

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 12, 2019

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 99OD-250

OAHU

Amend Prior Board Action of September 25, 2015, Item D-12, Authorize the Issuance of a Direct Lease to University of Hawaii for Educational Purposes; Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Boat Launching Facility Purposes; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041: portions of 006, 130 and 334.

The amendment is to recommend the Board (a) grant two (2) non-exclusive, term easements for boat dock and access purposes to the University of Hawaii in conjunction with the requested lease; (b) approve the form of the lease and easements; and (c) add "seaward of 006" to the list of tax map keys.

BACKGROUND:

On September 25, 2015, Item D-12, the Board authorized the issuance of a 65-year lease to the University of Hawaii ("UH") for educational and research purposes. A copy of the 2015 submittal is attached as **Exhibit 1**. Back in 2015, it was contemplated that UH would be allowed, under the requested lease, to use other portions of State lands outside the leased premises for floating dock and access purposes.

Subsequently, the Department of the Attorney General ("AG") advised the Division that the above-mentioned easements should be issued under two (2) separate easement documents which would state clearly the responsibilities of UH as the grantee of the easements. Pursuant to the subsequent negotiations between UH and the Division on the terms and conditions of the lease and easements, the Division brings today's request to the Board asking for approval of the terms and conditions that deviate from the standard language used in the lease and easement documents processed by AG.

For the Board's information, the Division brought a similar request to the Board at its meeting of June 28, 2013 (Item D-4) regarding a lease to UH for marine education and research purposes, which has been executed under General Lease No. ("GL") 5993.

Similar to GL 5993, staff will discuss the substantive changes in the following paragraphs

for the subject request. The redlined version of the draft lease is attached as Exhibit 2-A and shows changes made to the lease form accepted and used for GL 5993. The easement documents attached as Exhibits 3-A and 4-A are redlined to show changes proposed to the standard form used by the AG.

REMARKS:

LEASE (See **Exhibit 2A** for the lease language quoted and **Exhibit 2B** for map referenced in this submittal)

Page 6, section 2, “Ownership of improvements.” As explained in the 2015 submittal, the Department of Business, Economic Development and Tourism, who was tasked with the implementation of the Honolulu Waterfront Master Plan, constructed the marine education and training center together with a floating dock in 1990. UH wants to state clearly that improvements that existed prior to the commencement of the requested lease will be excluded from the reservation to the Lessor.

Page 8, section 8, “Improvements.” The revised language recites the Lessor’s approval of the improvements placed on the premises prior to the commencement of the lease, which also include the improvements that resulted from the relocation of UH’s former operation at Pier 45.

Page 9, section 11. “Character of use.” In view of its multiple programs under the UH system that may use the facilities, the proposed language will help to clarify any interpretation of this condition in the future.

Page 10, section 12. “Assignments.” Similar to section 11 described above.

Page 22, section 23f. “Lessee responsibility.” UH requires its contractors be responsible at their sole cost and expense for cleaning up and remediating any hazardous materials on the premises that can be attributable to use or activities of such parties.

Page 26, section 40. “Environmental regulations.” The language recites the completion of the environmental assessment process pertaining to this project.

Page 27, section 42 and 43. “Submerged lands”, “Access.” The language discusses the two separate term easements to be issued together with the subject lease.

EASEMENTS

Staff notes that the information, including the environmental assessment process, pertinent to the two easements mentioned above was covered in the 2015 submittal, now attached as Exhibit 1. Staff summarizes a few main items below and adds “(1) 1-5-041: seaward of 006” for the floating dock easement.

Term: 65 years, i.e. same as the requested lease.

Floating dock easement:	64,602 square feet, and located seaward of (1) 1-5-041:006 (See Exhibit 3-A for the easement language and Exhibit 3B for map referenced in this submittal)
Access easement	92,517 square feet (25,122 + 67,395 square feet) (See Exhibit 4-A for the easement language and Exhibit 4-B for map referenced in this submittal)

UH also proposes some revisions to the standard provisions of the easement documents to be issued. Most of revisions are very similar to those described above for the requested lease.

Page 7, section 6, “Grantee maintenance” on Exhibit 3A is the standard requirement which requires the grantee to maintain the easement area. In the subject situation, the easement areas are being utilized by other parties, and UH only agrees to be responsible for its pro rata share of maintenance required for the easement area. Staff does not have any objection to this change.

Upon approval of today’s request, the Division will work with UH in consummating the lease and easement documents.

To address any unanticipated events that might arise during the finalization of the documents, staff also recommends the Board delegate to the Chairperson the authority to revise the terms and conditions described above and/or impose additional terms and conditions which will serve the best interest of the State.


RECOMMENDATION: That the Board amends its prior action of September 25, 2015, item D-12 by adding the following paragraphs to the Recommendation sections:

- A. “4. Authorize the issuance of a term non-exclusive easement to the University of Hawaii covering the subject area for floating dock together with associated and supporting facilities and improvements purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The easement shall be substantially in the form of Exhibits 3-A and 3-B attached;
 - B. Review and approval by the Department of the Attorney General;
and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a term non-exclusive easement to the University

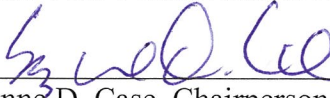
of Hawaii covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The easement shall be substantially in the form of Exhibits 4-A and 4-B attached;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.”
- B. Approve the form of lease and easements attached hereto as Exhibits 2-A, 3-A, and 4-A and authorize the finalization of the lease and easements and their execution by the Chairperson.
- C. Add “Tax Map Key: (1) 1-5-041: seaward of 006” to the subject request.
- D. Delegate to the Chairperson the authority to revise the terms and conditions mentioned above and/or impose new additional terms and conditions to serve the best interest of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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EXHIBIT 1

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 25, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF 99OD-250

OAHU

Authorize the Issuance of a Direct Lease to University of Hawaii for Educational Purposes; Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Boat Launching Facility Purposes; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:portions of 006, 130 and 334.

APPLICANT:

University of Hawaii ("UH"); and

Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DOBOR").

LEGAL REFERENCE:

Section 171-11, 53, and 95 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:portions of 006, 130, and 334, as shown on the map attached as **Exhibit A**.

AREA:

Lease

7.675 acres, together with easements for access (92,517 square feet) and floating dock (64,602 square feet), more or less; and

Set Aside

Both the set aside area and access easement will be determined by the DAGS, Survey Division.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 25, 2015 uo

EXHIBIT 1

D-12

The map attached as **Exhibit B** provides a general layout of the area. The UH's request pertains to the UH-METC (blue area) and UH-SOEST (yellow area) sites, together with an easement over the submerged land (white-hatched area) and access easement (green-hatched area). DOBOR'S area is outlined in red as shown on Exhibit B. For the Board's reference, City and County of Honolulu has obtained approval from the Board to utilize its section shown on Exhibit B regarding the homeless program.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: P-2

TRUST LAND STATUS:

Parcel 6 : PL 88-233 i.e. ceded
Parcel 130 & 334 : Section 5(a) lands of the Hawaii Admission Act, i.e. non-ceded

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

The METC and DOBOR areas shown on Exhibit B are portions of the Governor's Executive Order No. 2704 dated October 17, 1974 setting aside to the Department of Land and Natural Resources, Division of State Parks for Sand Island State Recreational Area purposes; and

The SOEST area shown on Exhibit B was previously a portion of the Governor's Executive Order No. 4170, which has been withdrawn pursuant to Governor's Executive Order No. 4485, i.e. the area is presently unencumbered.

LEASE TERM:

65 years

LEASE RENT

Gratis

CHARACTER OF USE OF LEASE:

Educational and research purposes

SET ASIDE PUBLIC PURPOSES:

Boat Launching Facilities

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the UH's project was published in the OEQC's Environmental Notice on August 8, 2015 with a finding of no significant impact (FONSI).

Final EIS of the boat launching facility was published on April 23, 1992

APPLICANT REQUIREMENTS:

None. UH provided the survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

In early 1990s, the Department of Business, Economic Development and Tourism ("DBEDT") was tasked with implementing the Honolulu Waterfront Master Plan. Part of the plan included the construction of a facility for marine education and training ("METC") and a floating dock. Due to multiple changes in the plan for the proposed UH facility over the past years, the lease for the METC previously authorized by the Board was never consummated.

Nevertheless, the adjacent boat launching facility was completed and is being used by the public as part of the DBEDT project. Finalizing the documentation for the set-aside the launching facility to the Division of Boating and Ocean Recreation is in order. Staff brings both requests to the Board for consideration under today's agenda.

UH - Lease

Recently, it was determined that the existing pier facility operated by the School of Ocean and Earth Science ("SOEST") of UH would need to be relocated in the Honolulu Harbor to facilitate the future development of the Honolulu Harbor planned by the Department of Transportation ("DOT"). Staff understands there is an agreement between UH and DOT regarding the relocation. However, the small vessel operation of SOEST has to secure a separate location to continue the programs. Therefore, UH requests an area adjacent to the METC to continue the small vessel operation of SOEST.

On January 10, 2014, under agenda item D-11, the Board approved in principle the issuance of a direct lease to UH for educational purposes over both the METC and SOEST areas. UH was also authorized, through a 24-month right-of-entry permit pursuant to the 2014 Board approval, to conduct an environmental assessment for its project. As noted above, the Final Environmental Assessment and the Findings of No Significant Impact for the UH's project was published on August 8, 2015 on the Environmental Notice.

In addition to the parcel to be utilized for METC and SOEST programs, a non-exclusive easement (green-hatched area) over portions of the State recreation area and the boat launching facilities is required to provide the access to UH's leased premises.

Further, UH is reminded, upon approval of today's request, to obtain resolution regarding the non-exclusive easement over the floating dock area pursuant to 171-53 (c), HRS at the next available legislative session.

Staff did not approach other agencies for comment on the request as solicitation of comments from agencies was conducted during the environmental assessment stage.

DOBOR – Set Aside

Staff also requests the Board recommend the issuance of an executive order for the public boat launching facility to the Division of Boating and Ocean Recreation of the Department, together with portion of the access easement over the existing Sand Island State Recreation Area.

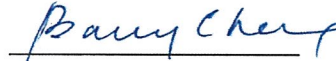
There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order withdrawing the METC and the DOBOR areas as shown on Exhibit B from the Governor's Executive Order No. 2704 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve the issuance of a 65-year direct lease to the University of Hawaii over the subject METC and SOEST areas together with the access and floating dock easements shown on Exhibit B for educational and research purposes under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current direct lease form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

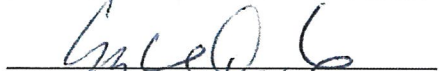
3. Approve of and recommend to the Governor issuance of an executive order setting aside the DOBOR area as shown on Exhibit B to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for boat launching facility purposes under the terms and condition cited above, where are by this reference incorporated herein and subject to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

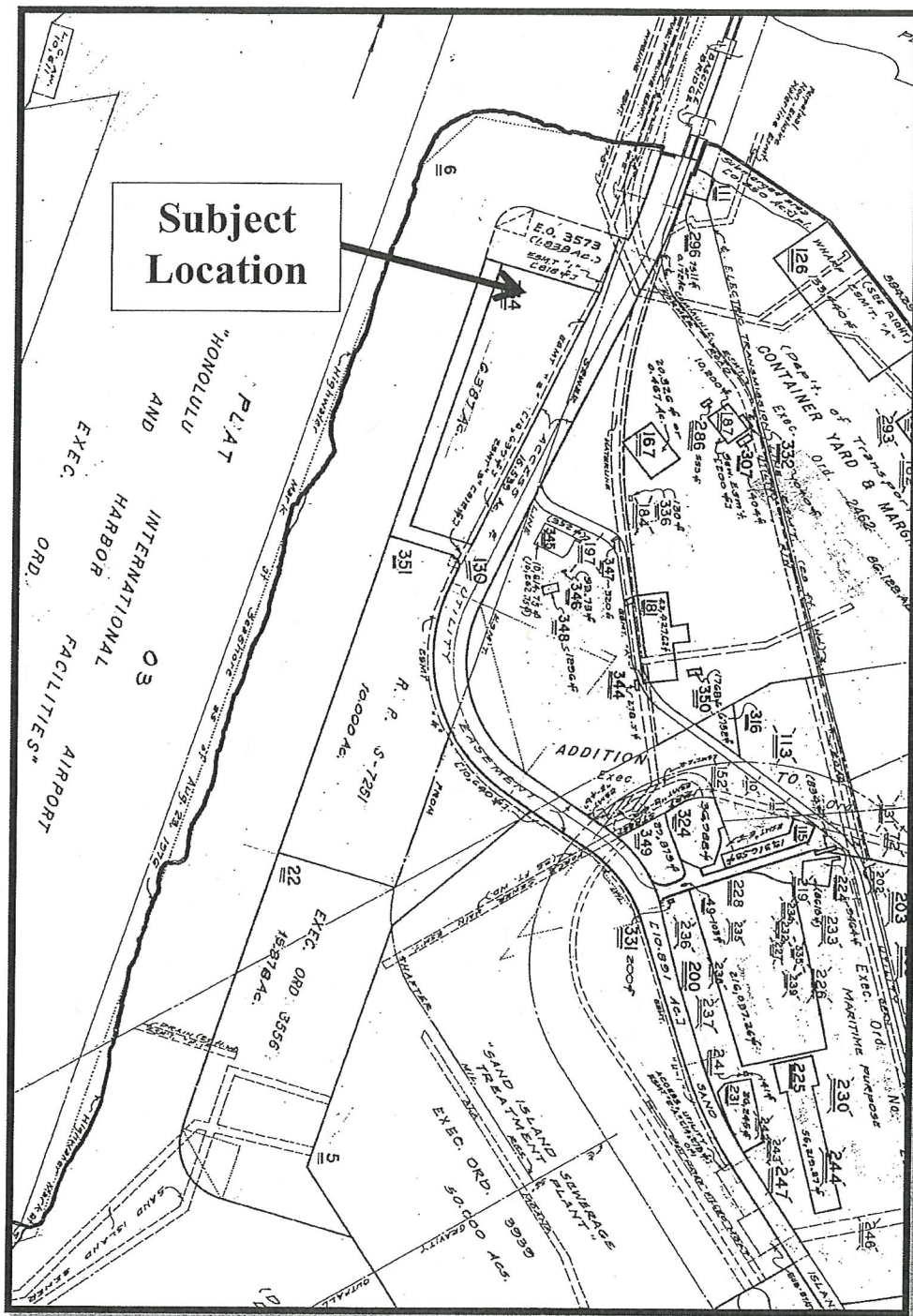


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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TMK (1) 1-5-041:portions of 006, 130, and 334
Source: Tax Map

EXHIBIT A

University of Hawaii - Sand Island Facility



EXHIBIT B

EXHIBIT 2A

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail () Pickup ()	To:

Tax Map Key No. (1)1-5-041:006, 130, 334

~~(formerly known as 6 9 01:Per.001)~~

GENERAL LEASE NO. ~~S 5993~~

STATE OF HAWAII

UNIVERSITY OF HAWAII, the state university and
a body corporate of the State of Hawai'i

Covering land situate at ~~Lalamilo, Waimea, South Kohala,~~
Sand Island,

~~Puakō UH Hilo DLNR lease (051313)~~
~~Sand Island METC Lease UH rev 031319~~

Compare UH METC to UH Puako lease - ~~TESTDLNR~~

EXHIBIT 2A

Island of Oahu, Hawaii, ~~Hawaii~~

For ~~Marine~~ Education and Research Purposes

Containing an area of ~~5.000~~7.675 acres, more or less

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. ~~S-5993~~ _____

THIS LEASE, made this _____ day of _____, 20____, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is Kalanimoku Building, Room 102, 1151 Punchbowl Street, Honolulu, ~~Hawaii~~Hawai'i 96813 (hereafter the "Lessor") and the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, whose address is 2444 Dole Street, Honolulu, ~~Hawaii~~Hawai'i 96822 (hereafter the "Lessee").

WITNESSETH:

The Lessor, pursuant ~~iv~~ to Section 171-95(a)(2), Hawaii
~~Puakō UH Hilo DLNR lease (051313) Sand~~ Island METC Lease UH rev 031319

Revised Statutes, and for and in consideration of the terms, covenants, and conditions herein contained, all on the part of the Lessee to be kept, observed, and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as "~~UH Hilo Kalakaua Marine Education Center,~~" ~~more particularly described in Exhibit "A" and~~ as University of Hawai'i Marine Education and Training Center," together with the right to use: (i) certain submerged lands owned or controlled by the Lessor to anchor and support one or more floating dock/pier facilities pursuant to Grant of Easement No. S-_____ and (ii) access and roadway easement areas within Easements 2 and 3 pursuant to and as described in Grant of Easement No. S-_____, including the right of access to and from said easement areas, all of which submerged lands, premises, and easements are more particularly described in Exhibit "A" and shown on the map marked Exhibit "B," both of which are attached hereto and made parts hereof (hereafter collectively the "Premises").

