupu"), for consideration of a lease of the "net shed" building at Kewalo Basin ("Net Shed") and surrounding 0.53 acres (approx.) of land, together with a right of entry for an additional 0.29 acres. Kupu asks that the Members of the Hawai'i Community Development Authority ("HCDA") authorize you to negotiate on behalf of HCDA and enter into a 35-year lease with Kupu in accordance with the term sheet attached as Exhibit 1 to the request. The proposed lease and right of entry areas are depicted on Exhibit 2 to the request and identified by Tax Map Key Nos. (1) 2-1-058-135 (portion), -136 (portion) and -137 (portion). Kupu requests a 35-year term of lease because Kupu proposes to invest \$6,000,000 in the Net Shed and surrounding area. Considering the proposed investment, nominal rent, revenue sharing with HCDA and addition landscaping and maintenance that Kupu proposes to perform, a 35-year lease term provides a reasonable return for HCDA and Kupu. The term also aligns with the requirements of some of Kupu's funding partners. We have enclosed 15 copies of the request and the supporting exhibits.

Jesse K. Souki
March 14, 2017
Page 2

Thank you for your time and consideration. We look forward to discussing the proposed lease with you and the Authority Members. Please contact me if I can provide additional information or otherwise be of assistance.

Very truly yours,



Calvert G. Chipchase

for

CADES SCHUTTE

A Limited Liability Law Partnership

Enclosure

cc: John Whalen, Chairperson
Members of the Hawaii Community Development Authority



March 14, 2017

Mr. John Whalen, Chairperson
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawai'i 96813

SUBJECT: REQUEST FOR LEASE OF NET SHED BUILDING AT KELWALO BASIN AND THE SURROUNDING 0.53 ACRES (APPROX.) OF LAND, TOGETHER WITH A RIGHT OF ENTRY FOR AN ADDITIONAL 0.29 ACRES, IDENTIFIED BY TAX MAP KEY NOS. 1) 2-1-058-135 (PORTION), 136 (PORTION), AND -137 (PORTION)

Dear Chair Whalen and Authority Members:

On behalf of KUPU, a Hawai'i nonprofit and tax-exempt organization ("Kupu"), I respectfully ask that the Members of Hawai'i Community Development Authority ("HCDA") authorize the Executive Director to negotiate and enter into a lease with Kupu for the "net shed" building at Kewalo Basin (the "Net Shed") and the surrounding 0.53 acres (approximately) of land, together with a right of entry for an additional 0.29 acres (approximately), in accordance with term sheet attached as Exhibit 1. The Net Shed and the land are identified by Tax Map Key Nos. (1) 2-1-058-135 (portion), -136 (portion), and -137 (portion) (the "Property").

In this letter, I explain the nature of Kupu's mission, discuss the proposed lease area and lease terms, address consistency with the plans and rules applicable to the lease area, discuss parking and other issues and identify some of the many benefits that HCDA and the community will enjoy as Kupu continues to improve and steward the Net Shed.

1. What is Kupu? Kupu is a nonprofit and tax-exempt organization focused on education, culture and community in Hawai'i. Kupu works to empower young adults through service in conservation and sustainability while providing transferable skills, pathways to higher education, community engagement and work readiness. Kupu was started in 2007 in response to the growing needs of Hawai'i's communities to train the next generation in natural resource management, renewable energy, energy conservation and green jobs skills. As part of its mission to serve and educate, Kupu also organizes and conducts workshops, service projects, cultural seminars and educational programs for the community and highlights native Hawaiian culture, craft and art. Its youth programs and broader public programming successfully engage people by developing a spirit of *kuleana* for our state, its resources and the community.

2. The proposed lease area. The Net Shed is an 8,400-square foot open-sided pavilion with a metal roof and walls of chain link fence strung between columns. The interior space is undivided except for restroom facilities and a kitchen area. The building was constructed in 1989 or 1990 by HCDA for use by Honolulu's fishing fleet as a net storage and drying area.

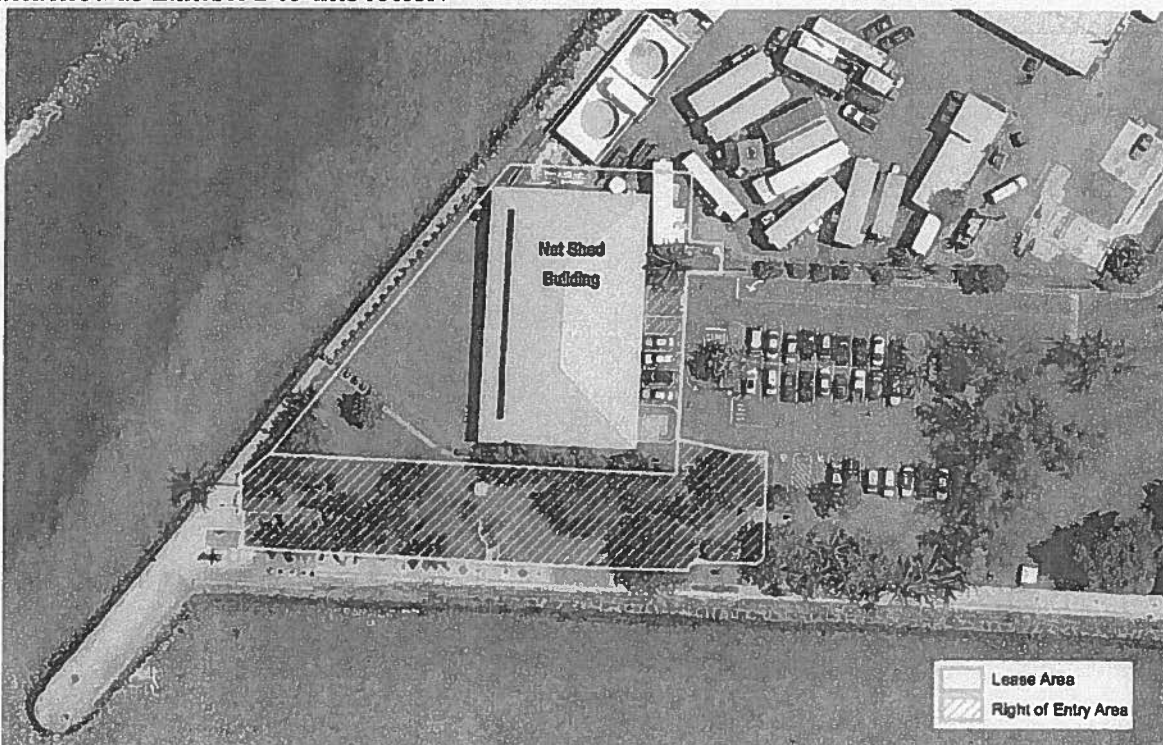
Due to changes in the fishing fleet at Kewalo Basin, as well as changes in equipment (the transition to nylon nets), the facility is no longer used as a net drying shed

Between 2006 and 2010, HCDA leased the Net Shed to a public charter school known as Hālau Kū Mana. Hālau Kū Mana used the building as a learning laboratory for the school's coastal education programs. The school also planted and maintained a native plant garden in a small area adjacent to the Net Shed to provide educational opportunities for its students and educational value for patrons of the park.

