

STATE OF HAWAII  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
Kakaako Community Development District  
Honolulu, HI 96813

March 7, 2018

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

HCDA Board Members:

**SUBJECT:** Shall the Authority Authorize the Interim Executive Director to Enter into a 65-Year Lease with the Hawaii Technology Development Corporation for the Entrepreneur's Sandbox Project?

**SUMMARY:**

The Authority is being asked to authorize the Interim Executive Director, to enter into a 65-year lease with the Hawaii Technology Development Corporation ("HTDC"), for construction, and operation and maintenance of the Entrepreneurs Sandbox ("Project").

**AUTHORITIES:**

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Hawaii Revised Statutes § 206E-4 (10, 11, 13).

**BACKGROUND:**

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- On January 8, 2014, the Authority authorized the Executive Director to enter into a memorandum of agreement with the High Technology Development Corporation for the delegation of funds for the planning and design of HTDC's facility to be located on Kakaako Makai Lot C.
  - On May 7, 2014 the Authority authorized the Executive Director to expend up to \$2,725,000.00 in Capital Improvement Projects funds pursuant to memorandum of agreement between the High Technology Development Corporation and the Hawaii Community Development Authority and engage consultants for planning and design of office facility for HTDC to be located on Kakaako Makai Lot C.
  - On September 19, 2014, after applying for federal financial assistance, the HTDC and HCDA were issued a U.S. Department of Commerce EDA grant award for \$3.0 million for the construction of the Entrepreneur's Sandbox.
  - On October 1, 2014, the Authority authorized the Executive Director to enter into a memorandum of understanding with the HTDC documenting HCDA's and HTDC's respective roles and responsibilities regarding the EDA grant application for the Entrepreneur's Sandbox.

- On November 4, 2015, the Authority authorized the Executive Director to prepare and release a Request for Proposal for a civic/mixed-use commercial development on Lot C including the Sandbox for HTDC.
- On January 6, 2016, the Authority accepted the determination of finding of no significant impact for the Final Environmental Assessment prepared for the Innovation Block at Lot C Master Plan.
- On July 13, 2016, the Authority adopted the recommendation of the RFP Evaluation committee for a civic/mixed-use commercial development on Lot C (the Entrepreneur's Sandbox and Innovation Hale) and authorized the Executive Director to negotiate a development agreement with Stanford Carr Development LLC.
- On September 6, 2017, the Authority authorized the Executive Director to execute the Economic Development Administration's Site Certificate and the Covenant of Purpose Use and Ownership, as Required Under the Economic Development Grant.

## **ANALYSIS:**

The Entrepreneur's Sandbox project ("Sandbox") will serve as an extension of the HTDC's tech business incubator which currently operates near the University of Hawaii Manoa campus. The Sandbox will provide access to shared resources which HTDC's tech incubator currently does not have capacity for. The Sandbox is a public mixed-use facility that gathers the essential ingredients for business formation and complements it with tools that allow an early stage startup to grow, and will provide facilities including a creative lab, digital media production studio, meeting rooms and mentor offices.

The Sandbox will fulfill one or more of HCDA's purposes under HRS 206E-31 and 33, which includes supporting the function of Kakaako as a major economic center. The project is the initial phase of HCDA's multi-phase master plan of Lot C, also referred to as the Innovation Block. Summary information on the Sandbox is provided as Exhibit A.

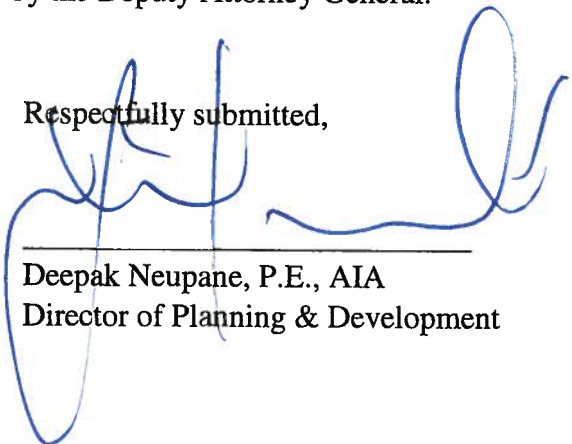
In accordance with HRS §206E-14, the proposed lease to HTDC is for a term not exceeding 65 years. While the annual rent will be \$1.00 per annum, the HTDC will pay to HCDA a percentage rent equal to 50% of net receipts for any for-profit endeavors on an annual basis. The draft lease is attached as Exhibit B.

Construction of the Sandbox is being funded in part by a U.S. Department of Commerce, Economic Development Administration ("EDA") grant which has been awarded to HCDA and HTDC as co-applicants. Pursuant to the EDA Special Award Conditions, this lease is required to be in place prior to the initial disbursement of funds by the EDA. Construction is anticipated to commence no later than May 2018.