TO HAVE AND TO HOLD the Premises unto the Lessee for the term of sixty-five (65) years, commencing on the _____ day of _____, 20____, up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided.

The annual rent shall be gratis.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

(a) Minerals reserved. All minerals as hereafter 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, 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 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 Lessee's permitted activities on the Premises and not for sale to others.

(b) Water rights reserved. 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 Lessor of the rights reserved in this ~~paragraph~~Section 1, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to, fences and stockwater system(s) located on the Premises prior to or on the commencement date of this lease, excluding those improvements constructed and completed by or for the Lessee that are: (a) existing on or within the Premises prior to the commencement date of this lease, including, without limitation, buildings, structures, piers, docks, utilities and access infrastructure, and parking and storage areas (hereafter collectively the "Existing Improvements") and (b) constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the Premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or the Lessor or the Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law

which may be payable in installments, the Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

2. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties, and rates of every description, including water, sewer, gas, refuse collection, or any other charges, as to which the Premises or any part, or any improvements, or the Lessor or the Lessee may become liable for during the term, whether assessed to or payable by the Lessor or the Lessee.

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.

4. Sanitation. The Lessee shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition.

5. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip, or unlawful, improper, or offensive use of the Premises or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the Premises.

6. Compliance with laws. The Lessee and the Lessor shall comply with all Applicable Laws. "Applicable Laws" mean all federal, state, county, and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, permits, and all legislative, administrative or judicial orders, decrees, requirements, rulings, or judgments, which now or in the future may be applicable to the Premises, the conduct of any business therein, to the Lessor or the Lessee, and to any possession, occupancy, and use relating to the Premises.

7. Inspection of Premises. The Lessee shall permit

the Lessor and its agents, at all reasonable times during the lease term, to enter the Premises and examine the state of its repair and condition.

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain, and install on the Premises any building, structure, or improvement of any kind and description, except with the prior written approval of the Lessor, through the Chairperson of the Board of Land and Natural Resources ~~(hereafter the "Land Board")~~ and upon those conditions the ~~Land Board~~Chairperson may impose, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.—

The Lessor hereby approves all of the Existing Improvements. However, Lessor makes no warranties or representations regarding the Existing Improvements, and Lessee accepts the Existing Improvements in "as is, where is" condition together with all faults and defects, whether latent or patent.

The Lessor acknowledges that the Lessee plans to construct on or within the Premises certain improvements in addition to the Existing Improvements. The Lessor and the Lessee agree that these improvements are intended to accommodate the relocation of certain Snug Harbor operations that the University formerly conducted at Pier 45, Honolulu Harbor and will primarily consist of the installation of a new floating dock/pier and security fencing, and paving the parking and storage areas (collectively the "New Improvements"). The Lessee shall obtain approval from the Chairperson of any plans for the New Improvements prior to commencing any construction or installation of the New Improvements. The Lessor and the Lessee acknowledge and agree that the Lessor approved and the Lessee has completed construction of the portion of the New Improvements consisting of the security fencing and the paving of the parking and storage areas.

Upon termination and/or expiration of the lease and if or to the extent desired by the Lessor, the Lessee, at its expense, shall remove any and all improvements installed or constructed upon the Premises and restore the Premises to a

condition reasonably satisfactory to the Lessor, reasonable wear and tear and damage due to any casualty not caused by the Lessee, excepted.

9. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the Premises, including the Existing Improvements and the New Improvements, in good order, condition, and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, (collectively the "Liens"), except as provided in this lease. The Lessee will, subject to and limited by the Lessee Limitations (as defined in Section 13 herein) and as may be authorized by the Lessee's Board of Regents, initiate proceedings or take action to discharge or have released or removed any ~~liens~~ Liens that may be filed against the Property, including the Lessee's interest therein, resulting from any act or neglect by the Lessee, all within a reasonable time of the Lessee learning or becoming aware of the existence of such ~~liens.~~ Liens.

~~11. Character of use. The Lessee shall use or allow the Premises to be used solely for marine education and research purposes.~~

11. Character of use. The Lessee shall use or allow the Premises to be used solely for education, research, and marine related purposes. The Lessor acknowledges and approves Lessee's present and planned use of the Premises as part of the education and research programs of Honolulu Community College, (hereafter "HonCC") and the University of Hawai'i at Mānoa (hereafter "UHM"), including HonCC's marine education and training programs and UHM's research programs involving UHM's School of Ocean & Earth Science & Technology (hereafter "SOEST") and SOEST's operation of the University of Hawai'i Marine Center and associated research vessels. The Lessor hereby approves all of the University uses and activities that were being conducted on or within the Premises as of the commencement date of this lease, including, without limitation, educational and technical

training activities and their supporting office and administrative uses, athletic related uses and activities, and research, preservation, and support activities relating to Native Hawaiian cultural and educational uses.

12. Assignments and transfers. The Lessee shall not sublease, transfer, assign, or permit any other person to occupy or use the Premises or any portion or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, ~~without the prior written approval of the Land Board.~~ (hereafter a "**Transfer**"), without the prior written approval of the Board of Land and Natural Resources (hereafter "Land Board"). The Lessor acknowledges and agrees that for purposes of this lease, entry, use, and/or occupancy of the Premises by any of the following will not be considered a Transfer or require the Lessee to obtain the Lessor's prior written approval: any employee, officer, department, unit, center, or group of the Lessee or a State of Hawai'i entity affiliated with the Lessee, such as The Research Corporation of the University of Hawai'i (hereafter "**RCUH**").

a. Lessee's Affiliates. The Lessee shall notify Lessee of any persons employed by or affiliated with any higher education, research, and government organizations and entities (such as the National Oceanic and Atmospheric Administration and San Jose State University) that are collaborating with the Lessee on ongoing research projects (collectively the "**Lessee's Affiliates**") and who will be using or occupying any facilities on or within the Premises, provided that the Lessee shall not be required to obtain Lessee's prior approval before allowing such Lessee's Affiliates to access, use, or occupy any facilities on or within the Premises.

b. Polynesian Voyaging Society. The Lessor and the Lessee hereby acknowledge that the Polynesian Voyaging Society (hereafter "**PVS**") has been using portions of the Premises to manage, oversee, and administer PVS operations, including, without limitation, organizing and conducting its voyages and educational outreach and programs, and maintaining, repairing, overhauling, reconstructing, docking, and storing the PVS vessels. The Lessor hereby approves PVS' continued non-exclusive use and occupancy of designated portions of the Premises in connection with PVS's operations and the conduct of PVS's educational outreach and programs.

13. Lessee Limitations.

a. ~~Lessee's~~ Lessee's Responsibility. The Lessee shall be responsible for damage or injury caused by the Lessee's officers and employees in the course of their employment to the extent that the ~~Lessee's~~ Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessee. The Lessee shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by the Lessor) where the Lessee is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 13a (Lessee's Responsibility). The Lessor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the Lessee. The Lessee's obligations under this Subsection 13a shall survive the expiration or earlier termination of this lease.

b. Lessee not authorized to indemnify- or be responsible for others. The Lessor and the Lessee acknowledge and agree that the Lessee, as an agency of the State of ~~Hawaii~~ Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless the Lessor in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons- or (2) be responsible for the acts or omissions of other persons or entities (other than the Lessee's officers and employees). Notwithstanding anything to the contrary contained in this lease, where the Lessee ~~shall have no contractual duty~~ is or may be obligated to: (i) indemnify, defend, or hold harmless the Lessor or any other persons under any circumstances arising out of or related to this lease and the Lessee's occupancy of the Premises under the terms of this lease. ~~In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by~~ (ii) be responsible for the Lessor) where the Lessee is or may be obligated to indemnify, defend, or hold

~~harmless the Lessor or any acts/omissions of other persons, or entities (except the Lessee's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity or, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.~~

c. Subject to ~~funding~~Funding. To the extent that the Lessee is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessee's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The Lessee shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessee's obligations. Notwithstanding anything to the contrary contained in this lease, this provision shall apply to and qualify each and every Lessee's obligation to perform under this lease, including, without limitation, any obligation of the Lessee to pay or reimburse the Lessor for any work performed by the Lessor due to the Lessee's failure or refusal to perform under this lease and any obligation of the Lessee to perform under the rules and regulations adopted or implemented by the Lessor.

(2) Lessor's right to notice. As an inducement to the Lessor to agree to the Lessee Limitations (as defined herein), the Lessee hereby agrees that for any obligations or liabilities of the Lessee which are subject to

the Lessee obtaining funding or satisfying other conditions prior to the Lessee being able to fulfill such obligations or liabilities, as specified in the Lessee Limitations (as defined herein), if the Lessee knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessee shall provide the Lessor with written notice thereof within thirty (30) days of the Lessee obtaining such knowledge, and the Lessor may immediately issue to the Lessee a notice of breach or default pursuant to Section ~~15~~16 of this lease.

d. Subject to Lessee Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 13a (Lessee's Responsibility), 13b (Lessee not authorized to indemnify or be responsible for others), and 13c (Subject to funding) are hereafter collectively the "Lessee Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), any and all obligations, duties, responsibilities, and liabilities of the Lessee under this lease (including, without limitation, the Lessee's obligations to comply with any provisions of any of the Lessor's rules and regulations) are expressly subject to and limited by the Lessee Limitations set forth and defined in Section 13 of this lease.

14. Lessor Limitations.

a. Lessor's Responsibility-. The Lessor shall be responsible for damage or injury caused by the Lessor's officers and employees in the course of their employment to the extent that the Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessor. The Lessor shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease where the Lessor is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 14a (Lessor's Responsibility). The Lessee acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the

Lessor. The Lessor's obligations under this Subsection 14a shall survive the expiration or earlier termination of this lease.

b. Lessor not authorized to indemnify- or be responsible for others. The Lessor and the Lessee acknowledge and agree that the Lessor, as an agency of the State of ~~Hawaii~~Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless the Lessee in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons- or (2) be responsible for the acts or omissions of other persons or entities (except for the Lessee's officers and employees). Notwithstanding anything to the contrary contained in this lease, where the Lessor ~~shall have no contractual duty~~is or may be obligated to: (i) indemnify, defend, or hold harmless the Lessee or any other persons under any circumstances arising out of or related to this lease or the Lessor's leasing of the Premises to the Lessee under the terms of this lease. ~~In each instance in this lease where the Lessor is or may~~(ii) be ~~obligated to indemnify, defend, or hold harmless the Lessee or any~~responsible for the acts/omissions of other persons, or entities (except the Lessor's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity- or, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to fundingFunding. To the extent that the Lessor is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessor's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on

the use of such funds. The Lessor shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessor's obligations. Notwithstanding anything to the contrary contained in this lease (except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under ~~Subsection~~ Subsections 1a (Minerals reserved) and 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), this provision shall apply to and qualify each and every Lessor's obligation to perform under this lease, including, without limitation, any obligation of the Lessor to pay or reimburse the Lessee for any work performed by the Lessee due to the Lessor's failure or refusal to perform under this lease.

(2) Lessee's right to notice. As an inducement to the Lessee to agree to the Lessor Limitations (as defined herein), the Lessor hereby agrees that for any obligations or liabilities of the Lessor which are subject to the Lessor obtaining funding or satisfying other conditions prior to the Lessor being able to fulfill such obligations or liabilities, as specified in the Lessor Limitations (as defined herein), if the Lessor knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessor shall provide the Lessee with written notice thereof within thirty (30) days of the Lessor obtaining such knowledge.

d. Subject to Lessor Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 14a (Lessor's Responsibility), 14b (Lessor not authorized to indemnify or be responsible for others), and 14c (Subject to funding) are hereafter collectively the "Lessor Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under ~~Subsection~~ Subsections 1a (Minerals reserved) and 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), any and all obligations, duties,

responsibilities, and liabilities of the Lessor under this lease are expressly subject to and limited by the Lessor Limitations set forth and defined in this Section 14 of this lease.

15. Lessee to require contractors to comply with obligations to Lessor. The Lessee shall require the Lessee's contractors and consultants, which shall include for purposes of this section PVS (hereafter collectively the "Lessee's Contractors") to comply with the following obligations to the Lessor:

a. Indemnify Lessor and Lessee. The Lessee shall require the Lessee's Contractors to indemnify, defend, (unless otherwise not permitted by Applicable Laws), and hold harmless the Lessor and the Lessee from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from:

(1) Lessee's ~~Contractors~~ Contractors acts or omissions. Any act or omission on the part of the Lessee's Contractors relating to the use, occupancy, maintenance, or enjoyment of the Premises.

(2) Failure to maintain. Any failure on the part of the Lessee's Contractors to maintain or keep in a safe condition the Premises or any portions thereof that are involved with or affected by the work being performed or the services provided by the Lessee's Contractors (hereafter the "Work Areas"), including any death, accident, fire, or nuisance growing out of or caused by any such failure to maintain.

(3) Non-performance of terms or conditions. All actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's Contractors' non-observance or non-performance of any of the obligations being required of the Lessee's Contractors under this lease, including failure to comply with applicable rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

b. Obtain insurance. The Lessee shall require that the Lessee's Contractors procure, at their own cost and expense, and maintain during the entire period during which the Lessee's Contractors are performing work or providing services

in relation to the Premises (hereafter the ~~("~~"Work Period"), from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-~~II~~ VIII" or other comparable and equivalent industry rating, a policy or policies of ~~comprehensive~~commercial general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Land Board.

(1) State as additional insured. The policy or policies of insurance shall name the State of Hawaii and the University of ~~Hawaii~~Hawai'i as additional insureds ~~and~~
a. A copy of the policy, certificate of insurance, or other documentation required by the Lessor shall be filed with the ~~Lessor~~Lessee and made available to the Lessor upon the Lessor's request.

(2) Insurance to cover entire Premises. The insurance shall cover the entire Premises, including all Work Areas and any buildings, improvements, grounds, roadways, and/or sidewalks located therein.

(3) Lessee's Contractors to furnish insurance policy(ies), certificates ~~of insurance, or other documentation.~~ The Lessee's Contractors shall furnish the ~~Lessor~~Lessee with a policy(ies), certificate(s) of insurance, or other documentation required by the Lessor showing the policy(~~s~~ies) to be initially in force, keep policy(ies), certificate(s) of insurance, or other documentation on deposit during the Work Period and furnish a like policy(ies), certificate(s) of insurance, or other documentation required by the Lessor upon ~~each~~the renewal of ~~the~~each policy(~~s~~)-.

(4) No cancellation without notice. This insurance shall not be cancelled, limited in scope of coverage, or not renewed unless and until written notice has been given to the Lessor and the Lessee.

(5) Lessor right to review coverage. The Lessor may at any time review the coverage, form, and amount of the insurance required hereunder, by requiring the Lessee to produce from Lessee's Contractors, copies of the insurance policy(~~s~~) ~~that are or were~~ies), certificates of insurance, or

other documentation confirming that the required insurance was or is currently in effect during the Work Period. If, in the opinion of the Lessor, the insurance provided hereunder does not provide adequate protection for the Lessor or the Lessee, the Lessor may require the Lessee to require the Lessee's Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable ~~but~~and be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.

(6) Lessor to notify Lessee of insurance changes. The Lessor shall notify the Lessee in writing of changes in the insurance requirements and the Lessee shall require the Lessee's Contractors to deposit with the ~~Lessor~~Lessee copies of acceptable insurance policy(~~s~~)eries), certificate(s) ~~thereof~~of insurance, or other documentation as may be required by the Lessor incorporating the written changes reasonably requested by the Lessor.