Kupu seeks a 35-year lease of the Net Shed and the land immediately adjacent to the building, including the following elements:

- An asphalt parking area containing six parking stalls adjacent to the Net Shed on the Diamond Head side (these six stalls are currently reserved for Kupu's use);
- An existing asphalt driveway on the makai side of the Net Shed;
- The access way behind the Net Shed (mauka (north) side);
- A flat asphalt pad between the Net Shed and the Kewalo Basin harbor channel (not including the area set aside for the harbor channel promenade); and
- An area adjacent to and makai of the flat asphalt pad which contains a portion of the Native Hawaiian plant garden previously installed by Hālau Kū Mana.

The Net Shed, surrounding lease area (delineated with the solid outline) and right of entry area (delineated with the dashed outline) are depicted on the following figure, which is attached as Exhibit 2 to this letter:



3. Kupu's current use of the Net Shed. Since 2010, Kupu has leased the majority of the Net Shed building (8,000 sf of 8,400 sf) from HCDA on a month-to-month basis. HCDA uses remaining area of the building for storage. During its tenancy, Kupu has opened the Net Shed to a variety of community groups and sponsored or participated in programs that focus on education, culture and the community.

As part of Kupu's mission of service to the community, the organization has consistently worked to improve and care for the Net Shed and surrounding area. Among other efforts, Kupu has provided assistance to homeless individuals occupying the park, helped to reduce crime (coinciding with Kupu's occupation of the building, the Honolulu Police Department noted a 53% reduction in Kewalo Basin crime incidents between 2009 and 2013), increased safety, kept the area free from litter, planted trees and maintained the facilities and landscaping.

4. HCDA's plans and rules for the Makai Area. HCDA's Makai Area Plan ("**Makai Plan**") envisions an active and vibrant Makai Area that includes "educational facilities," "open spaces" and "cultural facilities and amenities" that "distinguish the Makai Area as a place dedicated and attractive to the people of Hawai'i." *See* Makai Plan at 1.6. In accord with the vision for the Makai Area, the Plan explains that "cultural and educational uses along with a variety of active recreation activities will be allowed and encouraged [in the Park area], to provide additional public resources." *See id.* at 2.2. Through various amendments to the Plan, the focus has continued to be on the Makai Area as a "people-oriented place" where the environment is preserved and cultural and educational uses are fostered. *See id.* at 1.5.

To increase community input in planning for the Makai Area, HCDA adopted the Kaka'ako Makai Conceptual Master Plan ("**Conceptual Plan**") in 2011. The Conceptual Plan describes the Makai Area as a community gathering place that welcomes all people "with cultural, recreational and educational public uses." *See* Conceptual Plan at 8 and 100.

Consistent with these values, the Kaka'ako Community Planning Advisory Council ("**CPAC**") established guiding principles for the Makai Area. Among the principles are the preservation and improvement of the "Kewalo Basin Park, and the [the Net Shed] and parking lot for public use" and "existing facilities within the park . . ." *See id.* at 11. The principles also call for, among other things:

- (1) "enriching . . . cultural and educational opportunities . . . through . . . compatible facilities and activities . . ." *See id.* at 9
- (2) "offering enriching cultural facilities . . . and future sustainable operation of the area's public facilities" *See id.* at 5 and
- (3) "educational facilities . . . with permanent, interactive and rotating exhibits . . . and places for traditional Hawaiian cultural practices." *See id.* at 12

Echoing these themes, the Conceptual Plan expresses the need to support “recreational culture” and “educational” uses and “flexible opportunities for . . . seating, classrooms, performance, markets and community social and cultural gatherings.” *See id.* at 74. To accomplish these goals, the Conceptual Plan emphasizes that we must create “multi-use destinations” providing “a spectrum of uses” in the Makai Area in general and the Kewalo Basin Park in particular. *See id.* at 73. Through these multi-use destinations, we can build “authentic places by sustaining uses and activities that are complimentary.” *See id.* at 76.

The Makai Plan is incorporated into the Makai Area Rules (“**Makai Rules**”) by reference. *See* Makai Rules § 15-23-4. To accomplish the planning goals for the Makai Area, the Rules allow for the flexible administration of uses. *See id.* § 15-23-1. As the Rules point out, if the Makai Area is not redeveloped or renewed, it risks falling into a state of blight and deterioration. *See id.* § 15-23-1(a)(3). For this reason, we must “preserve and enhance [the Makai Area’s] value and potential.” *See id.* § 15-23-1(a)(3).

Within the “[P]ark zone, cultural and educational uses along with a variety of active recreation activities will be allowed and encouraged, to provide additional public resources.” *See* Makai Plan at 2.2; *see* Makai Rules § 15-23-4. The allowed uses specifically include the following:

- (1) Amphitheaters;
- (2) Performing art centers;
- (3) Museums, art galleries and workshops;
- (4) Aquariums and [marine] research facilities;
- (5) Active and passive recreation;
- (6) Gardens and greenhouses;
- (7) Parking;
- (8) Exploratoriums; and
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures.

The authority may allow other uses, provided that such other uses shall further the purpose and intent of [the Makai Area Rules] and the [M]akai [A]rea [P]lan.

See Makai Rules § 15-23-40.

Under category (9), HCDA has the discretion to permit any use that is “customarily accessory and clearly incidental and subordinate” to the principal uses as well as any “other uses . . . that further the purpose and intent” of the Makai Rules and Plan.

5. Kupu's proposed use of the Net Shed. Kupu proposes using the Net Shed as an educational, cultural and community center.¹ As part of its management of the Net Shed, Kupu will renovate the facility. With an anticipated investment of \$6,000,000 in capital improvements, the Net Shed will serve as a multi-use destination that supports Kupu's educational and cultural programs, provides a venue for public displays and workshops and becomes a resource for public and community groups to rent on terms to be approved by Executive Director. *See* Conceptual Plan at 68, 73 and 76.