**RECOMMENDATION:**

Staff recommends the Authority Authorize the Interim Executive Director to Enter into a 65-Year Lease with the Hawaii Technology Development Corporation for the construction and operation of the Entrepreneur's Sandbox Project, substantially in the form provided in Exhibit B, pending any further review of legal matters by the Deputy Attorney General.


Respectfully submitted,



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

**APPROVED FOR SUBMITTAL:**



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Garrett Kamemoto, Interim Executive Director  
Hawaii Community Development Authority

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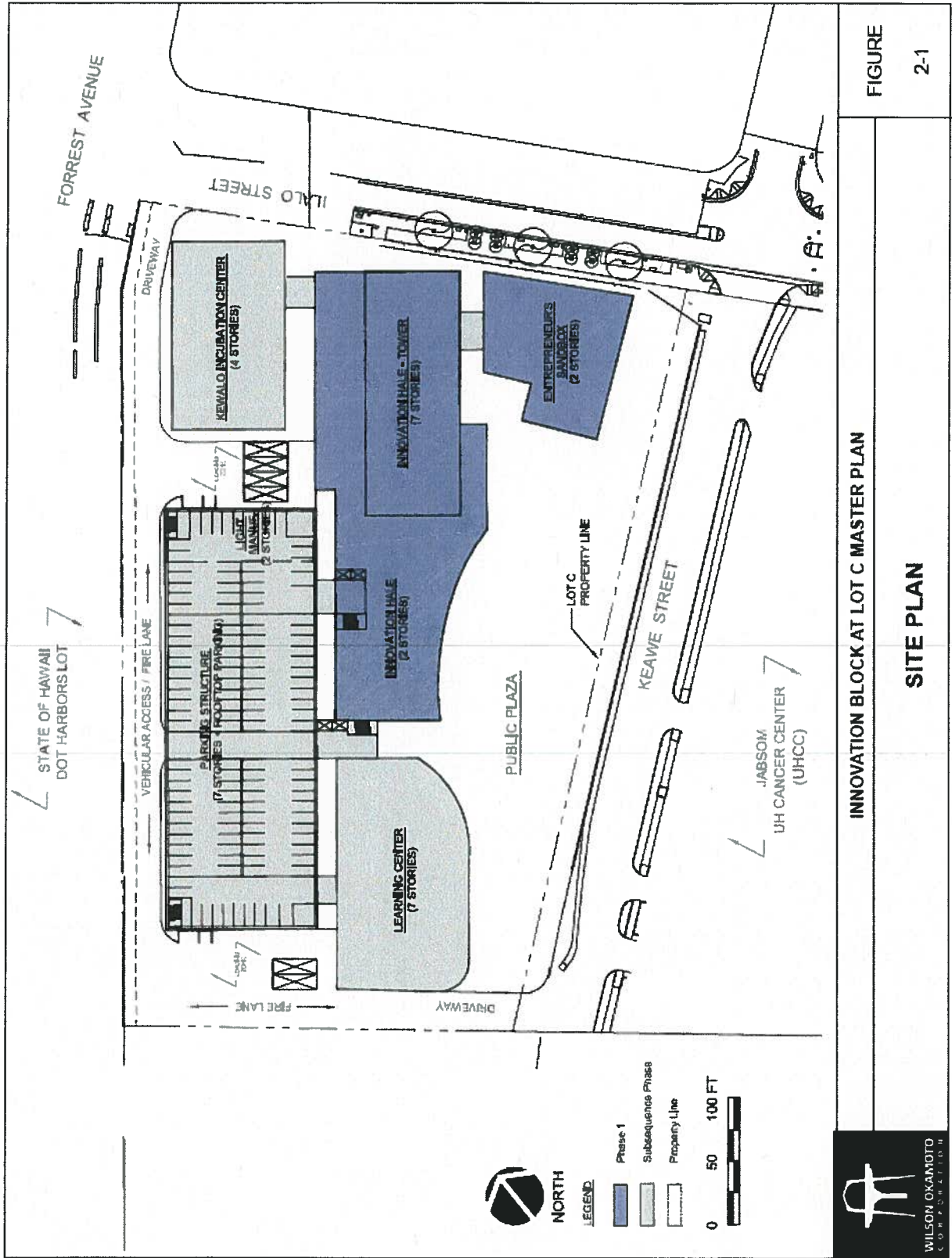
**Attachments**

