

Approval to Execute an Agreement and Mortgage with the United States Department of Commerce, Economic Development Administration (EDA) for the construction of a Business Recovery Center within the interior of the existing Hawaii Emergency Management Agency building B303 located at the Diamond Head State Monument TMK (1) 3-1-042-006.

LEGAL REFERENCE:

Section 171-11 and 55, Hawai'i Revised Statutes.

APPLICANT / MORTGAGOR

The State of Hawai'i Department of Defense, Hawaii Emergency Management Agency, whose principal place of business is 3949 Diamond Head Road, Honolulu, Hawai'i 96816-4495.

LOCATION AND TAX MAP KEY:

HI-EMA Building 303, Diamond Head State Monument, Honolulu, Oahu, identified by Tax Map Key: (1) 3-1-042-006.

AREA:

Area of Use (see attached plan):

- (1) The physical location of the proposed 2,000 square foot Business Recovery Center will be within the interior of the existing building 303 warehouse section. The BRC will be constructed as a portable modular in-plant office building. The building will consist of a Business Emergency Operations Center (BEOC) and training room, meeting rooms, offices, telecommunications room, and equipment storage rooms.
- (2) The BRC will be constructed within a 4,225 square foot section of the warehouse and users will have access to existing restrooms located within the warehouse section and administrative section.
- (3) Parking: Spaces within the existing B303 paved parking lot located in the front of the administrative section and adjacent to the warehouse section will be allocated for BRC use.

ZONING:

State Land Use District:	Conservation
City & County of Honolulu:	Preservation Restricted/General
FEMA Flood Designation	X
Tsunami Evacuation Zone	No

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admissions Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

CURRENT USE STATUS:

Land presently encumbered by Governor's Executive Order No. 1997 dated April 9, 1962, setting aside the land to the Department of Defense (DOD) for the Diamond Head Reservation. Building 303 is currently assigned and used by the Hawaii Emergency Management Agency (HI-EMA).

CHARACTER OF USE:

General administrative offices, media center, computer room, incident overflow offices, and general purpose warehouse and staging area. BRC operations will be normal workdays unless emergency activation to 24-hour operations.

TERM:

Fifteen (15) year term.

COMMENCEMENT DATE:

July 1, 2016

RENT:

Not applicable

CHAPTER 343, HRS – ENVIORNMENTAL ASSESSMENT:

No Environmental Assessment and Finding is currently available for building 303. As a requirement of the EDA Grant a project Environmental Narrative was produced that indicated no significant impacts from the project would be encountered. This project is entirely within building 303 and consists of interior renovations to the existing warehouse space.

REMARKS:

The EDA requirement for the Agreement and Mortgage is to provide a security that the grant recipient HI-EMA will continue to use the investment for the purposes intended for the term of the agreement (15-years). The effect of this agreement is to commit the State of Hawai'i to employ that portion of building 303 proposed for the Business Recovery Center. This agreement is a requirement to receive the Federal matching share of \$1,312,000.

RECOMMENDATION: That the Board:

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- B. Consent to the execution of an Agreement and Mortgage between the United States Department of Commerce, Economic Development Agency, and the State of Hawaii Department of Defense, Hawaii Emergency Management Agency, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:
 - 1. Review and approval by the Department of the Attorney General; and
 - 2. Such other terms and conditions as be prescribed by the Director of HI-EMA to best serve the interest of the State.

Respectfully submitted,



FOR ARTHUR J. LOGAN
Director
Hawai'i Emergency Management Agency

APPROVED FOR SUBMITTAL:

SUZANNE CASE
Chairperson and Member



PROJECT SITE

DESCRIPTION

**State of Hawai'i, Hawai'i Emergency Management Agency
State of Hawaii Business Recover Center
Project**

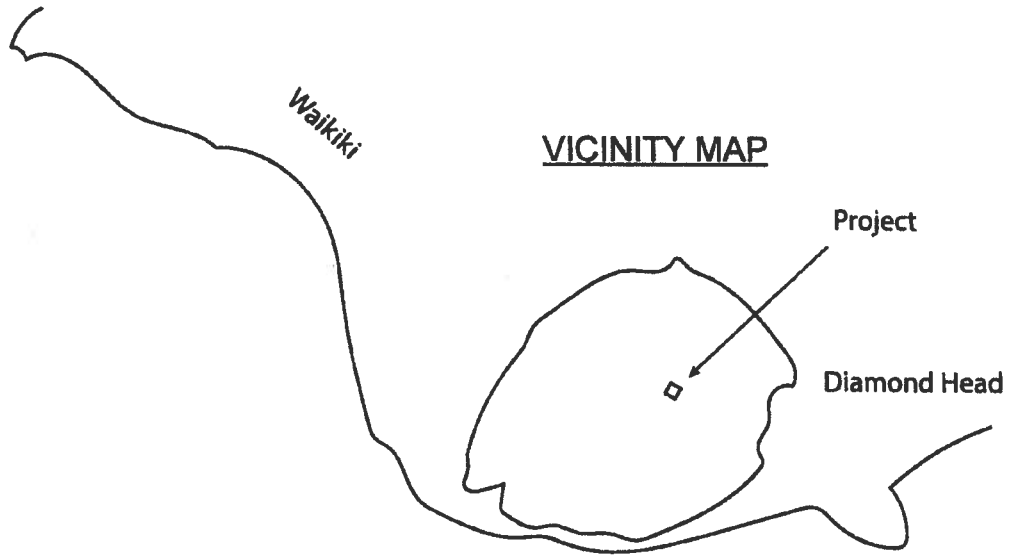
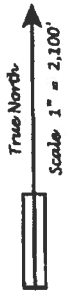
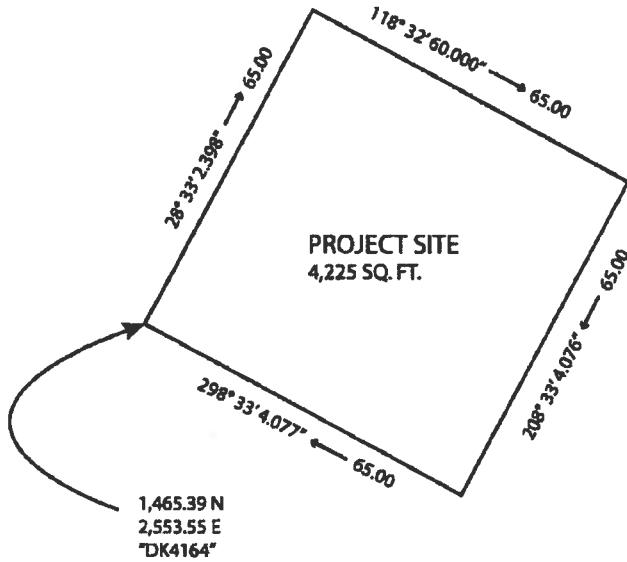
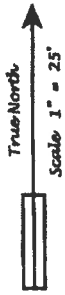
All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Number 8165, Part B, Land Commission Award Number 8559-B, Apana 32 to William C. Lunaliilo) situate, lying and being at Kapahulu, City and County of Honolulu, Island of Oahu, State of Hawaii, bearing Tax Key designation (1) 3-1-042-006, and containing an area of 303.190 acres, more or less.