As noted above, the Authority has the power to approve uses that "further the purpose and intent of [the Makai Rules] and the Makai [] Plan" as well as those "uses and structures which are customarily accessory and clearly incidental and subordinate" to permitted principal uses. *See* Makai Rules § 15-23-40(9). Kupu's proposed uses "further[] the purpose and intent of [the Makai Rules] and the [Makai Plan]" in the following ways:

- Helps to make the Makai Area a more "active, vibrant area" by providing "educational . . . and cultural facilities and amenities." *See* Makai Plan at 1.6.
- Bolsters the sense of community in the Makai Area. *See id.* at 2.1.
- Establishes a "cultural and educational facilit[y]," which has "always been a fundamental element in HCDA's evolving community development plans and objectives." *See id.* at 4.2.2.
- Provides "cultural and educational use . . . [that] increase[s] the public activities available in the Makai Area." *See id.* at 8.3.3.
- Taps into the Net Shed's potential by turning it into a true community destination and avoids the risk of letting the facility fall into blight and deterioration. *See* Makai Rules § 15-23-1(a)(3).
- Serves the needs of the surrounding community. *See id.* § 15-23-1(a)(4).
- Provides a desired mix of uses in the Makai Area. *See id.* § 15-23-1(c).
- Assists in the Makai Area's transformation to "an attractive and desirable urban community." *See id.* § 15-23-1(g).

¹ Kupu does not seek to lease, limit the public use of, or obstruct the shoreline or harbor channel promenade.

The following table illustrates alignment of planning goals and Kupu's proposed use and management of the Net Shed:

Proposed Use	Support Under Plans and Rules
Classroom and workshop space for workshops on culture and sustainability	<ul style="list-style-type: none"> • Conceptual Plan at 5, 9, 12, 74, 82-84 • Makai Plan § 2.2 • Makai Rules § 15-23-40(3)
Art exhibits featuring local artists	<ul style="list-style-type: none"> • Conceptual Plan at 5, 9, 12, 82-84, 101, 106 • Makai Plan § 2.2 • Makai Rules § 15-23-40(2) and (3)
Exploratorium space for exhibits on sustainability, Hawaiian culture and renewable energy	<ul style="list-style-type: none"> • Conceptual Plan at 5, 9, 12, 74, 82-84 • Makai Plan § 2.2 • Makai Rules § 15-23-40(8)
Symposium and event hosting	<ul style="list-style-type: none"> • Conceptual Plan at 5, 12, 74 • Makai Rules § 15-23-40(9)
Community-based events and workshops and microenterprise facilities, such as aquaponics	<ul style="list-style-type: none"> • Conceptual Plan at 5, 68, 74 • Makai Rules § 15-23-40(9)
Community service engagement for broader public	<ul style="list-style-type: none"> • Conceptual Plan at 5, 9, 106 • Makai Rules § 15-23-40(9)
Temporary food service, such as a farm-to-table food truck	<ul style="list-style-type: none"> • Conceptual Plan at 12, 74, 106 • Makai Rules § 15-23-40(9)
An accessory commercial kitchen and imu to provide food for visitors and events	<ul style="list-style-type: none"> • Conceptual Plan at 12, 74 • Makai Rules § 15-23-40(9)
Renting the Net Shed for events put on by other groups following a model similar to that implemented at the McCoy Pavilion	<ul style="list-style-type: none"> • Conceptual Plan at 5, 9, 12, 106 • Makai Rules § 15-23-40(9)

6. Kupu's proposed improvements. Kupu intends to improve the Net Shed and the surrounding grounds. The proposed Net Shed improvements include the following:

- The addition of exterior walls, doors, and windows
- Ground floor interior remodeling to provide separated rooms to serve Kupu's programmatic needs, including:
 - A central gallery area
 - Meeting space

- A vocational workshop space
- A classroom
- A commercial kitchen for vocational training
- A kitchen storage room
- A dining area
- An office area with staff conference area
- Men's and women's restrooms with showers
- Storage room
- The addition of a second floor mezzanine of 1,600 square feet
- The addition of roof insulation
- The installation of skylights (Solatubes)
- Installation of photovoltaic panels to meet all energy needs, thus allowing the facility to become a net zero energy facility.

Exterior hookups for a food truck (such as connections for water, wastewater and electricity). Exhibit 3 shows a site plan, building floor plans, elevations and section drawings.

The proposed exterior improvements within the leased grounds include additional landscaping and enhanced surfaces. The goal is to beautify and make the Lease Area more inviting, sustainable and functional for the broader public. The asphalt pad, curbs and gutters are proposed to be replaced with a surface that will reduce the amount of impervious surface. Removing or resurfacing the large asphalt pad between the Net Shed and the Kewalo Basin Harbor channel will create an area more suited for Kupu's programs, events and community use. The renovated area may be finished to include large concrete pavers (approximately 12-feet x 12-feet) segmented by bands of grass or gravel to allow for stormwater infiltration. Planter boxes and tanks for hydroponics may be added to the renovated area. A new rain garden and/or a vegetated swale along the harbor channel edge will allow for additional infiltration as well as bio-filtration and treatment of stormwater before it enters the ocean. This area may also be outfitted for a temporary special event tent or other removable or retractable shade covering. New plantings in the lease area may include shielding loulou palms and nā'ū hedges. 'Ākia may be planted near the entrance walkway. All existing trees will be retained.

Other exterior improvements may include:

- An imu in the Native Hawaiian plant garden area
- Rain barrels to capture roof runoff
- A pre-fabricated storage shed or sheds at the rear of the building (mauka side) for storage
- A trash container enclosure
- A gravel bed at the rear perimeter of the building to capture runoff
- Removal of existing asphalt and curbs and gutters around the Net Shed and replacement with new concrete surfaces and landscaping, to create a more inviting area for users and for outdoor educational spaces.

Within the right of entry area, Kupu anticipates funding limited improvements between the Net Shed Building and the waterfront pedestrian promenade. These improvements may include:

- A bioswale to improve drainage
- A patio area made with concrete pavers segmented with grass or gravel to allow for infiltration of water
- New benches/seating area
- Expansion of the Native Hawaiian plant garden

7. Parking. No stalls from the existing Kewalo Basin Park parking lot (beyond the existing six stalls on the Diamond Head (east) side of the Net Shed that are currently reserved for Kupu's use) will be used for any Kupu parking. This lot serves the Kewalo Basin Park and is reserved for park users. As part of the renovations, the six stalls on the Diamond Head (east) side of the Net Shed that are currently reserved for Kupu's use will be reconfigured into five regular parking stalls plus one Americans with Disabilities Act (ADA) accessible stall and an access aisle.

