

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

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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:

Land Court ( ) Regular ( ) Double ( )

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
Attention: Carianne Abara, Project Manager

Total pages 38

TYPE OF DOCUMENT: **Ground Lease**  
(Hawaii State Veterans Home)

PARTIES TO DOCUMENT:

Landlord: **Hawaii Housing Finance and Development Corporation**, a public  
body and a body corporate and politic of the State of Hawaii

Tenant: **State of Hawaii Department of Defense**

PROPERTY DESCRIPTION

UNIT 1 OF CONDOMINIUM  
"NORTHWEST CORNER OF VILLAGES  
OF KAPOLEI" AND ASSOCIATED  
COMMON ELEMENTS

DOCUMENT NO.

DOCUMENT NO.  
TRANSFER CERTIFICATE OF  
TITLE NO:

Tax Map Key No. (1) 9-1-016: 035: 0001

**GROUND LEASE**  
**(HAWAII STATE VETERANS HOME)**

THIS LEASE (“Lease”), made this day of September 30, 2021 (“Effective Date”) by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 (“**Landlord**”, as lessor), and **STATE OF HAWAII DEPARTMENT OF DEFENSE**, whose principal place of business and mailing address is 3949 Diamond Head Road, Honolulu, Hawaii 96816 (“**Tenant**”, as lessee).

**RECITALS:**

- A. WHEREAS, Landlord is the Master Developer of the Villages of Kapolei, situated at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii (hereinafter collectively the “**Villages of Kapolei**”). Landlord owns the fee simple title to that certain property identified as the Northwest Corner, located in the Villages of Kapolei and further identified as Tax Map Key No.: (1) 9-1-016: 035, as shown on the map attached hereto as **Exhibit “A”** (“**Northwest Corner**”).
- B. WHEREAS, Landlord and Tenant entered into that certain unrecorded Memorandum of Understanding (“**MOU**”) which provided, among other things, that Landlord would lease an approximately 6- to 7-acre portion of the Northwest Corner to Tenant for the purposes of the proposed Hawaii State Veteran Home, an approximately 120-room facility to serve the nation’s veterans with a wide range of services, as approved by Landlord’s board of directors in the For Action for the Project dated December 13, 2018 which is hereby incorporated by reference, which shall be developed, constructed, owned, and managed by Tenant (the “**Project**”, or “**HSVH**”).
- C. WHEREAS, in accordance with the MOU, Landlord submitted the Northwest Corner to a Condominium Property Regime consisting of three (3) units, with Unit 1 being intended for the Project, by filing that certain Declaration of Condominium Property Regime dated February 1, 2021 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-11365412 (the “**Declaration**”), together with the Bylaws of the CPR dated February 1, 2021 and recorded as Document No. T-11365413 (the “**Bylaws**”) and Condominium Map No. 2493 (the “**Condominium Map**”), all said documents as may be amended or restated from time to time, thereby creating a condominium property regime known as “Northwest Corner of Villages of Kapolei” (the “**CPR**”), all in accordance with Chapter 514B, Hawaii Revised Statutes. Said Declaration, Bylaws, and Condominium Map, together with any duly adopted Community Rules in effect (or differently named document(s) with the same effect as Community Rules), are referred to collectively as the “**Condominium Documents**”, all as may be amended or restated from time to time.
- D. WHEREAS, Unit 1 of the CPR and its appurtenant limited common element(s), being approximately 7.051 acres, together with an undivided percentage interest in the common

elements, as identified in the Condominium Documents, are collectively referred to herein as the “**Premises**”. The Premises is more particularly described in **Exhibit “B”** attached hereto and is shown on the map attached hereto as **Exhibit “C”**.

- E. WHEREAS, in accordance with the MOU, Landlord and Tenant desire to enter into this Lease for the Premises so that Tenant might develop, construct, manage, and operate the Project, specifically for the Permitted Use (as hereinafter defined).
- F. WHEREAS, Landlord and Tenant acknowledge and understand that some of Tenant’s duties and responsibilities will be performed by the facility operator/contractor. However, Tenant will ensure all the requirements are followed in accordance with the lease.

**NOW, THEREFORE**, in consideration of the rent to be paid and of the terms, covenants, and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant (the “**Parties**”) hereby agree as follows:

## **ARTICLE I – BASIC TERMS**

### **1.1 Demise; Habendum.**

Landlord leases unto the Tenant, and the Tenant does lease from the Landlord, the Premises.

TO HAVE AND TO HOLD the leased Premises, together with all improvements, tenements, rights, easements, privileges, and appurtenances thereon or thereunto belonging or appertaining, or held and enjoyed therewith, unto Tenant for the term hereinafter set forth in this Lease.

RESERVING UNTO LANDLORD, ITS SUCCESSORS, AND ITS ASSIGNS, THE FOLLOWING:

- a. Minerals and Waters.
  - i. All Minerals, as hereinafter defined, in, on, or under the Premises and the right, on its own behalf or through persons 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. “**Minerals**,” as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite 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 the land, fast or submerged; provided, that “**Minerals**” shall not include sand, gravel, rock,

or other material suitable for use and used in general construction in furtherance of the Tenant's permitted activities on the Premises and not for sale to others.

- ii. All surface and ground waters 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 required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Landlord of the rights reserved in this paragraph, just compensation shall be paid to the Tenant for any of Tenant's improvements taken.
- b. All prehistoric and historic remains found on the Premises.
- c. The right, for Landlord and its successors and assigns, to subdivide, consolidate, and re-subdivide the Premises and to designate easements on the Premises and thereupon to grant such easements to any public utility, governmental authority, or adjoining or nearby owner(s) of land and to record any documents against the Premises, as amended, with respect to such grant(s).
- d. Cancellation of the Condominium Documents and execution of a new ground lease substantially in the form of this Lease after subdivision of the Premises from the balance of the Northwest Corner. It is the intention of the parties that Landlord, or its assigns, will subdivide the Premises from the balance of the Northwest Corner and the CPR shall be cancelled at that time. A new ground lease of the subdivided Premises will be executed by the Landlord and Tenant substantially in the form of this Lease without reference to the CPR. All of the improvements of the Project, including any onsite detention basin, shall be within the Premises so the Premises can be subdivided from the balance of the Northwest Corner.
- e. Adjustments to the access to the Premises at Kealanani Avenue.
- f. Subject further to all other reservations listed in **Exhibit "B"**.

All parties hereby agree to execute documents necessary to effectuate the purposes of the aforementioned Landlord reservations.

## **1.2 Condominium.**

- a. The Premises is a portion of the CPR hereinabove described and shall, during the whole term hereof, remain so unless terminated in accordance with the law and with the prior written consent of Landlord. The Premises is and shall remain, until any such termination, subject to all of the terms, covenants, and conditions in the Condominium Documents. Tenant hereby covenants and agrees with Landlord to observe and perform or cause to be performed all of the provisions of

the Condominium Documents with respect to the Premises (including but not limited to the interest in common elements hereinabove described as a part of the Premises) or with respect to the “Owner” of the demised Unit 1, as defined in the Declaration, including but not limited to insurance requirements. Tenant represents that it has received copies of the Condominium Documents.

- b. It is mutually understood and agreed that the interests conveyed hereunder are not separately transferrable by Tenant. Thus, under no circumstances may Unit 1 of the CPR, the undivided interest in the common elements appurtenant thereto, and the interest in the limited common elements appurtenant thereto, be separated by Tenant, and said Unit 1, undivided interest in the common elements, and interest in the limited common elements may only be transferred or encumbered by Tenant together. Tenant shall not cause the Premises or any of its interests therein to be subdivided, partitioned, or consolidated.