Exhibit A- Summary information on the Sandbox  
Exhibit B- The draft lease



**EXHIBIT A**





INNOVATION BLOCK AT LOT C MASTER PLAN

SITE PLAN



**CONCEPTUAL RENDERED VIEW**

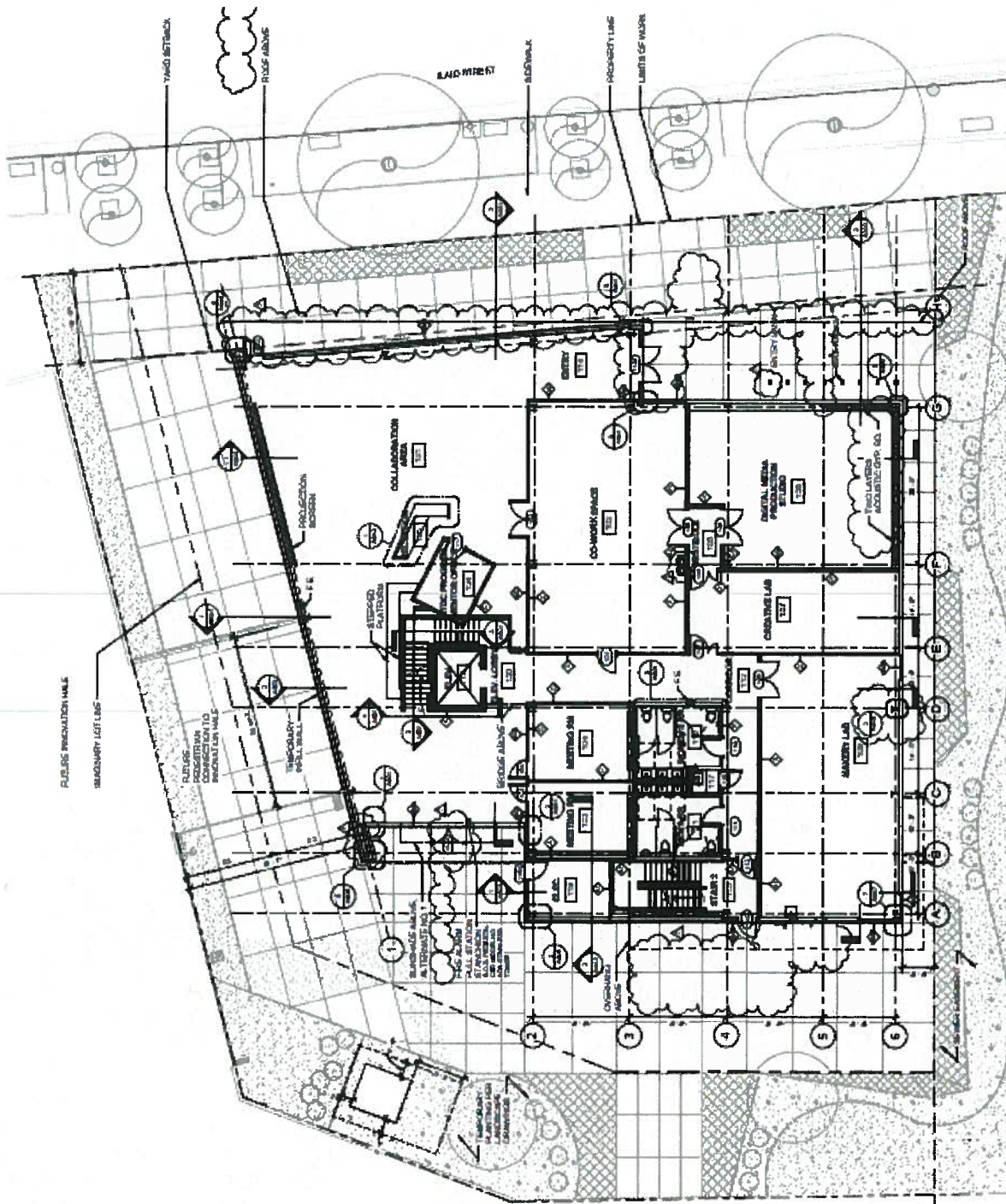
HCDA-WTDC LOT "C" MASTER PLAN

FERRARO CHOI

Figure 5. Conceptual rendered view of final build-out for HCDA Lot "C," view to west (courtesy of client)