Bicycle parking will be provided near the Net Shed entrance. Kupu also encourages alternative transportation use by subsidizing bus passes for program participants and nearly all participants rely on public transit to and from the Net Shed.

The addition of the mezzanine may require additional parking stalls. For any additional stalls, Kupu will work with, HCDA, Kewalo Harbor, LLC (which has a lease to operate the harbor, boat slips and parking immediately adjacent to the harbor) or Kewalo Harbor

Development Company, LLC (which was awarded the use of the "NOAA site"²) to provide for the remaining required parking and event parking. The additional parking could be provided either closer to Ala Moana Boulevard, within the Kewalo Harbor LLC lease area, or within the NOAA site.

8. The Term Sheet. The proposed Term Sheet is attached as Exhibit 1. The Term Sheet identifies the allowed uses and the other material terms and conditions of a lease between HCDA and Kupu. With respect to Kupu's proposal to make the Net Shed available to the community as a venue for events (similar to McCoy Pavilion), the Term Sheet also provides for revenue sharing with HCDA.

9. The permitting process. After the execution of a lease, Kupu will seek all required permits necessary for the improvements to the Lease Area and the Right of Entry Area. These permits include the following:

Permit/Approval	Responsible Agency
Development Permit	HCDA
Special Management Area (SMA) Major Permit	State of Hawai'i Office of Planning
Shoreline Setback Variance (if needed)	
Storm Drain Connection Application (if new connection is made)	City and County of Honolulu Department of Planning and Permitting
Grading Permit	
Building Permit	
Sewer Connection Application & Wastewater System Facilities Charges	

10. Benefits to HCDA and the community. Kupu has received widespread support from the community. Among its supporters are Friends of Kewalo, Kamehameha Schools, Hawaiian Electric Industries and Alexander & Baldwin. State Senator Galuteria and Representative Saiki have identified Kupu's renovation of the Net Shed as a priority project. U.S. Senators Schatz and Hirono have also endorsed the project. The state legislature has provided public funding for the project through grants in aid.

² The general area of TMK (1) 2-101-58-135 (formerly TMKs (1) 2-101-58-127 and TMK (1) 2-101-58-061) previously was used by the National Oceanic and Atmospheric Administration (NOAA) and is commonly referred to as the "NOAA site."

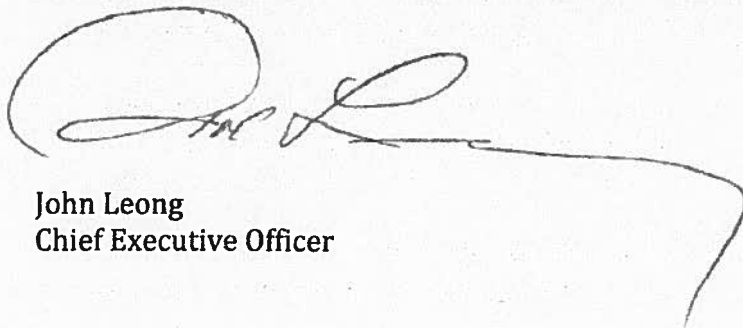
As these supporters recognize, Kupu's continued use of the Net Shed will benefit HCDA and the community in the following ways:

- *Renovations.* Kupu has raised funds to pay for the costs of renovations to the Net Shed, which will be owned by HCDA.
- *Maintenance.* Kupu will oversee and maintain the surrounding area of the Property with assistance covering the cost.
- *Beautification.* Kupu will continue to beautify the Property and surrounding area. Past efforts have included renovating the showers, regular pick up of litter, planting tree and grounds keeping.
- *Safety.* Kupu will continue its efforts to make the area safer. HPD has reported a 53% reduction in crime at the Kewalo Basin between 2009 and 2013. Homelessness near the Property has also already dropped substantially.
- *Engagement.* The Net Shed will help engage all members of the community through offering cultural and educational workshops, service, symposiums and programs and community outreach.
- *Parking.* Kupu will not require additional park parking or seek to monopolize parking for its Net Shed leaving plenty of parking for surfers and park goers.

11. Conclusion. We respectfully request that the Authority authorize the Executive Director to negotiate and enter into a lease with Kupu in accordance with the Term Sheet.

Thank you for your time and attention to this matter. If you have questions or concerns, or if there is any additional information that we can provide, please do not hesitate to contact me.

Respectfully Submitted,



John Leong
Chief Executive Officer

EXHIBIT 1

GROUND LEASE TERM SHEET

LESSOR: Hawai'i Community Development Authority

LESSEE: KUPU, a Hawai'i nonprofit corporation

AREA & LOCATION: Approximately 0.53 acres at the Net Shed Facility located in Kewalo Basin, Honolulu, Hawai'i, identified by Tax Map Key Nos. (1) 2-1-058-135 (portion), 136 (portion), and -137 (portion) as shown on Exhibit "A" attached ("Premises").

USE OF PREMISES: To be used only for the following purpose(s):

Design, construction, establishment, operation and maintenance of the Kupu Green Job Training and Community Center, which may include classroom space, workshop space, a commercial kitchen, an imu, gardening areas, community-based events and workshops and microenterprise facilities, such as aquaponics, farm to table food service and a food truck. Lessee may rent portions of the Community Center for events, subject to the terms and conditions of the lease, including Percentage Rent.

RIGHT OF ENTRY FOR LANDSCAPING: The lease will include a non-exclusive right of entry covering approximately 0.29 acres of property adjacent to the Premises as shown on attached Exhibit "A" giving Lessee the right and responsibility to install and maintain landscaping as reasonably approved by Lessor.

TERM: The term of the proposed lease is thirty-five (35) years.

BASE RENT: Base Rent for the Premises is \$1.00 per year, payable on the first day of each year during the term.

PERCENTAGE RENT: Percentage Rent for the Premises is ___% of any fees for renting portions of the Community Center for events by outside groups where Lessee or its program participants are not involved in staffing or serving the event.

OPERATING EXPENSES:

Lessee shall be responsible for all operating expenses, including, but not limited to, common area maintenance (including trash removal, water, electrical), management, building fire and liability insurance, conveyance tax, general excise tax, and real property taxes and assessments.

SUBLEASING AND ASSIGNMENT:

Lessee will not be able to sublease or assign the proposed Lease, without the prior written consent of Lessor which may be granted or withheld by Lessor, in Lessor's sole discretion.