### **1.3 Term.**

The term of this Lease (“Term”) shall be for a period of **Ninety-nine (99) years**, commencing on **October 1, 2021** (the “Commencement Date”) through **September 30, 2120** (the “Expiration Date”), unless sooner terminated as provided herein. Each consecutive twelve (12) month period elapsing after the Commencement Date shall constitute a “Lease Year”.

### **1.4 Surrender.**

Tenant shall, at the end of the term or other sooner termination of this Lease or any extension thereof, peaceably and quietly leave, surrender, and deliver possession of the Premises unto Landlord, together with all improvements existing or constructed thereon (unless otherwise removed by Tenant at its cost and expense), or the Tenant shall remove such improvements, at the option of Landlord, in either case, at no cost or expense to Landlord. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should the Tenant fail to remove any and all of Tenant’s personal property from the Premises, after notice thereof, the Landlord 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 the Tenant, and the Tenant does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the expiration or earlier termination of this Lease, notwithstanding any other provision to the contrary.

### **1.5 Use of Premises.**

- a. Permitted Use (Character of Use). The Tenant shall use or cause the Premises to be used for purposes of **developing, constructing, operating, and maintaining the Project, a government non-residential veterans home, sometimes known as Daniel K. Akaka State Veterans Home (aka the Hawaii State Veterans Home), an approximately 120-room facility to serve the nation’s veterans with a wide range of services, as approved by Landlord’s board of directors**

**in the For Action for the Project dated December 13, 2018 (the “Permitted Use”), and for no other purpose whatsoever.**

- b. Unauthorized Use. Tenant shall not do or suffer or permit to be done or suffered anything to or on the Premises, any Limited Common Element, or any Common Element that is prohibited by this Lease, by the Condominium Documents, or by any applicable County, State, or Federal law, ordinance, rule, or regulation.
- c. 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, including gender identity or expression, sexual orientation, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or HIV (human immunodeficiency virus) infection.
- d. Compliance with Laws. Tenant shall ensure that the development, construction, use, and occupancy of the Premises complies with all applicable County, State, and Federal laws, ordinances, rules, and regulations. Tenant shall at all times observe and comply with all laws, ordinances, rules, and regulations now in force or hereafter made by any governmental authority and applicable to the Premises, the use or occupancy thereof, the conduct of any business thereon, the construction of any improvements thereon, or the use of any common areas.
- e. Sanitation; Waste. Tenant shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall not commit, suffer, or permit to be committed any waste, nuisance, strip, or unlawful or improper use of the Premises or any part thereof.
- f. Complaints. Notwithstanding anything to the contrary in the Condominium Documents, Tenant shall be responsible for responding to any complaints against the Premises, or relating to or involving Tenant’s use of the Premises, and for resolving any issues arising from the complaints.
- g. Hazardous Materials. Tenant shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Tenant shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials not allowed by applicable law, except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such materials and upon Landlord's consent which may be withheld at Landlord's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Tenant, then Tenant shall be responsible for the reasonable costs thereof. In addition, Tenant shall execute affidavits, representations, and the like from time to time at Landlord's request concerning Tenant's best knowledge and

belief regarding the presence of hazardous materials on the Premises placed or released by Tenant.

For the purpose of this Lease "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

If Tenant discovers any hazardous materials on the Premises (other than contamination not directly caused, created, or contributed to by Tenant), the presence of which violates any applicable laws, Tenant shall inform Landlord and shall immediately undertake, at Tenant's expense, to remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance, and use of the Premises.

**1.6 Acceptance of Premises (Non-warranty).**

Tenant hereby accepts the Premises and improvements, if any, in "as is" condition "with all faults," without warranties by Landlord of any kind, express or implied, or representations as to the condition of the same, and assumes all risks of conditions known or unknown.

**1.7 Quiet Enjoyment.**

Landlord covenants and agrees with Tenant that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of Tenant to be observed and performed, Tenant shall and may have, hold, possess, and enjoy the Premises for the term of the Lease, without hindrance or interruption by Landlord or any other person or persons lawfully claiming by, through, or under it, except as may be expressly provided in this Lease.

**1.8 Assignments of Lease, etc.**

Tenant shall not assign this Lease, or any interest therein, without the prior written approval or consent of Landlord which may be withheld in Landlord's absolute discretion.

**1.9 Subletting.**

Tenant shall not be allowed to sublet the whole or any portion of the Premises without the prior written approval of Landlord which may be withheld in Landlord's absolute discretion.

**1.10 Additional Project-Specific Terms.**

- a. Compliance with Rezoning Ordinance and Unilateral Agreement. In developing, constructing, operating, and maintaining the Project, and in its use of the Premises in general, Tenant shall implement the policies, principles, and guidelines of the Rezoning Ordinance 01-07 approved by the City Council of the City and County of Honolulu on March 29, 2001 and that certain Unilateral Agreement And Declaration For Conditional Zoning dated March 6, 2001 by the Housing and Community Development Corporation of Hawaii and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as document number 2689090, including, but not limited to, the reservation of the rights by Landlord to assess the Project and/or the Tenant their share of future traffic improvements when the remainder of the Northwest Corner is developed. Tenant acknowledges that it has received copies of said Rezoning Ordinance and Unilateral Agreement.
- b. Road Connections. Tenant shall coordinate all road connection efforts with the City and County of Honolulu and ensure that it will not impede Landlord's road dedication efforts. Tenant agrees to reconfigure lot boundaries and/or driveway circulation if Landlord requires reconfiguring of the main entry driveway.
- c. Sewer Connection. The Project shall have a maximum sewer demand of **eighty-four (84) Equivalent Single-Family Dwelling Units (EDSU)**.
- d. Villages of Kapolei Association.
  - i. Tenant shall fully cooperate with Landlord's efforts, if any, to annex the Premises and/or the CPR to the Villages of Kapolei Association, as contemplated in the Condominium Documents and as permitted by those certain Amendment and Fourth Restated Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei, recorded with the Office of the Assistant Registrar of the Land Court of the State of Hawaii on July 26, 2016 as document number T-9703149 (the "**VOKA DCC&Rs**"), as may be further amended or restated from time to time). Tenant hereby acknowledges that it has received a copy of the VOKA DCC&Rs. Tenant shall, as necessary, prepare and execute such documents as may be necessary to effect such annexation, including but not limited to an Annexing Declaration as contemplated in the VOKA DCC&Rs, subject to Landlord's prior written approval and consent.
  - ii. Tenant shall, in good faith, negotiate with the Villages of Kapolei Association regarding the treatment of the Project. Such negotiations may include:
    1. Terms for annexation, including but not limited to (a) the classification of the Premises as a residential lot or a commercial



lot and whether it is in a private area or a commercial area, or the determination that the lot is exempt as a lot being used by a governmental agency for a nonresidential public, governmental, or public utility purpose, as provided for in the VOKA DCC&Rs, or any other classification(s) provided for in the VOKA DCC&Rs, (b) the classification of the Project as an apartment building or not, and (c) the rates for assessments, if any, with the Villages of Kapolei Association for the Premises prior to any such annexation. If the Premises shall be so annexed to the Villages of Kapolei Association, then Tenant shall be responsible for compliance with all terms of any documents binding the Premises, or Tenant in relation to the Premises, or Landlord in relation to the Premises, including but not limited to the VOKA DCC&Rs and any applicable Annexing Declaration or similar document(s), which are related to its status as a member of the Villages of Kapolei Association, including but not limited to payment of any assessments made under the VOKA DCC&Rs, if any.