(7) No limit on Lessee's ~~Contractors'~~Contractors liability. The procuring of the required policy(~~sies~~) of insurance shall not be construed to limit the liability of the Lessee's Contractors under this lease nor to release or relieve the Lessee's Contractors of the indemnification obligations being required of the Lessee's Contractors under this lease. Notwithstanding the policy(~~sies~~) of insurance, the Lessee shall require that the Lessee's Contractors shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of the Lessee's Contractors in connection with the Premises.-

It is further agreed that any insurance maintained by the Lessor and Lessee will apply in excess of, and not contribute with, insurance provided by the Lessee's ~~Contractors' policy(s).~~Contractors.

c. Maintain the Premises. The Lessee shall require the Lessee's Contractors to keep the Work Areas in a strictly clean, sanitary, and orderly condition.

d. Restoration after work completed. The Lessee shall require that the Lessee's Contractors be responsible for cleaning and restoring the Work Areas to

~~itstheir~~ original condition or a condition satisfactory to the Lessor and the Lessee upon completion of the work performed or services provided in connection with the Premises. The Lessee shall require the Lessee's Contractors to remove and properly dispose off-site all trash generated or brought onto the Premises and/or Work Areas by the Lessee's Contractors.

e. Compliance with Applicable Laws. The Lessee shall require that the Lessee's Contractors comply with all Applicable Laws in relation to the Premises and the Work Areas.

16. Breach. Time is of the essence in this lease and if the Lessee shall ~~abandon the premises or~~ fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default (hereafter the "Lessor's Default Notice") and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the Premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the Premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by the Lessee; furthermore, the Lessor shall retain all rent paid in advance to be applied to any damages. Upon the Lessee's receipt of the Lessor's Default Notice, the Lessor and the Lessee acknowledge and agree that the Lessor and the Lessee shall enter into good faith discussions (not to exceed sixty (60) days from the Lessee's receipt of the Lessor's Default Notice) to address and resolve any issues relating to the Lessee's breach or default hereunder before the Lessor takes any further action against the Lessee for breach of or default under the lease. _

17. Condemnation. If at any time, during the term of this lease, any portion of the Premises should be condemned, or required for public purposes by the federal government (hereafter the "federal condemning authority"), the rental shall

be reduced in proportion to the value of the portion of the Premises condemned. The Lessee shall be entitled to receive from the federal condemning authority (a) the value of growing crops, if any, which the Lessee is not permitted to harvest and (b) the value of the Lessee's improvements so taken in the proportion that the unexpired term of the lease bears to the total term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by the Lessee. The Lessee shall not by reason of the condemnation by the federal condemning authority be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation by the federal condemning authority shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other rights to which the Lessee may be entitled by law. Where the portion of the Premises taken by the federal condemning authority renders the remainder unsuitable for the use or uses for which the Lessee leased the Premises, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that the Lessee may remove the permanent improvements constructed, erected, and/or placed by the Lessee within or upon the Premises before the expiration of any reasonable period allowed by the Lessor. __

18. Right to enter. The Lessor and the City and County of HawaiiHonolulu and their respective agents or representatives shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor and the City and County of HawaiiHonolulu and their respective agents and representatives shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the Premises.

19. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Land Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

20. Quiet enjoyment. The Lessor covenants and agrees

with the Lessee 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 the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the Premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under the Lessor.

21. Surrender or termination. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the Premises in a clean and orderly condition, reasonable wear and tear and damage due to casualty not caused by the Lessee excepted, together with all improvements existing or constructed thereon or the Lessee shall remove such improvements, as mutually determined by the Lessor and the Lessee. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's fixtures, furnishings, equipment, and other personal property (hereafter collectively the "Lessee's Personal Property") from the Premises, after notice thereof, the Land Board may, subject to the Lessor's compliance with all Applicable Laws, remove any and all of the Lessee's Personal Property from the Premises and either deem the Lessee's Personal Property abandoned and dispose of the Lessee's Personal Property or place the Lessee's Personal Property in storage at the cost and expense of the Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the Lessee's Personal Property. This provision shall survive the termination of the lease.

22. Non-warranty. The Lessor does not warrant the conditions of the Premises, as the same are being leased as is.

23.— Hazardous materials.

a. No disposal or release within the Premises. The Lessee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law.

b. Lessee must obtain Lessor consent to bring hazardous materials onto the Premises. The Lessee shall not allow the storage or use of such hazardous materials in any

manner not sanctioned by law or by the highest reasonable standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of the Lessee's business, and then only after written notice is given to the Lessor of the identity of such hazardous materials and upon the Lessor's consent which consent shall not be unreasonably withheld.

c. If testing is required. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Lessee, then the Lessee shall be responsible for the reasonable costs thereof.

d. Lessee to attest to presence of hazardous materials. In addition, the Lessee shall execute affidavits, representations, and the like from time to time at the Lessor's request concerning the Lessee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by the Lessee.

e. "Hazardous materials" definition. 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, 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.

f. Lessee responsibility. To the extent that it can be proven or established that the presence, discharge, or release of hazardous materials on or within the Premises is or can be attributable or attributed to actions of the Lessee, the Lessee's responsibility for such hazardous materials on or within the Premises, including any clean-up and remediation, shall be subject to and governed and limited by the Lessee Limitations. The Lessee will require that the Lessee's Contractors, including PVS, be responsible, at their sole cost and expense, for cleaning up and remediating any hazardous materials on or within the Premises that were discharged or

released by the Lessee's Contractors, including PVS, or whose presence can otherwise be attributable to the use of or activities within the Premises by such parties. The Lessee Limitations shall not be available to Lessee's Contractors, including PVS, if it can be proven or established that the presence, discharge, or release of hazardous materials on or within the Premises is or can be attributable or attributed to the respective actions of such parties.

24. Hawaii law. This lease shall be construed in accordance with and interpreted, enforced, and governed by the laws of the State of Hawaii.

25. Exhibits - Incorporation in lease. All exhibits referred to in this lease are attached and hereby deemed incorporated by reference.

26. Headings. The article and paragraph headings herein are inserted only for convenience and reference only and shall in no way define, describe, or limit the scope or intent of any provision of this lease.

27. 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.

28. Withdrawal.

The Lessor shall have the right to withdraw the Premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds and shall be subject to the right of the Board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights of way within or without the Premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the

value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid to the Lessee based upon the unexpired term of the lease.

29. ~~Termination by either party.~~ The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any term, covenant, or condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

30. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail, cease to use, or abandon all or any portion of the Premises, this lease shall cease and terminate.

31. Building construction. All building construction shall be in full compliance with all Applicable Laws and in accordance with plans and specifications submitted to and approved by the ~~Land Board~~ Chairperson prior to commencement of construction. The Lessee shall be responsible for obtaining all necessary federal, state, or county clearances for such construction.

32. ~~Time of essence.~~ Time is of the essence in all provisions of this lease.

33. Historic preservation. In the event any historic properties or burial sites, as defined in Section 6E-2, Hawaii Revised Statutes, are found on the Premises during any ground disturbance or construction, the Lessee and the Lessee's agents, employees, and representatives (hereafter collectively the "Lessee's Agents") shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

34. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the Premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of said ninety (90) days.

35. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, the Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, and the State Department of Land and Natural Resources (hereafter the "DLNR"). Failure to comply with the provisions of this section shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Land Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Land Board may, at its sole option if Lessee does not do so, arrange for performance of the obligations under this section 35, with all costs and expenses of such performance to be charged to and payable by the Lessee. This provision shall survive and continue in effect after termination of this lease until the obligations hereunder are satisfied or performed by or on behalf of the Lessee.

36. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the Premises.

37. Cooperation with the DLNR Division of Forestry and Wildlife and Na Ala Hele. ~~The Lessee shall be required to cooperate with the DLNR Division of Forestry and Wildlife and the Na Ala Hele Program on the establishment, operation, and maintenance of the Ala Kahakai Trail that traverses the Premises.~~ [Reserved].

38. Submissions of plans. ~~The LesserLessee will have the right to terminate the lease with ninety (90) days written notice for the Lessee's failure to submit plans for the New Improvements for approval by the Land Board Chairperson within six (6) years of the commencement of the lease and for the Lessee's failure to construct and develop the facilities within nine (9) years of the commencement of the lease.~~

~~but prior to 39. — Improvements. The Lessee shall, at its own cost and expense, within nine (9) years from the date of lease commencement, complete the construction or erection of the New~~

Improvements.

~~39. of a facility to include development of the Lessee's planned marine education and research center, which presently includes laboratories, classrooms, and dormitory and dining facilities, in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Land Board Chairperson and in full compliance with all Applicable Laws.~~Improvements. [Reserved].

40. Environmental regulations. The Lessee shall comply with all Applicable Laws relating to environmental impact regulations, including but not limited to, chapter 343, Hawaii Revised Statutes, as amended, and the regulations governing historic preservation. The Lessor acknowledges and accepts Lessee's representation that the Lessee has complied with Applicable Laws relating to environmental impact regulations, specifically chapter 343, Hawai'i Revised Statutes, inasmuch as the Lessee has:

a. EA prepared. Prepared an environmental assessment entitled "University of Hawai'i School of Ocean and Earth Science and Technology and Marine Education Training Center Facilities at Sand Island Final Environmental Assessment/Finding of No Significant Impact" dated July 2015 that covered the New Improvements and was based on the assumption that the Lessor would lease to the Lessee the Premises upon which the New Improvements were to be constructed (hereafter the "EA").

b. EA acceptance. Obtained approval and acceptance of the final EA and a Finding of No Significant Impact for the New Improvements (hereafter the "FONSI") from the Governor of the State of Hawai'i, who was the Accepting Authority.

c. Submission to OEQC. Submitted the final EA and the FONSI to the State of Hawai'i Office of Environmental Quality (hereafter "OEQC") by letter dated July 17, 2015.

d. Publish Notice. Worked with OEQC and had OEQC publish notice of the final EA and the FONSI in "The Environmental Notice" on August 8, 2015 (hereafter the "Notice").

e. No notice of legal challenge. Not received notice of any legal challenge to the final EA and/or the FONSI during the legal challenge period which followed the publication of the Notice.

41. Compliance with the CDUP conditions. The Lessor and the Lessee acknowledge and agree that the Land Board, at its meeting held on ~~October 28, 2011~~ January 8, 1993, approved the issuance of a Conservation District Use Permit, which was subsequently issued by the ~~Department of Land and Natural Resources~~ DLNR as CDUP ~~HA-3589~~ on November 1, 2011 OA-2587, covering the University's proposed continued use and development of the Kalakaua Marine Education Educational and Training Center on and within (hereafter the Premises ("Marine Center" "METC"), associated docking and berthing facilities, and the parking and storage areas, all to be operated and used by the Lessee, through HonCC and SOEST ("METC CDUP"). The Lessee shall comply with all conditions contained in the ~~Marine Center~~ METC CDUP.

DEFINITIONS:

42. Submerged lands. Pursuant to Section 171-53, Hawai'i Revised Statutes, the Lessee must obtain the prior approval of the Hawai'i State Legislature and the Governor in order to use submerged lands. The Lessee obtained the approval of the Hawai'i State Legislature by Senate Concurrent Resolution No. 18 on April 25, 2016, and the Governor of the State of Hawai'i on May 11, 2016, to use certain submerged lands located at Sand Island, O'ahu, within Tax Map Key No. (1) 1-5-41: 006 (por.), consisting of approximately 64,602 square feet ("Submerged Area") and which is described in the attached property description (CSF 25701 dated November 27, 2018, and shown on the accompanying map of the Submerged Area dated November 27, 2018, both of which are included herein as parts of the attached Exhibits A and B, respectively, which have been incorporated herein by reference. Pursuant to such approvals obtained from the Hawai'i State Legislature, the Governor of the State of Hawai'i, and the Lessor, the Lessor in Grant of Easement No. S-) is granting the Lessee a non-exclusive easement covering the Submerged Area to use, maintain, improve, and replace an existing floating dock.

43. Access. Pursuant to Grant of Easement No. S- , the Lessor is granting the Lessee and the Lessee's Agents

and invitees the right to use the easement areas described therein for access and roadway purposes to and from the Premises, which easement areas are identified as Easements 2 and 3 and more particularly described in the attached property descriptions (CSF 25702 and CSF 25,703, both dated November 27, 2018) ("Roadway Area") and shown on the accompanying map of the Roadway Area dated November 27, 2018, all of which are included herein as parts of the attached Exhibits A and B, respectively, which have been incorporated herein by reference.

44. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid:

To the Lessor at:

Department of Land and Natural Resources
Land Division
Attention: Land Administrator
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

or

P.O. Box 621
Honolulu, Hawai'i 96809

Phone No.: 587-0419
Fax No.: 312-6357
Email: dlnr.land@hawaii.gov

To the Lessee at:

Office of Vice President for Budget and Finance/Chief
Financial Officer
Office of Planning
University of Hawai'i
1400 Lower Campus Road, Room 11

Honolulu, Hawaii 96822
Attention: Carleton Ching
Director of Land Development

Phone No.:
Fax No.: 956-2093
Email:
and

Copy to:

University of Hawai'i
Office of Procurement and Real Property Management
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822
Attention: Director

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at such other address as either the Lessor or the Lessee may designate in writing as its new address for such purpose by notice given to the other in accordance with this Section 44 (Notice). Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile or email to the number set forth herein or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile or email. The parties will each appoint a point of contact for matters relating to this lease and will attempt to minimize changes to such points of contact.

Definitions.

1. Use of genders. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. List of definitions. As used in this lease,

unless clearly repugnant to the context:

a. "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his/her successor.

b. "Lessee" means and includes the University of ~~Hawaii~~Hawai'i and its successors or permitted assigns.

c. "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

d. "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased, together with the easement granted (Easement No. S-) covering the Submerged Area for floating dock/pier facilities purposes, the easement granted (Easement No. S-) covering the use of Easements 2 and 3 described therein for access and roadway purposes, and Lessee's right to access the land and Submerged Area described herein.

e. "Waste" includes, but is not limited to, (1) permitting the Premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the Premises; and (3) failure to employ all of the usable portions of the Premises.

f. "Days" shall mean calendar days unless otherwise specified. _____

g. "Existing Improvements" has the meaning ascribed to it in Section 2 (Reservations) above and does not include the New Improvements.

h. "New Improvements" has the meaning ascribed to it in Section 8 (Improvements) above and does not include the Existing Improvements.

i. "Lessee's Affiliates" has the meaning ascribed to it in Section 12c (Lessee's Affiliates).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its meetings
held on January 10, 2014
~~held on April 8, 2004 and~~
Natural Resources
~~March 28, 2008.~~
2015 (Item D-12) and
(Item).

By _____
~~Chairperson~~ SUZANNE D. CASE
Chairperson
Board of Land and
(Item D-11), September 25,

LESSOR

Approved as to Form:

Deputy Attorney General
Dated: _____

UNIVERSITY OF HAWAII, the state
university and a body _____
corporate of

the State of Hawai'i

Recommend Approval:

By _____

~~Its~~ _____

By _____

~~Its~~ _____

David Lassner
Chancellor
University of Hawai'i at Manoa
Puakō UH Hilo DLNR lease (051313) Sand

Kalbert K. Young
Vice President for Budget and
Finance/Chief Financial Officer

1
Island METC Lease UH rev 031319

Brian Taylor, Dean
School of Ocean and Earth
Science and Technology
University of Hawai'i at Manoa

John Morton
Vice President for Community Colleges
University of Hawai'i

Erika Lacro, Chancellor
Honolulu Community College

LESSEE

~~APPROVED AS TO FORM:~~

~~_____
Deputy Attorney General~~

Dated: _____

APPROVED AS TO FORM:

Office of the University General Counsel

Bruce Y. Matsui
Associate General Counsel

Dated: _____

STATE OF HAWAII

) _

ss) ss.

CITY AND COUNTY OF HONOLULU

)

On this _____ day of _____

_____ , before me personally
appeared _____ and _____ , who are the

and

_____ of the UNIVERSITY OF

~~HAWAI'I, a body corporate,~~ KALBERT K. YOUNG to me personally known, who,
being by me duly sworn ~~or affirmed~~, did say that

and

_____ executed he is the Vice
President for Budget and Finance/Chief Financial Officer of the

University of Hawai'i, the ~~foregoing~~ state university and a body
corporate of the State of Hawai'i, and that said instrument was signed
on behalf of the UNIVERSITY OF HAWAI'I, said University of Hawai'i by ~~or~~
~~under the~~ authority of its Board of Regents, and ~~such~~

_____ said KALBERT K. YOUNG, as said
Vice President for Budget and

_____ executed the same as
Finance/Chief Financial Officer, acknowledged said instrument to be
the free act and deed of ~~such persons on behalf of the UNIVERSITY OF~~
~~HAWAI'I~~ said University of Hawai'i.