INSURANCE:

Lessee, at Lessee's sole cost and expense, will procure and maintain commercial general liability, property damage, and such other insurance coverage in such amounts as shall be specified by Lessor in the proposed Lease, covering Lessor, State of Hawaii and Lessee with respect to the Premises. Such insurance shall be written by a company authorized to do business in the State of Hawaii with a Best's Insurance Rating of A-NII or better. Lessee shall furnish ACORD 25 certificates of such insurance, together with evidence of payment of the premium thereon, and shall name Lessor, State of Hawaii, Lessor's managing agent (if any) and other designees as additional insured.

SPECIAL CONDITIONS:

1. Lessee, at its sole cost and expense will design, renovate and complete the Kupu Green Job Training Center.
2. Lessee will not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, Lessee will immediately notify the Lessor and protect the site and the material from further disturbance until the Lessor gives clearance to proceed.
3. The Parties contemplates that the Lease may require Lessee to submit the following: (i) conceptual drawings showing what the Kupu Green Job Training Center will look like after it has been restored, (ii) specific information on the developmental phasing, including a time schedule, to build out the project, (iii) proof of 100 percent of the estimated project cost through cash or in-kind donations, estimated at \$5.5-6.0 million, (iv) proof of all necessary

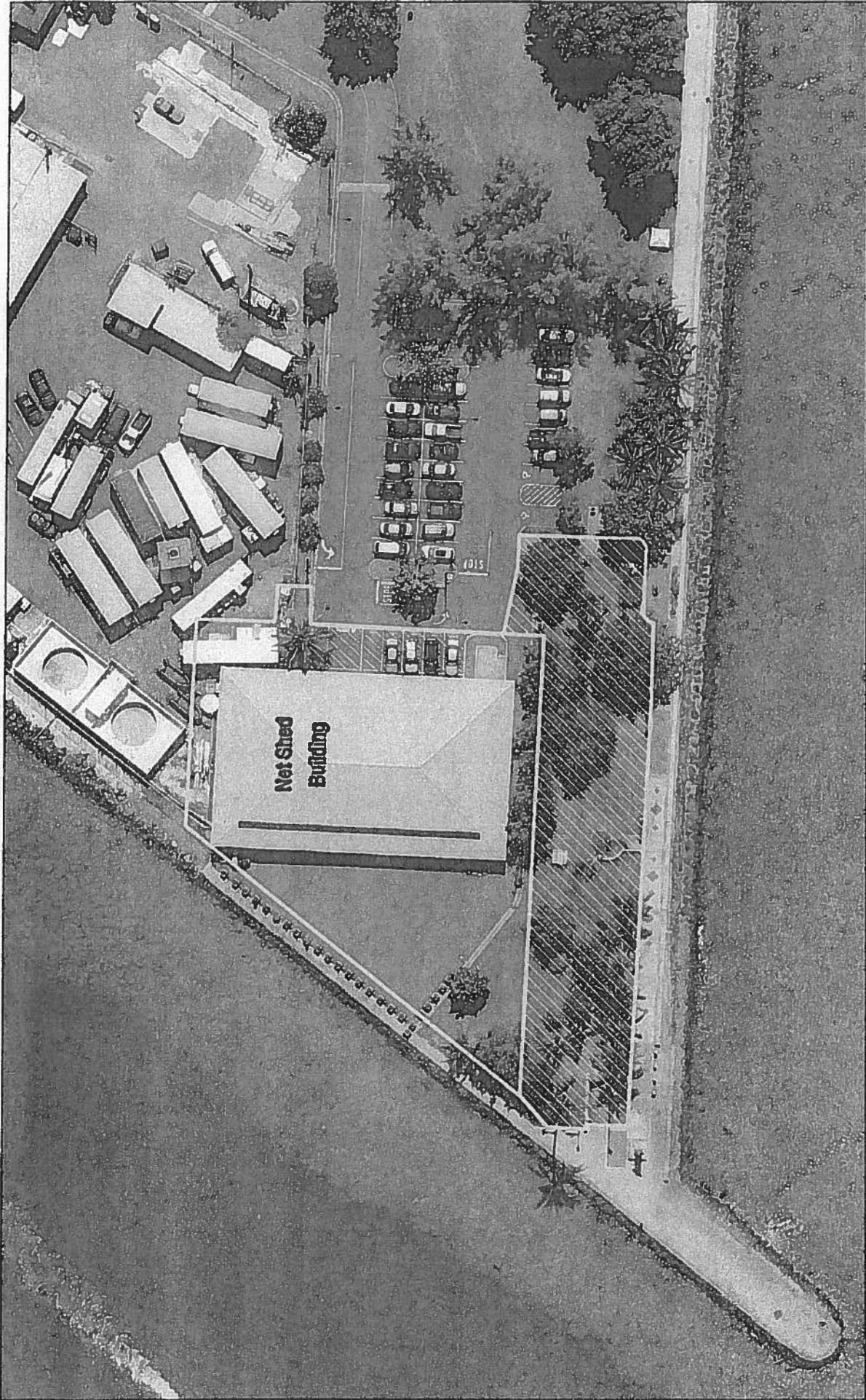
licenses, permits and approvals for the construction and operation of the facility, and (v) an executed construction contract to Lessor.

4. Lessor will reasonably cooperate with Lessee as necessary for Lessee to obtain utilities for the Kupu Green Job Training Center.