Tenant shall complete such negotiations within **five (5) years** of the Effective Date of this Lease (**the “VOKA Negotiation Period”**), or if Tenant shall fail to do so within said time period, then Tenant shall commence mediation with the Villages of Kapolei Association to resolve such negotiation, except that Tenant may for good cause request an extension of time of **one (1) additional year** to negotiate such terms if Tenant is using its best efforts to conduct such negotiations in good faith, which consent Landlord shall not unreasonably withhold.

- e. Consolidation and Subdivision; CPR Removal. Tenant shall fully cooperate with Landlord’s efforts to subdivide, consolidate, and/or re-subdivide lots owned by Landlord in the Villages of Kapolei, including but not limited to the Premises, and with Landlord’s efforts, if any, to remove the CPR in connection with such consolidation and re-subdivision. Tenant shall execute such documents as may be necessary or convenient for Landlord’s efforts regarding subdivision, consolidation, re-subdivision, and/or CPR removal.
- f. Landscaped Areas. In addition to the Premises, Tenant shall maintain, repair, and care for the following landscaped areas, as also shown on the map attached hereto as **Exhibit “D”**, unless another party affirmatively assumes responsibility for maintenance of said landscaped areas with Landlord’s approval which Landlord shall not unreasonably withhold:
  - i. The area fronting the Premises along Kealanani Avenue, from the edge of the Premises to the street curb and gutter, which extends the full length of the Premises along Kealanani Avenue; and

- ii. A 20-foot-wide strip along the south-eastern edge of the Premises, extending the full length of the Premises along said south-eastern edge, being the same area identified as the “**Wall Maintenance Area**” common element of the CPR in Exhibit D to the Declaration. Tenant shall be responsible for maintenance of the Premises-facing side of the wall identified in Exhibit D of the Declaration as the “**Neighborhood Wall**” along said Wall Maintenance Area, regardless of the actual placement of the Neighborhood Wall or whether it aligns with the expected placement.
- g. Irrigation. Landlord shall permit Tenant to connect the Project’s irrigation system to Landlord’s non-potable water system. Tenant shall be responsible for payment of all fees and charges relating to its connection and water use.

**1.11 Tenant’s Right to Terminate.**

In the event that Tenant and the Villages of Kapolei Association are unable to mutually agree on the items specified for negotiation in Section 1.10(d) above by the end of the VOKA Negotiation Period, then Tenant may terminate this Lease. In the event that Tenant so elects to terminate this Lease, then, at Landlord’s sole option, the improvements shall either become the property of Landlord or shall be removed by Tenant at its sole cost and expense pursuant to Section 1.4 herein.

**ARTICLE II – RENT AND CERTAIN OTHER CHARGES**

**2.1 Base Rent.**

In consideration of this Lease, Tenant shall pay or cause to be paid to Landlord, net over and above all real property taxes, assessments, and other charges hereunder payable by Tenant, a base rent of One Dollar and no/100 (\$1.00) per year (the “**Base Rent**”), due and payable in full in advance upon execution of this Lease.

**2.2 Percentage Rent.**

- a. During the Term of this Lease, in addition to the Base Rent and any other amounts due, Tenant shall pay or cause to be paid to Landlord, commencing with the **fifth (5<sup>th</sup>) Lease Year**, in the manner specified herein, **fifty percent (50%)** of its Net Cash Flow (as hereinafter defined) (such share of Net Cash Flow herein called the “**Percentage Rent**”). The Percentage Rent shall be paid annually for Tenant’s Fiscal Year (each “**Fiscal Year**” running from July 1<sup>st</sup> to June 30<sup>th</sup> of the following year) which ended during such Lease Year for which Percentage Rent is due. For example, the Percentage Rent due and payable for Lease Year 5 shall be calculated based on Tenant’s Fiscal Year which ends during Lease Year 5. Within sixty (60) days after the end of each Fiscal Year, Tenant shall furnish to Landlord the Tenant’s Annual Report (as hereinafter defined), certified by Tenant to be correct, showing the total Net Cash Flow and the Percentage Rent due and payable, and shall accompany each such report with a payment to Landlord equal to the Percentage Rent due and payable for such Lease Year, subject to a maximum cap (the “**Percentage Rent Cap**”) as specified in the table below:

Lease Year:	Percentage Rent Cap (Maximum amount of Percentage Rent due for a Lease Year):
1 – 4	\$ 0
5 – 10	\$ 296,000
11 – 20	\$ 310,000
21 – 30	\$ 476,000
31 – 40	Escalation as specified below
41 – 50	Escalation as specified below
51 – 60	Escalation as specified below
61 – 70	Escalation as specified below
71 – 80	Escalation as specified below
81 – 90	Escalation as specified below
91 – 99	Escalation as specified below

The following provides an example of how the foregoing is intended to work (this is an example only):

- (1) Lease Year 5 ends on September 30, 2026.
- (2) Tenant's Fiscal Year ends on June 30, 2026.
- (3) Tenant submits Tenant's Annual Report and the Percentage Rent by August 31, 2026. This payment is attributable to Lease Year 5.
- (4) If such Tenant's Annual Report shows that the Percentage Rent due would be in excess of the Percentage Rent Cap listed in the table above for Lease Year 5, then only the amount of the Percentage Rent Cap is due.

The Percentage Rent Cap may be amended by mutual written agreement of the Landlord and Tenant at any time during the Term of this Lease.

Landlord shall have the right to demand from Tenant financial statements to verify the Net Cash Flow reported by Tenant.

Escalation. The Percentage Rent Cap shall escalate on the fifth (5<sup>th</sup>), eleventh (11<sup>th</sup>), and twenty-first (21<sup>st</sup>) Lease Years to the amounts listed in the table above. The Percentage Rent Cap shall escalate on the thirty-first (31<sup>st</sup>), forty-first (41<sup>st</sup>), fifty-first (51<sup>st</sup>), sixty-first (61<sup>st</sup>), seventy-first (71<sup>st</sup>), eighty-first (81<sup>st</sup>), and ninety-first (91<sup>st</sup>) Lease Years by a percentage equal to the sum of the preceding ten (10) years of the increase in the consumer price index series title: all items in U.S. city average, all urban consumers, not seasonally adjusted, for the month of April published by the U.S. Department of Labor, Bureau of Labor Statistics.

Landlord will notify Tenant in writing of the updated Percentage Rent Cap no later than the first day of any Lease Year in which the Percentage Rent Cap escalates.