Notary signature

Print Name:

Notary

Public ~~for above noted State and County~~

My Commission expires: _____

Document Date: _____ Number of Pages: _____

Notary Name: _____, _____ Judicial

Circuit

Document Description: _____

Notary Signature

Date

State of

My Commission Expires:

NOTARY CERTIFICATION

Doc. Date: _____ #

Pages: _____

Notary Name: _____

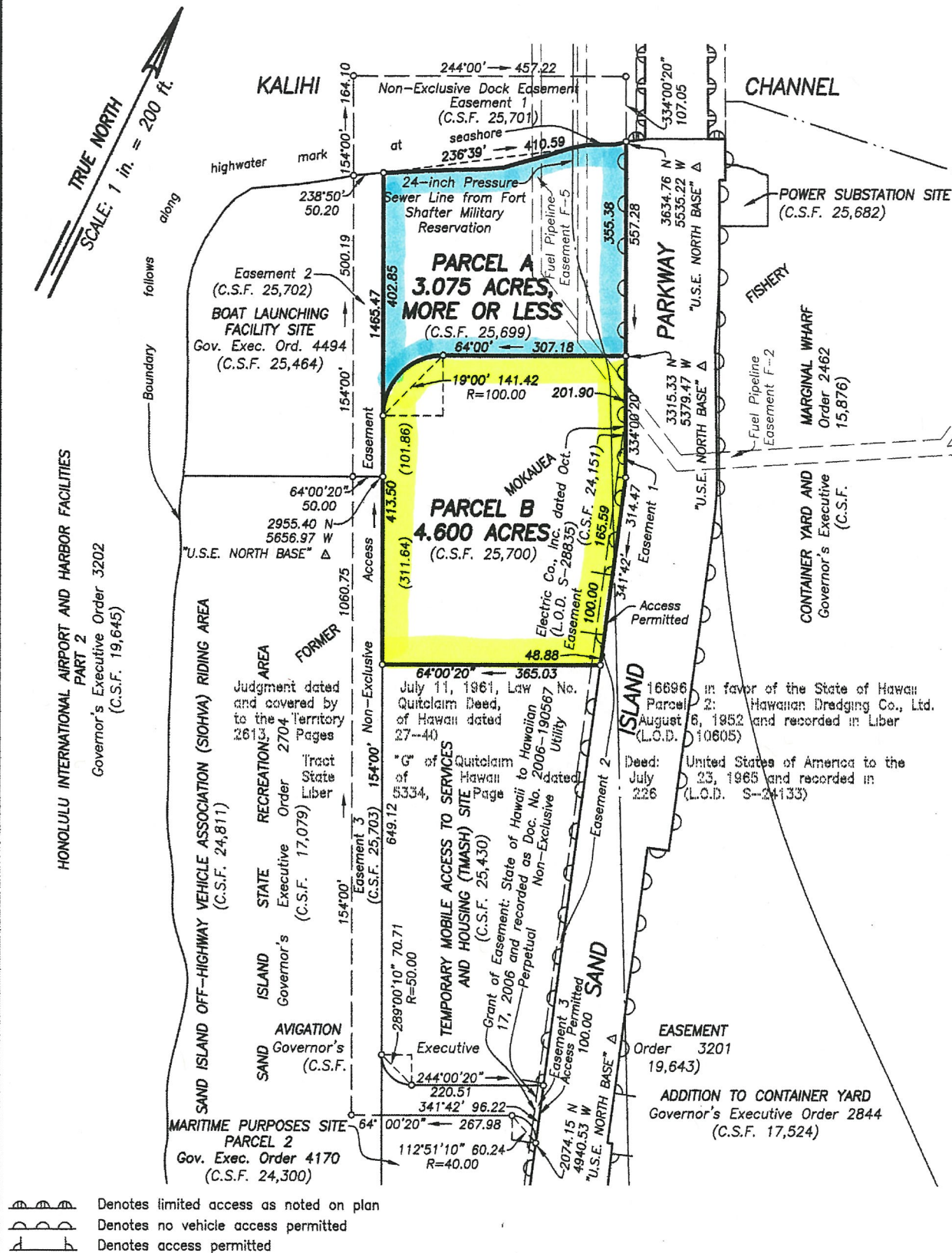
Circuit

Doc. Description General Lease
No. _____

Notary Signature

Date

EXHIBIT 2B



EDUCATIONAL PURPOSES SITE PARCELS A AND B

Mokauea, Sand Island, Honolulu, Oahu, Hawaii

Job O-262(17)

C. BK.

Scale: 1 inch = 200 feet

EXHIBIT 2B

TMK 1-5-41: Pors. 06 and 334

C.S.F. NOS. 25,699
25,700

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

RDM November 27, 2018

EXHIBIT 3A

[illegible]

Return by Mail () Pickup () To:

Tax Map Key No. ()

GRANT OF NON-EXCLUSIVE EASEMENT S-

THIS INDENTURE, made and entered into this _____ day of _____, 20____, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and _____ name/entity _____, whose address is _____ the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawaii, whose address is Bachman Hall, 2444 Dole Street, Honolulu, Hawai'i 96822, hereinafter referred to as the "Grantee."

WITNESSETH THAT:

The WHEREAS, Grantor and Grantee entered into that certain sixty-five (65) year lease dated _____ for Grantee's educational, research, and training purposes (hereafter the "Lease") and covering certain fast lands adjacent to the easement area described herein (hereafter the "Leased Property"); and

WHEREAS, Grantee's use of the Leased Property involves the use of submerged lands adjacent to the Leased Property; and

WHEREAS, Grantee desires to use the submerged lands primarily for purposes of anchoring or securing a floating dock or pier to the submerged lands; and

WHEREAS, pursuant to Section 171-13, Hawaii 53, Hawaii Revised Statutes—[, Grantee must obtain the prior approval of the Hawaii State Legislature and the Governor in order to use submerged lands; and

WHEREAS, Grantee obtained approval from the Hawaii State Legislature by Senate Concurrent Resolution No. 18 on April 25, 2016, and the Governor of the State of Hawaii on May 11, 2016, to use certain submerged lands located at Sand Island, O'ahu, within Tax Map Key No. (1) 1-5-41: 006 (por.), consisting of approximately 64,602 square feet (hereafter the "easement area" or the "premises"); and

WHEREAS, pursuant to such approvals obtained from the Hawaii State Legislature, the Governor of the State of Hawaii, and the State of Hawaii Board of Land and Natural Resources, Grantor is herein granting Grantee a non-conforming uses and Section 183C-5 exclusive easement covering the easement area to construct, use, maintain, repair, improve, and/or replace an existing floating dock or pier to be anchored or secured to the easement area,

NOW THEREFORE, Grantor, pursuant to Sections 171-13 and 171-95, Hawaii Revised Statutes, to the extent applicable,] for and in consideration of the rent to be paid and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:

Right, privilege, and authority to construct, use, operate, maintain, and repair the
, improve, and/or replace a floating dock or pier with berths

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-2 Grant of Non Exclusive Easement
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Sand Island submerged lands

for vessels that will be anchored and secured to the easement area, together with associated and supporting facilities and improvements (collectively the "Easement Purposes"), subject _____ to the terms and conditions herein, in, over, under and across ~~that/those certain parcel(s) of~~ land(s) ("area"), also referred to as "premises," situate at _____, being identified as "_____", containing ~~an~~the easement area of _____, more or less, which is more particularly described in Exhibit "A" and delineated on the map marked as Exhibit "B," both of which are attached hereto and made parts hereof, ~~said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. _____ and dated _____,~~ (collectively the "easement area" or the "premises"), TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. Term. The term of this easement shall be _____ ~~(60)~~sixty-five (65) years, commencing on the ____th day of _____, _____, up to and including the ____th day of _____, _____, unless sooner terminated as hereinafter provided, ~~the Grantor reserving and the Grantee yielding and paying to the Grantor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, [a one time payment, payable in advance, without notice or demand of _____.] / or/ [*an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal _____ (monthly, quarterly, semi annual or annual) installments on _____th of each and every year during the term as follows: with the understanding that the term of this easement is to coincide and be the same as the term of the Lease so that the term of this easement will expire or terminate as of the date that the term~~

~~10319-1.DOC~~

~~3~~Grant of Non Exclusive Easement
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of the Lease expires or terminates, unless the parties otherwise mutually agree to extend or continue the term of the easement.

~~A. For the first _____ (00) years, the sum of AND NO/DOLLARS (\$000.00) per annum.~~

~~B. The annual rental reserved shall be reopened and redetermined as of the day following the expiration of the _____ (___th), _____ (___th), _____ (___th), and _____ (___th) years of the term.~~

~~C. The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:~~

~~(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or~~

~~(2) A disinterested appraiser whose services shall be contracted for by the Board of Land and Natural Resources. Grantee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board of Land and Natural Resources or the Board of Land and Natural Resources' appraiser. The determination shall be deemed received by Grantee on the date the Grantee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Grantee does not agree upon the fair market rental as determined by the Board of Land and Natural Resources' appraiser, the Grantee must notify the Grantor in writing within thirty (30) days after receipt of the determination, and the Grantee shall appoint the Grantee's own appraiser whose name and address shall be stated in the notice. The Grantee shall provide the Board of Land and Natural Resources with the complete appraisal prepared by the Grantee's appraiser. Each party shall pay for its own appraiser. If the Board of Land and Natural Resources' and the Grantee's appraisers do not agree upon the easement rental, the Grantee and the Board of Land and Natural Resources shall, subject to section 171 17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of~~

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~~4~~ Grant of Non Exclusive Easement
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~~mediation and arbitration shall be borne equally by the Grantee and the Board of Land and Natural Resources.~~

~~In the event that the fair market rental is not finally determined before the reopening date, the Grantee shall pay the rental as determined by the Board of Land and Natural Resources' appraiser until the new rent is determined, and the rental paid by Grantee shall then be subject to retroactive adjustments as appropriate.~~

~~Should the Grantee fail to notify Grantor in writing within thirty (30) days after receipt of the determination that Grantee disagrees with the fair market rental as determined by the Board of Land and Natural Resources' appraiser and that Grantee has appointed its own appraiser, then the fair market rental as determined by the Board of Land and Natural Resources' appraiser shall be deemed to have been accepted by Grantee and shall be the fair market rental as of the date of reopening.~~

~~*D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.~~

~~* Delete if one time payment.~~

~~THE GRANTOR AND THE GRANTEE COVENANT AND AGREE AS FOLLOWS:~~

~~1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to release, indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including~~

~~10319-1.DOC~~

~~5~~ Grant of Non Exclusive Easement
State DLNR/University of Hawai'i
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~~any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non observance or non performance of any of the terms, covenants, and conditions of this grant of non exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.~~

2. _____

2. Grantor reservation. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and the right to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

3. Improvements. The placement of all improvements in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and subject to the terms of ~~paragraphs~~section 10 (Surrender) and 14section 15 (Breach) may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Work completion. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.
~~leave the easement area in a clean and sanitary condition satisfactory to the Grantor.~~

5. _____

5. No assignment or mortgage without Grantor

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~~6~~Grant of Non Exclusive Easement
State DLNR/University of Hawai'i
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approval. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, pledged, hypothecated, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor or the Chairperson of the Board of Land and Natural Resources ("Chairperson"), as applicable, and any assignment, conveyance, lease, mortgage, pledge, hypothecation, transfer, or disposition without such prior Grantor or Chairperson approval shall be null and void.

6. ~~The~~ Grantee maintenance. Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area. Grantee shall pay for such maintenance at Grantee's own cost and expense.

a. Maintenance Cost sharing. To the extent Grantor authorizes others to use the easement area by grant of easement, set-aside by Governor's executive order, lease, or similar disposition, Grantor shall require Grantee and such other authorized users (collectively the "Users") to: (a) contribute to and pay the cost of maintenance and repair of the easement area and improvements thereon ("Maintenance Cost") on a pro rata basis commensurate with each User's use (each a "Proportionate Share") and (b) enter into an agreement with Grantee and all other Users that will more specifically identify and establish a process for calculating and paying each User's Proportionate Share of the Maintenance Cost ("Other Agreement"). The intent of Grantor and Grantee is for all Users, including Grantee, to each pay their Proportionate Share of the Maintenance Cost in accordance with the terms of the mutually agreed upon Other Agreement.

b. Grantor's obligations with respect to Users
The failure or neglect of any User to pay its Proportionate Share of Maintenance Costs shall not constitute a breach or default by Grantor under this easement, and any dispute between or among Users as to payment of Proportionate Shares or other matters involving the easement shall be resolved in accordance with the terms and conditions of the Other Agreement. Grantor

agrees that it shall require that all Users of the easement area and/or any improvements thereon shall not unreasonably interfere with any other User's use of or operations within the easement area.

c. Resolving disputes. Grantee will work cooperatively with any other Users to reach agreement on the terms of the Other Agreement. Grantor and Grantee intend any disputes relating to reaching agreement on or otherwise arising under the Other Agreement, including disputes as to the total Maintenance Cost and/or the Proportionate Share for each User, shall be resolved by non-binding mediation with a mutually agreeable alternative dispute resolution firm or mediator, consistent with its or their mediation rules, process and procedure (subject to limitations applicable to Grantee). Additionally, the parties intend that all Users, including Grantee: (a) equally share in the cost of such mediation, consisting of the cost of the mediator services and the holding of the mediation sessions and (b) each bear the cost of making its presentation to the mediator.

Until mutual agreement is reached between all Users, including Grantee, on the terms of the Other Agreement, Grantee shall not be required to make any payments toward the Maintenance Cost and Grantor will not place or treat Grantee to be in breach or default under this easement.

7. No discrimination. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted 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.

8. Grantee to observe laws. The Grantee, in the exercise of the rights granted herein, shall comply with all of the applicable requirements of the federal, state, and county authorities and shall observe all applicable county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force- (collectively the "Applicable Laws").

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~~8~~ Grant of Non Exclusive Easement
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9. Non-use. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

10. Surrender. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon ~~or by~~ Grantee or, at the option of Grantor, Grantee shall remove such improvements and shall restore the premises to their original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's 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 Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

11. The Grantee Limitations.

a. Grantee's Responsibility. Grantee shall ~~procure~~ be responsible for damage or injury caused by Grantee's officers and employees in the course of their employment to the extent that Grantee's liability for such damage or injury has been determined by a court or otherwise agreed to by Grantee. Grantee shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this easement (including, without

limitation, any applicable rules and regulations adopted or implemented by Grantor) where Grantee is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 11a (Grantee's Responsibility). Grantor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of Grantee. Grantee's obligations under this Subsection 11a shall survive the expiration or earlier termination of this easement.

b. Grantee not authorized to indemnify or be responsible for others. Grantor and Grantee acknowledge and agree that Grantee, as an agency of the State of Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless Grantor in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons or (2) be responsible for the acts or omissions of other persons or entities (other than Grantee's officers and employees). Notwithstanding anything to the contrary contained in this easement, where Grantee is or may be obligated to: (i) indemnify, defend, or hold harmless Grantor or any other persons under any circumstances arising out of or related to this easement and Grantee's use of the premises under the terms of this easement or (ii) be responsible for the acts/omissions of other persons or entities (except Grantee's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to Funding. To the extent that Grantee is or may be: (1) obligated to perform under this easement, (2) obligated to make any payments under this easement, or (3) deemed liable under this easement, Grantee's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or

otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. Grantee shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Grantee's obligations. Notwithstanding anything to the contrary contained in this easement, this provision shall apply to and qualify each and every Grantee's obligation to perform under this easement, including, without limitation, any obligation of Grantee to pay or reimburse Grantor for any work performed by Grantor due to Grantee's failure or refusal to perform under this easement and any obligation of Grantee to perform under the rules and regulations adopted or implemented by Grantor.

(2) Grantor's right to notice. As an inducement to Grantor to agree to the Grantee Limitations (as defined herein), Grantee hereby agrees that for any obligations or liabilities of Grantee which are subject to Grantee obtaining funding or satisfying other conditions prior to Grantee being able to fulfill such obligations or liabilities, as specified in the Grantee Limitations (as defined herein), if Grantee knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then Grantee shall provide Grantor with written notice thereof within thirty (30) days of Grantee obtaining such knowledge, and Grantor may immediately issue to Grantee a notice of breach or default pursuant to Section 15 (Breach) of this easement.

d. Subject to Grantee Limitations. Grantor and Grantee acknowledge and agree that Subsections 11a (Grantee

Responsibility), 11b (Grantee not authorized to indemnify or be responsible for others), and 11c (Subject to funding) are hereafter collectively the "Grantee Limitations."

Notwithstanding and superseding anything to the contrary contained in this easement (and any exhibits attached to this easement), any and all obligations, duties, responsibilities, and liabilities of Grantee under this easement (including, without limitation, Grantee's obligations to comply with any provisions of any of Grantor's rules and regulations) are expressly subject to and limited by the Grantee Limitations set forth and defined in Section 11 (Grantee Limitations) of this easement.