EXHIBIT A

KEWALO BASIN NET SHED BUILDING

**TMKS (1) 2-1-058-135 (PORTION), 136 (PORTION), AND -137 (PORTION)
NOT TO SCALE**



LEGEND

 Lease Area


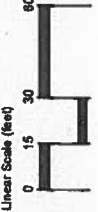
 Right of Entry Area

EXHIBIT A:
Project Area

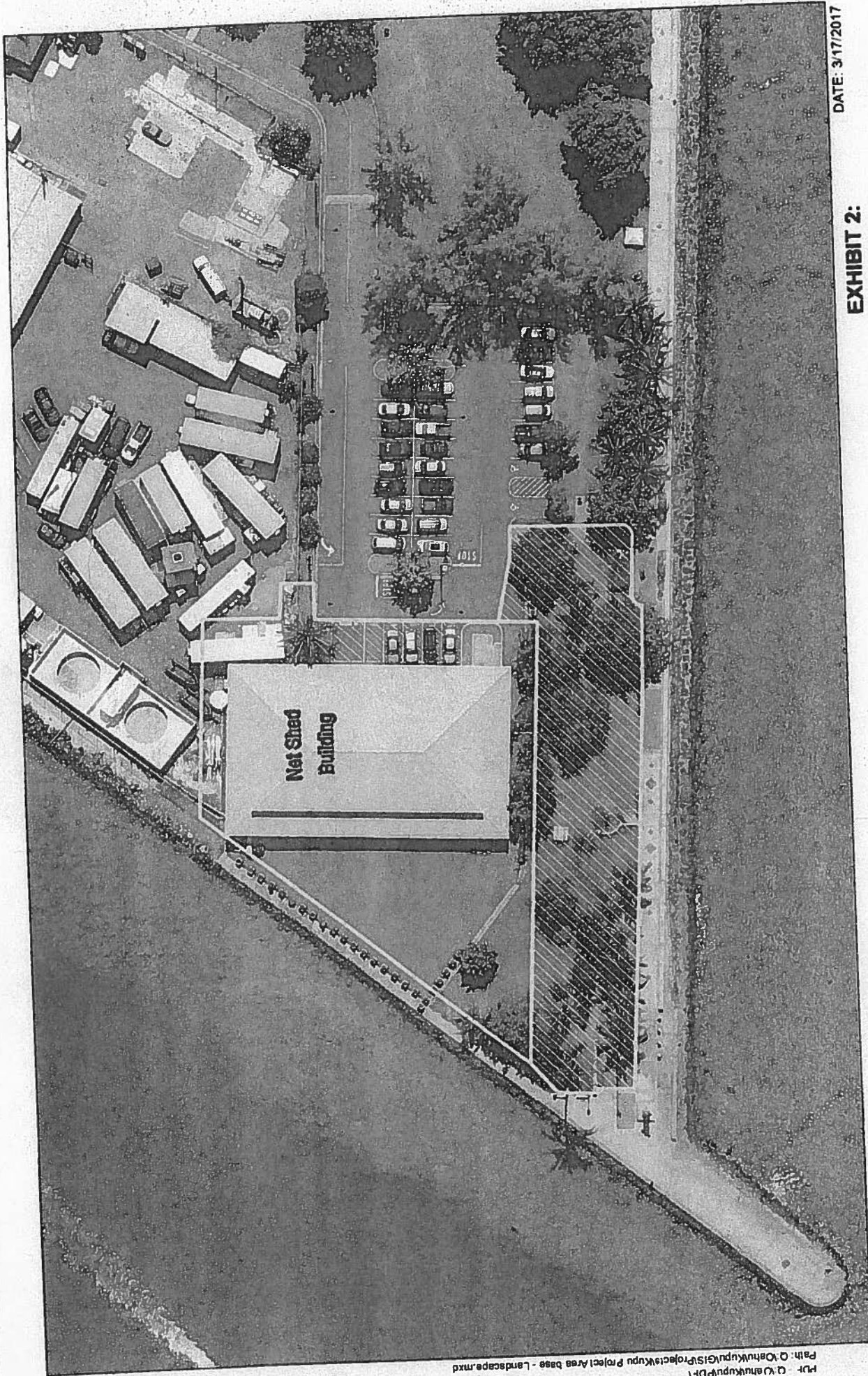
DATE: 3/17/2017

**KUPU GREEN JOB
TRAINING CENTER**

Scale: 1:1000
North Arrow



Source: ESRI online basemap, Group 70 International, 2015.
Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



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 Path: Q:\Wahukupu\GIS\Project\Kupu Project Area base - Landscape.mxd

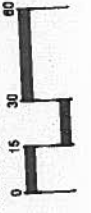
DATE: 3/17/2017

EXHIBIT 2:
Project Area

**KUPU GREEN JOB
 TRAINING CENTER**



Linear Scale (feet)