- b. Definitions. For the purposes of this Section, the following terms shall have the meanings set forth below:
- i. **“Net Cash Flow”** means Operating Revenue less Operating Expenses (each as hereinafter defined), provided, however, that for the purposes of this Lease, Net Cash Flow shall not be less than zero.
  - ii. **“Operating Revenue”** means all gross operating revenue actually received by, for, or on behalf of Tenant with respect to the Premises, regardless of who such gross operating revenue is actually received by, including but not limited to income from goods and services; subtenant lease rents; licensing fees; parking revenues; vending machine revenues; subsidies; grants; Medicare; Medicaid; Veterans Administration, and other government-paid per diems; and other revenues received by, for, or on behalf of Tenant, determined on a cash basis of accounting consistently applied.
  - iii. **“Operating Expenses”** means all operating costs and operating expenses attributable to the operation, maintenance, repair, management, and leasing of the Premises, determined on the same cash basis of accounting as Operating Revenue. Operating Expenses shall not include any expenses or costs of a capital nature under generally accepted accounting principles.
- c. Tenant’s Records. For the purpose of ascertaining the amount due and payable as Percentage Rent, Tenant agrees to prepare and keep within the State of Hawaii in a place accessible to Landlord for a period of not less than two (2) years following the end of each Fiscal Year to which they pertain, full, complete, proper, and adequate records which shall show the Operating Revenue and Operating Expenses derived from or associated with the Premises. The records shall include, without limitation, copies of rent rolls, leases, invoices, receipts, statements, and other such evidences of Operating Revenue and Operating Expenses derived from or associated with the Premises. Tenant further agrees to keep within the State of Hawaii in a place accessible to Landlord for at least two (2) years following the end of each Fiscal Year to which they pertain, the gross income, sales, and occupation tax returns, as well as all other applicable tax returns, with respect to said Fiscal Years. Landlord and Landlord’s authorized representatives shall have the right to examine Tenant’s aforesaid records at any and all times during regular business hours, as well as the records of any third party (or parties) operating the Project for or on behalf of Tenant.
- d. Bookkeeping and Accounting. Tenant shall establish and implement budget monitoring systems, and business office bookkeeping, and accounting procedures necessary for the preparation of proper financial records pertaining to the Project and the Premises. Tenant shall prepare or assist in the preparation of financial statements, audits, and tax returns relating to the Project and the Premises. Such

financial records shall pertain to the Project and the Premises and shall not be comingled with other projects or properties of Tenant or any third party. **Tenant must keep separate books for the Project, with no comingling, and Tenant's books shall be open to Landlord's inspection and subject to Landlord's audit as provided for herein. If Tenant utilizes a third-party operator which is a private entity, then such private entity must keep separate books for the Project, with no comingling, and such entity's books shall likewise be open to Landlord's inspection and subject to Landlord's audit as provided for herein. If Tenant utilizes a third-party operator which is a State entity, then such State entity must keep separate books for the Project, with no comingling, which shall likewise be open to Landlord's inspection and subject to Landlord's audit as provided for herein. Tenant hereby agrees that if it utilizes a third party to operate the Project, then Tenant shall cause its agreement(s) with its operator(s) to require such operator(s) to comply with the terms of this Section.**

- e. Tenant's Deliverables. Tenant shall submit to Landlord on or before the **sixtieth (60<sup>th</sup>) day** following the end of each Fiscal Year, at the place then fixed for the payment of rent, a written statement signed and certified by one or more authorized representatives of Tenant to be true and correct, showing in reasonably accurate detail and satisfactory scope to Landlord, the amount of Operating Revenue and Operating Expenses during the preceding Fiscal Year ("**Tenant's Annual Report**"). Tenant shall also submit, at the same time as Tenant's Annual Report, a copy of Tenant's annual "General Excise and Use Tax Return" or such form as may otherwise be designated for similar purposes which Tenant is required to file with the Hawaii Department of Taxation. Tenant consents to allow Landlord to verify the authenticity of such copy with the Department of Taxation. Tenant's Annual Report, and other statements referred to herein or provided hereunder, shall be in such form and style and contain such details and breakdown as Landlord may reasonably determine.
- f. Landlord's Right to Examine Books. The acceptance by Landlord of payments of Percentage Rent by Tenant shall be without prejudice to and shall not be a waiver of Landlord's right to examine Tenant's books and records of its Operating Revenue and Operating Expenses at the Premises in order to verify the amount of Percentage Rent owed by Tenant.
- g. Tenant's Audits. Tenant shall submit to Landlord copies of any audit performed upon Tenant's books and records pertaining to the business of Tenant conducted in, upon, or from the Premises for any Fiscal Year within ten (10) business days following the date that such audit is completed.
- h. Landlord's Right to Audit. At its option, Landlord may cause, at its sole cost and expense (except as otherwise provided below), at any reasonable time upon forty-eight (48) hours' prior written notice to Tenant, a complete audit to be made of Tenant's records relating to Operating Revenue and Operating Expenses for the

Premises for the period covered by any Tenant's Annual Report or any other statement issued by Tenant as set forth above. If such audit shall disclose a liability for Percentage Rent to the extent of three percent (3%) or more in excess of the Percentage Rent paid by or on behalf of Tenant for such period, then Tenant shall promptly pay or cause to be paid to Landlord the cost of said audit in addition to the deficiency, which deficiency shall be payable in any event.

**2.3 Payment of Rent.**

Tenant shall pay or cause to be paid the Base Rent, Percentage Rent, and any additional sums due under this Lease, to Landlord at the times provided in this Lease, without notice or demand, in legal tender of the United States of America at Landlord's business address listed above or at any other place that Landlord may from time to time designate.

**2.4 Additional Rental Obligations.**

Tenant shall also pay or cause to be paid to Landlord, as additional rent, within **forty-five (45) days** after the date of mailing or personal delivery of statements therefor, all costs and expenses paid or incurred by Landlord and required to be paid by Tenant under this Lease.

**2.5 Taxes, Assessments, Etc.**

**General.** Tenant shall pay or cause to be paid, before the same becomes delinquent, the amount of all taxes, rates, fees, fines, and assessments of every description, if any, as to which the Premises or any part, or any improvements, or Landlord in respect thereof, or Tenant, are now or may be assessed or become liable during the term of this Lease, whether assessed to or payable by Landlord or Tenant, except that such payments shall be prorated between Landlord and Tenant as of the dates of commencement and expiration respectively of said Term. This includes but is not limited to: (i) Tenant's share (as specified in the Condominium Documents) of real property taxes; and (ii) any conveyance tax which may be payable as a result of this Lease. Provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Tenant shall be required to pay only those installments, together with interest, which becomes due and payable during the term.

**2.6 Utility Services and Charges.**

Tenant shall pay or cause to be paid when due all charges, duties, and rates of every description, including but not limited to water, sewer, gas, electricity, refuse collection, telephone, and any other utilities or services charges, as to which the Premises or any part, or any improvements, or the Landlord or Tenant may become liable for during the term, whether assessed to or payable by the Landlord or Tenant. Tenant shall be solely responsible for obtaining any and all utilities and services for the Premises, and in no event shall Landlord be responsible for interruption or failure in the supply of any utilities or services to the Premises.

**2.7 Charges Due in Relation to CPR.**

Tenant shall be solely responsible for, and shall pay or cause to be paid to the appropriate entities before the same become delinquent, all charges, duties, rates, and other outgoings

of every description which are due on behalf of or assessed against the Premises, or against Landlord or Tenant in respect thereof, under the Condominium Documents. Such charges include but are not limited to Tenant's share of Common Expenses (as defined in the Condominium Documents), if any.

### **ARTICLE III – PHYSICAL MATTERS**

#### **3.1 Improvements.**

Except as otherwise provided in this Lease, Tenant shall not at any time during the Term construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind or description (collectively "improvements") except with the prior written approval of Landlord and upon those conditions Landlord may reasonably impose with exception that Tenant is not required to obtain Landlord's prior approval to effect (i) emergency repairs, (ii) interior alterations or minor repairs that are non-structural and do not significantly alter the external appearance or view of any improvements, (iii) other routine maintenance work that does not otherwise involve major repairs, or (iv) tenant improvement repair(s) in any retail commercial space.

Notwithstanding any provision herein or elsewhere to the contrary, Tenant shall own in fee simple all improvements which are now or hereafter situated on the Premises until the expiration or earlier termination of the Lease, at which time ownership of such improvements shall, at the option of Landlord, become the property of Landlord or shall be removed by Tenant at its sole cost and expense, pursuant to Section 1.4 herein.