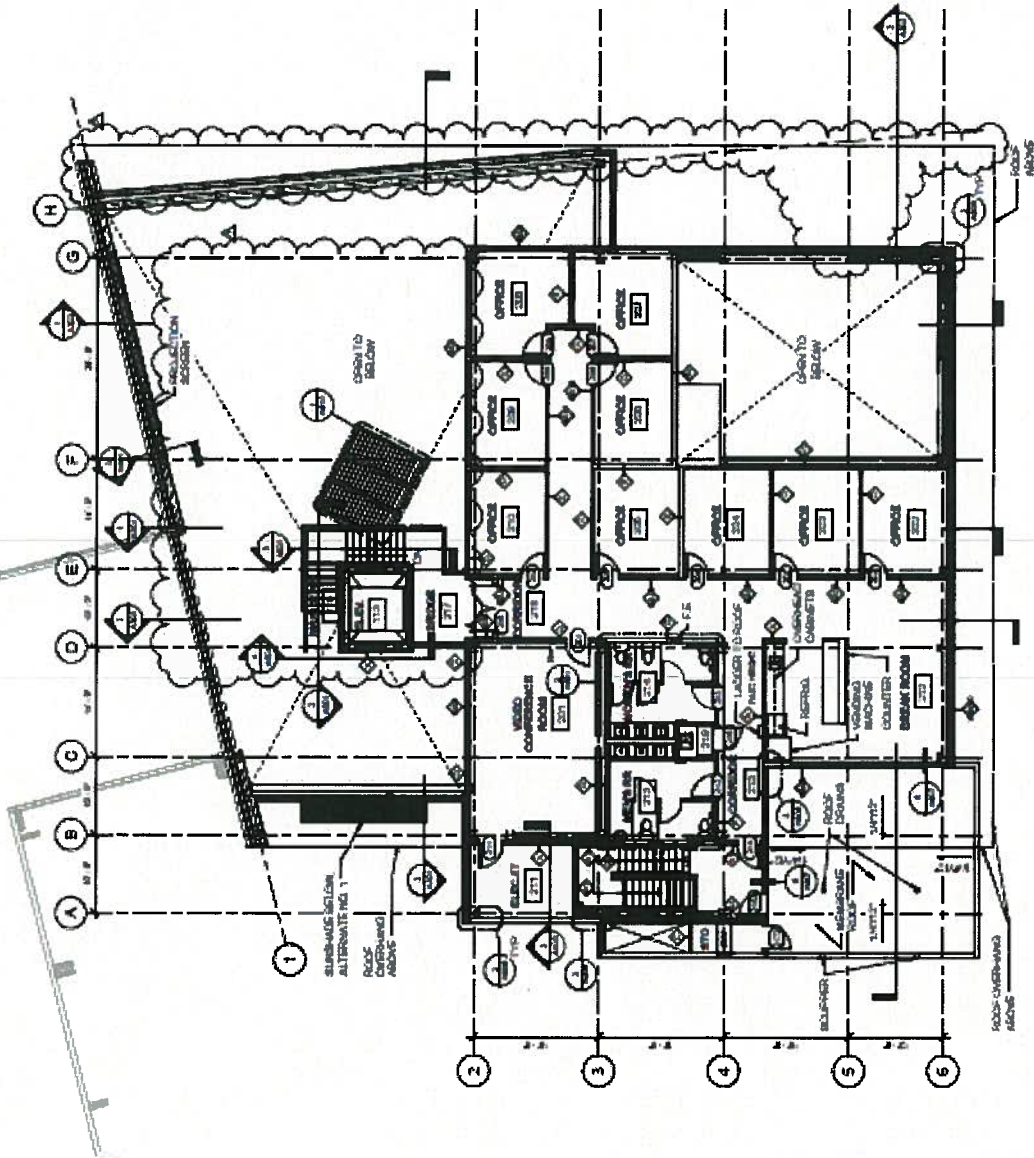


1 LEVEL 1 PLAN





FUTURE PRECINCT HALL



1 LEVEL 2 PLAN

## GENERAL LEASE NO. 17-04

THIS INDENTURE OF LEASE ("**Lease**"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2018 ("**Effective Date**"), by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("**LESSOR**" or "HCDA"), 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 HAWAII TECHNOLOGY DEVELOPMENT CORPORATION, ("**LESSEE**"), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business and mailing address is 2800 Woodlawn Drive, Suite 100, Honolulu, Hawaii 96822 (each, a "**Party**", and collectively, the "**Parties**").