12. Grantor Limitations.

a. Grantor's Responsibility. Grantor shall be responsible for damage or injury caused by the Grantor's officers and employees in the course of their employment to the extent that Grantor's liability for such damage or injury has been determined by a court or otherwise agreed to by Grantor. Grantor shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this easement where Grantor is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 12a (Grantor's Responsibility). Grantee acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of Grantor. Grantor's obligations under this Subsection 12a shall survive the expiration or earlier termination of this easement.

b. Grantor not authorized to indemnify or be responsible for others. Grantor and Grantee acknowledge and agree that Grantor, as an agency of the State of Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless Grantee in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any

persons or (2) be responsible for the acts or omissions of other persons or entities (except for the Grantee's officers and employees). Notwithstanding anything to the contrary contained in this easement, where Grantor is or may be obligated to: (i) indemnify, defend, or hold harmless Grantee or any other persons under any circumstances arising out of or related to this easement or the use of the premises by Grantor or any other persons (ii) be responsible for the acts/omissions of other persons or entities (except Grantor's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to Funding. To the extent that Grantor is or may be: (1) obligated to perform under this easement, (2) obligated to make any payments under this easement, or (3) deemed liable under this easement, Grantor's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. Grantor shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Grantor's obligations. Notwithstanding anything to the contrary contained in this easement (except for Grantor's obligation to pay just compensation in the event Grantor exercises its withdrawal and

taking rights under Section 14 (Withdrawal), this provision shall apply to and qualify each and every Grantor's obligation to perform under this easement, including, without limitation, any obligation of Grantor to pay or reimburse Grantee for any work performed by Grantee due to Grantor's failure or refusal to perform under this easement.

(2) Grantee's right to notice. As an inducement to Grantee to agree to the Grantor Limitations (as defined herein), Grantor hereby agrees that for any obligations or liabilities of Grantor which are subject to Grantor obtaining funding or satisfying other conditions prior to Grantor being able to fulfill such obligations or liabilities, as specified in the Grantor Limitations (as defined herein), if Grantor knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then Grantor shall provide Grantee with written notice thereof within thirty (30) days of Grantor obtaining such knowledge.

d. Subject to Grantor Limitations. Grantor and Grantee acknowledge and agree that Subsections 12a (Grantor's Responsibility), 12b (Grantor not authorized to indemnify or be responsible for others), and 12c (Subject to funding) are hereafter collectively the "Grantor Limitations."
Notwithstanding and superseding anything to the contrary contained in this easement (and any exhibits attached to this easement), except for Grantor's obligation to pay just compensation in the event Grantor exercises its withdrawal and taking rights under Section 14 (Withdrawal), any and all obligations, duties, responsibilities, and liabilities of Grantor under this easement are expressly subject to and limited by the Grantor Limitations set forth and defined in this Section 12 (Grantor Limitations) of this easement.

13. Grantee to require contractors to comply with obligations to Grantor. Grantee shall require Grantee's contractors and consultants, which shall include for purposes of this section the Polynesian Voyaging Society (hereafter collectively the "Grantee's Contractors") to comply with the following obligations to Grantor:

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a. Indemnify Grantor and Grantee. Grantee shall require the Grantee's Contractors to indemnify, defend (unless otherwise not permitted by Applicable Laws), and hold harmless Grantor and Grantee from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from:

(1) Grantee's Contractors' acts or omissions. Any act or omission on the part of the Grantee's Contractors relating to the use, occupancy, maintenance, or enjoyment of the premises.

(2) Failure to maintain. Any failure on the part of the Grantee's Contractors to maintain or keep in a safe condition the premises or any portions thereof that are involved with or affected by the work being performed or the services provided by the Grantee's Contractors (hereafter the "Work Areas"), including any death, accident, fire, or nuisance growing out of or caused by any such failure to maintain.

(3) Non-performance of terms or conditions. All actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's Contractors' non-observance or non-performance of any of the obligations being required of the Grantee's Contractors under this easement, including failure to comply with Applicable Laws.

b. Obtain insurance. Grantee shall require that the Grantee's Contractors procure, at ~~its~~their own cost and expense, in full force and effect throughout the term of this easement, general liability insurance, or its equivalent, with and maintain during the entire period during which the Grantee's Contractors are performing work or providing services in relation to the premises (hereafter the "Work Period"), from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of commercial general liability insurance or its equivalent, in an amount of at least \$1,000,000-~~00~~ for each occurrence and \$2,000,000-~~00~~ aggregate,

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and with coverage terms acceptable to the Chairperson ~~of the Board of Land and Natural Resources.~~_____

(1) State as additional insured. The policy or policies of insurance shall name the State of Hawaii and the University of Hawai'i as ~~an additional insured~~ insureds. A copy of the policy, certificate of insurance, or other documentation required by ~~the~~ Grantor shall be filed with ~~the State of Hawaii, Department of Land and Natural Resources.~~ The insurance shall Grantee and made available to Grantor upon Grantor's request.

(2) Insurance to cover entire premises. The insurance shall cover the entire ~~easement area~~ premises, including all Work Areas and any buildings, improvements, ~~and grounds and all~~, roadways, ~~and/or sidewalks on or adjacent to the easement in the use or control of the Grantee located therein.~~

~~The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall~~ (3) Grantee's Contractors to furnish the Grantor insurance policy(ies), certificates of insurance or other documentation. The Grantee's Contractors shall furnish Grantee with a policy(s)ies), certificates of insurance, or other documentation required by the Grantor showing the policy(s) to be initially in force, keep the policy(s)ies), certificates of insurance, or other documentation required by the Grantor on deposit during the entire easement term, Work Period and furnish a like policy(s)ies), certificates of insurance, or other documentation required by the Grantor upon each the renewal of the each policy(s).

(4) No cancellation without notice. This insurance shall not be cancelled, limited in scope of coverage, or ~~nonrenewed~~ not renewed unless and until after thirty (30) days written notice has been given to ~~the~~ Grantor and Grantee. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s)ies), certificates of insurance, or other documentation confirming that ~~are or were~~ the

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required insurance was or is currently in effect during the easement period or other documentation required by the Grantor.

The (5) Grantor shall retain the right to review coverage. Grantor may at any time to review the coverage, form, and amount of the insurance required by this easement hereunder, by requiring Grantee to produce from the Grantee's Contractors, copies of the insurance policy(ies) or certificates of insurance that are or were in effect during the Work Period. If, in the opinion of the Grantor, the insurance provisions in this easement deprovided hereunder does not provide adequate protection for the Grantor, the or Grantee, Grantor may require Grantee to require the Grantee's Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's Grantor's requirements shall be reasonable but shall and be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Grantor thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

(6) Grantor to notify Grantee of insurance changes. Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall require the Grantee's Contractors to deposit with the Grantee copies of acceptable insurance policy(ies), certificates of insurance, or other documentation as may be required by the Grantor incorporating the written changes reasonably requested by Grantor.

(7) No limit on Grantee's Contractors liability. The procuring of the required policy(sies) of insurance shall not be construed to limit Grantee's the liability of the Grantee's Contractors under this easement nor to release or relieve the Grantee Grantee's Contractors of the indemnification provisions and requirements of obligations being required of the Grantee's Contractors under this easement. Notwithstanding the policy(sies) of insurance, Grantee shall require that the Grantee's Contractors shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's the negligence or neglect connected with this

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easement of the Grantee's Contractors in connection with the premises.

It is further agreed that any insurance maintained by ~~the~~ Grantor and Grantee will apply in excess of, and not contribute with, insurance provided by ~~Grantee's policy.~~ the Grantee's Contractors.

c. Maintain the premises. Grantee shall require the Grantee's Contractors to keep the Work Areas in a strictly clean, sanitary, and orderly condition.

d. Restoration after work completed. Grantee shall require that the Grantee's Contractors be responsible for cleaning and restoring the Work Areas to its original condition or a condition satisfactory to Grantor and Grantee upon completion of the work performed or services provided in connection with the premises. Grantee shall require the Grantee's Contractors to remove and properly dispose off-site all trash generated or brought onto the premises and/or Work Areas by the Grantee's Contractors.

e. Compliance with Applicable Laws. Grantee shall require that the Grantee's Contractors comply with all Applicable Laws in relation to the premises and the Work Areas.

14. ~~12.~~ Withdrawal. Grantor reserves the right to withdraw the easement area or any portion thereof for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee. ~~[*Upon withdrawal of the easement, Grantor shall return to Grantee a portion of the one time payment described in paragraph 1. For purposes of determining the amount to be returned to the Grantee, the term "net payment" shall mean the one time payment described in paragraph 1 reduced by any non refundable portion of the one time payment, if any, that Grantor was required by statute to pay to any other entity or body. The amount returned to Grantee shall be the net payment prorated for the unused term of the easement.] [*In any such event, all monies paid by the Grantee hereunder will be retained by the Granter.]~~ Grantor and Grantee will work together to identify a

mutually agreeable alternative site that Grantee may use for the Easement Purposes as described in this easement that is within the reasonable vicinity of the easement area.

15. Breach. Time is of the essence in this easement
~~and 13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.~~

~~*14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default (hereafter the "Grantor's Default Notice") and demand for cure, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.~~

~~**14. Time is of the essence in this agreement and if the Grantee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) calendar days after delivery by the Grantor of a written notice of breach or default, or if the Grantee shall become bankrupt, or shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is~~

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~~made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, all improvements shall at the option of the Grantor, all buildings and improvements shall remain and become the property of the Grantor at the option of the Grantor or shall be removed by Grantee, furthermore, the. Upon Grantee's receipt of the Grantor's Default Notice, Grantor and Grantee acknowledge and agree that Grantor and Grantee shall retain all rent paid in advance enter into good faith discussions (not to be applied exceed sixty (60) days from Grantee's receipt of the Grantor's Default Notice) to address and resolve any damages. issues relating to Grantee's breach or default hereunder before Grantor takes any further action against Grantee for breach of or default under this easement.~~

~~*15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have~~

~~vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispense shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.~~

~~**15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure, or remedy the default or breach of rent payment within thirty (30) calendar days or any other default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest~~

~~and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispense shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market grant value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.~~

~~16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the~~

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~~Grantor in enforcing the covenants and conditions of this grant of non exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.~~

16. Condemnation. If at any time, during the term of this easement, any portion of the premises should be condemned, or required for public purposes by the federal government (hereafter the "federal condemning authority"), the rental, if any, shall be reduced in proportion to the value of the portion of the premises condemned. Grantee shall be entitled to receive from the federal condemning authority (a) the value of growing crops, if any, which Grantee is not permitted to harvest and (b) the value of the Grantee's improvements so taken in the proportion that the unexpired term of the easement bears to the total term of the easement; provided, that Grantee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by Grantee. Grantee shall not by reason of the condemnation by the federal condemning authority be entitled to any claim against Grantor for condemnation or indemnity for the easement interest and all compensation payable or to be paid for or on account of the easement interest by reason of the condemnation by the federal condemning authority shall be payable to and be the sole property of Grantor. The foregoing rights of Grantee shall not be exclusive of any other rights to which Grantee may be entitled by law. Where the portion of the premises taken by the federal condemning authority renders the remainder unsuitable for the Easement Purposes, Grantee shall have the option to surrender this easement and be discharged and relieved from any further liability; provided, that Grantee may remove the permanent improvements constructed, erected, and/or placed by Grantee within or upon the premises before the expiration of any reasonable period allowed by Grantor.

17. ~~The~~Hazardous materials.

a. No disposal or release within the premises.
Grantee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law.

b. Grantee must obtain Grantor consent to bring

hazardous materials onto the premises. Grantee shall not allow the storage or use of such hazardous materials in any manner not sanctioned by law or by the highest reasonable standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the ~~easement-~~
~~areapremises~~ any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such hazardous materials and upon ~~Grantor's~~Grantor's consent which consent ~~may~~shall not be unreasonably withheld ~~at Grantor's sole and absolute discretion.~~

c. If testing is required. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then ~~the~~ Grantee shall be responsible for the reasonable costs thereof.

d. Grantee to attest to presence of hazardous materials. In addition, Grantee shall execute affidavits, representations, and the like from time to time at ~~Grantor's~~Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the ~~easement area~~premises placed or released by Grantee.—

~~The Grantee agrees to release, indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.~~

e. "Hazardous materials" definition. For the purpose of this easement, "hazardous materialmaterials" 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, or any other federal, state, or local environmental law, regulation,

ordinance, rule, or ~~bylaw~~by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

f. Grantee responsibility. To the extent that it can be proven or established that the presence, discharge, or release of hazardous materials on or within the premises is or can be attributable or attributed to actions of Grantee, Grantee's responsibility for such hazardous materials on or within the premises, including any clean-up and remediation, shall be subject to and governed and limited by the Grantee Limitations. Grantee will require that the Grantee's Contractors, including PVS, be responsible, at their sole cost and expense, for cleaning up and remediating any hazardous materials on or within the premises that were discharged or released by the Grantee's Contractors, including PVS, or whose presence can otherwise be attributable to the use of or activities within the premises by such parties. The Grantee Limitations shall not be available to Grantee's Contractors, including PVS, if it can be proven or established that the presence, discharge, or release of hazardous materials on or within the premises is or can be attributable or attributed to the respective actions of such parties.

18. Hawaii law. This easement shall be construed in accordance with and interpreted, enforced, and governed by the laws of the State of Hawaii.

19. Headings. The article and paragraph headings herein are inserted only for convenience and reference only and shall in no way define, describe, or limit the scope or intent of any provision of this easement.

20. Partial invalidity. If any term, provision, covenant, or condition of this easement should be held to be invalid, void, or unenforceable, the remainder of this easement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in

writing and given by delivering the notice in person or by
commercial courier, or by sending it by first-class mail,
certified mail, return receipt requested, or overnight courier,
return receipt requested, with postage prepaid:

To Grantor at:

Department of Land and Natural Resources
Land Division
Attention: Land Administrator
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

or

P.O. Box 621 Honolulu, Hawaii 96809

Phone No.: 587-0419
Fax No.: 312-6357
Email: dlnr.land@hawaii.gov

To Grantee at:

Office of the Vice President for Budget and
Finance/Chief Financial Officer
University of Hawai'i
Office of Planning
1400 Lower Campus Road, Room 11
Honolulu, Hawaii 96822
Attention: Carleton Ching
Director of Land Development

Phone No.:
Fax No.: 956-2093
Email:

Any notice, demand, request, consent, approval, or communication
that either party desires or is required to give to the other
party shall be addressed to the other party at such other

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address as either Grantor or Grantee may designate in writing as its new address for such purpose by notice given to the other in accordance with this Section 21 (Notice). Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile or email to the number set forth herein or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile or email. The parties will each appoint a point of contact for matters relating to this easement and will attempt to minimize changes to such points of contact.

22.

Entire agreement. Grantor and Grantee agree that this easement shall be the final expression of their entire agreement with respect to the subject matter hereof (except for the Lease and any additional easements associated therewith), and supersedes and replaces, and may not be contradicted by evidence of, any prior or contemporaneous written or oral agreements or understandings.

23. Environmental Requirements.

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a. Compliance with regulations. Grantee shall comply with all applicable federal and state environmental impact regulations.

b. Implement pollution control measures. Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from Grantee's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to Grantor's satisfaction the area affected by such pollution or contamination, all at Grantee's own cost and expense.

[Remainder of page intentionally left blank]
[Signature page to follow]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this ~~Indenture~~Grant of Non-Exclusive Easement to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meeting held on

By _____
SUZANNE ~~D.~~ CASE
Chairperson
Board of Land and
Natural Resources

GRANTOR

APPROVED AS TO FORM:

(Entity's name)

UNIVERSITY OF HAWAI'I

Amanda J. Weston
Deputy Attorney General
Dated: _____

~~10319_1.DOC~~

~~-29~~Grant of Non Exclusive Easement
State DLNR/University of Hawai'i
Sand Island submerged lands

By _____

~~Name~~ _____ KALBERT K. YOUNG

Vice President for Budget and
Finance/Chief Financial Officer

GRANTEE

RECOMMEND APPROVAL:

David Lassner, Chancellor
University of ~~Grantee~~ Hawai'i at Mānoa

Its _____

Brian Taylor, Dean
School of Ocean and Earth Science and Technology
University of Hawai'i at Mānoa

John Morton, Vice President for Community Colleges
University of Hawai'i

Erika Lacro, Chancellor
Honolulu Community College

APPROVED AS TO FORM:

And By _____

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~~-30~~ Grant of Non Exclusive Easement
State DLNR/University of Hawai'i
Sand Island submerged lands

STATE OF HAWAII _____)
_____) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me
personally appeared _____ to
me known to be the person described in and who executed the
foregoing instrument and acknowledged that _____ executed the
same as _____ free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

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State DLNR/University of Hawai'i

Sand Island submerged lands

STATE OF HAWAII

)

) SS.

CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20_____,
before me appeared _____ and
_____ KALBERT K. YOUNG, to me
personally known, who, being by me duly sworn, did say that ~~they~~
~~are~~ he is the _____ Vice President for
Budget and Finance/Chief Financial Officer of the University of
Hawai'i, the state university and _____,
respectively of _____, a
~~Hawaii corporation,~~ body corporate of the State of Hawai'i and
that said instrument was signed in behalf of said
~~corporation~~ University of Hawai'i by authority of its Board of
~~Directors~~ Regents, and ~~the~~ said _____ KALBERT
K. YOUNG, as said Vice President for Budget and _____
Finance/Chief Financial Officer, acknowledged said instrument to
be the free act and deed of said ~~corporation~~ University of
Hawai'i.

Print Name: _____

Notary Public, ~~State of~~ _____

~~Hawaii~~ First Circuit

State of Hawai'i

My commission expires: _____

STATE OF HAWAII _____)

) SS.

COUNTY OF _____)

On this _____ day of _____, 20_____,

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before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires: _____

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~~-34~~ Grant of Non Exclusive Easement

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ATTACHMENT

SPECIAL CONDITIONS

~~(If roadway easement include 18 19 below)~~

~~18. The easement area shall not be used at any time by the Grantee, its guests or invitees for parking purposes.~~

~~19. The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.~~

~~20. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway, waterway, or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.~~

~~(If seawall easement include 21 24 below)~~

~~21. No building, structure or improvements other than the existing (i.e. seawall) shall be placed or constructed within the easement area.~~

Date of Document: _____ # Pages: _____
or ☐ Undated at time of notarization

Name: _____ First Circuit _____

Doc. Description: Grant of Non-Exclusive Easement S- _____

Notary Signature _____ Date _____

NOTARY CERTIFICATION _____ (Seal)

~~22. The Grantee acknowledges and agrees that the _____ described in Exhibit "A" and delineated on Exhibit _____~~

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~~"B" herein is/are nonconforming and, further, that the Grantee is prohibited from rebuilding or altering said _____ without first obtaining the appropriate permission (e.g., conservation district use permit) from Grantor. In no event may Grantee extend the _____ seaward of its/their present location. Furthermore, the Grantee shall keep the _____ in good condition and repair, provided, however, if the _____ is/are damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction as determined by the Grantor, this easement and all rights granted herein shall cease and terminate automatically without any further action on the part of the Grantor.~~

~~23. The public shall have access across the easement area at all times.~~

~~24. The Grantee shall release, hold harmless, defend, and indemnify the State of Hawaii, its boards, departments, agencies, and public and appointed officials from any and all claims for harm, taking, damages, loss of land, or specific performance that may arise out of or result from the existence and effect of the _____ on the flow of ocean water that, in turn, may affect or cause lateral erosion of shoreline land in either direction along the shore from the _____.~~

~~Replace paragraph 5 for seawall easements pursuant to Board Submittal dated January 14, 2005, and for those easements which the Board approved (see Board Submittal August 10, 2012 for the most current revision) with condition that easement runs with the land herein below:~~

~~. Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. () _____, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold,~~

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~~assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.~~

~~25. The Grantee shall comply with all applicable federal and state environmental impact regulations.~~

~~26. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.~~

~~27. The Grantee shall maintain, repair and upkeep the existing _____ in a condition satisfactory to the Grantor, and in a manner that will enhance the public shoreline and access thereto. Any improvements to the existing _____ shall be subject to the prior written approval of the Board of Land and Natural Resources and any other appropriate permission. Upon abandonment, expiration or termination of this easement, if desired by the Grantor, the Grantee, its successors and assigns, at its sole cost and expense, shall remove the _____ and restore the area to a condition satisfactory to the Grantor.~~

~~Subsurface Easement — NOTE this provision is also used for roadway easements)~~

~~— The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.~~

~~(Term Utility Easement — Use the following relocation~~

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~~provision:)~~

~~. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any money, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.~~

~~NOTE: For extraordinary circumstances on grants of easements: If granting an easement for extraordinary circumstances, modify the relocation provision by deleting rest of paragraph after "expense."~~

~~(Prior approval by the Governor and the prior authorization of the Legislature by Concurrent Resolution for Submerged Lands)~~

~~. Section 171-53(c), Hawaii Revised Statutes, requires the prior approval of the Governor of the State of Hawaii to be obtained for this term easement. The Governor of the State of Hawaii's approval was obtained on~~

~~. Section 171-53(c), Hawaii Revised Statutes, requires the prior authorization of the legislature by concurrent resolution to be obtained for this term easement. Said concurrent resolution was obtained on~~

~~(Bond Requirement)~~

~~. The Grantee shall, at its own cost and expense, within thirty (30) calendar days after the date of receipt of this easement document, procure and deposit with the Grantor and thereafter keep in full force and effect during the term of this easement a good and sufficient surety bond, conditioned upon the~~

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~~full and faithful observance and performance by Grantee of all the terms, conditions, and covenants of this easement, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the easement terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Grantor as liquidated and ascertained damages and not as a penalty.~~

~~(Environmental Requirement)~~

~~— The Grantee shall comply with all applicable federal and state environmental impact regulations.~~

~~— The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's and its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the area affected by such pollution or contamination, all at the Grantee's own cost and expense.~~

~~(Governor's approval for easements upon land encumbered by Governor's Executive Order)~~

~~— The easement area is encumbered by Governor's Executive Order No. _____ to the State of Hawaii, Department of _____, and therefore this grant of easement is subject to the State of Hawaii Governor's approval. Said approval was obtained on _____~~

~~(Agency's or County's approval for easements upon land encumbered by Governor's Executive Order)~~

~~— The easement area is encumbered by Governor's~~

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~~Executive Order No. _____ to the State of Hawaii,
Department of _____ or County of
_____), and therefore this grant of easement is subject to
the (Agency's or County's) approval. Said approval was obtained
on _____.~~

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State DLNR/University of Hawai'i
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EXHIBIT 3B

TRUE NORTH
SCALE: 1 in. = 200 ft.
follows along

Governor's Executive Order 3202
(C.S.F. 19,645)

**BOAT LAUNCHING
FACILITY SITE**
Gov. Exec. Ord. 44
(C.S.F. 25,464)

Easement 2
(C.S.F. 25,702)

EDUCATIONAL
PURPOSES SITE
PARCEL A
(C.S.F. 25,699)

Fuel Pipeline
Easement F-5

PARKWAY

*U.S.E. NOR

POWER SUBSTATION SITE
(C.S.F. 25,682)

CONTAINER YARD AND
Governor's Executive
(C.S.F.)
Hawaii and
Territory of
L.O.D. 10605
Hawaii
S-24133

MARGINAL WHARF
Order 2462
5,876)

FISHERY

SAND ISLAND OFF-HIGHWAY VEHICLE ASSOCIATION (SIOHVA) RIDING AREA
(C.S.F. 24,811)

GOVERNOR SAND ISLAND STATE RECREATION AREA
AVIG Governor's Executive Order 2704
(C.S.F. 17,079)

Easement 3
(C.S.F. 25,703) Non-Exclusive




TEMPORARY MOBILE ACCESS TO SERVICES
AND HOUSING (TMASH) SITE
(C.S.F. 25,430)

Grant of Easement: State of Hawaii to Hawaiian
Oct. 17, 2006 and recorded as Doc. No. 2006-1
-Perpetual Non-Exclusive Utility Easement

~~Easement 3~~
~~Access Permitted~~

EASEMENT
Order 3201
19,643)

ADDITION TO CONTAINER YARD
Governor's Executive Order 2844
(C.S.F. 17,524)

	Denotes limited access as noted on plan
	Denotes no vehicle access permitted
	Denotes access permitted

**NON-EXCLUSIVE DOCK EASEMENT
EASEMENT 1**

Mokauea, Sand Island, Honolulu, Oahu, Hawaii

EXHIBIT 3B

TMK 1-5-41: 06 Seaward
C.S.F. NO. 25,701

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

RDM November 27, 2018

EXHIBIT 4A

WHEREAS, Grantee plans to continue using one or more of Grantor's roadways to access the Leased Property; and

WHEREAS, pursuant to Section the Lease, Grantor agreed to grant a roadway easement to Grantee for use in connection with the Lease,

NOW THEREFORE, Grantor, pursuant to Sections 171-13 and 171-95, Hawaii Revised Statutes [non-conforming uses and Section 183C 5, Hawaii Revised Statutes, to the extent applicable,], for and in consideration of the rent to be paid and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:

Right, privilege, and authority to construct, use, operate, maintain, and repair the a roadway on Grantor's property adjacent to the Leased Property for access to the Leased Property ("Roadway"), together with associated and supporting facilities and improvements but such improvements shall not include any utility lines and facilities situated within said (collectively the "Roadway Improvements"), subject to the terms and conditions herein,

in, over, under and across ~~that/those certain parcel(s) of land(s) ("the easement area"), also referred to as "premises,"~~ situate at _____, being identified as "_____," containing an area of _____, ~~more or less,~~ which is located on Grantor owned lands adjacent to the Leased Property and is more particularly described in Exhibit "A" and delineated on the map marked as Exhibit "B," both of which are attached hereto and made parts hereof, ~~said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. _____ and dated _____, (collectively the "easement area" or the "premises"),~~ TOGETHER WITH the rights of ingress and egress to and from the easement area for all

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~~2~~ Grant of Non Exclusive Easement
State DLNR/University of Hawai'i
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purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. Term. The term of this easement shall be _____
~~(00)sixty-five (65)~~ years, commencing on the ____th day of _____
, _____, up to and including the ____th day of _____,
, unless sooner terminated as hereinafter provided, ~~the Grantor~~
~~reserving and the Grantee yielding and paying to the Grantor at~~
~~the Office of the Department of Land and Natural Resources,~~
~~Honolulu, Oahu, State of Hawaii, [a one time payment, payable in~~
~~advance, without notice or demand of _____.] /-~~
~~or/ [*an annual rental as provided hereinbelow, payable in~~
~~advance, without notice or demand, in equal _____(monthly,~~
~~quarterly, semi annual or annual) _____installments on _____th of~~
~~each and every year during the term as follows:with the~~
~~understanding that the term of this easement is to coincide and~~
~~be the same as the term of the Lease so that the term of this~~
~~easement will expire or terminate as of the date that the term~~
~~of the Lease expires or terminates, unless the parties otherwise~~
~~mutually agree to extend or continue the term of the easement.~~

A. ~~For the first _____ (00) years, the sum of~~
~~AND NO/DOLLARS (\$000.00) per annum.~~

B. ~~The annual rental reserved shall be reopened and~~
~~redetermined as of the day following the expiration of the~~
~~_____ (____th), _____ (____th), _____ (____th), and _____ (____~~
~~th) years of the term.~~

C. ~~The rental for any ensuing period shall be the~~
~~fair market rental at the time of reopening. At least six months~~
~~prior to the time of reopening, the fair market rental shall be~~
~~determined by:~~

~~(1) An employee of the Department of Land and Natural~~
~~Resources qualified to appraise lands; or~~

~~(2) A disinterested appraiser whose services shall be~~

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~~contracted for by the Board of Land and Natural Resources. Grantee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board of Land and Natural Resources or the Board of Land and Natural Resources' appraiser. The determination shall be deemed received by Grantee on the date the Grantee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Grantee does not agree upon the fair market rental as determined by the Board of Land and Natural Resources' appraiser, the Grantee must notify the Grantor in writing within thirty (30) days after receipt of the determination, and the Grantee shall appoint the Grantee's own appraiser whose name and address shall be stated in the notice. The Grantee shall provide the Board of Land and Natural Resources with the complete appraisal prepared by the Grantee's appraiser. Each party shall pay for its own appraiser. If the Board of Land and Natural Resources' and the Grantee's appraisers do not agree upon the easement rental, the Grantee and the Board of Land and Natural Resources shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of mediation and arbitration shall be borne equally by the Grantee and the Board of Land and Natural Resources.~~

~~— In the event that the fair market rental is not finally determined before the reopening date, the Grantee shall pay the rental as determined by the Board of Land and Natural Resources' appraiser until the new rent is determined, and the rental paid by Grantee shall then be subject to retroactive adjustments as appropriate. —~~

~~— Should the Grantee fail to notify Grantor in writing within thirty (30) days after receipt of the determination that Grantee disagrees with the fair market rental as determined by the Board of Land and Natural Resources' appraiser and that Grantee has appointed its own appraiser, then the fair market rental as determined by the Board of Land and Natural Resources' appraiser shall be deemed to have been accepted by Grantee and shall be the fair market rental as of the date of reopening. —~~

~~*D. The interest rate on any and all unpaid or~~

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~~delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.~~

~~* Delete if one time payment.~~

~~THE GRANTOR AND THE GRANTEE COVENANT AND AGREE AS FOLLOWS:~~

~~1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to release, indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non observance or non performance of any of the terms, covenants, and conditions of this grant of non exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.~~

~~2.~~

2. Grantor reservation. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and the right to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

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3. Roadway Improvements. The placement of all ~~improvements~~Roadway Improvements in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and subject to the terms of ~~paragraphs~~section 10 (Surrender) and 1415 (Breach) may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal.

4. Work completion. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.
~~leave the easement area in a clean and sanitary condition satisfactory to the Grantor.~~

5. —

5. No assignment or mortgage without Grantor approval. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, pledged, hypothecated, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor or the Chairperson of the Board of Land and Natural Resources ("Chairperson"), as applicable, and any assignment, conveyance, lease, mortgage, pledge, hypothecation, transfer, or disposition without such prior Grantor or Chairperson approval shall be null and void.

6. The Grantee maintenance. Grantee shall keep the easement area and the ~~improvements~~Roadway Improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.— Grantee shall pay for such maintenance at Grantee's own cost and expense.

a. Maintenance Cost sharing. To the extent Grantor has already authorized others to use the easement area by grant

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of easement, set-aside by Governor's executive order, lease, or similar disposition (Grantee and such authorized users are collectively the "Users"), it is the intent of Grantor and Grantee that all Users contribute to the cost of maintenance and repair of the easement area and the Roadway Improvements thereon (collectively the "Maintenance Cost") on a pro rata basis commensurate with each User's use (each a "Proportionate Share").

b. All Users to enter into Other Agreement. Grantor and Grantee acknowledge and agree that there are already existing Users of portions of the easement area and that Grantee will need to work cooperatively with all Users to reach agreement on a separate memorandum of understanding, memorandum of agreement, or similar agreement, that will more specifically identify and establish a process for calculating the Proportionate Share for each User, including Grantee (collectively the "Other Agreement"). The intent of Grantor and Grantee is for all Users, including Grantee, to each pay their Proportionate Share of the Maintenance Cost in accordance with the terms of the mutually agreed upon Other Agreement.

(1) Difficulty in reaching agreement. If all Users, including Grantee, are unable to reach agreement on the terms of the Other Agreement, including the total Maintenance Cost and/or the Proportionate Share for each User, it is the intent of Grantor and Grantee that all Users, including Grantee, enter into a non-binding mediation process to try and resolve any disputes and enter into an Other Agreement. The parties further intend that any such mediation be conducted by a mutually agreeable alternative dispute resolution firm or mediator, consistent with its or their mediation rules, process and procedure (subject to limitations applicable to Grantee). Additionally, the parties intend that all Users, including Grantee: (a) equally share in the cost of such mediation, consisting of the cost of the mediator services and the holding of the mediation sessions and (b) each bear the cost of making its presentation to the mediator. Until mutual agreement is reached between all Users, including Grantee, on the terms of the Other Agreement, Grantee shall not be required to make any

payments toward the Maintenance Cost and Grantor will not place or treat Grantee to be in breach or default under this easement.