Tenant, for itself and its successors and assigns, covenants that, except as provided for in this Lease, the buildings, structures, and real property improvements shall not be separated from the Premises and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Landlord's approval or consent if required as provided herein even though not expressly mentioned or described in the conveyance or other instrument.

#### **3.2 Bond.**

Tenant shall not commence construction of any improvement to the Premises or improvements at a cost of more than \$100,000.00 without first obtaining and depositing with Landlord performance and labor and material payment bonds naming Landlord and the State of Hawaii as additional obliges with a responsible surety authorized to do business in the State of Hawaii, which bonds shall guarantee completion of such construction in accordance with the contract therefore free and clear of all mechanics' and materialmen's liens and shall be in a penal sum not less than 100% of the cost of such construction.

#### **3.3 Repairs to Improvements and Premises.**

Tenant shall, at its own expense, keep, repair, and maintain the Premises (including all limited common elements) and all buildings and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Tenant shall also, at its own expense, make any and all repairs

and perform all work required to keep the Premises, buildings, and improvements on the Premises in compliance with all County, State, and Federal laws and regulations.

**3.4 Landlord's Right of Access.**

Landlord, the State of Hawaii, and their agents and representatives shall have the right to access, enter, and cross any portion of the Premises at all reasonable times for all proper purposes.

**ARTICLE IV – INSURANCE, LIABILITY, LIENS, ETC.**

**4.1 Tenant's Insurance.**

- a. Tenant is a State agency and is self-insured under the State's self-insurance program. Tenant shall provide a letter evidencing its self-insurance covering the use of the Premises allowed under this Lease.
- b. Tenant shall cause its contractors, at its cost and expense, to procure and maintain insurance acceptable to Landlord in full force and effect throughout the Term of this Lease as set forth in **Exhibit "E"**, which is attached hereto and incorporated by reference.
- c. Common Insurance. In addition to the other insurance required herein, Tenant shall pay its proportionate share of the cost to procure and maintain, at all times during the term of this Lease, fire and extended coverage insurance insuring all of the common elements of the Property, to the extent such is required by the Condominium Documents, in the joint names of Landlord and Tenant, with the standard mortgagee clause for any Leasehold Mortgagees, as their interests may appear, in an amount equal to the replacement cost of the common elements. Tenant, at its cost and expense, may elect to have the managing agent of the CPR (as provided for in the Condominium Documents), if any, procure and maintain such fire and extended coverage insurance insuring the Premises as required above.

**4.2 Liens.**

Except for the liens expressly permitted by this Lease and except for leases and/or rental agreements with residential Tenants for the residential spaces in the Project described in this Lease, Tenant shall at all times keep the Premises, and the estate of Tenant therein, free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances of any kind.

**4.3 Mortgage.**

Tenant shall not mortgage, hypothecate, or pledge the Premises, any portion, or any interest in this Lease without the prior written approval of Landlord and any mortgage, hypothecation, or pledge without Landlord's approval shall be null and void.

**4.4 Risk of Loss of Tenant's Personal Property.**



All personal property of any kind or description whatsoever on the Premises shall be at Tenant's sole risk and Landlord shall not be liable to Tenant or to anyone claiming under or through Tenant for any loss or damage to Tenant's personal property or damage or loss suffered by Tenant's business or operation arising from any act or neglect of anyone, or from any other reason whatsoever.

## **ARTICLE V – ADVERSARIAL AND UNFORESEEN EVENTS, ETC.**

### **5.1 Notice of Damage.**

Notice of any damage to or destruction of the Premises or any part thereof or any improvements thereupon shall be promptly given by Tenant to Landlord within **three (3) business days** of discovery, excepting normal wear and tear.

### **5.2 Tenant Default.**

The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

- a. Any failure by Tenant to make any payment required of it hereunder when due.
- b. The abandonment or vacation of the Premises by Tenant.
- c. A failure by Tenant to observe and perform any provision of this Lease, where failure continues for more than **thirty (30) days** after written notice by Landlord to Tenant. If the nature of the default, in landlord's reasonable discretion, is such that the default cannot reasonably be cured within the **thirty (30) day** period, Tenant shall not be deemed to be in default if within the **thirty (30) day** period Tenant shall commence to cure and thereafter diligently execute the same to completion within **ninety (90) days**.
- d. Either (i) the appointment of the receiver (except a receiver appointed at the insistence or request of Landlord) to take possession of all or substantially all of the assets of Tenant, or (ii) a general assignment by Tenant for the benefit of creditors, or (iii) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant.
- e. Any **two (2)** failures by Tenant to observe and perform any provision of this Lease during any **twelve (12) month** period of the Term may constitute a separate default, at Landlord's sole option.

In the event of any breach or default by Tenant which is not cured within the periods of time herein prescribed, then in addition to any other remedies available to Landlord herein or at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of such intention to terminate.

In the event that Landlord shall elect to so terminate this Lease, then Landlord shall retain all rent paid in advance to be applied to any damages, and Landlord may recover from Tenant any unpaid rent which has been earned at the time of such termination, plus any other unpaid amounts due to Landlord under this Lease, plus any other amount, including interest on all unpaid amounts at the maximum rate then allowable by law, necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom.

**5.3** **Hold Over**

**Hold Over.** If Tenant remains in possession of the Premises or any portion thereof after the expiration of the Term with Landlord's written consent, Landlord may, at its sole option, deem such holdover as a tenancy from month-to-month on the same terms, covenants, conditions, and provisions contained herein, except as to duration, which are not inconsistent with a month-to-month tenancy, and either party shall have the right to terminate such month-to-month tenancy with at least **thirty (30) days** prior written notice to the other party.

**ARTICLE VI – GENERAL / MISCELLANEOUS**

**6.1** **Amendments.**

This Lease shall not be amended except by a written amendment agreed to and executed by both Landlord and Tenant which refers to this Lease specifically.

**6.2** **Archaeological Sites.**

In the event any sites or remains such as shell, bone, or charcoal deposits, human burials, rocks or coral alignments, pavings, or walls are found on the Premises, Tenant and Tenant's agents, employees, and representatives, and the like, shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, HRS.

**6.3** **Authority.**

The Parties represent that the undersigned individuals possess the legal authority to enter into this Lease and that the signatures shall be sufficient to bind the Parties to the terms of this Lease.

**6.4** **Counterparts.**

This Lease may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

**6.5** **Entire Agreement.**

This Lease contains all of the terms, covenants, conditions, stipulations, agreements, and provisions agreed upon between the Parties in relation to the matters contemplated herein and supersedes and cancels each and every other agreement, promise, or negotiation between the Parties relating to such. For the avoidance of ambiguity, this section shall not be construed as to supersede or cancel the MOU, which is intended to remain in

effect until termination or expiry under its own terms. No employee, agent, or representative of Landlord or Tenant has authority to change, modify, or alter the terms hereof except by mutual agreement in writing executed by the duly authorized persons, agents, or officers of the Parties hereto and neither party is nor shall be bound by any inducement, statement, representation, promise or agreement not in conformity with this section.

**6.6 Exhibits – Incorporation Into Lease.**

All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

**6.7 Governing Law.**

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

**6.8 Inurement; Successors; Joint and Several Obligations.**

The provisions and covenants of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and permitted assigns, as the context of this Lease may require. The covenants, conditions, and agreements of Tenant shall be the joint and several obligations of Tenant and Tenant's guarantors, and shall be binding upon them and their respective successors and assigns.

**6.9 No Merger of Fee.**

The fee estate of Landlord and the leasehold estate of Tenant shall at all times remain distinct separate estates and shall not merge, notwithstanding any acquisition by any means of both such estates by Landlord, Tenant, any post-foreclosure lessee, any leasehold mortgagee, or a third party.