### RECITALS

WHEREAS, at its meeting on Wednesday, May 7, 2014, the Kakaako Members of the HCDA directed the executive director to expend up to \$2,725,000.00 in Capital Improvement Projects funds, pursuant to the Memorandum of Agreement between the Hawaii Technology Development Corporation and the HCDA, to engage consultants for planning and design of an office facility for the LESSEE to be located on Kakaako Makai Lot C, subject to determination that such expenditure is consistent with the legislature's appropriation;

WHEREAS, the proposed project will fulfill one or more of HCDA's purposes under HRS §§ 206E-31 and -33, which includes supporting the function of Kakaako as a major economic center;

WHEREAS, LESSOR is the fee simple owner of the Premises, defined herein;

WHEREAS, the Premises is a component of a multi-phase redevelopment of the Innovation Block at Lot C which has been master planned by the HCDA to provide commercial mixed uses supporting surrounding land uses, and stimulate industry and economic development in the State;

WHEREAS, LESSEE desires to lease the Premises to operate a project entitled the "Entrepreneur's Sandbox" to provide a central location to foster innovation to meet the needs of portable startup businesses and will consist of approximately 13,500 s.f., in response to federal opportunity number EDAP2014 solicitation grant, and subsequent U.S. Department of Commerce Economic Development Administration award number 07-01-07127(hereinafter "**Project**");

WHEREAS, the project was jointly awarded to the LESSOR and LESSEE with the common goal of providing economic development for the region;

WHEREAS, economic development is the primary objective for the LESSOR and LESSEE in the Project;

WHEREAS, all revenue collected by the LESSEE from operating the Entrepreneur's Sandbox shall be used by LESSEE to offset operational expenses;

WHEREAS, if a net profit is generated, it shall be shared between LESSOR and

LESSEE;

WHEREAS, at its meeting of \_\_\_\_\_, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY approved the terms for this Lease, and authorized the Director to enter into said lease;

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 located at Tax Map Key No. (1) 2-1-15:052, more particularly described in Exhibit "A-1" and depicted in Exhibit "A-2" attached hereto and made a part hereof, together with all appurtenances, and other rights and privileges now or hereafter belonging or appertaining to the Premises (hereinafter, the "**Premises**"). LESSEE's assets shall include the Project, its leasehold interest in the Premises(collectively, the "**Lessee Property**").

1.2 Term. The Premises is demised unto LESSEE, together with all of the improvements (if any) and all appurtenant rights, but subject to the terms and conditions of this Lease, commencing at 12:00 pm Hawaii time on \_\_\_\_\_, 2018 ("**Commencement Date**") through 12:00 p.m. Hawaii time on \_\_\_\_\_, 2083 ("**Termination Date**"), unless this Lease is earlier terminated as provided herein (hereinafter, the "**Term**").

1.3 Use. The Premises will be occupied and used by LESSEE to operate an innovation center. The LESSEE shall assure the Project use and operation shall be in strict conformance with EDA award 07-01-07127 for a minimum of 20 years from the effective date of this Lease or subsequent date that is mutually agreed upon by LESSOR and LESSEE ("Use Conformance Period") . LESSEE will not use or permit, or suffer the use of the Premises for any other business or purposes without the written consent of the LESSOR. After the expiration of the Use Conformance Period, the LESSEE and LESSOR may mutually agree to terminate this Lease as provided herein.

1.4 Parking. The Premises include LESSEE's use of a portion of the existing surface parking.

ARTICLE II.  
RENT

2.1 Annual Rent. Annual rent of One Dollar (\$1.00) per annum. By its execution hereof, LESSOR acknowledges receipt of the annual rent for the Term from LESSEE.



2.2 Percentage Rent. Subject to and in accordance with the provisions herein, LESSEE shall pay to LESSOR a percentage rent ("Percentage Rent") equal to fifty percent (50%) of LESSEE'S Net Receipts from any for-profit endeavors engaged in by LESSEE.

(a) LESSEE shall pay the Percentage Rent to LESSOR on a calendar annual basis, in arrears, by the 15<sup>th</sup> of the month following the fiscal year end. 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 Net Receipts collected or received by LESSEE by category for the payment period. The form attached as **Exhibit "B"**, or a reasonable facsimile as mutually agreed upon by the parties, is to be used for such written statement of Net Receipts.

As used in this lease, "Net Receipts" means Gross Receipts minus Costs and Expenses.

As used in this Lease, "Gross Receipts" means the total amount received by LESSEE from or relating to the premises from all sources during its annual accounting period, without subtracting any costs or expenses.

As used in this Lease, "Costs and Expenses" means the total cost LESSEE incurs from operating, and running its authorized programs, and maintaining the Premises, including personnel costs for operating its programs, provided that personnel costs are not funded by the state's General Fund.

(b) LESSEE shall keep and maintain accurate accounting records of all revenues and receipts generated at, by, from or upon the Premises, including accounting records of revenues received or collected by LESSEE from any SUBLESSEEs or vendors or any other business(es) which are located in or upon the Premises.

### 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 portion of the Premises or of LESSEE's improvements so 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, (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 portion of the Premises or LESSEE's improvements so 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 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 sixty (60) days prior written notice to LESSEE and just compensation shall be paid to LESSEE for any of LESSEE's improvements taken. Except as provided in Section 7.7 (Condemnation), in no event shall LESSOR withdraw any portion of the Premises that would permanently, materially and adversely impact or affect LESSEE's use and enjoyment of the Premises.