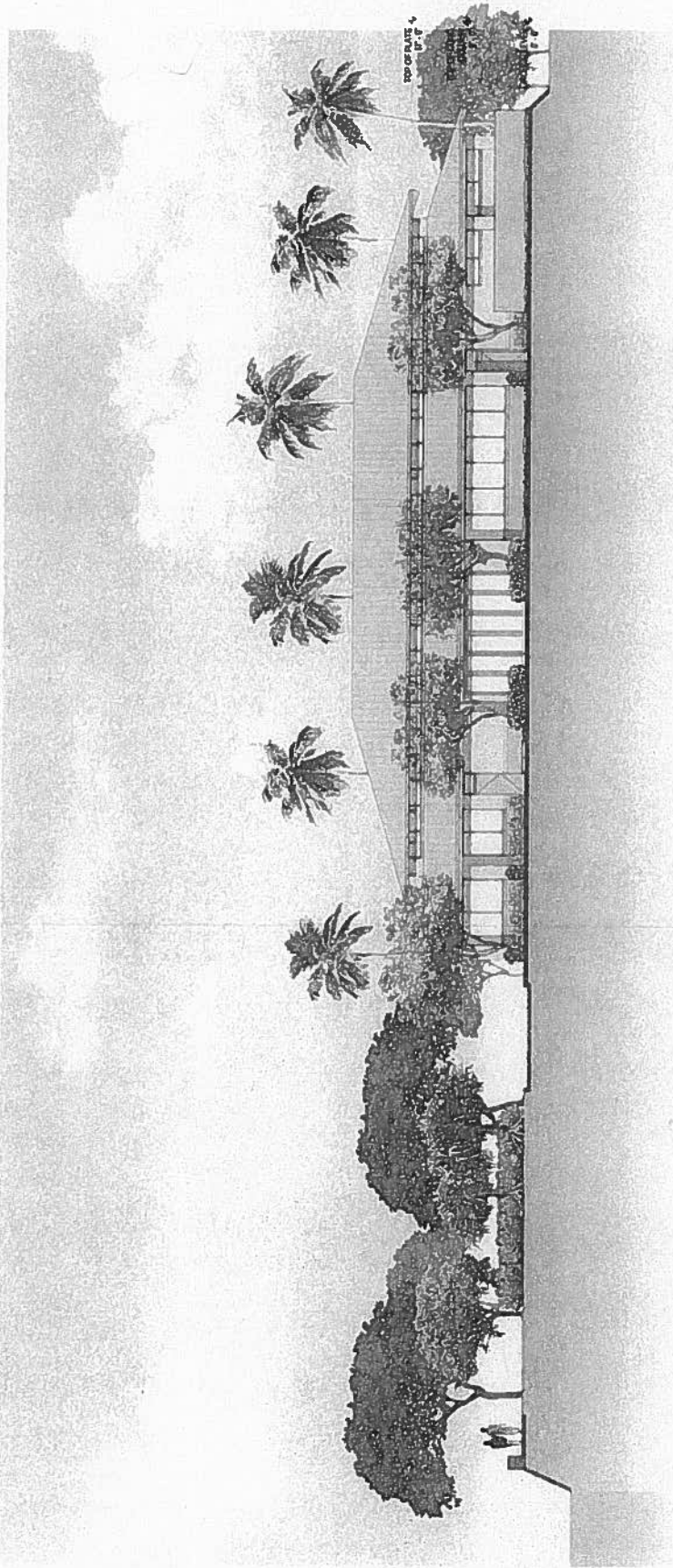


LEGEND

Lease Area

Right of Entry Area

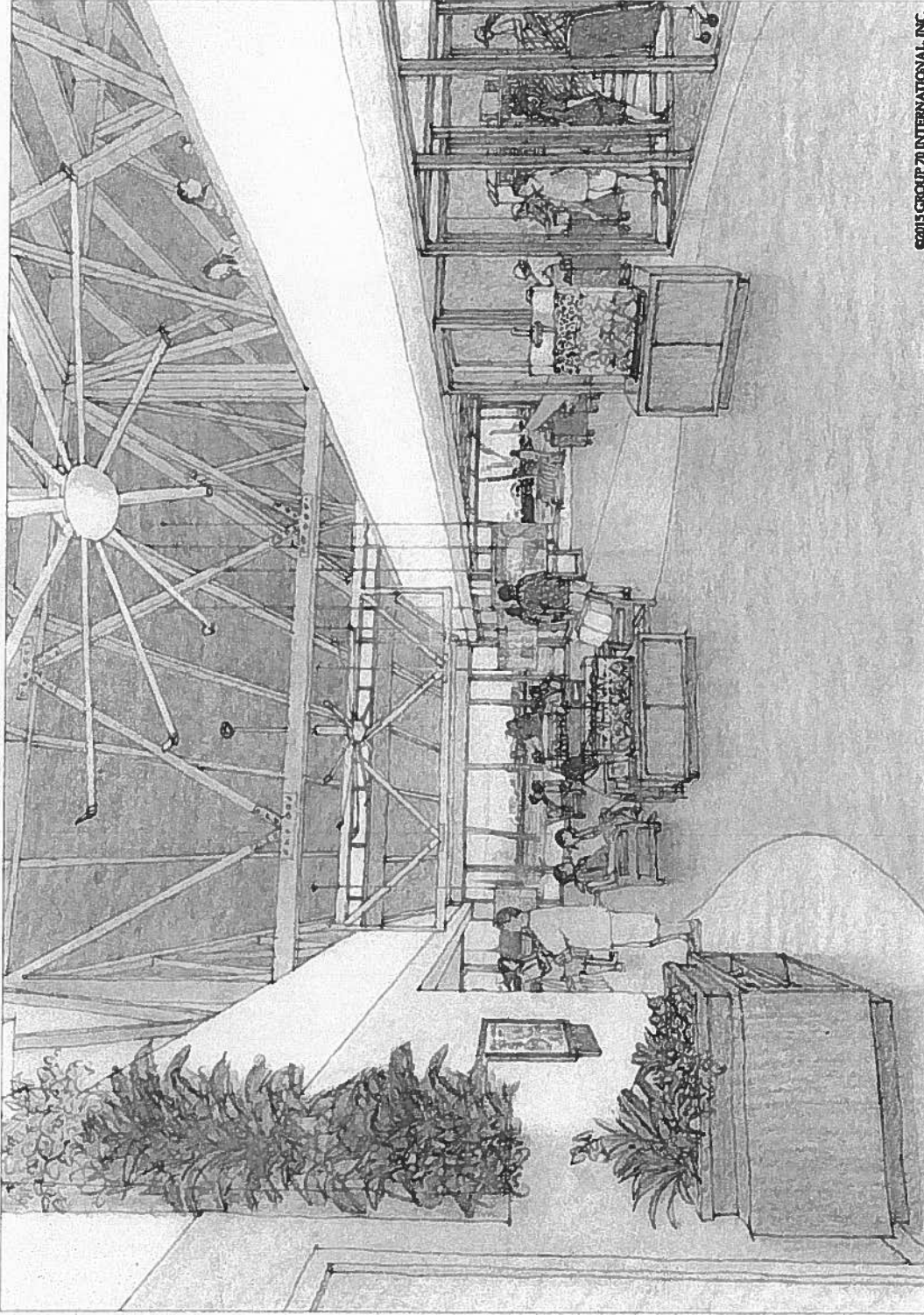
Source: ESRI online basemap, Group 70 International, 2015.
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