**6.10 Non-Waiver.**

The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant, or condition herein contained. The acceptance of rent by Landlord shall not be deemed to be a waiver of any of the terms or conditions including the remedies of Landlord herein. No covenant herein shall be deemed to be waived by Landlord unless such waiver be in writing by Landlord.

**6.11 No Partnership Intended.**

Landlord and Tenant hereby agree that Landlord in no event and for no purpose is a partner of Tenant in the conduct of any of its businesses or other affairs or a joint venturer or a member of a joint enterprise with Tenant as a result of this Lease or Tenant's occupancy or use of the Premises. The foregoing, however, shall not limit Landlord and Tenant from entering into any partnership, joint venture, or other agreement outside of this Lease.

**6.12 Partial Invalidity.**

If any term, provision, covenant, or condition of this Lease should be held by a court of competent jurisdiction 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.

*[--The remainder of this page is intentionally left blank; the signature page follows--]*

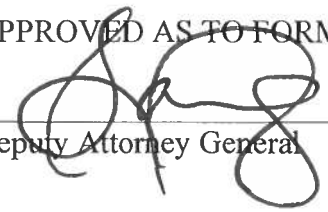
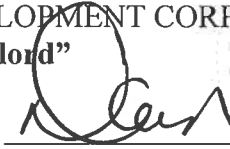
Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: State of Hawaii Department of Defense

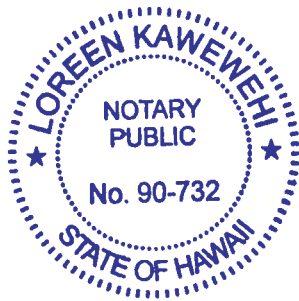
TMK: (1) 9-1-016: 035: 0001


**IN WITNESS WHEREOF**, the Parties hereto have hereunto set their hands the day and year first above written.

<p>APPROVED AS TO FORM:</p>  <p>_____ Deputy Attorney General</p>	<p>HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION "Landlord"</p> <p>By:  _____ Denise Iseri-Matsubara Its Executive Director</p> <p>Date: <u>SEP 30 2021</u></p>
<p>APPROVED AS TO FORM:</p> <p>_____ Deputy Attorney General</p>	<p>STATE OF HAWAII DEPARTMENT OF DEFENSE "Tenant"</p> <p>By: _____ MG Kenneth S. Hara Its Adjutant General</p> <p>Date: _____</p>

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

On this 30TH day of SEPTEMBER 2021, before me appeared DENISE ISERI-MATSUBARA, to me personally known, who, being by me duly sworn, did say that she is the EXECUTIVE DIRECTOR of HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that this 37-PAGE GROUND LEASE (HAWAII STATE VETERANS HOME), UNDATED AT THE TIME OF NOTARIZATION was signed and sealed on behalf of the corporation by authority of its Board of Directors, and said officer acknowledged the instrument to be the free act and deed of the corporation.



  
Name: Loreen Kawewehi  
Notary Public, State of Hawaii  
1<sup>st</sup> Judicial Circuit

My commission expires: December 4, 2022

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: State of Hawaii Department of Defense

TMK: (1) 9-1-016: 035: 0001

**IN WITNESS WHEREOF**, the Parties hereto have hereunto set their hands the day and year first above written.

APPROVED AS TO FORM:

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

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION  
"Landlord"

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

Denise Iseri-Matsubara  
Its Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM:

*Michael S. Vincent*

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

STATE OF HAWAII DEPARTMENT OF  
DEFENSE  
"Tenant"

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

  
MG Kenneth S. Hara  
Its Adjutant General

Date: 27 SEP 21

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

On this 27<sup>th</sup> day of September, 2021, before me personally appeared Major General Kenneth S. Hara, of the **State of Hawaii Department of Defense**, to me known to be the person described in and who executed the foregoing instrument and, who, being by me duly sworn, did say that he is the **Adjutant General** of the **State of Hawaii Department of Defense**, and that he executed the foregoing instrument as the free act and deed of the **State of Hawaii Department of Defense**, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Victoria Tom [signature]  
Notary Public, State of Hawaii  
Print Name: Victoria Tom  
1<sup>ST</sup> Judicial Circuit  
My commission expires: 9/2/2024

Document Date: <u>undated when notarized</u>	# Pages: <u>37</u>
Name: <u>Victoria Tom</u>	<u>First</u> Circuit
Doc. Description: <u>Ground Lease (Hawaii State Veterans Home)</u>	
<u>Victoria Tom</u>	<u>9/27/2021</u>
Notary Signature	Date
NOTARY CERTIFICATION	

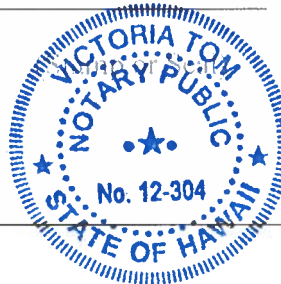




EXHIBIT "A"  
MAP OF NORTHWEST CORNER OF VILLAGES OF KAPOLEI



**EXHIBIT "B"**  
**DESCRIPTION OF PREMISES**

UNIT 1, "NORTHWEST CORNER OF VILLAGES OF KAPOLEI"  
CONDOMINIUM PROJECT

All that certain leasehold estate and interest and all those certain estates, rights and/or interest conveyed by this Lease in and to the following:

FIRST:

UNIT 1 of that certain condominium project known as "NORTHWEST CORNER OF VILLAGES OF KAPOLEI," as shown on Condominium Map No. 2493, and described in the Declaration of Condominium Property Regime dated February 1, 2021, and recorded February 12, 2021 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-11365412, and noted on Certificate of Title No. 341501.

Together with appurtenant easements as follows:

- A. Non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility purposes for and in support of said Unit 1, as designated by the Declaration; in the other common elements for use according to their respective purposes, as designated by the Declaration.
- B. Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration.

SECOND:

An undivided 26.583% interest in all common elements of the project and in the land upon which said project is located as established for said Unit 1 by the Declaration, or such other percentage interest as hereinafter established for said Unit 1 by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

The land upon which said condominium project "NORTHWEST CORNER OF VILLAGES OF KAPOLEI" is located is described as follows:

-PARCEL FIRST:-

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 2-A, area 3.634 acres, more or less, as shown on Map 13, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1828 of the Trustees of the Estate of James Campbell.

The following as set forth by Order filed as Land Court Document No. T-11292188 filed on

December 1, 2020:

Lot 2-A will have access:

- (i) Over Lots 5351, 5353 and 5349, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road; or
- (ii) Over Lots 5351, 5353 and 5354, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road; or
- (iii) Over Lots 5351, 5353, 5349 and 5356, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road.

-PARCEL SECOND:-

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 5351, area 22.890 acres, and 5353, area .506 acre, more or less, as shown on Map 505, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being land(s) described in Transfer Certificate of Title No. 341,501 issued to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic in the State of Hawaii.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR: STATE OF HAWAII, by its Board of Land and Natural Resources, acting pursuant to Section 171-95, Hawaii Revised Statutes

GRANTEE: HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii

DATED: January 4, 1990

FILED: Land Court Document No. 1696820

The following as set forth by Land Court Order No. 97282, filed March 21, 1990:

Lot 5351 will have access over Lots 5349 and 5356.

Lot 5353 will have access over Lot 5349.

SUBJECT, HOWEVER, TO:

1. Mineral and water rights of any nature.

2. -AS TO PARCEL FIRST (LOT 2-A):-

(A) Restriction of access rights for vehicular traffic, as shown on Map 1 of Land Court Application No. 1828.