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, or ingress or egress to or from, the Premises and any entry or inspection shall be conducted during reasonable hours after 48 hours 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. DEFAULT

4.1 Breach and Events of Default. Time is of the essence of this Lease, and following the notice and cure provisions described in this Section 5.1 or in Section 5.2 (Remedies Upon Event of Default; Termination of Lease) below, 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 faithfully observe and perform any term, covenant or condition of this lease, or shall abandon the Premises, or shall suffer this lease or any estate or interest hereunder be taken on execution;

(b) If LESSEE shall fail to observe, perform, or comply with the Applicable Laws described in Section 6.6 (Compliance with Laws).

#### 4.2 Remedies Upon Event of Default; Termination of the Lease.

(a) Notice of Default. Upon the occurrence of any Event of Default, LESSOR shall deliver a written notice of the occurrence of such event in accordance with Section 7.2 (Notices) below, 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.

(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, 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; plus, at the sole option of LESSOR, the present worth at the time of termination of this Lease of the excess, if any, of the total rent payable under this Lease for the remainder of the Term, over the then reasonable rental value of the Premises for the same period and all of the foregoing amounts shall be immediately due and payable by LESSEE to LESSOR upon demand; 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 at the Default Rate. 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.

ARTICLE V.  
LESSEE'S COVENANTS

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

5.1 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, including any assessments imposed as part of LESSOR's District-Wide Improvement Program, 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. LESSOR acknowledges that LESSEE may undertake efforts to obtain exemptions from taxes allowed by law, including without limitation exemptions from General Excise Tax and real property taxes pursuant to Hawaii Revised Statutes Chapters 201H, HRS §237-29, Hawaii Administrative Rules Chapter 15-306, and Revised Ordinances of Honolulu Chapter 8, Article 10, and to the extent that such efforts may require LESSOR's reasonable cooperation, as the fee owner of the Premises, LESSOR shall reasonably cooperate with LESSEE in any such application. To the extent that LESSOR shall receive the same, LESSOR agrees to submit to LESSEE all real property tax or assessment valuation notices within ten (10) 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.

5.2 Utility Services. During the Term, LESSEE shall be responsible for obtaining any 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.

5.3 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.

5.4 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.

5.5 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. Except as necessitated by the construction of the Project, LESSEE shall not 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; provided, however, that LESSEE's development of the Project shall be in compliance with all Applicable Laws as defined herein.

5.6 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, as directly related to the project facilities.

5.7 Improvements. Except for the Project and for those improvements 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 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.

5.8 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.

5.9 Liens. Except as otherwise provided in this Lease, 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 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.

5.10 Non-Transferable. Except as otherwise contemplated under this Lease, 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.

5.11 Subletting. LESSEE shall expressly be allowed to rent or sublet the whole or any portion of the Premises consistent with the provisions of Section 1.3 above without the approval or consent of Lessor. LESSEE shall be entitled to all rents, revenues and payments received under any and all subleases throughout the term of the Lease, subject to any net profits to be divided between LESSEE and LESSOR.

5.12 Hazardous Materials. 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.

5.13 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.

5.14 Indemnity.

(a) LESSOR shall be responsible for any 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 any action by LESSOR and the State of Hawaii, and their respective officials, directors, members, employees, and agents, to the extent that LESSOR's liability for such claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death has been determined by a court of competent jurisdiction or otherwise agreed to by the State of Hawaii, and provided that funds have been authorized by the Legislature of the State of Hawaii for such purposes and funds have been allocated by the budget process. This provision shall survive the termination or expiration of this Lease.

(b) LESSEE shall be responsible for any 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 any action by LESSEE and the State of Hawaii, and their respective officials, directors, members, employees, and agents, to the extent that LESSEE's liability for such claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, bodily injury and wrongful death has been determined by a court of competent jurisdiction or otherwise agreed to by the State of Hawaii, and provided that funds have been authorized by the Legislature of the State of Hawaii for such purposes and funds have been allocated by the budget process. This provision shall survive the termination or expiration of this Lease.

5.15 Extension, Termination, and Surrender of the Lease. Prior to the end of the 20-year Use Conformance Period, or expiration or termination of this Lease, LESSEE and LESSOR shall evaluate the ongoing performance of the Project in fostering innovation and economic development. Based on the evaluation, the LESSEE and LESSOR may continue or extend the Lease term for a specified amount of time to continue the Project, by mutual written agreement, if permissible by statutes and administrative rules at the time of such extension. Should the LESSEE and LESSOR determine that the Project is no longer viable or necessary, either at the end of the 20-year Use Conformance Period, or 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.