Beginning at the west corner of this parcel of land, the coordinates of said point of beginning referred to National Geodetic Survey Station "Diamond Head 2 Reset DK4164" being 1,465.39 feet north and 2,553.55 feet east running by azimuths measured clockwise from True North:

1. 28° 33' 2.398" 65.00 feet;
2. 118° 32' 60.000" 65.00 feet;
3. 208° 33' 4.076" 65.00 feet;
4. 298° 33' 4.077" 65.00 feet.

The above described parcel of land lies entirely within the TMK (1) 3-1-042-006.

EXHIBIT "A"



VICINITY MAP

PROJECT SITE

State of Hawaii, Hawaii Emergency Management Agency
Business Recovery Center
Installation Project
Harding Warehouse

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EXHIBIT "A"

AGREEMENT AND MORTGAGE

WHEREAS, Hawaii Emergency Management Agency (hereinafter "Mortgagor"), whose address is 3949 Diamond Head Road, Honolulu, HI, has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (hereinafter "EDA") an award in the amount of one million three hundred and twelve thousand Dollars (\$ 1,312,000) (hereinafter "Award Amount") pursuant to a Financial Assistance Award (hereinafter "Award Agreement") entered into by the parties on _____, 2016, and bearing EDA Project Number 07-79-06902 (the "Project"); and

WHEREAS, pursuant to the application (hereinafter "Award Application") filed by Mortgagor requesting said award and pursuant to the Award Agreement, the Award Amount is to be used for the purpose of making improvements consisting of the construction of a 2,000 s.f. modular in-plant office located within Building 303.

on the real property described in Exhibit "A," attached hereto and made a part hereof (hereinafter the "Property"); and

WHEREAS, any transfer or conveyance of a project by a recipient of a Financial Assistance Award must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) is not authorized to permit transfer or conveyance of a project to parties which are not eligible to receive EDA Financial Assistance Awards unless EDA is repaid its share of the fair market value of the project or unless the authorized purpose of the EDA Financial Assistance Award was to develop land in order to lease it for a specific use, in which case EDA may authorize the lease(s) of the project if certain conditions are met; and

WHEREAS, the aforesaid Award Agreement from EDA provides the authorized purpose for which the Award Amount may be used while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, (other than by a lease permitted by the Award Agreement), or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the Award Application made by Mortgagor, such alienation or use being prohibited by 13 C.F.R. part 314, or by 15 C.F.R. parts 14 and 24 (hereinafter the "Regulations") as may be amended from time to time; and

WHEREAS, the value of said right to repayment under the terms of the Regulations is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Award Agreement, or the Regulations;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer, or alienation of the Property, or interest therein, in violation of the Award Agreement or in violation of the Regulations, as such Award Agreement or Regulations may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect 15 years from the date hereof, which period of years has been established as the useful life of the improvements to

the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the amount determined by EDA, pursuant to the Regulations. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Award Agreement or the Regulations, as such may be amended from time to time, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Award Application and Award Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the Award, said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its award percentage in the total cost of the award program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taxing of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be the percentage of said condemnation proceeds equal to its award percentage in the total cost of the award program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage – Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property and any other place where recording is required under applicable law. Mortgagee shall be furnished a conformed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any Notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Remedies:

Upon Mortgagor's breach of any covenant or agreement herein, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT and MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such

other powers as my be deemed necessary.

12. Governing Law: Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument, which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the ____ day of _____, 20 16.

A completed duly recorded copy of this Agreement and Mortgage shall be forwarded to EDA.

Hawaii Emergency Management Agency

Mortgagor
By: _____
Its: Director _____

(The appropriate acknowledgment must be included for recording in the Mortgagor's jurisdiction.)

STATE OF HAWAII)
)
COUNTY OF HONOLULU)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ day of _____, 20 16, by _____.

Notary Public, State of