A portion of said restriction of vehicular access rights affecting Lot 2-B has been cancelled by Order filed as Land Court Document No. T-10453245, as shown on Map 13.

(B) DESIGNATION OF EASEMENT "N"

PURPOSE: irrigation  
SHOWN: on Map 2, as set forth by Land Court Order No. 21338, filed June 3, 1963

(C) Restriction of vehicle access rights, as shown on Map 13, as set forth by Order filed as Land Court Document No. T-10453245.

(D) The terms and provisions contained in the following:

INSTRUMENT: UNILATERAL AGREEMENT AND DECLARATION FOR  
CONDITIONAL ZONING  
DATED: March 6, 2001  
FILED: Land Court Document No. 2689090

Said above Agreement was also recorded as Document No. 2001-032622.

(E) The terms and provisions contained in the following:

INSTRUMENT: MEMORANDUM OF AGREEMENT  
DATED: November 27, 2002  
RECORDED: Document No. 2005-068465  
PARTIES: HOUSING AND COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII, a public body and body  
corporate and politic of the State of Hawaii, and STATE OF  
HAWAII, Department of

(F) Abutter's rights of vehicle access over and across the common boundary of Lot 2 and 3, which rights were conveyed to the State of Hawaii by Deed dated April 19, 1966, filed as Land Court Document No. 393650.

(G) The terms and provisions contained in the following:

INSTRUMENT: AGREEMENT

DATED: April 11, 1989  
FILED: Land Court Document No. 1650349  
PARTIES: STATE OF HAWAII by its Board of Land and Natural Resources, HOUSING FINANCE AND DEVELOPMENT CORPORATION and STATE OF HAWAII DEPARTMENT OF TRANSPORTATION and THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED  
RE: to provide for the acquisition by the State through its condemnation powers of approximately 830 acres of land for the development of the Kapolei Village project

(H) DESIGNATION OF EASEMENT "X" (10 feet wide)

PURPOSE: sewer  
REFERENCED: on Map 5, as set forth by Land Court Order No. 96678, filed January 26, 1990

3. -AS TO PARCEL SECOND (LOT 5351):-

(A) Restriction of access as set forth by Land Court Order No. 18309, filed on August 16, 1960.

(B) Abutter's right of vehicle access in favor of the State of Hawaii along Barbers Point Naval Air Station Access Road, by Quitclaim Deed dated October 18, 1972, filed as Land Court Document No. 623619

(C) DESIGNATION OF EASEMENT "2312"

PURPOSES: electrical  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(D) DESIGNATION OF EASEMENT "2315"

PURPOSES: drainage  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(E) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

DATED: July 10, 1990

FILED: Land Court Document No. 1747712  
GRANTING: a perpetual right and easement for utility purposes, Easement "2313"

(F) DESIGNATION OF EASEMENT "6756"

PURPOSE: none stated  
SHOWN: on Map 956, as set forth by Land Court Order No. 134762, filed April 13, 1999

(G) Order filed as Land Court Document No. T-11292188 filed December 1, 2020 sets forth the following:

Access in favor of Lot 2-A.

4. -AS TO PARCEL SECOND (LOT 5353):-

(A) DESIGNATION OF EASEMENT "2312"

PURPOSES: electrical  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(B) DESIGNATION OF EASEMENT "2315"

PURPOSES: drainage  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(C) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation  
DATED: July 10, 1990  
FILED: Land Court Document No. 1747712  
GRANTING: a perpetual right and easement for utility purposes, over Easement 2312

(D) DESIGNATION OF EASEMENT "6755"

PURPOSE: none stated  
SHOWN: on Map 956, as set forth by Land Court Order No. 134762, filed April 13, 1999

(E) The terms and provisions contained in the following:

INSTRUMENT: UNILATERAL AGREEMENT AND DECLARATION FOR  
CONDITIONAL ZONING

DATED: March 6, 2001

FILED: Land Court Document No. 2689090

Said above Agreement was also recorded as Document No. 2001-32622.

(F) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC. and HAWAIIAN  
TELCOM, INC.

DATED: April 25, 2013

FILED: Land Court Document No. T-8521109

GRANTING: non-exclusive easement for transmission and distribution of  
electricity

(G) The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS, VILLAGES OF KAPOLEI

DATED: July 26, 1990

FILED: Land Court Document No. 1752834

Restated Declaration of Covenants, Conditions and Restrictions of Villages of  
Kapolei dated September 30, 1994, filed as Land Court Document No. 2199063.

Second Restated Declaration of Covenants, Conditions and Restrictions of Villages  
of Kapolei dated February 16, 1995, filed as Land Court Document No. 2238460  
(Consent thereto given by the U.S. Department of Housing and Urban  
Development, by instrument dated February 27, 1995, filed as Land Court  
Document No. 2238461; No consent given by Housing Finance and Development  
Corporation).

Said Declaration was supplemented by instruments dated May 11, 1994, filed as  
Land Court Document No. 2151494, dated September 1, 1995, filed as Land Court  
Document No. 2258452 and dated December 11, 2006, filed as Land Court  
Document No. 3534701. (Not noted on Transfer Certificate(s) of Title referred to  
herein)

Third Restated Declaration of Covenants, Conditions and Restrictions of Villages  
of Kapolei dated March 23, 1999, filed as Land Court Document No. 2620834  
(Consent thereto given by Housing and Community Development Corporation and  
the U.S. Department of Housing and Urban Development).

Amendment and Fourth Restated Declaration of Covenants, Conditions and  
Restrictions of Villages of Kapolei dated March 16, 2016, filed as Land Court

Document No. T-9703149 (Consent thereto given by Hawaii Housing Finance & Development Corporation)

(H) Order filed as Land Court Document No. T-11292188 filed December 1, 2020 sets forth the following:

Access in favor of Lot 2-A.

5. The terms and provisions contained in the following:

INSTRUMENT: QUITCLAIM DEED  
DATED: January 3, 1990 and June 20, 1990  
FILED: Land Court Document No. 1696820

The foregoing includes, but is not limited to, matters relating to the reservation of minerals, water and prehistoric and historic remains.

6. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF CONDITIONS IMPOSED BY THE LAND  
USE COMMISSION  
DATED: June 6, 1990  
FILED: Land Court Document No. 1736622

Said Declaration was amended by instrument dated February 6, 1992, filed as Land Court Document No. 1888121.

7. The terms and provisions contained in the following:

INSTRUMENT: QUITCLAIM DEED  
DATED: July 9, 1990 and June 20, 1990  
FILED: Land Court Document No. 1745093