5.16 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.

## ARTICLE VI. MUTUAL COVENANTS

6.1 Dispute Resolution. Except as otherwise expressly provided in this Lease, all disputes between LESSOR and LESSEE under this Lease shall be subject to the provisions of this Section 6.1.

(a) Notice. The party seeking relief or resolution of any dispute under this Lease shall deliver to the other a written notice of the dispute, which notice shall provide a detailed explanation of the alleged dispute or matter for resolution ("**Dispute Notice**"). Following the delivery and receipt of the Dispute Notice, the parties shall attempt, in good faith, to resolve such dispute.

(b) Submission to DBEDT Director. If, after the fifteenth (15th) calendar day following the delivery of the Dispute Notice, the parties have not been able to resolve the dispute which is the subject of the Dispute Notice, either party may request, in writing, a meeting with the Director of the Department of Business, Economic Development and Tourism ("**DBEDT**"). Within 48 hours following the receipt of said request, the parties shall schedule a meeting with the DBEDT Director, or their designees which meeting shall take place as soon as practicable, but not later than 30 days following the request for such meeting. At such meeting, LESSOR and LESSEE shall present their opinions with respect to the subject matter of the disputes and the cause of the said dispute for resolution to the DBEDT Director and respond to questions. The DBEDT Director, or their designee, shall provide its decision on the matter.

(c) Governor's Decision. Should LESSOR and/or LESSEE disagree with the DBEDT Director's decision, the matter will be submitted to the Governor for resolution. A decision or resolution of any dispute in the manner set forth in this Section 6.1 shall be binding on LESSOR and LESSEE. The decision of the Governor shall constitute a final determination of the matter, and shall not be appealable or otherwise subject to court challenge.

(d) Intent of the Project. The DBEDT Director and/or the Governor shall consider the primary purpose of the project of economic development in rendering their decision.

6.2 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.

6.3 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):

LESSEE:

Hawaii Technology Development Corporation of Hawaii  
2800 Woodlawn Drive, Suite 100  
Honolulu, Hawaii 96822  
Attention: Executive Director  
Telephone: (808) 539-3615

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

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.

6.4 Force Majeure. A failure or delay in performance by either Party shall not be a breach of this Lease and shall not be an Event of Default under this Lease if such failure or delay arises out of or results from an event of Force Majeure. An event of "Force Majeure" shall mean the following events or circumstances:

(a) Strikes, lockouts, labor disputes, failures or delays in transportation, or freight embargoes;

(b) Acts of God, tornadoes, hurricanes, floods, earthquakes, fire or other hazards of the kind typically covered by property damage or business interruption insurance, tsunamis, epidemics, quarantine, pestilence, drought or other water shortages, or abnormal or unusually severe weather;

(c) Acts of a public enemy, acts of war, rebellion, sabotage, terrorism, effects of nuclear radiation, hostilities, civil commotions or disturbances, mob violence or malicious mischief, unavoidable casualties, blockades, insurrections, or riots; and

(d) Acts, rules, regulations, orders, or other directives of any Governmental Authority or agency or the order of any court of competent jurisdiction, including any requirements of law related to historic remains or sites of archaeological significance present or discovered at the Premises.

6.5 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 affiliates, agents, representatives, employees, consultants, or advisors, and except as provided in Section 5.14 (Indemnity) above).

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

6.7 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.

6.8 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.

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

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

6.11 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.

6.12 Recordation. LESSOR and LESSEE shall record a Memorandum of this Lease in the Bureau of Conveyances of the State of Hawaii. At the expiration of the Term, LESSOR and LESSEE shall execute a quitclaim termination of LESSEE's interest in this Lease.

6.13 Relationship of the Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal agent relationship exist between them. Nothing contained in any agreement or contract between the parties hereto shall be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership or joint venture.

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

(a) "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.

(b) "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.

(c) "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 within the Kakaako Makai area identified in Figure 1.9 of the Mauka Area Rules, Hawaii Administrative Rules Chapter 15-217.

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

6.15 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, (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSOR according to the terms of this Lease, and (v) LESSOR owns fee simple good and marketable title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except as listed on Exhibit A.

(b) LESSEE represents and warrants to LESSOR, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSEE is authorized to do so, (ii) LESSEE has full right and

authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSEE, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSEE according to the terms of this Lease.