(2) Grantor's obligations with respect to Users other than Grantee. If Grantor allows a new User to use or have access to the easement area subsequent to Grantee herein, Grantor shall require each new User to become a party to the Other Agreement and pay such new User's Proportionate Share of the Maintenance Cost thereunder. The failure or neglect of any User to pay its Proportionate Share of the Maintenance Cost shall not constitute a breach or default by Grantor under this easement, and any dispute between or among Users as to payment of Proportionate Shares or other matters involving the easement shall be resolved in accordance with the terms and conditions of the Other Agreement. Grantor agrees that it shall require that all Users of the easement area and/or any Roadway Improvements thereon shall not unreasonably interfere with any other User's use of or operations within the easement area.

7. No discrimination. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted 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.

8. Grantee to observe laws. The Grantee, in the exercise of the rights granted herein, shall comply with all of the applicable requirements of the federal, state, and county authorities and shall observe all applicable county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force. (collectively the "Applicable Laws").

9. Non-use. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

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10. Surrender. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all ~~improvements existing on~~ Roadway Improvements constructed thereon ~~or by~~ Grantee or, at the option of Grantor, Grantee shall remove such ~~improvements~~ Roadway Improvements constructed by Grantee and shall restore the premises to ~~their~~ its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If ~~the~~ Grantee does not remove the ~~improvements~~ Roadway Improvements so constructed by Grantee or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's 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 Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

11. The Grantee Limitations.

a. Grantee's Responsibility. Grantee shall ~~procure~~ be responsible for damage or injury caused by Grantee's officers and employees in the course of their employment to the extent that Grantee's liability for such damage or injury has been determined by a court or otherwise agreed to by Grantee. Grantee shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this easement (including, without limitation, any applicable rules and regulations adopted or implemented by Grantor) where Grantee is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or

pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 11a (Grantee's Responsibility). Grantor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of Grantee. Grantee's obligations under this Subsection 11a shall survive the expiration or earlier termination of this easement.

b. Grantee not authorized to indemnify or be responsible for others. Grantor and Grantee acknowledge and agree that Grantee, as an agency of the State of Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless Grantor in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons or (2) be responsible for the acts or omissions of other persons or entities (other than Grantee's officers and employees). Notwithstanding anything to the contrary contained in this easement, where Grantee is or may be obligated to: (i) indemnify, defend, or hold harmless Grantor or any other persons under any circumstances arising out of or related to this easement and Grantee's use of the premises under the terms of this easement or (ii) be responsible for the acts/omissions of other persons or entities (except Grantee's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to Funding. To the extent that Grantee is or may be: (1) obligated to perform under this easement, (2) obligated to make any payments under this easement, or (3) deemed liable under this easement, Grantee's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or

liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. Grantee shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Grantee's obligations. Notwithstanding anything to the contrary contained in this easement, this provision shall apply to and qualify each and every Grantee's obligation to perform under this easement, including, without limitation, any obligation of Grantee to pay or reimburse Grantor for any work performed by Grantor due to Grantee's failure or refusal to perform under this easement and any obligation of Grantee to perform under the rules and regulations adopted or implemented by Grantor.

(2) Grantor's right to notice. As an inducement to Grantor to agree to the Grantee Limitations (as defined herein), Grantee hereby agrees that for any obligations or liabilities of Grantee which are subject to Grantee obtaining funding or satisfying other conditions prior to Grantee being able to fulfill such obligations or liabilities, as specified in the Grantee Limitations (as defined herein), if Grantee knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then Grantee shall provide Grantor with written notice thereof within thirty (30) days of Grantee obtaining such knowledge, and Grantor may immediately issue to Grantee a notice of breach or default pursuant to Section 15 (Breach) of this easement.

d. Subject to Grantee Limitations. Grantor and Grantee acknowledge and agree that Subsections 11a (Grantee Responsibility), 11b (Grantee not authorized to indemnify or be responsible for others), and 11c (Subject to funding) are hereafter collectively the "Grantee Limitations." Notwithstanding and superseding anything to the contrary contained in this easement (and any exhibits attached to this

easement), any and all obligations, duties, responsibilities, and liabilities of Grantee under this easement (including, without limitation, Grantee's obligations to comply with any provisions of any of Grantor's rules and regulations) are expressly subject to and limited by the Grantee Limitations set forth and defined in Section 11 (Grantee Limitations) of this easement.

12. Grantor Limitations.

a. Grantor's Responsibility. Grantor shall be responsible for damage or injury caused by the Grantor's officers and employees in the course of their employment to the extent that Grantor's liability for such damage or injury has been determined by a court or otherwise agreed to by Grantor. Grantor shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this easement where Grantor is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 12a (Grantor's Responsibility). Grantee acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of Grantor. Grantor's obligations under this Subsection 12a shall survive the expiration or earlier termination of this easement.

b. Grantor not authorized to indemnify or be responsible for others. Grantor and Grantee acknowledge and agree that Grantor, as an agency of the State of Hawai'i, is not authorized to: (1) indemnify, defend, or hold harmless Grantee in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons or (2) be responsible for the acts or omissions of other persons or entities (except for the Grantee's officers and employees). Notwithstanding anything to the contrary contained in this easement, where Grantor is or may be obligated to: (i) indemnify, defend, or hold harmless Grantee or any other persons

under any circumstances arising out of or related to this easement or the use of the premises by Grantor or any other persons (ii) be responsible for the acts/omissions of other persons or entities (except Grantor's officers and employees), such obligations shall be deemed null and void and such contrary responsibility, indemnity, defense, and/or hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to Funding. To the extent that Grantor is or may be: (1) obligated to perform under this easement, (2) obligated to make any payments under this easement, or (3) deemed liable under this easement, Grantor's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. Grantor shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Grantor's obligations. Notwithstanding anything to the contrary contained in this easement (except for Grantor's obligation to pay just compensation in the event Grantor exercises its withdrawal and taking rights under Section 14 (Withdrawal), this provision shall apply to and qualify each and every Grantor's obligation to perform under this easement, including, without limitation, any obligation of Grantor to pay or reimburse Grantee for any work performed by Grantee due to Grantor's failure or refusal to

perform under this easement.

(2) Grantee's right to notice. As an inducement to Grantee to agree to the Grantor Limitations (as defined herein), Grantor hereby agrees that for any obligations or liabilities of Grantor which are subject to Grantor obtaining funding or satisfying other conditions prior to Grantor being able to fulfill such obligations or liabilities, as specified in the Grantor Limitations (as defined herein), if Grantor knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then Grantor shall provide Grantee with written notice thereof within thirty (30) days of Grantor obtaining such knowledge.

d. Subject to Grantor Limitations. Grantor and Grantee acknowledge and agree that Subsections 12a (Grantor's Responsibility), 12b (Grantor not authorized to indemnify or be responsible for others), and 12c (Subject to funding) are hereafter collectively the "Grantor Limitations." Notwithstanding and superseding anything to the contrary contained in this easement (and any exhibits attached to this easement), except for Grantor's obligation to pay just compensation in the event Grantor exercises its withdrawal and taking rights under Section 14 (Withdrawal), any and all obligations, duties, responsibilities, and liabilities of Grantor under this easement are expressly subject to and limited by the Grantor Limitations set forth and defined in this Section 12 (Grantor Limitations) of this easement.

13. Grantee to require contractors to comply with obligations to Grantor. Grantee shall require Grantee's contractors and consultants, which shall include for purposes of this section the Polynesian Voyaging Society (hereafter collectively the "Grantee's Contractors") to comply with the following obligations to Grantor:

a. Indemnify Grantor and Grantee. Grantee shall require the Grantee's Contractors to indemnify, defend (unless otherwise not permitted by Applicable Laws), and hold harmless Grantor and Grantee from and against any claim or demand for loss, liability, or damage, including claims for

bodily injury, wrongful death, or property damage, arising out of or resulting from:

(1) Grantee's Contractors' acts or omissions. Any act or omission on the part of the Grantee's Contractors relating to the use, occupancy, maintenance, or enjoyment of the premises.

(2) Failure to maintain. Any failure on the part of the Grantee's Contractors to maintain or keep in a safe condition the premises or any portions thereof that are involved with or affected by the work being performed or the services provided by the Grantee's Contractors (hereafter the "Work Areas"), including any death, accident, fire, or nuisance growing out of or caused by any such failure to maintain.

(3) Non-performance of terms or conditions. All actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's Contractors' non-observance or non-performance of any of the obligations being required of the Grantee's Contractors under this easement, including failure to comply with Applicable Laws.

b. Obtain insurance. Grantee shall require that the Grantee's Contractors procure, at ~~its~~their own cost and expense, in full force and effect throughout the term of this easement, general liability insurance, or its equivalent, with and maintain during the entire period during which the Grantee's Contractors are performing work or providing services in relation to the premises (hereafter the "Work Period"), from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of commercial general liability insurance or its equivalent, in an amount of at least \$1,000,000-~~00~~ for each occurrence and \$2,000,000-~~00~~ aggregate, and with coverage terms acceptable to the Chairperson-~~of the~~ Board of Land and Natural Resources.

(1) State as additional insured. The policy or policies of insurance shall name the State of Hawaii

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and the University of Hawai'i as an additional insured.
insureds. A copy of the policy, certificate of insurance, or
other documentation required by the Grantor shall be filed with
the State of Hawaii, Department of Land and Natural Resources.
The insurance shall Grantee and made available to Grantor upon
Grantor's request.

(2) Insurance to cover entire premises.

The insurance shall cover the entire easement areapremises,
including all Work Areas and any buildings, improvements, and
grounds and all, roadways, and/or sidewalks on or adjacent to
the easement in the use or control of the Grantee. located
therein.

The Grantee, prior to entry and use of the
easement area or within fifteen (15) days after the effective
date of this easement, whichever is sooner, shall (3) Grantee's
Contractors to furnish the Grantor insurance policy(ies),
certificates of insurance or other documentation. The Grantee's
Contractors shall furnish Grantee with a policy(s)ies),
certificates of insurance, or other documentation required by
the Grantor showing the policy(s) to be initially in force, keep
the policy(s)ies), certificates of insurance, or other
documentation required by the Grantor on deposit during the
entire easement term, Work Period and furnish a like
policy(s)ies), certificates of insurance, or other documentation
required by the Grantor upon eachthe renewal of theeach
policy(s)-.

(4) No cancellation without notice. This
insurance shall not be cancelled, limited in scope of coverage,
or nonrenewednot renewed unless and until after thirty (30) days
written notice has been given to the Grantor. The and Grantee.
Grantor may at any time require the Grantee to provide Grantor
with copies of the insurance policy(s)ies), certificates of
insurance, or other documentation confirming that are or werethe
required insurance was or is currently in effect during the
easement period or other documentation required by the Grantor.

The (5) Grantor shall retain the
right to review coverage. Grantor may at any time to review the

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coverage, form, and amount of the insurance required ~~by this~~
~~easement hereunder~~, by requiring Grantee to produce from the
Grantee's Contractors, copies of the insurance policy(ies) or
certificates of insurance that are or were in effect during the
Work Period. If, in the opinion of ~~the~~ Grantor, the insurance
~~provisions in this easement do~~ provided hereunder does not provide adequate
protection for ~~the~~ Grantor, ~~the~~ or Grantee, Grantor may require
Grantee to require the Grantee's Contractors to obtain insurance
sufficient in coverage, form, and amount to provide adequate
protection. ~~The Grantor's~~ Grantor's requirements shall be reasonable
~~but shall and~~ be designed to assure protection for and against the
kind and extent of the risks which exist at the time a change in
insurance is required. ~~The Grantor shall notify Grantee in writing of changes in the~~
~~insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or other~~
~~documentation required by the Grantor thereof, with the Grantor incorporating the changes within thirty~~
~~(30) days after receipt of the notice.~~

(6) Grantor to notify Grantee of insurance
changes. Grantor shall notify Grantee in writing of changes in
the insurance requirements and Grantee shall require the
Grantee's Contractors to deposit with the Grantee copies of
acceptable insurance policy(ies), certificates of insurance, or
other documentation as may be required by the Grantor
incorporating the written changes reasonably requested by
Grantor.

(7) No limit on Grantee's Contractors
liability. The procuring of the required policy(sies) of
insurance shall not be construed to limit ~~Grantee's~~ the liability
of the Grantee's Contractors under this easement nor to release
or relieve the ~~Grantee~~ Grantee's Contractors of the
indemnification ~~provisions and requirements of obligations being~~
required of the Grantee's Contractors under this easement.
Notwithstanding the policy(sies) of insurance, Grantee shall
require that the Grantee's Contractors shall be obligated for
the full and total amount of any damage, injury, or loss caused
by ~~Grantee's~~ the negligence or neglect ~~connected with this~~
~~easement of~~ the Grantee's Contractors in connection with the
premises.

It is further agreed that any insurance
maintained by ~~the~~ Grantor and Grantee will apply in excess of,

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and not contribute with, insurance provided by ~~Grantee's policy.~~
the Grantee's Contractors.

c. Maintain the premises. Grantee shall require the Grantee's Contractors to keep the Work Areas in a strictly clean, sanitary, and orderly condition.

d. Restoration after work completed. Grantee shall require that the Grantee's Contractors be responsible for cleaning and restoring the Work Areas to its original condition or a condition satisfactory to Grantor and Grantee upon completion of the work performed or services provided in connection with the premises. Grantee shall require the Grantee's Contractors to remove and properly dispose off-site all trash generated or brought onto the premises and/or Work Areas by the Grantee's Contractors.

e. Compliance with Applicable Laws. Grantee shall require that the Grantee's Contractors comply with all Applicable Laws in relation to the premises and the Work Areas.

14. ~~12.~~Withdrawal. Grantor reserves the right to withdraw the easement area or any portion thereof for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee. ~~[*Upon withdrawal of the easement, Grantor shall return to Grantee a portion of the one time payment described in paragraph 1. For purposes of determining the amount to be returned to the Grantee, the term "net payment" shall mean the one time payment described in paragraph 1 reduced by any non refundable portion of the one time payment, if any, that Grantor was required by statute to pay to any other entity or body. The amount returned to Grantee shall be the net payment prorated for the unused term of the easement.] [~~**In any such event, all monies paid by the Grantee hereunder will be retained by the Grantor.~~]~~ Grantor and Grantee will work together to identify a mutually agreeable alternative site that Grantee may use for the roadway and access purposes as described in this easement that is within the reasonable vicinity of the easement area.

15. Breach. Time is of the essence in this easement

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~~and 13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.~~

~~*14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default (hereafter the "Grantor's Default Notice") and demand for cure, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.~~

~~**14. Time is of the essence in this agreement and if the Grantee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) calendar days after delivery by the Grantor of a written notice of breach or default, or if the Grantee shall become bankrupt, or shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days~~

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~~after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, all improvements shall at the option of the Grantor, all buildings and improvements shall remain and become the property of the Grantor at the option of the Grantor or shall be removed by Grantee; furthermore, the.~~ Upon Grantee's receipt of the Grantor's Default Notice, Grantor and Grantee acknowledge and agree that Grantor and Grantee shall retain all rent paid in advance enter into good faith discussions (not to be applied exceed sixty (60) days from Grantee's receipt of the Grantor's Default Notice) to address and resolve any damages. issues relating to Grantee's breach or default hereunder before Grantor takes any further action against Grantee for breach of or default under this easement.

*15. ~~In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection~~

~~with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redistribution shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redistribution; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redistribution which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.~~

~~**15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) calendar days or any other default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to~~

~~the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispense shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market grant value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.~~

~~16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.~~

16. Condemnation. If at any time, during the term of

this easement, any portion of the premises should be condemned, or required for public purposes by the federal government (hereafter the "federal condemning authority"), the rental, if any, shall be reduced in proportion to the value of the portion of the premises condemned. Grantee shall be entitled to receive from the federal condemning authority (a) the value of growing crops, if any, which Grantee is not permitted to harvest and (b) the value of the Grantee's Roadway Improvements so taken in the proportion that the unexpired term of the easement bears to the total term of the easement; provided, that Grantee may, in the alternative, remove and relocate its Roadway Improvements to the remainder of the premises occupied by Grantee. Grantee shall not by reason of the condemnation by the federal condemning authority be entitled to any claim against Grantor for condemnation or indemnity for the easement interest and all compensation payable or to be paid for or on account of the easement interest by reason of the condemnation by the federal condemning authority shall be payable to and be the sole property of Grantor. The foregoing rights of Grantee shall not be exclusive of any other rights to which Grantee may be entitled by law. Where the portion of the premises taken by the federal condemning authority renders the remainder unsuitable for roadway and access purposes, Grantee shall have the option to surrender this easement and be discharged and relieved from any further liability; provided, that Grantee may remove the Roadway Improvements constructed, erected, and/or placed by Grantee within or upon the premises before the expiration of any reasonable period allowed by Grantor.