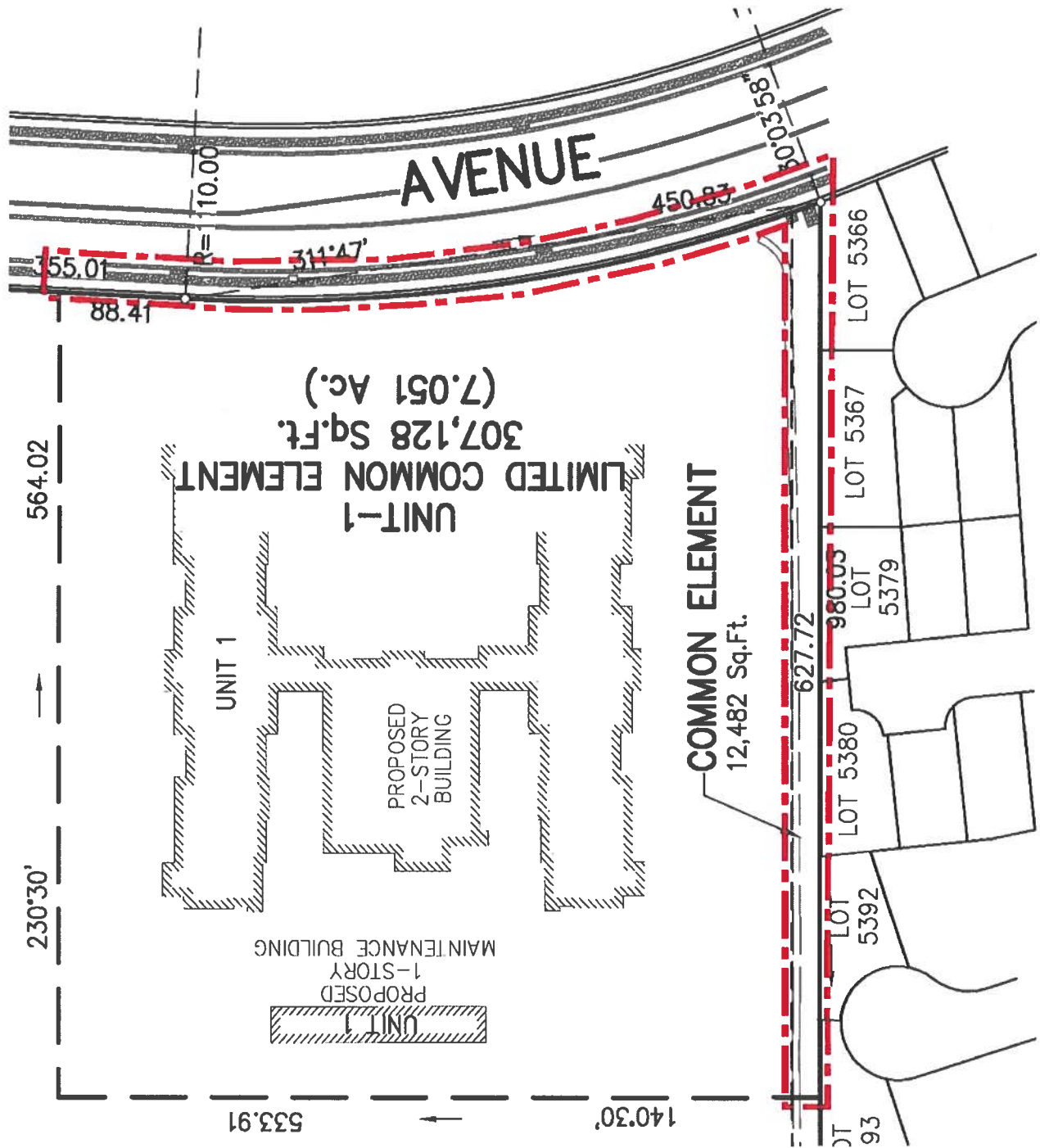
The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

--- END OF EXHIBIT "B" ---





**EXHIBIT "D"**  
**MAP OF ADDITIONAL AREA TO BE MAINTAINED**  
 (Area indicated by red dot-dash outline)



**EXHIBIT “E”**

INSURANCE REQUIREMENTS  
GROUND LEASE – HAWAII STATE VETERANS HOME

The policy or policies of insurance maintained by Tenant’s contractors, consultants, and/or persons acting for or on its behalf (“Contractors”) shall provide the following minimum policy limits and coverages:

<b><u>Coverage</u></b>	<b><u>Minimum Policy Limits</u></b>
Commercial General Liability and Automobile Insurance	Tenant’s Contractor’s commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations, servicing, and maintenance performed under this Sublease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If Tenant’s Contractors do not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage of no less than \$1,000,000 per accident.
Workers’ Compensation	As required by Hawaii laws.
Builder’s Risk	100% replacement value.
Property	Fire and extended coverage insurance, insuring all buildings and improvements erected on the Premises in the joint names of Tenant and Landlord, with the standard mortgage clause for any Leasehold Mortgagee, as their interests may appear. Shall include Windstorm coverage and be written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by or for Tenant, located on the Premises. Tenant shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. Landlord and the State of Hawaii shall be loss payees under the Property Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.

- a. Additional Requirements of Commercial General Liability Insurance. The Commercial General Liability Insurance and the Automobile Insurance shall contain the following five provisions:
  - i. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.

- ii. Landlord and the State of Hawaii are added as additional insured parties for operations performed on the Premises under this Lease.
  - iii. If a general aggregate limit is used, the general aggregate limit shall apply separately to this Lease.
  - iv. Insurance shall include a cross liability or severability of interest clause.
  - v. Tenant or Tenant's Contractors shall immediately provide written notice to Landlord should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
- b. Requirements of Insurance Providers. All insurance required herein shall be procured from an insurance company or insurance companies licensed to do business in the State of Hawaii.
- c. Insurance to be Primary. The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the Premises, and for all operations performed which are incidentally, directly, or indirectly connected with all operations to be performed under this Lease and on the Premises, including operations performed outside the work area and all change order work.
- d. Waiver of Subrogation. All rights or claims of subrogation against Landlord and the State of Hawaii, their officers, employees, and agents, are waived. Tenant's Contractors shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other. Tenant's Contractors agree to obtain a Waiver of Subrogation against Landlord and the State of Hawaii and their respective directors, employees, and agents, for each required policy described herein. When required by the insurer, or should a policy condition not permit Tenant's Contractors to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant's Contractors shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement or voids coverage should Tenant's Contractors enter into such an agreement on a pre-loss basis.
- e. Evidence of Insurance. Tenant agrees require its Contractors to deposit with Landlord, on or before the Effective Date of this Lease, certificates of insurance necessary to satisfy Landlord that the insurance provisions of this Lease have been complied with. Tenant further agrees to require its Contractors to keep such insurance in effect and current certificates of insurance on deposit with Landlord

during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

- f. Landlord's Right to Review Coverage. Landlord shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord, Landlord may require Tenant's Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.
- g. Tenant's Right to Notification. Landlord shall notify Tenant in writing of any changes in the insurance requirements desired by Landlord or by the State Risk Manager. If Tenant or Tenant's Contractors do not deposit copies of insurance policies with Landlord incorporating such changes requested by Landlord within **sixty (60) days** of receipt of such notice, this Lease shall be in default without further notice to the Tenant and Landlord shall be entitled to all legal remedies, including termination of this Lease, and Tenant shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Tenant shall have the right to contest Landlord's request.
- h. Separate Requirements. The procuring of the required policy or policies of insurance shall not be construed to limit Tenant's or Tenant's Contractors' liability under this Lease nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding the policy or policies of insurance, Tenant shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent Tenant is liable therefor under this Lease.
- i. Proceeds of Property Insurance in Event of Loss. Subject to the prior written approval of any Leasehold Mortgagee, if any, in the event of total or partial loss, any proceeds derived from the policy(s) shall be used by Tenant for rebuilding, repairing, or otherwise reinstating the same improvements in a good and substantial manner according to plans and specifications approved in writing by Landlord; provided, however, that with the approval of Landlord, Tenant may surrender this Lease and pay the balance owing on any mortgage and Tenant shall then receive, after payment of such balance, that portion of the remaining proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the Landlord to be paid the balance of the proceeds.
- j. No Termination for Casualty Without Landlord's Consent. Notwithstanding the foregoing, this Lease may not be terminated in the event of a casualty without the prior written consent of Landlord, and all insurance proceeds to which Tenant is entitled shall be paid to Landlord.

**END OF EXHIBIT "E"**