*[signature pages to follow]*



LESSOR:

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY

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

Name:

Title:

APPROVED AS TO FORM:

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

LESSEE:

HAWAII TECHNOLOGY DEVELOPMENT  
CORPORATION OF HAWAII

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

Name:

Title:

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_ of the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>General Lease No.</u>	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): <u>First</u>	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
) SS.  
)

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, of **HAWAII TECH DEVELOPMENT**

Notary Public, State of Hawaii

(Notary Stamp or Seal)

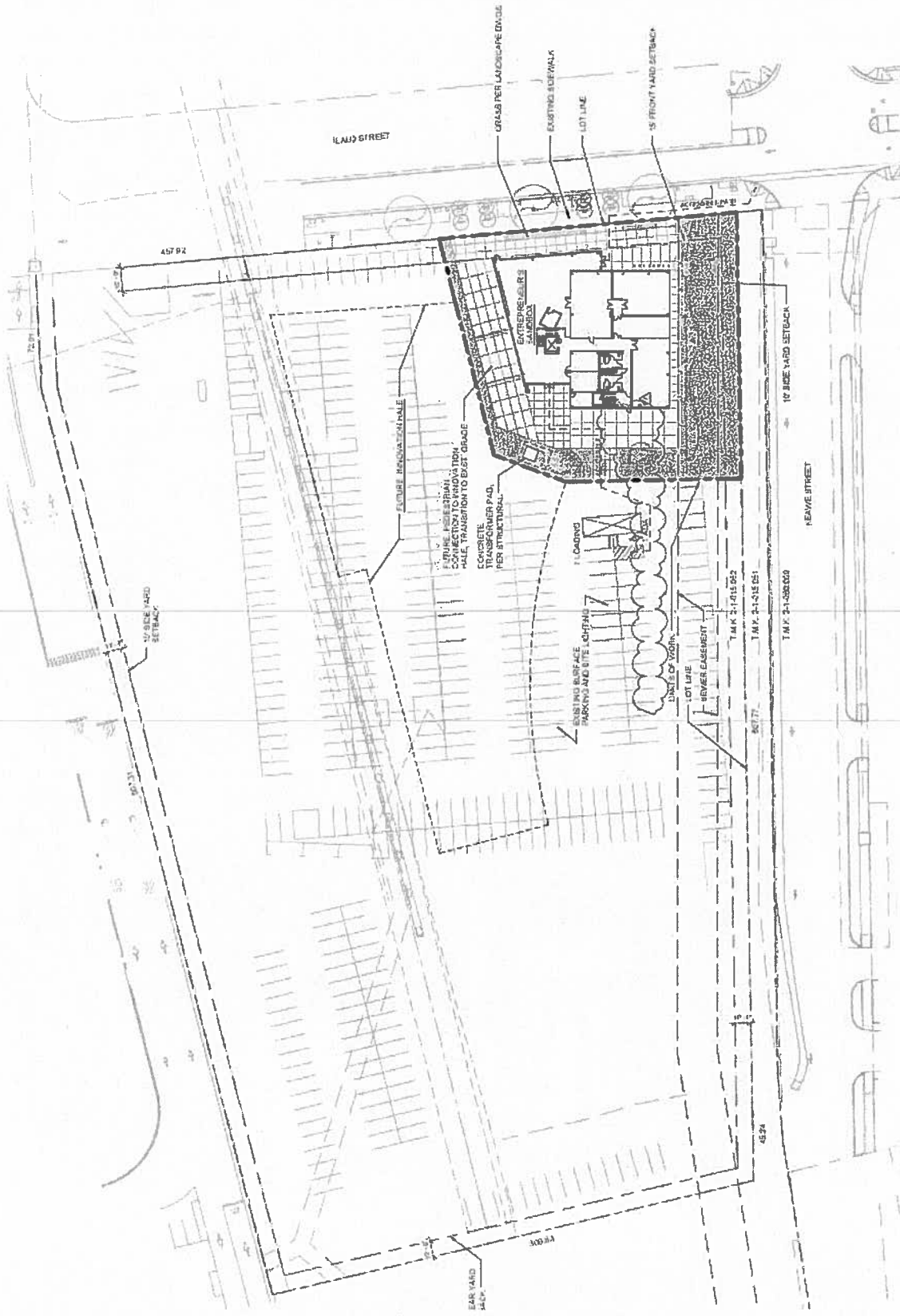
Document Identification or Description: General Lease No.

No. of Pages: \_\_\_\_\_

Signature of Notary

(Notary Stamp or Seal)

General Lease No. 17-04







## Exhibit B

### Entrepreneur's Sandbox Gross Receipt Statement

Annual Gross Receipts Statement for Percentage Rent for		(Year)
(1) Gross Receipts		
(2) Less: Expenses		
(3) Net Receipts Subject to % Rent		
(4) Percentage Rent Rate		50%
(5) TOTAL AMOUNT DUE		

I, the undersigned, am duly authorized by the High Technology Development Corporation, to certify that this Receipt Statement is true and correct.

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Name

---

Title

---

Date