17. ~~The~~ Hazardous materials.

a. No disposal or release within the premises.
Grantee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law.

b. Grantee must obtain Grantor consent to bring hazardous materials onto the premises. Grantee shall not allow the storage or use of such hazardous materials in any manner not sanctioned by law or by the highest reasonable standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the ~~easement~~

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~~are~~premises any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such hazardous materials and upon ~~Grantor's~~Grantor's consent which consent ~~may~~shall not be unreasonably withheld ~~at Grantor's sole and absolute discretion.~~

c. If testing is required. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then ~~the~~ Grantee shall be responsible for the reasonable costs thereof.

d. Grantee to attest to presence of hazardous materials. In addition, Grantee shall execute affidavits, representations, and the like from time to time at ~~Grantor's~~Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the ~~easement area~~premises placed or released by Grantee.—

~~The Grantee agrees to release, indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.~~

e. "Hazardous materials" definition. For the purpose of this easement, "hazardous material~~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, or any other federal, state, or local environmental law, regulation, ordinance, rule, or ~~by law~~by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

~~IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.~~

~~STATE OF HAWAII~~

~~Approved by the Board of~~ By _____
~~Land and Natural Resources~~ ~~SUZANNE D. CASE~~
~~at its meeting held on~~ Chairperson _____
_____. Board of Land and
_____ Natural Resources

GRANTOR

(Entity's name)

By _____

(Name of Grantee)

Its _____

~~APPROVED AS TO FORM.~~

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And By _____

Its _____
~~Deputy Attorney General~~ _____

Dated: _____

(Individuals/Trustees of Trust)

(Name of Grantee)
Its _____
(For Trustees state as Trustee
aforesaid)

_____ GRANTEE

~~*Paragraph 12, 14, 15 If one time payment use this.~~

~~**Paragraph 12, 14, 15 If annual payment use this.~~

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STATE OF HAWAII _____)
) ~~SS.~~

COUNTY OF _____)

~~On this _____ day of _____, 20____, before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.~~

Notary Public, State of Hawaii

My commission expires: _____

~~STATE OF HAWAII _____)
) ~~SS.~~~~

f. Grantee responsibility. To the extent that it can be proven or established that the presence, discharge, or release of hazardous materials on or within the premises is or can be attributable or attributed to actions of Grantee, Grantee's responsibility for such hazardous materials on or within the premises, including any clean-up and remediation, shall be subject to and governed and limited by the Grantee Limitations. Grantee will require that the Grantee's Contractors, including PVS, be responsible, at their sole cost and expense, for cleaning up and remediating any hazardous materials on or within the premises that were discharged or released by the Grantee's Contractors, including PVS, or whose presence can otherwise be attributable to the use of or activities within the premises by such parties. The Grantee Limitations shall not be available to Grantee's Contractors, including PVS, if it can be proven or established that the

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Sand Island roadway and access _____

presence, discharge, or release of hazardous materials on or within the premises is or can be attributable or attributed to the respective actions of such parties.

18. Hawaii law. This easement shall be construed in accordance with and interpreted, enforced, and governed by the laws of the State of Hawaii.

19. Headings. The article and paragraph headings herein are inserted only for convenience and reference only and shall in no way define, describe, or limit the scope or intent of any provision of this easement.

20. Partial invalidity. If any term, provision, covenant, or condition of this easement should be held to be invalid, void, or unenforceable, the remainder of this easement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid:

To Grantor at:

Department of Land and Natural Resources
Land Division
Attention: Land Administrator
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Or

P.O. Box 621
Honolulu, Hawaii 96809

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Phone No.: 587-0419
Fax No.: 312-6357
Email: dlnr.land@hawaii.gov

To Grantee at:

Office of the Vice President for Budget and
Finance/Chief Financial Officer
University of Hawai'i
Office of Planning
1400 Lower Campus Road, Room 11

Honolulu, Hawaii 96822
Attention: Carleton Ching
Director of Land Development

Phone No.: _____
Fax No.: 956-2093
Email: _____

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at such other address as either Grantor or Grantee may designate in writing as its new address for such purpose by notice given to the other in accordance with this Section 21 (Notice). Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile or email to the number set forth herein or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile or email. The parties will each appoint a point of contact for matters relating to this easement and will attempt to minimize changes such points of contact.

22. _____ COUNTY OF _____)

On this _____ day of _____, 20_____,
before me appeared _____ and _____
_____, to me personally known,
who, being by me duly sworn, did say that they are the _____
and _____, respectively of _____
_____, a Hawaii corporation, and that said instrument was signed in
behalf of said corporation by authority of its Board of
Directors, and the said _____ and _____
acknowledged said instrument to be the free act and deed of said
corporation.—

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII _____)
_____) SS.
COUNTY OF _____)

On this _____ day of _____, 20_____,
before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.—

Notary Public, State of Hawaii

My commission expires: _____

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ATTACHMENT

SPECIAL CONDITIONS

~~(If roadway easement include 18-19 below)~~

~~18. The easement area shall not be used at any time by the Grantee, its guests or invitees for parking purposes.~~

~~19. The Grantee shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grant.~~

~~20. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway, waterway, or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.~~

~~(If seawall easement include 21-24 below)~~

~~21. No building, structure or improvements other than the existing _____ (i.e. seawall) shall be placed or constructed within the easement area.~~

~~22. The Grantee acknowledges and agrees that the _____ described in Exhibit "A" and delineated on Exhibit "B" herein is/are nonconforming and, further, that the Grantee is prohibited from rebuilding or altering said _____ without first obtaining the appropriate permission (e.g., conservation district use permit) from Grantor. In no event may Grantee extend the _____ seaward of its/their present location. Furthermore, the Grantee shall keep the _____ in good condition and repair; provided, however, if the _____ is/are damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction as determined by the Grantor, this easement and all rights granted herein shall~~

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~~cease and terminate automatically without any further action on the part of the Grantor.~~

~~23. The public shall have access across the easement area at all times.~~

~~24. The Grantee shall release, hold harmless, defend, and indemnify the State of Hawaii, its boards, departments, agencies, and public and appointed officials from any and all claims for harm, taking, damages, loss of land, or specific performance that may arise out of or result from the existence and effect of the _____ on the flow of ocean water that, in turn, may affect or cause lateral erosion of shoreline land in either direction along the shore from the _____.~~

~~Replace paragraph 5 for seawall easements pursuant to Board Submittal dated January 14, 2005, and for those easements which the Board approved (see Board Submittal August 10, 2012 for the most current revision) with condition that easement runs with the land herein below:_____~~

~~. Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. () _____, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document._____~~

Entire agreement. Grantor and Grantee agree that this easement shall be the final expression of their entire agreement with respect to the subject matter hereof (except for the Lease and any additional easements associated therewith), and supersedes and replaces, and may not be contradicted by evidence of, any prior or contemporaneous written or oral agreements or understandings.

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23. Environmental Requirements.

Compliance with regulations.

a. ~~25.~~ ~~The~~ Grantee shall comply with all applicable federal and state environmental impact regulations.

b. Implement pollution control measures. ~~26.~~
~~The~~ Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from ~~the~~ Grantee's, ~~its~~ ~~invitee's, or its agent's~~ use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to ~~the~~ Grantor's satisfaction the ~~areas~~ area affected by such pollution or contamination, all at ~~the~~ Grantee's own cost and expense.

24. No parking within roadway easement area. The roadway portion of the easement area shall not be used at any time by the Grantee, its guests or invitees for parking purposes, unless otherwise approved or permitted by Grantor.

~~25. 27. The Grantee shall maintain, repair and upkeep the existing _____ in a condition satisfactory to the Grantor, and in a manner that will enhance the public shoreline and access thereto. Any improvements to the existing _____ shall be subject to the prior written approval of the Board of Land and Natural Resources and any other appropriate permission. Upon abandonment, expiration or termination of this easement, if desired by the Grantor, the Grantee, its successors and assigns, at its sole cost and expense, shall remove the _____ and restore the area to a condition satisfactory to the Grantor.~~

~~Subsurface Easement NOTE this provision is also used for roadway easements)~~

~~. The~~ No structures over easement area. Grantee

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shall not construct, place or maintain any building or structure over or upon the easement area, except for the purposes described in this grantee easement or as otherwise permitted in writing by Grantor.

26. ~~(Term Utility Easement Use the following relocation provision:)~~

~~Keep vegetation trimmed. Grantee shall at all times during the term of this easement keep trimmed all vegetation growing within, over, or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway, waterway, or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.~~

27. Relocation. Should future development necessitate a relocation of the easement granted herein, or any portion thereof, the relocation shall be accomplished at ~~the~~ Grantee's own cost and expense or with Grantee's pro rata contribution to the extent that the easement area is used by others; provided, however, that if other lands of ~~the~~ Grantor are available, ~~the~~ Grantor will grant to ~~the~~ Grantee without payment of any money, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law.

[Remainder of page intentionally left blank]
[Signature pages to follow]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the

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Department of Land and Natural Resources to be hereunto affixed
and the parties hereto have caused this Grant of Non-Exclusive
Easement to be executed as of the day, month, and year first
above written.

STATE OF HAWAII

Approved by the Board of _____ By _____
Land and Natural Resources SUZANNE CASE
at its meeting held on _____ Chairperson
_____ Board of Land and
_____ Natural Resources

APPROVED AS TO FORM: _____

GRANTOR

UNIVERSITY OF HAWAI'I

Amanda J. Weston
Deputy Attorney General
Dated: _____

By _____
KALBERT K. YOUNG
Vice President for Budget and
Finance/Chief Financial Officer

GRANTEE

RECOMMEND APPROVAL:

David Lassner, Chancellor
University of Hawai'i at Mānoa

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Brian Taylor, Dean
School of Ocean and Earth Science and Technology
University of Hawai'i at Mānoa

John Morton, Vice President for Community Colleges
University of Hawai'i

Erika Lacro, Chancellor
Honolulu Community College

APPROVED AS TO FORM:

Office of University General Counsel:

Bruce Y. Matsui
Associate General Counsel

Dated: _____

CITY AND COUNTY OF HONOLULU _____)

~~(Prior approval by the Governor and the prior authorization of the Legislature by Concurrent Resolution for Submerged Lands)~~

~~Section 171-53(c), Hawaii Revised Statutes, requires the prior authorization of the legislature by concurrent resolution to be obtained for this term easement. Said concurrent resolution was obtained on~~

~~The Grantee shall, at its own cost and expense, within thirty (30) calendar days after the date of receipt of this easement document, procure and deposit with the Grantor and thereafter keep in full force and effect during the term of this easement a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Grantee of all the terms, conditions, and covenants of this easement, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the easement terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Grantor as liquidated and ascertained damages and not as a penalty.~~

~~(Environmental Requirement)~~

~~. The Grantee shall comply with all applicable federal and state environmental impact regulations.~~

~~. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's and its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the area affected by such pollution or contamination, all at the Grantee's own cost and expense.~~

~~(Governor's approval for easements upon land encumbered by Governor's Executive Order)~~

~~. The easement area is encumbered by Governor's Executive Order No. _____ to the State of Hawaii, Department of _____, and therefore this grant of easement is subject to the State of Hawaii Governor's approval. Said approval was obtained on _____.~~

~~(Agency's or County's approval for easements upon land encumbered by Governor's Executive Order)~~

~~. The easement area is encumbered by Governor's Executive Order No. _____ to the State of Hawaii, Department of _____ or County of _____), and therefore this grant of easement is subject to the (Agency's or County's) approval. Said approval was obtained on _____.~~

day of _____,

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before me appeared KALBERT K. YOUNG, to me personally known,
who, being by me duly sworn, did say that he is the Vice
President for Budget and Finance/Chief Financial Officer of the
University of Hawai'i, the state university and a body corporate
of the State of Hawai'i and that said instrument was signed in
behalf of said University of Hawai'i by authority of its Board
of Regents, and said KALBERT K. YOUNG, as said Vice President
for Budget and Finance/Chief Financial Officer, acknowledged
said instrument to be the free act and deed of said University
of Hawai'i.

Print Name: _____

Notary Public, First Circuit

State of Hawai'i

My commission expires: _____

Date of Document: _____	# Pages: _____
or <input type="checkbox"/> Undated at time of notarization	
Name: _____	First Circuit
Doc. Description: Grant of Non-Exclusive Easement	
S- _____	

Notary Signature _____	Date _____
NOTARY CERTIFICATION _____	(Seal) _____

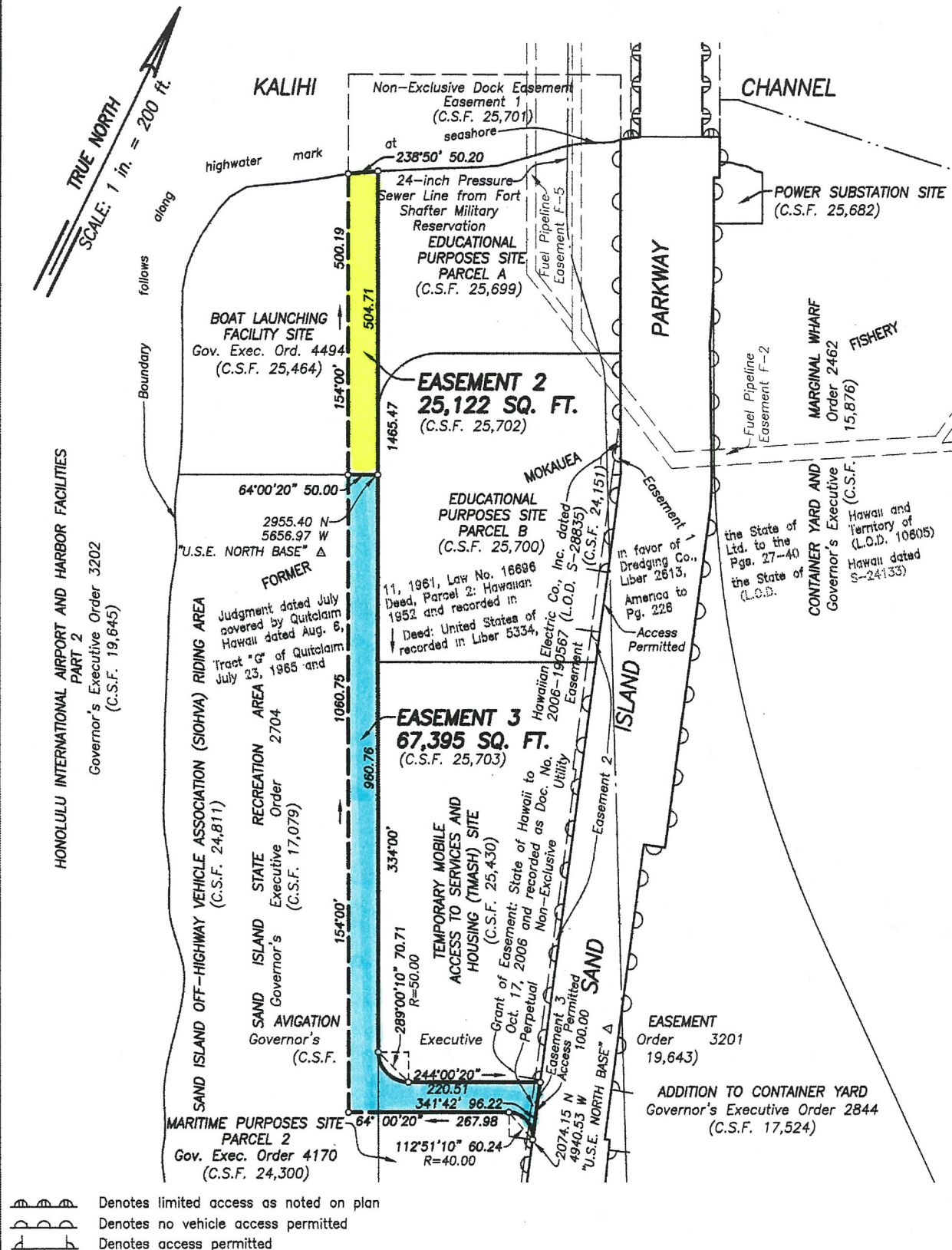
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EXHIBIT 4B



NON-EXCLUSIVE ACCESS EASEMENT EASEMENTS 2 AND 3

Mokauea, Sand Island, Honolulu, Oahu, Hawaii

Job O-262(17)

C. BK.

Scale: 1 inch = 200 feet

EXHIBIT 4B

TMK 1-5-41: Pors. 06

C.S.F. NOS. 25,702
25,703

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

RDM November 27, 2018