Kupu

EXHIBIT 3B:
EAST ELEVATION RENDERING

GROUP 70
INTERNATIONAL
ARCHITECTS

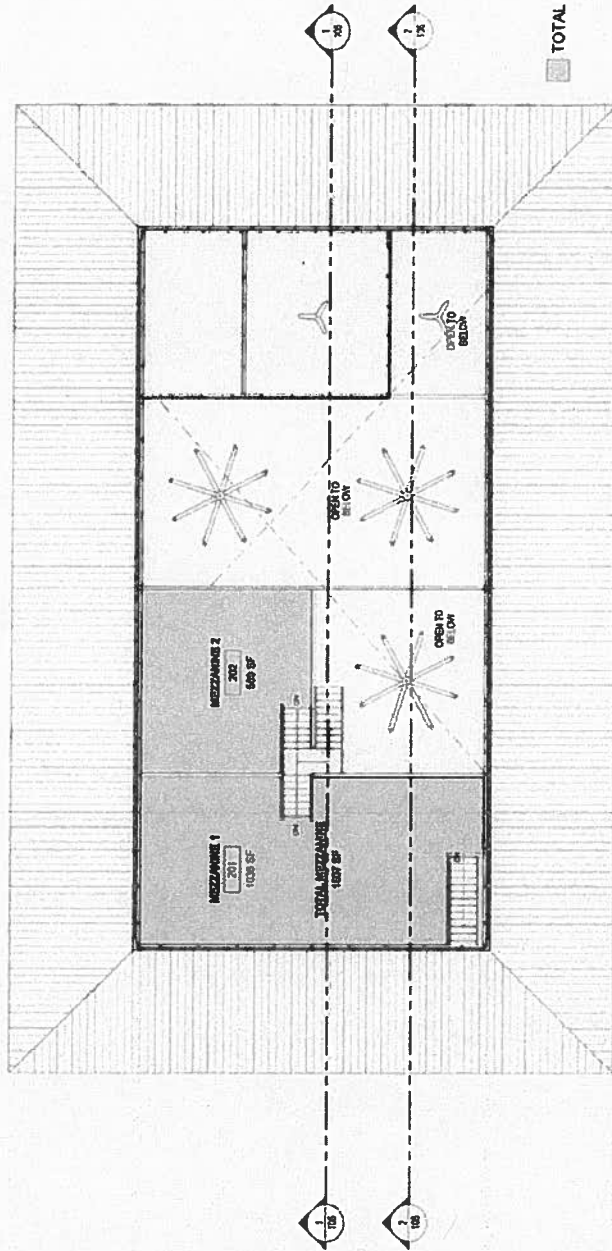


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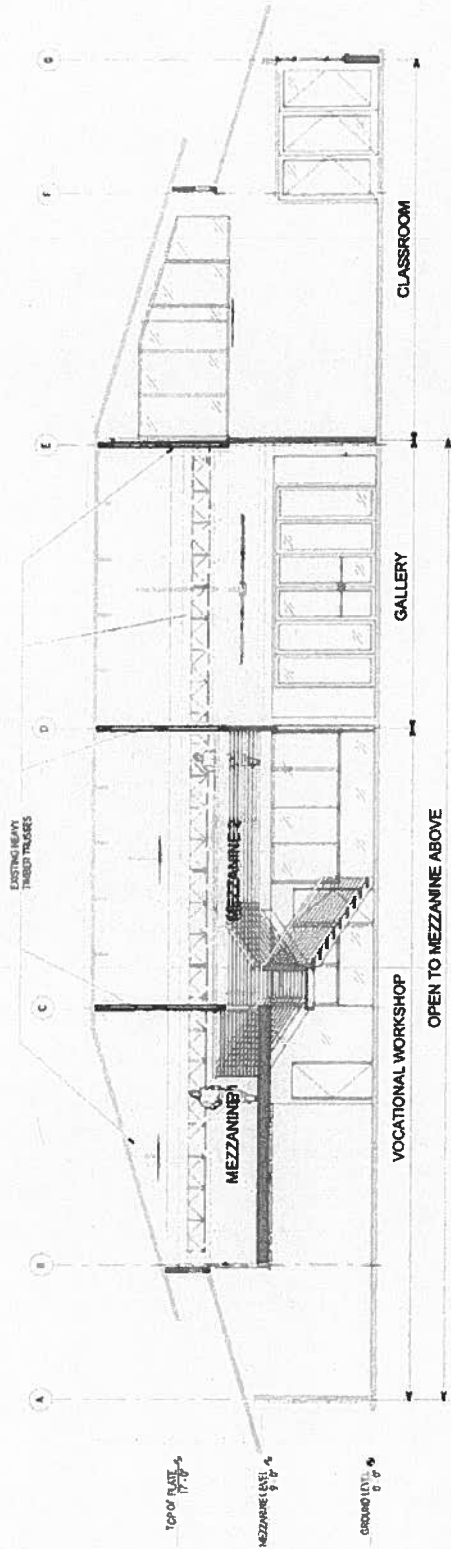
Kupu

EXHIBIT 3C:
GALLERY CONCEPTUAL RENDERING

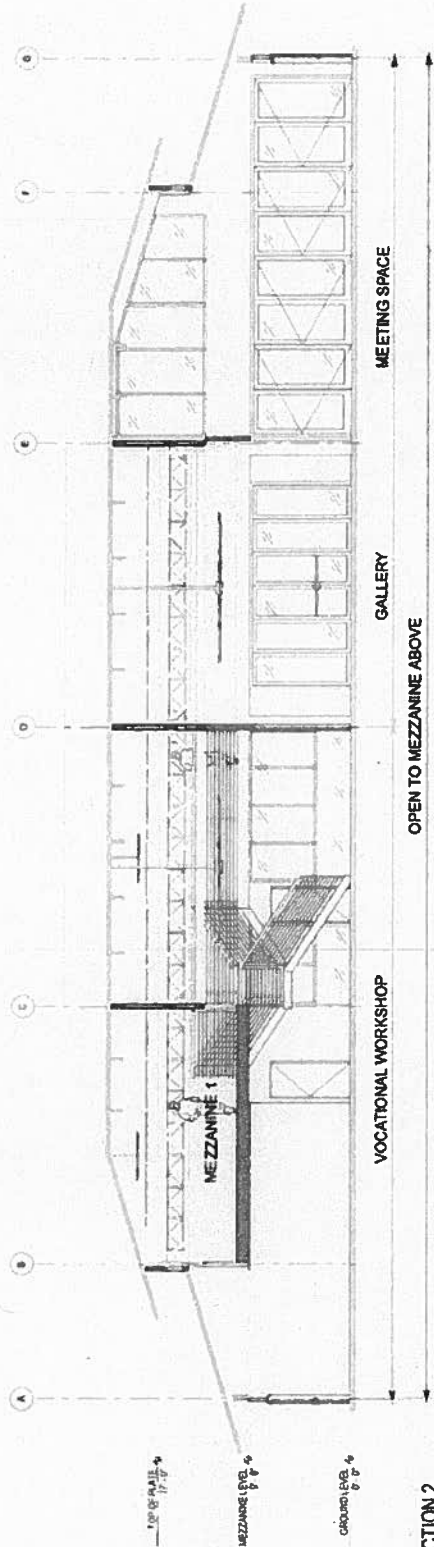
GROUP 70
INTERNATIONAL
MERU



1 MEZZANINE LEVEL
SCALE 1/8" = 1'-0"



1 BUILDING SECTION 1
SCALE 3/8" = 1'-0"



2 BUILDING SECTION 2
SCALE 3/8" = 1'-0"

EXISTING CONSTRUCTION
NEW CONSTRUCTION

EXHIBIT E

§15-23-39 MUZ-I zone: development standards.

The following shall apply to waterfront industrial uses within the MUZ-I zone:

- (1) On-site open space shall not be required;
- (2) One off-street parking space for every two employees or one space per one thousand square feet of floor area, whichever is greater, shall be required; and
- (3) Public facilities fees shall not be required. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-23-40 Park areas. Within areas designated "Park" (P), the following uses shall be permitted:

- (1) Amphitheaters;
- (2) Performing arts centers;
- (3) Museums, art galleries and workshops;
- (4) Aquariums and [marine] research facilities;
- (5) Active and passive recreation;
- (6) Gardens, greenhouses;
- (7) Parking; [and]
- (8) Exploratoriums; and
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. The authority may allow other uses, provided that such other uses shall further the purpose and intent of this chapter and the makai area plan.

In circumstances where there may be uncertainty about applicable provisions, the executive director shall determine which land use zone provisions apply. [Eff 2/24/90; am and comp 10/10/98; comp 2/2/02; comp 12/9/02; am and comp 11/3/05] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)